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4 October 2024

Associated British Ports
25 Bedford Street
London
WC2E 9ES

Dear Sir/Madam,

Planning Act 2008
Application for the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order

1. I am directed by the Secretary of State for Transport ("the Secretary of State") to say that consideration has been given to:

- the report dated 25 April 2024 of the Examining Authority ("ExA"), comprised of Grahame Gould BA MPhil MRTPI, Stephen Bradley BA DipArch MA MSc ARB RIBA and Mark Harrison BA(Hons) DipTP LLM MioL MRTPI, who conducted an Examination into the application ("the Application") made on 10 February 2023 by Associated British Ports ("the Applicant") for the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 ("the Order") under section 37 of the Planning Act 2008 as amended ("the 2008 Act");
- the responses to the further consultations undertaken by the Secretary of State following the close of the Examination in respect of the Application; and
- late representations received by the Secretary of State following the close of the Examination.

2. Published alongside this letter on the Planning Inspectorate website is a copy of the ExA's Report of Findings, Conclusions and Recommendation to the Secretary of State ("the Report"). All "ER" references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form "ER x.xx.xx" as appropriate. References to "requirements" are to those in Schedule 2 to the Order as the ExA recommended at Appendix E to the Report ("the draft Order").

The Application

3. The Application was accepted for Examination on 6 March 2023. The Examination began on 26 July 2023 and was completed on 25 January 2024. The Examination was conducted based on written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook an accompanied site inspection, one unaccompanied site inspection and one bespoke Familiarisation Site Inspection because the vast majority of the marine and landside areas of the Order Limits could not be observed from the publicly accessible vantage points [ER 1.4.10].

4. The Order as applied for would grant development consent for the construction, within the existing Port of Immingham on the Humber Estuary/river, of a new roll on/roll off ("Ro-Ro") terminal comprising three berths and associated landside works, storage areas, terminal buildings and a road bridge ("the Proposed Development") [ER 1.1.1].

5. The marine elements of the Proposed Development comprises [ER 1.3.15]:

- an approach jetty;
- two finger piers; and
- vessel impact protection measures.

6. The main elements of the landside works comprise [ER 1.3.20]:

- a northern storage area to accommodate: 266 trailer bays; 65 container (40 foot) ground slots; and 19 "trade unit" slots;
- a central storage area to accommodate: 211 trailer bays; 75 staff parking spaces; and 15 equipment parking spaces, some UK Border Force search and welfare accommodation and a new internal bridge linking the northern and southern storage areas;
- a southern storage area to accommodate 397 trailer bays, six trade unit ground slots, 50 pre-gate HGV parking spaces, and some parking for passengers and staff. Provision will also be made for tug parking and holding/marshalling lanes for accompanied units and passenger vehicles. The main customs and passport accommodation for the UK Border Force functions to be exercised and the main terminal building would also be sited in the southern storage area;
- a western storage area to accommodate 800 trailer bays;
- a two-lane internal bridge spanning an internal port road (Robinson Road);
- widening of the width of the Port of Immingham's East Gate to provide two lanes of entry and the installation of a replacement gate house, and on the adjoining public highway (Queens Road) the relocation of a bus stop, removal of a lay-by and the installation of a new length of footway;
- alterations to two internal port roads, Robinson Road and Gresley Way; and
- environmental enhancement works.

7. The location of the Proposed Development lies within the administrative area of North East Lincolnshire Council ("NELC"). Although the Proposed Development

wholly lies within the administrative boundaries of NELC, parts of the Port of Immingham are within the administrative area of North Lincolnshire Council ("NLC") [ER 1.3.1].

8. During the Examination, the Applicant put forward four change requests, which it considered non-material and would improve the performance and efficiency of the Proposed Development, to address various concerns raised by Interested Parties ("IPs") and the ExA during the examination [ER 1.5.1]. In summary, the change requests sought were to allow for [ER 1.5.4]:

- Change 1 – the realignment of the approach jetty and associated work to the marine infrastructure;
- Change 2 – the realignment and shortening of the Proposed Development's onshore internal bridge;
- Change 3 – the realignment of the UK Border Force facilities; and
- Change 4 – the potential installation of a 'dolphin' structure, as an impact protection measure at the western end of the Immingham Oil Terminal finger pier.

9. The ExA considered the materiality of the proposed changes and concluded that the changes, either individually or collectively, were not material changes. The ExA therefore accepted the changes [ER 1.5.5]. The ExA also considered that the changes to the documentation, including amendments made to the ES during the Examination, together with the change requests did not individually or cumulatively undermine the scope and assessment of the ES [ER 2.6.4].The Secretary of State agrees with the ExA that these changes should be accepted as part of the Proposed Development for the reasons set out in the ExA's procedural decision letter dated 6 December 2023 in respect of the above changes sought by the Applicant to the Order.

SUMMARY OF EXA'S RECOMMENDATION

10. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad headings:

- The Principle of the Development and Need (including urgency)
- Consideration of alternatives to the Proposed Development
- Navigation and Shipping effects
- Marine Ecology, Biodiversity and Natural Environment
- Terrestrial Traffic and Transport
- Climate Change
- Flood Risk
- Water Environment
- Socio-Economic, Commercial and Economic effects
- Air Quality

- Noise and Vibration
- Landscape and Visual Effects
- Historic Environment
- Costal Physical Processes, Waste Management and Dredge Disposal
- Land Use Planning
- Cumulative and In Combination Effects
- Habitats Regulations Assessment
- Compulsory Acquisition and related matters
- Draft Development Consent Order and related matters.

11. For the reasons set out in the Report, the ExA concluded that the Proposed Development meets the tests in section 104 of the 2008 Act, and recommended that the Secretary of State grant the Order in the form attached at Appendix D to the Report, subject to the securing of the allocation of 1.0 hectare of the Outstrays to Skeffling Managed Realignment Scheme as compensatory land [ER 8.3].

SUMMARY OF SECRETARY OF STATE'S DECISION

12. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in this Application. The letter is the statement of reasons for the Secretary of State's decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 ("the 2017 Regulations").

SUMMARY OF SECRETARY OF STATE'S CONSIDERATION

13. The Secretary of State's consideration of the Report, responses to the consultations of 9 May 2024 and 9 July 2024, representations received after the close of Examination and all other material considerations are set out in the following paragraphs. Where consultation responses and late representations are not otherwise mentioned in this letter, it is the Secretary of State's view that these representations do not raise any new issues that were not considered by the ExA and do not give rise to an alternative conclusion or decision on the Order.

14. The Secretary of State has had regard to the Local Impact Report prepared by NELC. The Secretary of State also notes the ExA's assessment, set out in section 2 of the Report, regarding relevant legislation and other relevant policies and agrees these are matters to be considered in deciding this Application.

15. The Secretary of State has also had regard to the environmental information associated with the Proposed Development as defined in regulation 3(1) of the 2017 Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

16. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations as set out in the Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

The Principle of the Development and Need

17. The Secretary of State is content that the Proposed Development is a Nationally Significant Infrastructure Project in accordance with section 14(1)(h) and section 22(1) of the 2008 Act for the reasons set out at ER 1.1.3 and that section 104(2) of the 2008 Act has effect in relation to the Proposed Development. In determining this Application, the Secretary of State must therefore have regard to any relevant National Policy Statements ("NPS"), Local Impact Reports, any matters prescribed in relation to the Proposed Development, and any other matters the Secretary of State considers to be both important and relevant to the decision. Under section 104(3) of the 2008 Act, the Secretary of State must decide this Application in accordance with any relevant NPS which in this case is the National Policy Statement for Ports ("NPSfP").

18. The Secretary of State agrees with the ExA that the NPSfP and the East Inshore Marine Plan ("EIMP") (which forms part of the East Inshore and Offshore Marine Plans 2014) form the primary policy basis for the consideration of the Principle of the Development (and Need) [ER 3.2.1].

19. The NPSfP sets out the case for the need for the provision of new port infrastructure. The Government's policy, as outlined in the NPSfP, is not just about matching supply and demand, but also seeks to increase competition while making port capacity more resilient (i.e. adaptable to peaks in demand, weather conditions, accidents and other operational difficulties) [ER 3.2.5]. Paragraph 3.4.11 of the NPSfP outlines that capacity therefore needs to be provided at a wide range of facilities and locations so that there is flexibility to match the changing demands of the market, possibly with traffic moving from existing ports to new facilities generating surplus capacity.

20. The NPSfP purposely does not seek to dictate where new port development should take place, with new development needing to be responsive to changing commercial demands and competition being encouraged as a means of driving efficiency and reducing costs (NPSfP 3.4.12).

21. Paragraph 3.5.1 of the NPSfP explains that the Secretary of State in determining an application should accept the need for future capacity to: cater for long term forecasted growth in volumes of imports and exports; support the development of offshore sources of renewable energy; encourage coastal shipping; ensure effective competition amongst ports and provide resilience; and take account of the potential contribution port developments might make to regional and local economies. Paragraph 3.5.2 sets out that, given the level and urgent need for infrastructure as outlined in the NPSfP, there is a presumption in favour of granting consent to applications for port development which meets the criteria set out in paragraph 3.5.1 of the NPSfP. This presumption applies unless any more specific and relevant policies in the NPSfP or another NPS clearly indicate that consent should be refused. The presumption is also subject to the provisions of the 2008 Act.

22. EIMP's policy dictates that new port development should avoid or minimise interference with existing port activities and provide mitigation when interference cannot be avoided [ER 3.2.12].

Need for the Proposed Development

23. Chapter 4 of the Environmental Statement ("ES"), supplemented by the Applicant's Markets Forecast Study Report, Planning Statement (incorporating Harbour Statement) and addendum sets out the Applicant's case for the need for the Proposed Development [ER 3.2.13]. In examining the Application, the ExA considered:

- existing Ro-Ro Capacity on the Humber;
- the Need for Additional Ro-Ro capacity on the Humber;
- the Proposed Development's Capacity;
- contribution to Port Capacity Resilience on the Humber;
- competition to Ro-Ro services on the Humber; and
- urgency for Capacity on the Humber [ER 3.2.40].

24. The ExA's summary of the issues considered during the Examination and its conclusions on these matters is found at paragraphs 3.2.33 – 3.2.130 of the Report.

Existing Ro-Ro Capacity on the Humber

25. The Secretary of State notes that CLdN Ports Killingholme Limited ("CLdN"), the operators of the Port of Killingholme, consider that there will be some growth in the freight market on the Humber but consider that the Applicant's forecasting was bullish, particularly in the short term [ER 3.2.73]. It challenged the Applicant's need case and raised concerns regarding the Applicant's Market Forecast Study Report during the Examination. In particular, CLdN considered that:

- the Applicant had overstated the need to increase the Humber's unaccompanied Ro-Ro unit handling capacity [ER 3.2.41 – 3.2.44];
- the Applicant's assessment made no allowance for the current expansion at the Port of Killingholme or further expansion that is expected to take place in future through permitted development rights or by obtaining any necessary express planning permission(s) [ER 3.2.42];
- the Applicant's assessment relied on an unrealistic dwell time [ER 3.2.43]; and
- the Applicant's underestimation of the Port of Killingholme's capacity and the use of an unrealistic dwell time means that the capacity for unaccompanied Ro-Ro units would not be exceeded until sometime between 2031 and 2044 [ER 3.2.47].

26. The Secretary of State notes that following a request by the ExA [ER 3.2.50], the Applicant updated its Market Forecast Study Report to take into account, among other things, capacity at the Port of Killingholme [ER 3.2.52 – 3.2.53]. Nevertheless, the ExA recorded continued disagreement on capacity in the Humber region and at the Port of Killingholme [ER 3.2.55 – 3.2.58].

27. On the existing and future capacity at the Port of Killingholme, the ExA considered CLdN's evidence to be more persuasive than that provided by the Applicant [ER 3.2.54]. The ExA concluded that the Port of Killingholme's capacity is currently not constrained, and that the Applicant's earlier reliance on a dwell time of 2.25 days was excessive, resulting in an underestimation of the Humber's current capacity [ER 3.2.62]. The ExA therefore considered that any shortage in the Humber's existing unaccompanied Ro-Ro handling capacity had been overstated by the Applicant and that this has implications for the weight to be attached to the Applicant's claim that there is a compelling and urgent need for the Proposed Development [ER 3.2.63].

The Need for Additional Ro-Ro capacity on the Humber

28. The ExA reports that the Applicant and CLdN submitted considerable amounts of evidence on the possible level of future demand for unaccompanied Ro-Ro freight handling capacity [ER 3.2.75]. The ExA highlighted the eight different scenarios contained within the Applicant's response to CLdN's Deadline 4 Submissions (9 October 2023), and that these scenarios suggest that the annual volume of units handled by 2050 could be anywhere between 1.6 and 2.2 million [ER 3.2.76]. The ExA considered that it is likely that further Ro-Ro freight capacity on the Humber is required, but that there is currently too much uncertainty to rely on any particular scenario [ER 3.2.77]. The Secretary of State notes that the disagreement between the Applicant and CLdN on the current unit handling capacity and the future demand for capacity was not resolved by the end of the Examination. [ER 3.2.105]. The Secretary of State is also aware that CLdN questioned the reliability of the Applicant's forecasts, including Gross Domestic Product forecasts [ER 3.2.65 – 3.2.67], and that it considered that storage capacity for unaccompanied Ro-Ro units would not be exceeded by 2026 as suggested by the Applicant and could give rise to the over provision of Ro-Ro handling capacity on the Humber [ER 3.2.68].

29. Based on the evidence presented, the ExA considered that the Proposed Development would contribute to the expansion of the handling capacity for unaccompanied Ro-Ro units on the Humber, aligning with the policy support for new port infrastructure stated in the NPSfP. However the ExA was of the view that, as the Applicant underestimated the amount of existing capacity on the Humber, the compelling and urgent need made by the Applicant had been exaggerated [ER 3.2.78], and that this should attract little positive weight in the making of the Order [ER 3.2.124].

The Proposed Development's Capacity

30. The Secretary of State has considered CLdN's representations on the Proposed Development's capacity [ER 3.2.79 – 3.2.89] and notes that it argued that if the Proposed Development operated with an average dwell time of 2.25 days, then the maximum annual throughput of 660,000 units for the Proposed Development as presented by the Applicant would not be possible [ER 3.2.79 – 3.2.80]. The ExA reports that the Applicant maintained that the Proposed Development would be capable of handling a maximum of 660,000 Ro-Ro units per year, with an efficient annual throughput level of 80% [ER 5.2.81 – 5.2.83]. The Secretary of State notes that the ExA concluded, after considering the responses from Stena Line [ER 3.2.86] and the Applicant [ER 3.2.87] to its questions on this matter, that the Proposed Development's throughput would be sensitive to the capacity of the vessels used and their capacity utilisation. The ExA therefore considered that there is a possibility that

the annual throughput could be more modest than the efficient annual throughput or the maximum annual throughput figures provided by the Applicant [ER 3.2.88]. The Secretary of State notes that the ExA also considered that a partial or phased implementation of the Proposed Development would reduce its contribution that could be made to meeting the need for additional port capacity [ER 3.2.89].

31. Overall, the ExA concluded that the Proposed Development would contribute to meeting the need for additional port capacity identified in the NPSfP, notwithstanding how much of that capacity might actually be utilised. The Proposed Development would therefore align with the policy support for providing new port infrastructure stated in the NPSfP. The ExA also considered that the Proposed Development would be consistent with the East Inshore Marine Plan, particularly Policy PS3, as long as the additional port capacity provided would not unacceptably interfere with existing activities at the Port of Immingham [ER 3.2.90]. The Secretary of State's consideration of the Proposed Development's impacts on existing activities at the Port of Immingham is considered further in the Navigation and Shipping Effects section below.

Competition to Ro-Ro services on the Humber

32. The Secretary of State notes that CLdN argued that the Proposed Development would not support competition [ER 3.2.91], an argument challenged by the Applicant during the Examination [ER 3.2.92 and 3.2.97]. The ExA recognised that although the Proposed Development would increase Ro-Ro handling capacity on the Humber, this increased capacity would not necessarily lead to a greater choice amongst Ro-Ro service providers on the Humber. This is because an existing Ro-Ro service provider, Stena Line, would relocate its two existing services, one currently operating from the Port of Immingham's inner dock and the other from the Port of Killingholme, to the Proposed Development [ER 3.2.94]. Stena Line submitted that there would be potential for it to provide one or more additional services in the future [ER 3.2.94], but the ExA recorded that no clear evidence was provided to demonstrate that Stena Line would do so [ER 3.2.128]. The ExA also noted that no evidence was provided during the Examination to show that the capacity vacated by Stena Line at the Port of Immingham's inner dock and the Port of Killingholme would be backfilled by new entrant Ro-Ro shipping lines [ER 3.2.95]. Therefore, the ExA concluded that there would be no immediate change in the number of Ro-Ro operators using the Port of Immingham because once Stena had vacated the port's inner dock, there is no guarantee that part of the port would remain in Ro-Ro use [ER 3.2.96].

33. Overall, the ExA concluded that since the Applicant expected Stena Line would be the primary user of the Proposed Development, and because no clear evidence was presented to demonstrate that Stena Line would increase its services or that new entrant Ro-Ro service providers would enter the Humber port market, the Proposed Development would do little to add to effective competition among the Humber ports [ER 3.2.100 and ER 3.2.128]. Furthermore, the ExA concluded that it had not been demonstrated that the Proposed Development would either ensure effective competition or make available spare capacity to ensure real choices for port users, in accordance with paragraphs 3.4.1. and 3.4.13 of the NPSfP [ER 3.2.101].

Contribution to Port Capacity Resilience on the Humber

34. The Secretary of State is aware that CLdN and the Applicant disagreed on the contribution the Proposed Development would make on port capacity resilience on the Humber [ER 3.2.102 – 3.2.104]. Tthe ExA considered that the Applicant had understated the current handling capacity, particularly in connection with the facilities available at the Port of Killingholme, and that there is considerable uncertainty about how additional capacity will be required to meet future demand [ER 3.2.106]. Noting that the NPSfP supports the provision of additional port infrastructure that contributes to resilience and that this support is unqualified by any reference to where and how much additional capacity should be provided for resilience purposes, the ExA concluded that the Proposed Development would be consistent with the NPSfP policy for building resilience into the port sector, noting that Policy PS3 of the East Inshore Marine Plan would also need to be met [ER 3.2.107].

Urgency for Capacity on the Humber

35. The ExA reported that the Applicant claimed there was an urgent need for the Proposed Development on the Humber, and that this urgency primarily arose from Stena Line's need to vacate its existing operations at the Port of Killingholme by 1 May 2025 [ER 3.2.108]. The ExA concluded that the urgency set out by the Applicant is not necessarily of the kind envisaged by paragraph 3.5.1 of the NPSfP [ER 3.2.116]. The ExA considered this to be the case in light of its conclusion that current capacity on the Humber is not as constrained as put forward by the Applicant, and that it is only because of the breakdown of negotiations between Stena Line and CLdN that the former is seeking to move all of its operations from the Port of Killingholme [ER 3.2.113]. In addition, the ExA concluded that although the Proposed Development would allow for the handling of freight, it would be in a location where it has not been demonstrated there is clear absence of capacity in the short to medium term ER 3.2.116].

36. Overall, the ExA concluded that the Proposed Development would contribute to meeting the broad need for additional port capacity in the UK, and that it therefore benefits from the presumption in favour of the granting of the Order as set out in paragraph 3.5.21 of the NPSfP [ER 3.2.123]. The ExA concluded that the contribution the Proposed Development would make in terms of additional resilience among the Humber ports should carry moderate positive weight [ER 3.2.130, second bullet]. However, as set out above, the ExA also concluded that the following matters affect the weight that the Secretary of State should give in the planning balance:

- given its conclusion that there is existing available capacity on the Humber and that the compelling and urgent need case made by the Applicant has been exaggerated [ER 3.278], the ExA concluded that the contribution of the Proposed Development to meet the generalised need for additional port capacity attracts little positive weight in favour of the making of the Order [ER 3.2.130, first bullet];
- although the ExA concluded that the contribution that the Proposed Development would make in terms of resilience should carry moderate positive weight [ER 3.2.130, second bullet]; it had doubts as to the precise contribution the Proposed Development would make to meeting the need for additional Ro-Ro handling capacity on the Humber [ER 3.2.126];

- the ExA considered that the Proposed Development would not add to effective competition on the Humber as it would be operated by Stena Line, an established Ro-Ro service operator on the Humber [ER 3.2.128] and there was no evidence that any new Ro-Ro service providers would enter the Humber market [ER 3.2.95]; and
- the ExA concluded that the urgency for the Proposed Development should attract little positive weight because the case put forward by the Applicant primarily stems from Stena Line's need to vacate the Port of Killingholme by 1 May 2025 for contractual reasons. The ExA considered that although the contract renewal discussions between Stena Line and CLdN have broken down, the Port of Killingholme could physically accommodate Stena Line. That is because Stena Line has historically operated both of its Humber services from the Port of Killingholme, and the Port of Killingholme is currently being expanded [ER 3.2.129].

The Secretary of State's Conclusion on Need for the Proposed Development

37. The Secretary of State agrees with the ExA that the Application benefits from the presumption in favour of consent set out by the NPSfP [ER 3.2.123], and that the resilience that the Proposed Development carries moderate positive weight in the planning balance [ER 3.2.130, second bullet]. However, she does not agree with the weight the ExA has recommended that she gives to a number of mattters for the reasons set out below.

Capacity

38. The Secretary of State has considered the ExA's overall conclusion that the current capacity across the Ro-Ro terminals on the Humber is not as constrained as was implied by the Applicant in its Market Forecast Study Report [ER 3.2.113] and that the need for additional capacity as been exaggerated by the Applicant [ER 3.2.124].

39. The Secretary of State considers that it is the NPSfP that establishes the long-term national need for port infrastructure to accommodate growth of imports and exports by sea for all commodities, and is underpinned by the 2006 MDS Transmodal forecasting report (NPSfP 3.5.1) which was updated by The UK Port Freight Traffic 2019 Forecasts. The NPSfP is clear that it is Government policy to allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment (NPSfP 3.3.1, second bullet). It also states that it is for each port to take its own commercial view and its own risks on its particular traffic forecasts (NPSfP 3.4.7). The NPSfP states that it is then for the Secretary of State to determine whether any likely impacts that are expected to occur as a result of the Development have been assessed and addressed (NPSfP 3.4.13). In terms of decision-making, the NPSfP is clear that the Secretary of State should accept the need for port development including the need to cater for long-term forecast growth through a combination of existing and new capacity (NPSfP 3.4.16 and 3.5.1, third bullet).

40. The NPSfP also highlights that new facilities may result in surplus capacity (NPSfP 3.4.11), and that spare capacity is necessary to allow choices for port users and to accommodate any fluctuations in demand (NPSfP 3.4.13). Therefore, while the

Secretary of State notes that the Port of Killingholme is currently expanding with the benefit of an express planning permission [ER 3.2.42] and she accepts that there may be spare capacity at the Port of Killingholme, this is not a reason for excluding the possibility of new port developments on the Humber (NPSfP 3.4.11 and 3.4.16). She also places very little weight on capacity that has yet to be consented or capacity that might be released through permitted development rights or future planning applications. This is because there is no certainty that such capacity would come forward.

41. The Secretary of State does not consider that any of the demand scenarios for capacity at the regional Humber level considered by the ExA or any other representations submitted during the Examination on this matter have included evidence that would require her to diverge from Government policy detailed in the NPSfP in taking a decision on this Application.

Resilience

42. The Secretary of State has considered the ExA's conclusion that there is a possibility that the capacity, that the Applicant has stated that the Proposed Development will deliver, could be lower, and this would reduce its contribution to meeting the need for port infrastructure. In terms of resilience, the NPSfP is clear that it is spare capacity that enables resilience of national port infrastructure, and that capacity is required nationally at a variety of locations and covering a range of cargo and handling facilities (NPSfP 3.4.15). The NPSfP states that spare capacity is required to build resilience to allow the continuous flow of goods, for example, to meet short-term peaks in demand and where disruptive events such as adverse weather conditions, accidents, operational difficulties and other events that might occur at other port locations. Additionally, there is no requirement in the NPSfP for an applicant to demonstrate the exact level of capacity contribution it will make to the need for port infrastructure identified by the NPSfP or to demonstrate that it is better placed than an existing port to deliver the capacity it seeks to deliver. The NPSfP also recognises that efficient operation of a port is not the same as operating at full physical capacity (NPSfP 3.4.13). Therefore, the Secretary of State disagrees with the ExA that available capacity at the Port of Killingholme or the lack of clarity on the precise level of capacity the Proposed Development will deliver are matters that would affect the weight she should give to this matter. The Secretary of State therefore considers that this weighs substantially in favour of the granting of the Order.

Competition

43. As with resilience, the NPSfP states that sufficient spare capacity is required to ensure effective competition at the national level. The NPSfP welcomes and encourages competition between UK ports as well as with ports in continental Europe as this will drive efficiency and lower costs for industry and consumers and therefore leading to the competitiveness of the UK economy. The NPSfP is clear that it is for the port industry and port developers to assess their ability to attract businesses to their facilities and the level of any new capacity that will be commercially viable (NPSfP 3.4.13). The Secretary of State accepts that spare capacity may be available at the regional Humber level, and the Proposed Development may not result in an increase in competition on the Humber in the short to medium term. However, she is satisfied that the capacity that the Proposed Development will deliver is likely to help meet the

demand for capacity established by the NPSfP to enable effective long-term competition at the national level.

Urgency

44. The Secretary of State does not agree with the ExA [ER 3.2.116] that the Applicant has not demonstrated the kind of urgency contemplated by the NPSfP for its Proposed Development. Contrary to the ExA's conclusions regarding the types of infrastructure contemplated by paragraph 3.5.1 of the NPSfP, the Secretary of State considers that the proposed development does cater for long-term forecast growth. The NPSfP expressly provides that infrastructure which meets that test is urgently needed. (NPSfP 3.5.2). Nevertheless, and in any case, the Secretary of State notes that despite the ExA finding that the urgency case attracts little positive weight, the ExA still concluded the Proposed Development was acceptable in planning terms [ER 5.3.7].

45. Overall, the Secretary of State is satisfied that the Proposed Development would contribute to the urgent need to meet the long-term demand for port capacity at the national level as identified in the NPSfP [ER 3.2.78]. Granting the Proposed Development would provide additional capacity for the movement of goods and commodities (NPSfP 3.4.16), and therefore the overall need for the Proposed Development weighs heavily in favour of the granting of the Order.

Consideration of alternatives to the Proposed Development

46. Section 4.3. of Chapter 4 of the ES sets out the Applicant's consideration of alternatives. The ExA's consideration of the Applicant's assessment of alternatives and options appraisal is set out in paragraphs ER 3.2.24 to ER 3.2.32 and in paragraphs ER 3.2.118 - 3.2.122 of the Report.

47. The Secretary of State notes that the main issues considered during the Examination in relation to alternatives were:

- whether river frontage locations at the Port of Grimsby, the Port of Hull, and between the Port of Immingham and the Port of Killingholme would be able to accommodate the Proposed Development;
- whether the Port of Killingholme should be considered as an alternative; and
- whether consideration of alternatives is necessary for the purposes of an assessment under the Conservation of Habitats and Species Regulations 2017.

The Secretary of State's conclusion on alternatives

48. The NPSfP states that, from a policy perspective, there is no general requirement to consider alternatives or to establish whether a proposed project represents the best option (NPSfP 4.9.1). However, it also states that an applicant should include factual information about the main alternatives they have considered in the ES submitted in support of their application (NPSfP 4.9.2).

49. With regard to the Applicant's assessment of alternative locations for the Proposed Development, the Secretary of State notes that there is agreement amongst

the Interested Parties that the Port of Grimsby, the Port of Hull and the riverside between the Port of Immingham and the Port of Killingholme would be unable to accommodate the Proposed Development and the ExA saw no reason to reach a contrary position in this regard [ER 3.2.119]. The Secretary of State agrees with that conclusion.

50. The Secretary of State notes that the Applicant discounted the Port of Killingholme as an alternative because it was considered incapable of meeting Stena Line's needs [ER 3.2.31], an argument contested by CLdN [ER 3.2.120]. As set out in the 'Need for the Development' section above, the Secretary of State accepts that while there may be spare capacity at the Port of Killingholme, the NPSfP expressly contemplates that new port developments may result in spare capacity, and that spare capacity enables effective competition and builds resilience in the national port infrastructure. The NPSfP is also clear that it is spare capacity that will allow ports to operate efficiently, and that operating at efficient levels is not the same as operating at full physical capacity (NPSfP 3.4.13). As also set out above, the NPSfP does not require an applicant to demonstrate that it is better placed to deliver the capacity it seeks to deliver in comparison to an existing port in a different location (NPSfP 4.9.1).

51. The Secretary of State is satisfied that the Applicant has considered a number of alternative locations for the Proposed Development, and has adequately set out the reasons for their proposal.

52. In addition to the above, paragraph 4.9.2 of the NPSfP also states that there can be legislative requirements for an applicant and decision-maker to consider alternatives such as under the Habitats Directive, and that where there is such a legal requirement the Applicant should describe the alternatives considered in compliance with those requirements (NPSfP 4.9.3). The Secretary of State notes that the berths proposed by the Applicant would be in the Humber Estuary Special Area of Conservation ("SAC"), the Humber Estuary Special Protection Area ("SPA") and the Humber Estuary Ramsar site, and the Applicant concluded there would be no adverse effect on the integrity of those sites [ER 3.2.24]. The Applicant therefore considered it unnecessary to demonstrate that there would be no alternative to the Proposed Development for the purposes of undertaking an assessment under the Conservation of Habitats and Species Regulations 2017 [ER 3.2.24]. However, the Secretary of State is aware that due to Natural England's outstanding concerns during the Examination regarding impacts on the Humber Estuary SAC [ER 3.4.35], the Applicant submitted, on a without prejudice basis, an HRA Derogation Report setting out potential compensatory measures. Section 3 of the HRA Derogation Report details the Applicant's assessment of alternatives. The Secretary of State's consideration of this matter is set out in her Appropriate Assessment [ER 3.4.36].

Navigation and Shipping Effects

53. The Secretary of State is aware that the Immingham Oil Terminal ("IOT"), which serves two refineries at Immingham, is nationally critical infrastructure for energy supply security. She notes that the proposed Berth 1 of the northernmost finger pier would be approximately 95 metres from the IOT's finger pier [ER 3.3.2], and that the location of the Proposed Development's Ro-Ro berths, relative to the IOT's jetties handling hazardous substances, is approximately 95 metres. Further, the Secretary of State also notes that the near proximity of the Proposed Development to a Control of

Major Accident Hazard ("COMAH") site and its position in a fast-flowing tideway site is, in the ExA's consideration, without precedence in the UK [ER 3.3.91].

54. A Navigational Risk Assessment ("NRA") was included in Appendix 10.1 of Chapter 10 of the ES submitted in support of the Application [ER 3.3.21]. The Secretary of State notes that the NRA included an assessment of the risks of allision between a vessel and the IOT's marine infrastructure, the Port of Immingham's Eastern Jetty, and/or a moored vessel, and that the NRA concluded the risks, if unmitigated, to be intolerable. The NRA also concluded that those risks could be reduced to As Low as Reasonably Practicable if mitigation measures were applied [ER 3.3.22]. The NRA further suggested that project-specific 'adaptive procedures' could be applied as risk controls (mitigation measures) for the protection of the IOT infrastructure [ER 3.3.23]. The Secretary of State notes that during the Examination further evidence, clarifications and simulations were submitted by the Applicant and other Interested Parties as detailed in the paragraphs 3.3.60 – 3.3.90 in the Report.

55. The Secretary of State is aware that the ExA considered a number of issues raised by Interested Parties during the Examination [ER 3.3.26 – 3.3.59]. The Secretary of State notes that the effects from the risks to maintaining safe navigation, accidental damage to existing infrastructure and/or moored vessels, and risks of interference to existing shipping service remained areas of outstanding disagreement at the close of the Examination. [ER 3.3.1]. The Secretary of State in particular notes the representations by:

- Humber Oil Terminals Trustee Limited and Associated Petroleum Terminals (Immingham) Limited (collectively referred to as "the IOT Operators") who raised concerns regarding the risk of vessel allision with IOT infrastructure or tankers berthed there [ER 3.3.27-3.3.39], the inadequacy of the Applicant's NRA [ER 3.3.31-3.3.32], the appropriateness of the Applicant's governance structure [ER 3.3.40] and the adequacy of the wind and tide vessel simulations [ER 3.3.43] in particular regarding the use of maximum design vessels (DV) [ER 3.3.46].
- DFDS Seaways ("DFDS") who raised concerns regarding the wind and tide berthing simulations on vessels manoeuvrability [ER 3.3.48], the Port of Immingham congestions resulting from a shortage of pilotage [ER 3.3.49] and potential congestion from vessels overlapping with the approach area for the proposed berthing spaces [ER 3.3.50], the risk of vessel allision with the IOT's finger pier or trunkway [ER 3.3.53] and the adequacy of the NRA [ER 3.3.52-3.3.54].
- CLdN, the operators of the Port of Killingholme, who raised concerns regarding the potential for the Proposed Development's construction to interfere with the running of the scheduled services operating at the Port of Killingholme [ER 3.3.58-3.3.59]. The Secretary of State has considered CLdN's concerns under the Protective Provisions subsection of the Compulsory Acquisition section below.

Safety Governance

56. During the Examination, in response to the concerns raised by both the IOT Operators and DFDS, the Applicant clarified that although those who cover statutory roles related to safety are employed by the Applicant [ER 3.3.60], its designated

person for the purposes of the Applicant's Marine Safety Management System does not have a direct connection with the Port of Immingham's commercial management or the promotion of the Proposed Development and thus is able to act independently on safety matters [E3.3.64].

57. The Secretary of State notes that the Harbour Master for the River Humber ("the Harbour Master") leads both the tidal Humber's Statutory Harbour Authority and the Humber's Competent Harbour Authority, which have been combined into the Statutory Conservancy and Navigation Authority [ER 3.3.61]. During the Examination, the Harbour Master confirmed that both the Statutory Harbour Authority and the Competent Harbour Authority are statutory bodies and act independently from the Applicant. The Harbour Master further confirmed that it may issue byelaws and General Directions controlling operations in the Humber under the statutory powers of the Statutory Harbour Authority and Competent Harbour Authority. The Secretary of State notes that these directions could include specific instructions to vessels [ER 3.3.81]. The ExA recognised that the safety culture and risk appetite of the project team for this Application may be influenced by commercial considerations but on the evidence presented the ExA was content that the Harbour Master, would not be influenced in that way [ER 3.3.106]. Separately, the Harbour Master, as head of the Statutory Conservancy and Navigation Authority, was provisionally satisfied with the NRA and simulation work put forward by the Applicant and the initial assessment would be subject to further and more vigorous appraisal in the event of the Proposed Development being consented [ER 3.3.104]. The ExA was also satisfied that the Applicant had assessed the risk tolerability standards of the Proposed Development in line with those other ports currently operated by the Applicant [ER 3.3.107]. The Secretary of State also notes the ExA's conclusion that the Group Safety Director was a reliable witness and that it has no reason to doubt their integrity when evaluating risks and mitigations. Nevertheless, the ExA considered that the 'wearing of two hats' by the Group Safety Director presents the potential for a conflict of interest to arise [ER 3.3.109].

58. The Secretary of State notes the alleged conflict of interest concerns raised by the Interested Parties in their response to DfT's letter of 9 July 2024. The ExA concluded that the Statutory Harbour Authority and Competent Harbour Authority for Humber pilotage would be able to exercise their statutory duties in the interests of navigational safety without there being any unacceptable conflict with the Applicant's commercial interests as a port operator [ER 3.3.193]. The Secretary of State agrees with that assessment.

Appropriateness of the NRA

59. During the Examination, the Applicant's NRA was criticised for assessing risks using incorrect methodology [ER 3.3.112], for using words rather than numbers to describe the likelihood and frequency of risks [ER 3.3.113], and for applying incorrect rating tolerability when assessing risks [ER 3.3.114].

60. The Secretary of State is aware that the Applicant conducted numerous navigational simulations to establish the expected safe operational limits for the proposed berths that would be acceptable to the Harbour Master [ER 5.2.12]. The ExA was satisfied that by the close of the Examination an adequate NRA had been

submitted [ER 5.2.14]. In particular, the ExA was satisfied that the NRA was appropriately comprehensive [ER 3.3.124], given that the Applicant had:

- adequately assessed tidal currents' effects on pilotage by carrying out surveys and additional modelling [ER 3.3.119];
- adequately assessed the effects of wind during berthing/unberthing manoeuvres by carrying out additional wind tests and simulations [ER 3.3.120];
- adequately assessed the risk of release of hazardous substances from collisions by complying with the relevant policies [ER 3.3.121];
- adequately assessed the navigational hazard consequences for people and property by proposing controls to reduce the risks to tolerable levels from the perspective of navigation [ER 3.3.122]; and
- adequately assessed marine navigational risks as the Harbour Authority and Safety Board as the Duty Holder has considered appropriate advice in concluding that all risks assessed can be mitigated to an acceptable residual level subject to the identified risk controls being applied [ER 3.3.123].

61. The Secretary of State is aware that the Harbour Authority and Safety Board is the Duty Holder under the Port of Immingham's Safety Management System and acceptance by the Harbour Authority and Safety Board serves as Stage 5 of the formal safety assessment process promoted under the Port Marine Safety Code [ER 3.3.25].

Compliance with the Environmental Impact Assessment Regulations

62. As described in the Applicant's Non-Technical summary in its ES, the proposed berths have been designed based on a maximum design vessel with an overall length of up to 240 metres, a beam of up to 35 metres and a draught of up to 8 metres [ER 1.3.26]. In light of the concerns raised by Interested Parties regarding the adequacy of the Applicant's pre-application simulations, the ExA requested further simulations applying challenging current and wind conditions close to and above those that the Harbour Master expected would limit the operation of the proposed berths [ER 3.3.125]. The ExA reports that most of the simulations have been carried out using a model for the Stena T class vessel that is already being used by Stena Line on the Humber, and some simulations have been carried out using a model for the larger 'Jinling' class of Ro-Ro vessel which is closer in dimensions to the maximum design vessel used for assessing the Proposed Development in the ES [ER 3.3.129].

63. The Secretary of State is aware that concerns were raised related to the maximum design vessel defined in the ES and the NRA, the simulations with smaller vessels, and the lack of assessment in the ES on the risks of operating a vessel with the parameters of the maximum design vessel [ER 3.3.125-142]. Interested Parties considered that the Applicant's failure to assess the impacts of the maximum design vessel means it would be unlawful to grant development consent for the Proposed Development [ER 3.3.135] unless the use of the Proposed Development is restricted to the smaller vessels assessed by the Applicant [ER 3.3.134]. These concerns were reiterated in responses to the Secretary of State's consultation during the decision-making stage.

64. The Secretary of State notes that Interested Parties agreed that while a G9 class vessel was used during loss of power simulations in December 2023, G9 vessels do not have the manoeuvrability and propulsion characteristics of the maximum design vessel. Therefore, the Applicant and other Interested Parties considered the G9 class vessel unsatisfactory for simulating berthing at the Proposed Development [ER 3.3.130].

65. The ExA was content, based on the simulation work that had been undertaken, that the Stena T class vessel can be safely berthed and unberthed at the Proposed Development [ER 3.3.131] even if Stena T class vessels are smaller than the maximum design vessel.

66. The Applicant confirmed during the course of the Examination that the maximum design vessel does not currently exist as a vessel with characteristics suitable for operation at the Proposed Development [ER 1.3.26]. While accepting that the propulsion and manoeuvrability characteristics for the maximum design vessel are currently unknown, the ExA reported that it is the siting and dimensions of the proposed berths the Applicant seeks consent for rather than for the vessels that would use those berths, and was satisfied that the ES gave adequate and appropriate regard to the siting of the proposed berths relative to existing port infrastructure and the maximum physical dimensions of the proposed maximum design vessel [ER 3.3.137].

67. The Secretary of State has noted that a vessel with the dimensions, manoeuvrability, and power characteristics of the maximum design vessel does not yet exist [ER 3.3.133]. Instead, the Applicant simulated berthing using Stena Class T vessels and a ‘Jinling’ class of Ro-Ro vessel. The Applicant and other Interested Parties agreed that while ‘Jinling’ vessels are highly manoeuvrable, and its simulation model had been used during the Development of the Immingham Outer Harbour. The ExA reports that the ‘Jinling’ vessels are similar in dimensions to a maximum design vessel [ER 3.3.129], but that their displacement is less substantial than that of a maximum design vessel and thus they were not considered in assessing impacts from the Proposed Development in the ES [ER. 3.3.130]. Nevertheless, the ExA was content that the Jinling vessel simulations have demonstrated that a vessel of its handling characteristics would be likely to be acceptable [ER 3.3.131].

68. The ExA and concluded that while the NRA has yet to demonstrate that a vessel of the proposed dimension of the maximum design vessel could be safely operated at the Proposed Development, it is the siting and dimension of the proposed berths for which the Applicant seeks consent and not the vessels that would use those berths [ER 3.3.137]. Whie accepting that the propulsion and manoeuvrability characteristics for the maximum design vessel are currently unknown, the ExA concluded that the ES gave adequate and appropriate regard to the siting of the proposed berths relative to existing port infrastructure and the maximum physical dimensions of the proposed maximum design vessel. The ExA was also persuaded that it would be reasonable for the assessment of the ability of the Proposed Development to accommodate vessels of the maximum design vessels parameters to be completed by the Statutory Conservancy and Navigation Authority and the Statutory Harbour Authority should such a need arise following the making of the proposed Order [ER 3.3.142].

69. Th ExA also placed importance on the fact that the Harbour Master did not object to the Proposed Development and considered that the proposed berths could

be operated safely and that it could, by acting on behalf of the Statutory Conservancy and Navigation Authority, restrict the types of vessels using the proposed births in the interests of navigational safety and such restrictions would be imposed disregarding commercial considerations [ER 3.3.138].

Risk of Allision

70. The Secretary of State has considered the ExA's detailed summary of the concerns raised by Interested Parties regarding the control of risk of allision (accidental impact of vessels with existing infrastructure, moored vessels, or other objects) which is set out in paragraphs 3.3.143 – 3.3.161 of the Report. The Secretary of State is aware that the risk of allision was a contentious matter during the Examination, with the hazards described by the ExA as concerning both Ro-Ro vessels arriving at or departing from the proposed berths or other vessels arriving at or departing from the same part of the Port of Immingham [ER 3.3.150]. The ExA reported that the fundamental disagreement between the Applicant and other Interested Parties concerned what level of control for allision risk with the IOT's infrastructure would be 'reasonably practicable' and how that could be secured in any made Order [ER 3.3.152].

71. The Secretary of State is aware that the Applicant has undertaken several simulations for navigational conditions close to and above those expected by the Harbour Master to be the operational limits for the proposed berths both before and during the Examination [ER 3.3.192]. The Applicant's additional simulations confirmed the challenging nature, even with tug assistance, of avoiding allision with the IOT's finger pier while berthing in moderately strong south-westerly winds [ER 3.3.156]. Nevertheless, the ExA reports that the Harbour Master was of the opinion that the installation of impact protection measures may not be required until demonstrated by progressive testing and operational experience although the ExA considered a precautionary approach should be applied [ER 3.3.162]. The Secretary of State notes that ExA considered that the risk of a vessel alliding with the IOT's pipeline trunkway would be lower than an allision of the finger pier [ER 3.3.199]. On the risk of allision between coastal tankers with the western end of the IOT's finger pier, the ExA disagreed with the Harbour Master and considered that the risk of allision would increase given the spatial constraints on pilotage, and the effect would be exacerbated by the presence of moored vessels at the proposed Berth 1 [ER 3.3.153].

72. During the Examination, the ExA requested the Applicant to submit a new requirement, requirement 19, to ensure that the 'dolphin' impact protection measures proposed for Work No. 3(b) are installed at the finger pier's western end prior to the operation of proposed Berth 1 [ER 7.3.24 - 7.3.25]. The ExA has suggested further amendments to the version of requirement 19 submitted by the Applicant on a without prejudice basis. The ExA's recommends in relation to new requirement 19 some changes to that provided by the Applicant so as to make it specific to the first commercial use of proposed Berth 1 (the berth closest to the IOT's finger pier), necessitating the incorporation of a reference to a plan and Work No. 3(b), to aid precision and enforceability [ER 7.3.26]. The ExA also recommended that the term 'IOT Operators' is used instead of 'the operator of the Humber Oil Terminal' and suggested that this term is used in requirement 18, and new requirement 19 [7.3.27], and recommended that the use of the term 'IOT Operators' may be a matter on which the Secretary of State should seek the Applicant's views [ER 8.2.4].

The Secretary of State Conclusions on Navigation and Shipping Effects

73. For the reasons outlined above, the Secretary of State agrees with the ExA that based on the evidence submitted by both the Applicant and separately by the Harbour Master, there is no reason to doubt the soundness and effectiveness of the safety process and management systems that apply to the Port of Immingham and across the Humber, which are audited periodically [ER 3.3.103]. The Secretary of State also agrees with the ExA that based on the provided evidence the Statutory Harbour Authority and Competent Harbour Authority for Humber pilotage would be able to exercise their statutory duties in the interests of navigational safety without there being any unacceptable conflict with the Applicant's commercial interests as a port operator. [ER 3.3.193]. The Secretary of State also accepts the ExA's conclusion that while the Applicant has not yet demonstrated that a vessel of the maximum design vessel dimensions could safely use the proposed berths, this would not preclude the proposed Order being made.

74. In regard to the concerns regarding the appropriateness of the NRA, the Secretary of State is aware that the Applicant conducted numerous navigational simulations both during pre-Application and the Examination to establish the expected safe operational limits for the proposed berths that would be acceptable to the Harbour Master [ER 5.2.12]. The Secretary of State agrees with the ExA that by the close of the Examination, an adequate and appropriately comprehensive NRA had been submitted [ER 3.3.196], and that the Proposed Development meets the requirements set out in the NPSfP, the Marine Policy Statement and the East Inshore Marine Plan [ER 5.2.14].

75. The Secretary of State has carefully considered the concerns raised regarding the maximum design vessel dimensions and the assessment of smaller vessels in the Applicant's simulations. The Secretary of State also recognises that new port infrastructure will typically be a long-term investment and therefore needs to remain in operation over many decades. In light of this, the Secretary of State is supportive of the Applicant's approach to future proofing the Proposed Development by designing the berths so that it is physically able to cater for vessels with the maximum design vessel parameters should a demand for the use of the Proposed Development by such vessels arise in future. If such demand does materialise, the Secretary of State agrees with the ExA that vessels of the maximum design vessel dimensions will only be able to utilise the Proposed Development if the Statutory Conservancy and Navigation Authority and the Harbour Master are satisfied that it is safe for them to do so. Therefore, the Secretary of State considers that it is not necessary to restrict, through the proposed Order, the use of the Proposed Development to the smaller vessels simulated and modelled by the Applicant so as to exclude vessels of the maximum design vessel considered for 'Rochdale envelope' purposes. The Secretary of State is also satisfied with the ExA's conclusion that the Applicant has demonstrated that the Stena T class vessel could safely use the proposed berths and that the simulations for the Jinling class vessel have demonstrated that vessels of its size and handling characteristics can be operated safely at the Proposed Development, both subject to pilotage controls being developed and tested, together with 'soft-start' training and adaptation for marine pilots and pilot exemption certificate holders [ER 3.3.194].

76. As recommended by the ExA, the Secretary of State consulted the IOT operators and other Interested Parties regarding the ExA's suggested changes to

requirement 18 and new requirement 19 which was suggested by the ExA to reduce the risk of vessel allision with the IOT Operators' infrastructure to as low as reasonably possible. In response to the Secretary of State's first consultation, putting to one side Interested Parties views on whether additional protection measures are required to address navigational risks, the Secretary of State notes that both the IOT Operators and DFDS reiterated that the suggested impact protection measures should be built before the commencement of operations of the Proposed Development although they did not agree that the measures go far enough. Additionally, the IOT Operators stated that the requirement included no mechanism to identify the design of the mitigation measures, and for such measures to be delivered in accordance with that design. The IOT Operators considered that if such a design mechanism were to be included, it would be essential for the IOT Operators to at the very least have a significant influence on this design, or for the IOT Operators to approve the specification of the measures. The IOT Operators also stated that there would also be a need for an independent determination mechanism to resolve any disagreements.

77. In response to the Secretary of State's second round of consultation, DFDS responded to raise concerns regarding the Applicant's wording of requirement 18 which would leave the design of the impact protection measures to the Applicant and requires it to consult parties such as the IOT Operators and only have regard to their views. While DFDS acknowledge that the measures would need to accord with the engineering and general arrangement plans, it noted that the plans do not contain any specification details or details on what impact and at what speed they must be designed to resist. DFDS also stated that in order to address its and other Interested Parties concerns, the design and implementation of the impact protection measures would have to be substantially different, that it is too late to address this issue following the close of the Examination by way of a change of the Application, the Application should be refused and a new application should be brought forward by the Applicant should it wish to still go ahead with this project. The IOT Operators responded to reiterate their concerns regarding the lack of protection measures that were required in addition to those considered by the Applicant, and that even with requirements 18 and 19 the level of impact protection would remain inadequate.

78. The Secretary of State has carefully considered the responses to her consultation on allision risk and, for the reasons set out in this letter and in the ExA's report, is satisfied that the impact protection measures to the western end of the IOT's finger pier (Work No. 3(b)) should be constructed prior to the proposed berth 1 becoming operational [ER 3.3.164]. The Secretary of State also agrees with the ExA that while the consequences of allisions between a Ro-Ro vessel and the IOT Trunkway could be severe, the likelihood of such an event occurring would be less likely than the risk of allision with the IOT's finger pier [ER 3.3.166], as demonstrated by the Applicant's simulations demonstrated that a 'dead ship' of 50,600 tones displacement in a peak spring ebb tide could be controlled by tug support before passing through the gap between proposed berth 1 and IOT berth 8 [ER 3.3.167]. The Secretary of State therefore agrees with the ExA that it is not necessary to require the implementation of Work No. 3(a) before the operation of the proposed berths, and that it is reasonable for these works to be left as a matter for consideration by the Harbour Master following commencement of the use of the berths and further testing of operational controls including tug assistance [ER 3.3.169].

79. Overall, the Secretary of State agrees with the ExA that, subject to the mitigation discussed above, the residual adverse effects on navigation and shipping carry little negative weight against the making of the proposed Order. The Secretary of State also agrees with the ExA that, after mitigation, there would be limited potential interference for other users of the Port of Immingham and the Humber, which neither weighs for nor against the making of an Order [ER 3.3.202]. The Secretary of State is satisfied that as the Proposed Development would not unacceptably interfere with the use of the Humber or the Port of Immingham by other users, it would be compliant with Policy PS3 of the East Inshore Marine Plans [ER 3.3.201] and agrees with the ExA that it also complies with the requirements of the NPSfP and NPS EN-1 [ER 3.3.196].

Marine Ecology, Biodiversity and Natural Environment

80. Chapter 9 of the ES sets out the Applicant's assessment of any potentially significant effects of the Proposed Development on nature conservation and marine ecology and identifies proposed mitigation measures. The assessment focussed on the area over which the Proposed Development's potential direct and indirect effects were predicted to occur during construction and operation, that is to say the Port of Immingham and the proposed disposal sites for dredged material with consideration of the wider Humber Estuary for any indirect effects [ER 3.4.9].

81. During Examination, no substantive matters regarding onshore ecological matters were raised and issues were focussed on the Proposed Development's marine ecology effects [ER 3.4.29].

82. Twenty impact pathways during construction and operation were considered in the ES including direct loss of habitat, direct and indirect changes to habitats and species, changes in water and sediment quality, the potential introduction and spread of non-native species, underwater noise and vibration, air borne noise and visual disturbance [ER 3.4.11].

83. The Applicant identified the following international and national designated sites within its ES:

- Humber Estuary Special Area of Conservation ("SAC")
- Humber Estuary Special Protection Area ("SPA")
- Humber Estuary Ramsar site
- The Greater Wash SPA
- North Killingholme Haven Pits Site of Special Scientific Interest ("SSSI")
- The Lagoons SSSI
- Holderness Inshore Marine Conservation Zone ("MCZ")

84. Matters relating to the SACs, SPA and Ramsar site have been addressed in the Habitats Regulations Assessment ("HRA") section of this Decision Letter and in the Secretary of State's HRA Report, which should be read in conjunction with this Decision Letter.

85. The North Killingholme Haven Pits SSSI is approximately 5km northwest of the Proposed Development. The Applicant's ES concluded that there would be no direct effects and any indirect effects would be negligible on the SSSI. The Lagoons SSSI is 20km east of the Proposed Development on the northern side of the Humber Estuary. The Applicant's conclusion was that the Proposed Development would not have any direct or indirect effects on this SSSI [ER 3.4.16].

86. The Holderness Inshore MCZ is approximately 20km east of the Proposed Development. The Applicant concluded in the ES that there would be no direct or indirect effects on the MCZ and therefore an MCZ Assessment was not necessary [ER 3.4.17].

87. The Applicant concluded that during construction the direct loss of intertidal and subtidal habitats would be insignificant [ER 3.4.22]. This issue is addressed in the Secretary of State's HRA Report and summarised below in this Decision Letter. The potential impact on fish and marine mammals from underwater noise and vibration during construction was identified and the following mitigation measures were proposed [ER 3.4.23]:

- soft start – gradually increasing piling power, to give fish and mammals the opportunity to move away from the area before full power is achieved;
- vibro piling to be used wherever possible, rather than percussive piling;
- seasonal piling restrictions, to minimise the impacts on migratory fish;
- night-time piling restrictions to minimise impacts on upstream migration of river lamprey and also glass eel migratory activity; and
- establishment of a 500 metre "*mitigation zone*" from the piling locations and employment of a Marine Mammal Observer to search for the presence of marine mammals within the zone before and during piling.

88. The impact of noise and visual disturbance during construction on coastal waterbirds is addressed in the Secretary of State's HRA Report and summarised below in the HRA section of this Decision Letter. The ES proposed the following mitigation measures to reduce the impacts on coastal waterbirds from noise and visual disturbance during construction [ER 3.4.24]:

- restriction of certain activities to avoid construction on the approach jetty and inner finger pier between October and March;
- placement of acoustic barrier / screening on construction barges and the approach jetty to limit disturbance;
- the use of noise suppression systems during piling for the outer finger pier;
- applying soft start procedures during piling; and
- restriction of construction activities during cold weather when birds are considered more vulnerable to disturbance.

89. While the impacts from the operational phase of the Proposed Development were assessed as being minor, the Applicant's ES identified a potential disturbance to coastal waterbirds. The Applicant proposed screening to reduce the potential visual disturbance stimuli for waterbirds on the foreshore, on a precautionary basis. The

removal of the screening would be a phased after two years of operation and there would be coastal waterbird monitoring during these first two years [ER 3.4.26].

90. The other potential impacts on nature conservation and marine ecology receptors were assessed as being insignificant to minor adverse and therefore not significant in Applicant's ES (Chapter 9) [ER 3.4.27].

91. Voluntary Biodiversity Net Gain ("BNG") has not been offered by the Applicant, but an onshore environmental enhancement has been proposed at the nearby "*Long Wood*" off Laporte Road. This is set out in the Woodland Enhancement Management Plan which would be secured by requirement 11 of the draft DCO [ER 3.4.28].

92. Natural England raised several matters relating to HRA during Examination., As mentioned above the Secretary of State has addressed these in more detail in her HRA Report and summarised in this Decision Letter.

93. During Examination, the Marine Management Organisation ("MMO") and the Lincolnshire Wildlife Trust raised a number of concerns. The MMO considered that issues in relation to the marine environment, including the impacts and duration of the proposed piling works needed to be resolved and included suggested amendments to the proposed Deemed Marine Licence in Schedule 3 of the draft Order. Those concerns, following discussions between the Applicant and MMO and additional material submitted by the Applicant including amendments to the Deemed Marine Licence, were resolved. The MMO confirmed in its representation at Deadline 10 that it considered all its concerns had been resolved. The signed statement of common ground between the Applicant and MMO confirmed that all matter between them were agreed [ER 3.4.56].

94. In its relevant representation the Lincolnshire Wildlife Trust raised a number of points in relation to the impacts on the European sites. By the close of the Examination, these matters were confirmed as resolved in the signed statement of common ground between the Applicant and Lincolnshire Wildlife Trust other than in combination effects [ER 3.4.57]. The Secretary of State has addressed in combination impacts in her HRA Report and summarised in this Decision Letter.

<u>The Secretary of State's Conclusions on Marine Ecology, Biodiversity and Natural Environment</u>

95. The Secretary of State considers that biodiversity and ecology have been adequately assessed and that the policy requirements of the NPSfP, the MPS and the EIMP have been met. The environmental measures at Long Wood subject to the proposed Woodland Enhancement Management Plan would provide ecological enhancement. The Secretary of State considers the effects on marine ecology, diversity and the natural environment to attract little positive weight for the making of an Order [ER 3.4.61].

<u>Terrestrial Traffic and Transport</u>

96. The Applicant's assessment of traffic and transport matters is set out within its Transport Assessment, Chapter 17 of the ES [ER 3.5.18]. Terrestrial traffic and transport issues considered by the ExA during the examination [ER 3.5.28 – 3.5.46]

and the ExA's conclusions on these matters are set out in ER 3.5.47 and 3.5.48. The key concerns raised by IPs are listed by the ExA as:

- the adequacy of the baseline traffic surveys used to inform the Applicant's Transport Assessment, as well as the assumptions underpinning the Transport Assessment [ER 3.5.29];
- capacity at existing junctions and whether the Proposed Development makes sufficient provision for the anticipated numbers of Ro-Ro units [ER 3.5.29];
- the adequacy of the Applicant's worst case scenario assessment [ER 3.5.30];
- an error in the Transport Assessment in respect of the conversion of HGVs to passenger car units [ER 3.5.32];
- the distribution of vehicular traffic between the East Gate and West Gate that would result from the Proposed Development [ER 3.5.33];
- impacts from additional HGV traffic that would be generated and the impacts on the surrounding road network and local villages [ER 3.4.44]; and
- measures to protect Royal Mail Group Limited's road based operation during construction of the Proposed Development [ER 3.5.46].

97. The ExA also mentioned under this subject matter that an objection was lodged by Network Rail Infrastructure Limited in respect of the need for safeguarding its interests and the safety and integrity of the operational railway [ER 3.5.45]. This is considered further in the Protective Provision subsection of the Compulsory Acquisition section below

98. The ExA listed the following concerns raised by DFDS and CLdN as outstanding at the close of examination:

- junction capacity and the need for off-site mitigation, the adequacy of the Applicant's worst case scenario, the need for sufficient off-site mitigation and the capacity of the Proposed Development to handle the proposed volume of Ro-Ro units [ER 3.5.40 – 3.5.41]; and
- the assessment undertaken by the Applicant on the expected vehicular traffic split between the East and West Gate [ER 3.5.42].

99. The Secretary of State is aware that in response to the concerns raised by Interested Parties regarding the baseline data surveys and assumptions underpinning the Transport Assessment [ER 3.5.29 and ER 3.5.30], the Applicant submitted a Transport Assessment Addendum during the examination which took into account the passenger car units conversion error and a sensitivity test for the traffic expected to use the Port of Immingham's East and West Gates. The Secretary of State notes that the Transport Assessment Addendum reached the same conclusion of no adverse impact on highway safety or capacity as set out in the Transport Assessment submitted in support of the Application [ER 3.5.38].

100. The Secretary of State notes that both DFDS and CLdN consider that capacity at junctions on key access routes to and from the Port of Immingham would be

exceeded during operation of the Proposed Development creating negative impacts on junction capacity in the local area that require mitigation [ER 3.5.41]. The ExA noted that the Ratio Flow Capacity used in both the Transport Assessment and Transport Assessment Addendum show certain junctions as "*approaching capacity*" during operation of the Proposed Development, and that any exceedances of junction capacity would be relatively marginal and not significant. The ExA therefore concluded that there would not be a significant impact on the road network as a result of the Proposed Development, and mitigation is not required at the affected existing junctions [ER 3.5.41]. The Secretary of State agrees with the ExA's conclusion on this issue.

101. The Secretary of State is also aware that in response to concerns as to whether the Applicant had assessed the worst case scenario for the daily handling of Ro-Ro units, the Applicant agreed to a daily cap of 1,800 Ro-Ro units per day as opposed to the annual cap of 660,000 units [ER 3.5.35 and 3.5.36] and to an Operational Freight Management Plan to minimise the impact of HGV movements and measures to ensure the maximum daily throughput cap of 1,800 units would not be exceeded [ER 3.5.37]. The Secretary of State notes that the Operational Freight Management Plan is secured by requirement 13 of the Order, and that the final version of this requirement must be approved by NELC and National Highways as the relevant highways authority. The Secretary of State also notes that the daily throughput cap of 1,800 Ro-Ro units is secured by article 21 of the Order.

102. The Secretary of State notes that DFDS considered the Applicant's assumption that only 15% of the new HGV traffic would use the Port of Immingham's West Gate and the remaining 85% would use the East Gate as unrealistic. The Secretary of State has considered the Applicant's sensitivity test which included an assessment of the impacts of 60% of traffic from the Proposed Development using the West Gate and notes that this found that the conclusions reached in the Applicant's Transport Assessment remained unaltered. The ExA concluded, taking into account its review of the internal vehicle routes within the Port of Immingham during its accompanied site inspection, that it was more likely that the majority of drivers utilising the Proposed Development are likely to use the East Gate over the West Gate given the closer proximity of the East Gate to the Proposed Development and given the less favourable route to and from the West Gate [ER 3.5.42]. The Secretary of State accepts the ExA's findings on this matter.

103. Finally, the Secretary of State has considered the Statement of Common Ground ("SoCG") between the Applicant and National Highways and NELC. The Secretary of State notes that both National Highways and NELC accept the conclusions in the Transport Assessment Addendum to be appropriate, and that no further mitigation is required. It is also noted that NLC raised no concerns in its SoCG with the Applicant [ER 3.5.39]. Like the ExA, the Secretary of State considers it important that none of these highways authorities have raised any concerns about the ability of the surrounding strategic and local highways networks to safely and efficiently accommodate the traffic that is expected to be generated as a result of the Proposed Development [ER 3.5.43]. The Secretary of State therefore agrees with the ExA's overall conclusion that the impacts deriving from the Proposed Development would not be significant on the road network and that mitigation is not required at affected junctions.

<u>The Secretary of State Conclusions on Terrestrial Traffic and Transport</u>

104. The Secretary of State acknowledges that the Proposed Development would generate additional vehicular traffic to the surrounding highway network. She agrees with the ExA that requirements 5, 12 and 13 in the Order include measures to adequately mitigate against any potential negative impacts from an increase in traffic [ER 3.5.47]. The Secretary of State also agrees with the ExA's conclusion that the highway network in the vicinity of Immingham would be able to accommodate the expected level of increase in traffic as a result of the Proposed Development. In addition, the Secretary of State notes that no concerns were raised by any Highways Authority about the ability of the strategic road network and local road networks to safely and efficiently accommodate the increase in traffic expected as a result of the Proposed Development [ER 3.5.43].

105. The Secretary of State is satisfied that the Proposed Development aligns with the transport and traffic policies in the NPSfP and the National Planning Policy Framework (NPPF) [ER 3.5.48]. The Secretary of State notes that the ExA recommended that the transport and traffic impacts are neutral and should weigh neither for nor against the granting of the Development. The Secretary of State agrees that terrestrial traffic and transport effects weigh neither for or against the making of the Order.

Climate Change

Background

106. The UK's international obligations include its obligations under the Paris Agreement, which was ratified by the UK Government in 2016 after the NPSfP was designated in 2012. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008. In June 2019, the Government announced a new carbon reduction 'Net Zero' target for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050.

107. The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the fourth ("4CB"), fifth ("5CB") and sixth ("6CB") carbon budgets are 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas (GHG) emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target. Compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement.

108. Paragraph 4.12.3 of the NPSfP states that a decision-maker is not required to take into account how a new port development might affect the GHG emissions produced by ships traveling to and from the port. Paragraph 4.12.4 of the NPSfP further clarifies that while the emissions resulting from ships in ports are unlikely to be significant contributors to climate change, it suggests that, in circumstances where an ES is required, applicants should outline the proposed mitigations aimed at minimising emissions effects in the local area and determine their likely contribution to GHG. However, if a development is expected to lead to significant increases in inland traffic,

then the impacts from CO_2 and other GHG will need to be assessed in the ES and accompanied by a Transport Assessment (paragraph 4.12.5).[1]

Climate Change Assessment

109. The Secretary of State notes that the Applicant carried out an assessment of GHG and climate change resilience in Chapter 19 of the ES for both the construction and operational phases of the Proposed Development [ER 3.6.7]. The Applicant's ES assessed that the most substantial GHG impact during the construction phase derives from the construction materials, which account for up to 97% of the total emissions. Additionally, it is noted that GHG emissions from the construction activities are expected to last for up to two years (Table 19.3 (construction phase GHG emissions (2024 to 2025)) of ES, Chapter 19). Nevertheless, the GHG emissions from the construction works are assessed to contribute 1% of the total GHG emissions of the Proposed Development, assuming an engineering design standard period of 50 years (ES, Chapter 19, paragraph 19.8.16).

110. The Secretary of State notes that while all the GHG emissions generated by the Proposed Development were deemed significant, in accordance with the Institute of Environmental Management Assessment guidance, the Applicant considered the impacts of constructing and operating the Proposed Development as low. This determination is based on the assessment that these emissions, when measured against the UK Carbon Budgets, amount to less than 1% of the UK Carbon Budgets (ES, Chapter 19, paragraph 19.11.3) and as such, this would not prevent the UK to meeting its Carbon Budgets [ER 3.6.9]. Nevertheless, the Applicant assessed the potential residual effects of GHG resulting from the Proposed Development as minor/adverse for both the construction and operational phases [ER 3.6.8].

111. The climate change resilience of the Proposed Development was assessed in Chapter 19 of the Applicant's ES. The Secretary of State notes that, while several risks and impacts were identified in the ES, the Applicant concluded that climate resilience mitigation measures are embedded in the design of the Proposed Development [ER 3.6.10].

<u>The Secretary of State Conclusions on Climate Change</u>

112. The Secretary of State notes that, while the Environment Agency, raised some issues regarding the Proposed Development, these matters were resolved prior to the conclusion of the Examination [ER 3.6.12]. The Secretary of State also notes that no concerns were raised by any other Interested Party [ER 3.6.11] and that a SoCG between NELC and the Applicant, confirming compliance of the Proposed Development with the policies of the North East Lincolnshire Local Plan of 2018 (NELLP), was submitted [ER 3.6.13].

113. The Secretary of State agrees with the ExA that the Proposed Development is unlikely to generate significant effects for climate change and that reasonable mitigation measures could be secured [ER 3.6.14]. The Secretary of State also agrees

[1] https://assets.publishing.service.gov.uk/media/5a78c20ae5274a277e68f3b1/national-policy-statement-ports.pdf

with the ExA that the climate change matters are neutral and neither weight for nor against the granting of the Proposed Development.

Flood Risk

114. The Secretary of State notes that the Applicant assessed coastal protection, flood risk and drainage both during construction and operation in Chapter 7 (Physical Processes) of its ES. She further notes that the Proposed Development is located in Flood Zone 3a, and that there is a presence of flood defences along the Port of Immingham and estuary frontage [ER 3.6.27]. Section 5.2 of the NPSfP states that applications for port development in Flood Zone 3 areas should be accompanied by a Flood Risk Assessment ("FRA") [ER 3.6.16].

Flood Risk Assess*ment*

115. The Secretary of State has considered the Applicant's FRA and notes that it has considered all potential flooding sources, including tidal, fluvial, groundwater, land drainage, overland flow and sewer drainage, and inclusive of allowances for climate change [ER 3.6.27]. The Secretary of State is satisfied that the FRA has been considered in accordance with the requirements of paragraph 5.2.5 of the NPSfP.

116. The NPSfP states that the decision maker should be satisfied that, where relevant:

- the application is supported by an appropriate FRA;
- the Sequential Test has been applied as part of site-selection, as appropriate;
- the proposal is in line with any relevant national and local flood risk management strategy;
- a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk;
- priority has been given to the use of sustainable drainage systems and the requirements set out in the next paragraph on National Standards have been met; and
- in flood risk areas the project is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed over the lifetime of the development. [ER 3.6.17]

117. The Secretary of State notes that the FRA concluded that the risk of tidal flooding from tidal sources as being low because tidal flood defences are in place where the Proposed Development is located [ER 3.6.27]. The conclusion of the Applicant's assessment in Chapter 7 (Physical Processes) of the ES was that there will be no or little impact on the significance on water levels, flow speed, flood direction, erosion and accretion patterns or wave propagation as a result of the Proposed Development's marine elements [ES Appendix 11.1: Flood Risk Assessment, paragraph 9.1.2, seventh bullet].

118. The Applicant's assessment indicates no likely significant effects to coastal protection, flood risk and drainage during the construction of the Proposed Development. The assessment also identified the residual impacts during operation of the Proposed Development as being no greater than slight adverse. For Habrough Marsh Drain the Applicant concluded no greater than slight beneficial effect, and for the drainage infrastructure a moderate beneficial effect [ER 3.6.30]. The Secretary of State is satisfied with the Applicant's conclusion that there would be no residual off-site impacts as a result of the Proposed Development and that the Proposed Development's flood risk can be mitigated to a level which is low and acceptable [ER 3.6.27].

119. The Secretary of State agrees with the conclusions of the ExA that the flood risk considerations weigh neither for nor against the making at the Order [ER 3.6.37] and is satisfied that the Proposed Development would be unlikely to have any significant effects for flood risk and that appropriate mitigation could be secured in the recommended Order and that it accords with the flood risk policies contained within the NPSfP and NELLP [ER 3.6.36].

Sequential and Exception Tests

120. Paragraph 5.2.12 of the NPSfP states that for development in Flood Zone 3, consent should not be given unless the decision maker is satisfied that the sequential and exception test requirements have been met. Under the sequential test, if there are no reasonably available sites in Flood Zones 1 and 2, then nationally significant infrastructure can be located in Zone 3, subject to the exception test (paragraph 5.2.13) [ER 3.6.18].

121. In respect of the requirements of the sequential test, the Secretary of State notes that the analysis undertaken by the Applicant in ES Chapter 4 (Need and Alternatives) demonstrates that there is no alternative to the Proposed Development that could meet the need and objectives that have been defined. The analysis demonstrates that in respect of the sequential test that there is no reasonably available site within Flood Zones 1 and 2 where the Proposed Development could alternatively be located, and that the Proposed Development will be located entirely in Flood Zone 3A [Planning Statement, page 160]. The Secretary of State also notes that the terminal building, which the Applicant describes as the key sensitive element of the Proposed Development in terms of flood risk, will be located in a part of the site that has the lowest flood hazard, water depth and flood velocities [Planning Statement, page 165].

122. The Secretary of State also notes that the NELC's Local Impact Report advises that although the Port of Immingham is in Flood Zone 3 it is an allocated site in the NELLP, and the Proposed Development is deemed to be acceptable under the sequential test of Policy 33 of the NELLP and would also accord with Policy 34 with regard to drainage [ER 3.6.31].

123. In its Planning Statement, the Applicant states that the Proposed Development falls within the 'Water Compatible Development' classification in line with policy contained within both the NPSfP and the NPPF and, as made clear in the NPPF, Water Compactible Development does not need to be subject to the exception test when proposed within Flood Zone 3a [Planning Statement, page 277]. Further, the ExA reported that the NPSfP considers port development appropriate in Flood Zone 3 if

appropriate mitigation can be provided [ER 3.6.27]. Notwithstanding, the Secretary of State also notes that the Applicant has still carried out the exception test and demonstrated that the Proposed Development would meet the requirements of the test. Specifically:

- the Proposed Development would provide wider sustainability benefits to the community, as outlined in the Applicant's ES Appendix 11.1: flood risk assessment and Planning Statement, page 278;

- the Proposed Development would be located on developable previously developed (brownfield) land (which also forms part of the operational area of the Port of Immingham); and

- the design of the Proposed Development has taken account of flood risks as appropriate, as demonstrated in the FRA and supporting documentation.

The Secretary of State Conclusions on Flood Risk

124. The NPSfP states that port development is acceptable in Flood Zone 3 if appropriate mitigation can be provided. The Secretary of State agrees with the ExA that the Proposed Development would be unlikely to have any significant effects for flood risk and that appropriate mitigation is secured in the recommended draft Order. She also notes that the ExA considers that the Proposed Development would accord with the relevant policies in the NPSfP and NELLP relating to flood risk [ER 3.6.36].

125. In addition, the Secretary of State notes that at the close of the Examination, there were no outstanding concerns or matters concerning flood risk or drainage [3.6.35]. The ExA recorded that the principal concerns raised by the Environment Agency when the Application was originally submitted had subsequently been resolved, including the safeguarding of the flood defences and protecting water quality [ER 3.6.32]. Furthermore, the ExA reported that the North East Lindsey Drainage Board confirmed that it has no objection to the Proposed Development, provided it adheres to the Drainage Plan and achieves stipulated allowable discharge rates for the Habrough Marsh Drain [ER 3.6.33]. The SoCG between the Applicant and NELC confirmed compliance with the NELLP's policies [ER 3.6.34].

126. The ExA recommended flood risk considerations should weigh neither for nor against the granting of the Development [ER 3.6.37]. The Secretary of State agrees and has given this matter neutral weight in the planning balance as set out in the Planning Balance section below.

Water Environment

127. The Secretary of State considered the Applicant's assessment of ground conditions including land quality, water and sediment quality matters as detailed in Chapter 12 (Ground Conditions including Land Quality) and Chapter 8 (Water and Sediment Quality) of its ES that identifies the main effects during the construction and operational phases together with mitigation measures [ER 3.6.40]. The Secretary of State notes that, in the absence of quantified UK standards for marine sediment quality, the Applicant reports that it is common practice to use the Centre for Environment, Fisheries and Aquaculture Science Guideline Action Levels for the disposal of dredge material. Furthermore, she notes that the Applicant agreed a

sampling plan with the Marine Management Organisation, in consultation with the Centre for Environment, Fisheries and Aquaculture Science, with sediment samples collected from ten locations across the Proposed Development's dredge area [ER 3.6.44].

128. A summary of the assessed impact pathways, the identified residual impacts and the level of confidence is presented by the Applicant in Table 8.18 of Chapter 8 of the ES. The Applicant's assessment shows that all potential impacts from the Proposed Development on water and sediment quality are between insignificant to minor adverse and therefore, no specific mitigation measures have been identified as being required. However, tertiary mitigations would be undertaken to manage commonly occurring environmental effects during the construction phase. The mitigation measures to manage water quality impacts, as outlined in the section 8.9 of Chapter 8 of the ES, have been incorporated in the Offshore and Onshore Construction Environmental Management Plans respectively [ER 3.6.45]. Further, the Secretary of State acknowledges that the outcomes of the Applicant's water and sediment quality assessment informed its Water Framework Directive Compliance Assessment [ER 3.6.46].

129. The Secretary of State notes that at the close of the Examination, there were no outstanding concerns or matters concerning the water environment [ER 3.6.49]. The ExA recorded that the SoCG between the Applicant and NELC confirmed compliance with the NELLP's policies [ER 3.6.47] and the Environment Agency confirmed that all matters between it and the Applicant had been resolved [ER 3.6.48].

The Secretary of State Conclusions on Water Environment

130. The Secretary of State notes that the ExA is satisfied that the Proposed Development would be unlikely to have any significant effects for land or water quality and that appropriate mitigation is secured in the draft Order. Further, she notes that the ExA considers that the Proposed Development would accord with the relevant policies in the NPSfP and MPS relating to water quality [ER 3.6.50]. The ExA considered that the effects on the water environment neither weigh for nor against the granting of the Development [ER 3.6.51] and the Secretary of State agrees with that conclusion.

Socio-Economic, Commercial and Economic effects

131. The Secretary of State is aware that Chapter 16 of the ES sets out the Applicant's socio-economic assessment [ER 3.7.8]. The Secretary of State agrees with the ExA that the Applicant has, for the most part, adequately assessed the Proposed Development's socio-economic effects and has provided sufficient evidence to support its conclusions about those effects [ER 3.7.25].

132. For the construction phase, the Secretary of State agrees with the ExA that the Applicant's assessment that the employment and Gross Value Added effects would be moderately beneficial, while the effects on local services, temporary accommodation (housing for construction workers) and existing businesses would be negligible [ER 3.7.18].

133. For the operational phase, the Secretary of State notes that the ExA disagrees with the Applicant's assessment of the contribution to employment as being

moderately beneficial, as the assessment does not take into account Stena Line's intention to relocate its existing Humber services to the Proposed Development [ER 3.7.19]. The ExA instead considers the Proposed Development's employment effect to be more likely negligible to minor beneficial, and that it would only be greater if the presence of the proposed berths resulted in a net increase in Ro-Ro services being operated on the Humber [ER 3.7.19].

134. The ExA accepted that the Proposed Development's construction phase would in socio-economic terms be beneficial for the Grimsby Travel to Work Area ("TTWA"), most particularly in terms of employment opportunities and Gross Value Added [ER 3.7.18]. In that regard the ExA shares the Applicant's view that for the construction phase the employment and Gross Value Added effects would be moderately beneficial, with the effects for local services, temporary accommodation (i.e., housing for construction workers) and existing benefits being "negligible". For the operational phase, the ExA concluded that the impacts would be minor beneficial, with the impact on local services being negligible [ER 3.7.20] for the reasons set out in ER 3.7.19.

135. The ExA had reservations regarding the Applicant's conclusion that the operational phase's effect on local businesses would be negligible, as outlined in paragraphs ER 3.7.21 to ER 3.7.24. The ExA noted in particular that while the Applicant has reached agreements with three tenants that would be affected by the construction of the proposed Northern Storage Area, it had not yet reached an agreement with Volkswagen Group ("VWG"), who occupy the proposed Western Storage Area (Plot 9) regarding its relocation to the Port of Grimsby. The ExA therefore did not accept the Applicant's conclusion as the effects for VWG as being "negligible" [ER 3.7.24].

Secretary of State conclusions on Socio-Economic, Commercial and Economic effects

136. The ExA concluded that overall, the Applicant has adequately assessed the socio-economic effects and has provided sufficient evidence to support their conclusion that the Proposed Development will have an overall beneficial economic effect on the Grimsby TTWA economy. The ExA therefore accepted that the Proposed Development would provide some support for economic development in the area and would accord with the relevant policies in the NPSfP [ER 3.7.25]. The Secretary of State agrees.

137. As set out above in respect of the impacts from the Proposed Development on local businesses during the operational phase, the ExA's recommended that little positive weight should be attached to the socio-economic effects that would arise as a result of the Proposed Development due to its reservations about the Applicant's forecasted employment benefits during the operation and the potential effect upon VWG's operations on the Humber. The ExA also recommended, however, that if the matter of relocating VWG to the Port of Grimsby were to be resolved the Proposed Development's socio-economic effects would attract greater positive weight [ER 3.7.25].

138. As set out in the Compulsory Acquisition section below, the Secretary of State notes from the responses to her consultations that while the negotiations required to secure the move for VWG from the Port of Immingham to the Port of Grimsby are still ongoing, these negotiations are considered by VWG to be proceeding extremely

positively and amicably, draft heads of Terms for an Agreement for Lease are in an advanced stage with the design and specification for the new site in Grimsby being finalised, VWG expects to conclude an Agreement for Lease for it to occupy premises at the Port of Grimsby in the first Quarter 1 of 2025 and the commencement of the construction of the storage areas will focus on the Northern, Central and Southern storage areas so as to avoid the Western Storage Area. In light of these developments since the conclusion of the examination, the Secretary of State therefore accepts the Applicant's conclusion that the impacts from the Proposed Development as being negligeable. The Secretary of State agrees with the ExA recommendation that, as these matters are approaching resolution, a greater positive weighting should be attached to the socio-economic effects and has given them moderate positive weight in the planning balance.

Air Quality

139. The Secretary of State has considered the air quality assessment on human receptors as set out in Chapter 13: Air Quality of the Applicant's ES concerning the likely effects during both the construction and operation phases of the Proposed Development.

140. The Secretary of State notes that Chapter 13 of the ES reports that the vessel activity generated from construction of the Proposed Development would be approximately 1.5km away from the nearest human sensitive receptors and that construction traffic impacts would be below the required threshold [3.8.14].

141. The ES noted the potential for significant on-site dust impacts on human receptors during the construction phase. However, the Applicant recognised that by implementing adequate mitigation measures, these adverse effects could be minimised to levels deemed insignificant. The on-site operational effects for human receptors were assessed as being insignificant [ER 3.8.15].

142. The Secretary of State notes that the on-site effects from the operational phase of the Proposed Development are assessed as insignificant [ER 3.8.16], and that off-site likely effects from construction and operation, as well as the anticipated residual effects on human health, were all deemed insignificant. She further notes that the operational effects are likely to further diminish over time owing to the expected increased utilisation of emissions reduction technology [ER 3.8.17].

143. The Secretary of State is aware that there were no issues raised on air quality during the Examination and that NELC agreed with the Applicant's air quality assessment subject to the implementation of the mitigations measure set out in Chapters 13 and 14 of the ES [ER 3.8.22].

The Secretary of State Conclusions on Air Quality

144. The Secretary of State agrees with the ExA that the Applicant's assessment on air quality on human receptors is adequate and that appropriate mitigation measures have been identified by the Applicant which it has proposed would be included in the draft Order. The ExA considered with respect to air quality it is unlikely there would be any significant residual effects for humans [ER 3.8.24]. The Secretary of State notes that the ExA concluded with respect to air quality for humans there would be no conflict with the relevant policies in the NPSfP, EIMP and NELLP and she agrees with the ExA

that the impacts on air quality neither weigh for nor against the granting of the Order [ER 3.8.25].

Noise and Vibration

145. The Secretary of State notes that there were no issues raised on noise and vibration during the Examination and that NELC agreed with the Applicant's noise and vibration assessment subject to the implementation of the mitigation measures set out in Chapters 13 and 14 of the ES [ER 3.8.22]. Nevertheless, the Secretary of State notes that the Applicant's assessment of noise and vibration in Chapter 14: Airbourne Noise and Vibration of the ES identified some effects on human receptors resulting from both the construction and operations of the Proposed Development [ER 3.8.19-.20].

146. The assessment in Chapter 14 of the ES predicted the noise impacts resulting from the construction of the Proposed Development as being minor adverse to the occupiers of the dwellings on Queens Road, and as being moderate adverse to the occupiers of the Port of Immingham. The vibration impacts resulting from the construction of the Proposed Development were assessed in the ES as negligible/minor adverse to the occupiers of premises within the Port of Immingham [ER 3.8.19].

147. The Secretary of State notes that while the on-site noise effects resulting from the operation of the Proposed Development was assessed as minor adverse to the occupiers of the dwellings on Queens Road and Kings Road, the off-site increase in road traffic noise experienced during the operational phase of the Proposed Development by the residents of Queens Road were assessed as being moderate/major adverse and therefore significant. The Secretary of State notes that a requirement within the draft Order secures a noise insulation mitigation package for the owners of affected properties which would reduce the effect for residents of Queens Road to minor adverse at worst. For occupiers of the Port of Immingham, the operational noise effects have been assessed as ranging between major adverse to minor adverse. It is noted that the Applicant has assessed that the occupiers of the Port of Immingham, the effect is expected to reduce to "minor adverse or less with windows and doors facing the Proposed Development kept closed and the use of alternative means of ventilation". The Applicant also considered that the anticipated electrification of port vehicles and equipment would reduce the level of noise associated with the operation of the Proposed Development [ER 3.8.20].

The Secretary of State Conclusions on Noise and Vibration

148. The Secretary of State agrees with the ExA that the Applicant's assessment on noise and vibration on human receptors is adequate and that appropriate mitigation measures have been identified by the Applicant which it has proposed would be included in the draft Order. The ExA considered that with respect to noise and vibration it is unlikely there would be any significant residual effects for humans [ER 3.8.24]. The Secretary of State has noted that with respect to noise and vibration for humans there would be no conflict with the relevant policies in the NPSfP, EIMP and NELLP and she agrees with the ExA's recommendation that noise and vibration effects should neither weigh for nor against the granting of the Order [ER 3.8.25].

Landscape and Visual Effects

149. The Secretary of State notes that the Planning Inspectorate agreed that the landscape/seascape and visual impact could be scoped out of the application "on the grounds that new structures within the Proposed Development would be within the existing port environment and would be similar to existing structures". Responding to advice within the Scoping Opinion, the Application included a Lighting Plan and a lighting design concept report [ER 3.8.21].

150. The Secretary of State notes that there were no concerns or matters raised on landscape and visual effects during the Examination [ER 3.8.22].

The Secretary of State Conclusions on Landscape and Visual Effects

151. The Secretary of State notes that having inspected the site and taking into account the industrial character of the Port of Immingham, the ExA was content that the Proposed Development would not have any adverse landscape and visual effects [ER 3.8.24]. She agrees with the ExA's recommendation that landscape and visual effects should neither weigh for nor against the granting of the Order [ER 3.8.25].

Historic Environment

152. The Secretary of State notes that no IPs raised issues on Historic Environment during the Examination [ER 3.8.34 and ER 3.8.41]. The ES and supplementary documents submitted by the Applicant suggested that the Proposed Development would lie outside the setting of any heritage assets for which setting makes a contribution to the significance of those assets, and not cause any harm to any terrestrial heritage assets, an assessment accepted by NELC in its SoCG with the Applicant [ER 3.8.31 and ER 3.8.39].

153. The Secretary of State notes the ExA's summary of the Applicant's marine historic environment assessment at ER 3.8.33 and that, in their SoCGs, both Historic England's and NELC's acceptance of the Applicant's assessment [ER 3.8.44 and ER 3.8.46]. In respect of the intertidal zone the ExA was also content that the Applicant has adequately consulted NELC about its Applicant's Written Scheme of Investigation (WSI) aimed at reducing negative impacts [ER 3.8.46].

The Secretary of State Conclusions on the Historic Environment

154. The Secretary of State considers that the Applicant has taken reasonable steps to assess the terrestrial and marine historic environment and that adequate mitigation measures are secured in the draft Order [ER 3.8.47]. The Secretary of State agrees with the ExA that after mitigation secured through the Order the Proposed Development would be unlikely to result in harm to designated or non-designated heritage assets and that the impacts on the historic environment weigh neither for nor against the making of the Order [ER 3.4.47-3.4.48].

Coastal Physical Processes, Waste Management and Dredge Disposal

155. The Applicant's physical processes assessment is in Chapter 7 of the ES which has been informed by the Applicant's HRA report [ER 3.8.54]. The Secretary of State notes that the physical processes assessment that the Applicant undertook, as outlined in its ES, concluded that changes resulting from the Proposed Development's construction and operation are considered small in both magnitude and extent and the resultant exposure to change is assessed as low [ER 3.8.55].

156. The Secretary of State also considered the Waste Hierarchy Assessment that the Applicant undertook to determine the Best Practical Environmental Option for the disposal of dredge arisings. The Applicant's assessment concluded that landside disposal is not considered feasible due to practical, economic and environmental costs. The chemical analysis from sediment samples indicated that the material to be dredged "does not contain levels of contamination that would restrict the material being disposed of in the marine environment" [ER 3.8.56]. Since no beneficial use was identified for the dredge arisings and the dredged material was assessed as suitable for disposal in the sea at an appropriate licensed disposal site, the option for disposal in the Humber Estuary was selected as the Best Practical Environmental Option. The Applicant's assessment also reports that two of the Humber's existing licensed disposal sites have sufficient capacity to accommodate the worse-case maintenance dredging arising from the Proposed Development [ER 3.8.57]. The impact of dredge disposal was assessed further as part of the coastal physical processes assessment. The ExA recorded that to protect the marine and coastal environment, the Deemed Marine Licence, Schedule 3 in the draft Order contains conditions relating to dredge disposal and on the management of construction waste [ER 3.8.58].

157. The Construction Environmental Management Plan ("CEMP") included with the Application includes a Site Waste Management Plan [ER 3.8.89]. The Applicant's assessment of ground conditions and land quality concluded that there would be no likely significant residual effects after mitigation during the construction phase. The mitigation is secured in the draft Order through adherence to the offshore and onshore CEMPs [ER 3.8.60]. The Secretary of State notes that no Interested Parties raised concerns about waste management during the Examination and that clarifying questions that the ExA asked in relation to the disposal of dredged material and the wording of the CEMPs were all addressed to the ExA's satisfaction [ER 3.8.61]. The Secretary of State also notes that the SoCG between the Applicant and the MMO which confirmed that all comments and questions concerning physical process and sediment related impacts had been resolved [ER 3.8.62].

<u>The Secretary of State conclusions on Coastal Physical Processes, Waste Management and Dredge Disposal</u>

158. The Secretary of State notes the conclusions of the ExA that there would be no conflict with the policies concerning coastal physical processes, waste management and dredge disposal policies included in the NPSfP and the MPS and she agrees that the effects of these matters weigh neither for nor against the granting of the Order [ER 3.8.63].

<u>Land Use Planning</u>

159. The Applicant confirmed that security measures would be applied to the land use for the Proposed Development [ER 3.8.68].

160. The Secretary of State notes that during the statutory consultation the Ministry of Defence confirmed that it had no safeguarding concerns with the Proposed Development [ER 3.8.69] and the UK Health Security Agency submitted that it was satisfied that the Proposed Development should not result in any significant adverse impact on human health [ER 3.8.73].

161. Chapter 18: Land Use Planning of the ES provides an assessment of risks in relation to land use planning and human health and advises that there would be no storage or processing of hazardous substances. The Proposed Development would not therefore require Hazardous Substances Consent nor would it be subject to the COMAH Regulations. However, the Proposed Development lies within the consultation distance for a number of COMAH sites and the Applicant consulted with the Health and Safety Executive. Vessels using the proposed berths would lie beyond the low water mark and would not be subject to the COMAH Regulations [ER 3.8.70]. It is noted that although Section 18.9 of the ES demonstrates that the Proposed Development would not be a COMAH site, Section 18.10 assess the risks to users of the Proposed Development from the nearby COMAH sites. Section 18.13 concluded that the Proposed Development would not of itself contribute to any risks to the safety and health of people and that there was no reason why the Health and Safety Executive ("HSE") would advise against the Proposed Development [ER 3.8.71].

162. With regard to the proximity of the Proposed Development to the adjoining COMAH sites, DFDS had contended that the HGV drivers should be included in the 100 passenger limit that the HSE has accepted. However, the Secretary of State noted that in the SoCG between the Applicant and the HSE, the HSE confirmed its agreement with the Applicant's assessment and a daily limit of 100 departing passengers in cars prescribed in the draft Order plus HGV drivers using the Proposed Development. The HSE accepted that HGV drivers need not be counted in the passenger limit and the ExA did not disagree with that position. DFDS submitted its concern that the safety of passengers had not been properly assessed but the ExA was content with the Applicant's case that safety management for passengers on site is a normal matter for the port operator that does not need to be secured in the Order [ER 3.8.72].

The Secretary of State conclusions on Land Use Planning

163. The Secretary of State notes that the Applicant has given appropriate consideration to land use planning and agrees with the ExA's conclusion that the Proposed Development would accord with the relevant policies of the NSPfP, MPS and NELLP. She agrees with the ExA's recommendation that land use planning effects neither weigh for or against the granting of the Order [ER 3.8.74].

Cumulative and In Combination Effects

164. The Secretary of State notes the Applicant's cumulative and in combination assessment, as set out in Chapter 20 of the ES [ER 3.9.1], concluded that the Proposed Development would not give rise to any unacceptable cumulative/in combination effects [ER 3.9.2].

165. During the Examination, two other NSIP applications were accepted: 1) the Immingham Green Energy Terminal ("IGET") [ER 1.3.31]; and 2) the Viking Carbon Capture and Storage pipeline [ER 1 3 32]. The Applicant's revised ES Chapter 20 (REP7-008) concluded that the Viking Carbon Capture and Storage pipeline cumulative and in combination assessment concluded that cumulative and in combination impacts were not predicted.

166. The Secretary of State notes the concerns raised by Natural England regarding in combination adverse effects on integrity for physical loss of intertidal habitat effects

with IGET [ER 3.4.34]. She also notes that the ExA recommended that the Secretary of State enter into a section 106 agreement with the Applicant to secure allocation of compensatory land in relation to that concern [ER 3.4.37]. Following the Secretary of State's consultation (9 July 2024), Natural England confirmed (23 July 2024) that in combination impacts between IGET and the Proposed Development had been adequately addressed through the IGET project and therefore compensatory measures were no longer required for either project. This matter has been addressed more fully in the Secretary of State's HRA Report and summarised in this Decision Letter.

167. Some questions from the MMO relating to cumulative effects on coastal processes were resolved by the Applicant's Deadline 1 response. There were no matters of disagreement between these parties as noted by the signed SoCG submitted at Deadline 10. The Secretary of State notes that the ExA was content that initial concerns the MMO had regarding the cumulative effects had been adequately addressed [ER 3.9.4].

168. Taking into consideration the above and taking into account the mitigation measures identified by the Applicant, the Secretary of State is content that the Proposed Development would be unlikely to give rise to significant cumulative and in combination effects. It is noted that the necessary mitigation measures can be secured through requirements or Deemed Marine Licence conditions included in the proposed Order [ER 3.9.6].

The Secretary of State's conclusions on Cumulative and In combination Effects

169. The Secretary of State is content that the assessment of cumulative and in combination effects accords with the EIA Regulations and the NPSfP. The ExA considered that the cumulative and in combination effects neither weigh for nor against making of an Order [ER 3.9.7]. The Secretary of State agrees with this conclusion.

Habitats Regulations Assessment

170. This section should be read alongside the Secretary of State's Habitats Regulations Assessment for an Application under the 2008 Act – Immingham Eastern Roll on Roll off Terminal (October 2024).

171. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations'), the Secretary of State, as the competent authority, is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site. The purpose of the likely significant effects ("LSE") test is to identify the need for an 'appropriate assessment' ("AA") and the activities, sites or plans and projects to be included for further consideration in any AA.

172. Where LSE cannot be ruled out, the Secretary of State must undertake an AA under regulation 63(1) of the Habitats Regulations to assess potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking a plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the plan or

project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest apply (regulation 64).

173. The Secretary of State notes that the Proposed Development is not directly connected with, or necessary to, the management of a European site [ER C. 1.1.11] and that the European sites that were considered in the Applicant's assessment of LSE were: the Humber Estuary SAC, the Humber Estuary Ramsar site, the Humber Estuary SPA and the Wash and North Norfolk Coast SAC. The Secretary of State notes that Natural England's submission to supplement its Relevant Representation [AS-015], advised that the Wash and North Norfolk Coast SAC should be included in relation to the harbour [common] seal feature. Following this, no IPs raised any further concerns about the scope of the European sites considered or their qualifying features. [ER 1.2.4].

174. The Applicant screened out the Greater Wash SPA within Table 2 of the initial HRA report and identified no pathways to be screened in at Stage 1 screening that could have any LSE on the qualifying features of the SPA. The Applicant had concluded no LSE would occur from the Proposed Development either alone or in-combination with any plans or projects, a conclusion that Natural England confirmed it agreed with [ER C.1.2.27].

Likely Significant Effects Assessment

175. The Applicant identified impacts from the Proposed Development considered to have the potential to result in LSE alone and in-combination on the remaining sites as summarised in Table C, Appendix C of the ExA Recommendation Report. Those sites were [ER C.1.2.28]:

- Humber Estuary SAC
- Humber Estuary SPA
- Humber Estuary Ramsar
- The Wash and North Norfolk SAC

176. The Applicant identified impacts from the Proposed Development considered to have the potential to result in LSE alone and in combination on the remaining sites in Table C. The impacts considered by the Applicant to have the potential to result in LSE during construction and operation were set out in ER Table C.

177. Having considered the assessment material submitted during and since the Examination, the Secretary of State considers that LSE in relation to the construction and operation of the Proposed Development could not be ruled out in relation to the Humber Estuary sites and The Wash and North Norfolk SAC. The Secretary of State therefore considered that an AA should be undertaken to discharge her obligations under the Habitats Regulations. The AA is provided in detail within the Secretary of State's Habitats Regulations Assessment published alongside this letter and should be read in conjunction with it.

Appropriate Assessment

The Wash and North Norfolk Coast SAC

178. The only impact pathway that was identified during the screening to give rise to LSE were underwater noise effects on marine mammals resulting from capital dredging, piling, dredge disposal and vessel operations including maintenance dredge and maintenance dredge disposal [ER. C 1.2.33 Table C]. The Applicant put forward the case [REP5-020, Table 32] that it is unlikely that the immediate vicinity of the Proposed Development is within the core range for harbour [common] seal qualifying features of the SAC, which is located over 75 km from the Proposed Development. The ExA and the Secretary of State are satisfied that, with the correct mitigation secured in the CEMP [REP8-010] and the Outline Offshore CEMP [REP8-012] secured in the Order there would be no adverse effect on site integrity from the Proposed Development alone or in combination with other plans or projects [ER 1.9.5].

Humber Estuary SAC

179. In relation to the Humber Estuary SAC, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, in relation to lamprey species and grey seal, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievements of the conservation objectives arising from the LSE identified. The ExA [ER 4.5.3] was satisfied that with the correct mitigation secured in the Order, CEMP and the Outline Offshore CEMP there would be no adverse effect on site integrity from the Proposed Development alone. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.

180. Post Examination, outstanding issues in relation to the in combination effects on the SAC between the Applicant and Natural England were resolved. Natural England confirmed during consultation with the Secretary of State on 23 July 2024 that in combination effects between the Proposed Development and other plans or projects - including the Immingham Green Energy Terminal and the Humber Stallingborough Phase 3 Defence Improvement Scheme - in relation to physical habitat loss and physical damage through disturbance and/or smothering of habitat can be ruled out, and a conclusion of no adverse effect on integrity ("AEoI") can be drawn.

Humber Estuary SPA

181. In relation to the Humber Estuary SPA, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievement of the conservation objectives arising from the LSE identified. The ExA [ER 4.5.3] was satisfied that with the correct mitigation secured in the proposed Order, CEMP and Outline Offshore CEMP there would be no adverse effect on site integrity from the Proposed Development alone. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.

182. In addition, the Secretary of State is satisfied that the only impact pathway that was not resolved by the end of the Examination that was identified to have a potentially likely significant effect was airborne noise and visual disturbance during construction. By the end of the Examination, Natural England and the Applicant had not agreed on suitable disturbance buffer distances to use as mitigation in relation to this impact

pathway. The Applicant held that a 200 m buffer zone would be sufficient to mitigate visual and airborne noise disturbance during the construction phase of the Proposed Development, whereas Natural England recommend a precautionary approach at 300 m. The Secretary of State has considered the Applicant's further arguments for a 200 m buffer distance [REP-013] and [REP5-020] and considers 200 m to be adequate in this instance, and did not consider further enquiries needed to be made on this issue. The Secretary of State has therefore concluded no AEoI due to visual and airborne noise disturbance during construction, both alone and in combination with other plans and projects [ER 4.5.5 and 4.5.6].

Humber Estuary Ramsar site

183. In relation to the Humber Estuary Ramsar site, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievements of the conservation objectives arising from the LSE identified. The ExA [ER 4.5.3] was satisfied that with the correct mitigation secured in the Order, CEMP and the Outline Offshore CEMP there would be no adverse effect on site integrity from the Proposed Development alone. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.

184. In addition, the same impact pathways identified above for the Humber Estuary SAC of physical habitat loss and physical damage through disturbance and/or smothering of habitat were identified to potentially have a significant effect on the Ramsar site in combination with other plans or projects. However, AEoI has been ruled out by the Secretary of State due to the same arguments set out above under the Humber Estuary SAC of this decision letter. As such, a conclusion of no AEoI has been drawn.

Appropriate Assessment Conclusions

185. The Secretary of State concludes that when mitigation measures are taken into account, adverse effects, from the Proposed Development alone and in combination with other plans and projects, on the integrity of the Humber Estuary SPA, the Humber Estuary SAC, the Humber Estuary Ramsar site and The Wash and North Norfolk Coast SAC. These conclusions are set out in more detail in the HRA that accompanies this letter.

<u>The Secretary of State's conclusion on the Habitats Regulations Assessment</u>

186. The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of these European sites and where relevant, the measures in place to avoid and reduce the potential harmful effects, there would not be any implications for the achievement of the conservation objectives for all of the European sites identified from the Proposed Development alone and in combination with other plans or projects.

187. At the time of the ExA Recommendation Report Natural England had not come to an agreement with the Applicant on excluding AEoI beyond reasonable scientific doubt on in combination effects with other plans or projects on the Humber Estuary SAC and the Humber Ramsar site. The Applicant was therefore requested to produce a 'Without Prejudice Derogations Report' [REP8-033] which assessed the Project

against three tests. Each test must be passed sequentially before proceeding to the next in order for the project to proceed. This report set out a consideration of alternatives, imperative reasons of overriding public interest, and suitable compensation measures for the Proposed Development to continue. Although the Secretary of State welcomes this submission and notes that the Derogations Report states that the Proposed Development would pass the derogations tests, further information was submitted during the IGET[2] examination in July 2024 and Natural England are now in agreement with the Applicant that any AEoI of the Humber Estuary SAC and the Humber Estuary Ramsar site can be excluded beyond reasonable scientific doubt. As such, the HRA undertaken by the Secretary of State has concluded at Stage 2: Appropriate Assessment and the need to engage with the HRA derogations, including the need for compensatory measures, is no longer required.

188. The Secretary of State, as the competent authority for the purposes of the Habitats Regulations, has therefore concluded that, taking into account the package of mitigation measures, it is permissible for her to grant development consent for the Proposed Development.

Planning Balance

189. The ExA's recommendations on the weight that the Secretary of State should give to the principle issues is found in section 5.3 of the Report. The ExA recommend that the following matters should weigh in favour of the Proposed Development:

- the Proposed Development's contribution to meeting the general need for additional port capacity attracts little positive weight for the making of the Order [ER 5.3.1];
- providing that compensatory habitat at the Outstrays to Skeffling Managed Realignment Scheme can be secured, the effects on Marine Ecology, Biodiversity and the Natural Environment attract little positive weight to the making of the Order [ER 5.3.2]; and
- the generation of employment and gross value added benefits for the local economy that would occur as a result of the Proposed Development attracts little positive weight [ER 5.3.3];

190. The ExA concluded that other issues and matters should weigh neutrally in the planning balance [ER 5.3.5] which include:

- terrestrial traffic and transport effects;
- climate change matters;
- flood risk considerations;
- the effects on the water environment;
- effects on air quality;
- noise and vibration matters;

[2] Immingham Green Energy Terminal Shadow Habitats Regulations Assessment: Immingham Green Energy Terminal Volume 7 - July 2024 (planninginspectorate.gov.uk)

- landscape and visual effects; and
- land use planning effects.

191. The ExA concluded the following issue should weigh against the Proposed Development:

- Navigation and Shipping – little negative weight on residual adverse navigation and shipping effects [ER 3.3.202 and 5.3.4].

The Secretary of State's Conclusions on Planning Balance

192. Unless otherwise stated below, the Secretary of State agrees with the ExA's recommendation in respect of the weighting for matters set out above.

193. The Secretary of State places substantial weight on the capacity that the Proposed Development would deliver and the contribution this would make towards: meeting the long-term demand for port capacity to cater for growth in volumes and imports and exports by sea at the national level as established by the NPSfP; ensuring resilience of the national port infrastructure and effective competition among UK ports at the national level and with neighbouring trade partners; and ensuring port capacity at a variety of locations nationally to match existing and expected trade (NPSfP 3.5.1). Further, the Secretary of State notes the discussion on alternatives and is content that it is line with Section 4.9 of the NPSfP which states that from a policy perspective there is no general requirement to consider alternatives or to establish whether a proposed project represents the best option [ER 3.2.122]. The Secretary of State also notes and agrees with the ExA's conclusion that there would be no conflict with the policies of the NPSfP, the MPS and the EIMP [ER 5.3.6]. For the reasons set out in the Socio-Economic, Commercial and Economic Effects section of this letter, the Secretary of State disagrees with conclusion reached by the ExA and has placed moderate positive weight on the socio-economic benefits identified by the ExA in paragraph ER 3.7.25.

194. Having carefully weighed the expected benefits against the potential negative impacts, the Secretary of State is of the view that the need and other benefits that are expected as a result of the Proposed Development outweigh the potential negative impacts.

195. The Secretary of State agrees with the ExA that the Proposed Development is acceptable in principle in planning terms and that the case for Development Consent has been made [ER 5.3.7].

COMPULSORY ACQUISITION

196. The Secretary of State notes that the Application seeks compulsory acquisition powers for the acquisition of new permanent rights over land and the extinguishment and/or suspension of rights over land for the construction, operation and maintenance of the Proposed Development [ER 6.1.1 and 6.2.1]. Section 122(2) of the 2008 Act requires that the land to be compulsorily acquired must be required for the development to which development consent relates, is required to facilitate or be incidental to that development, or is replacement land which is to be given in exchange for the order land. Section 122(3) of the 2008 Act requires that there must be a

compelling case in the public interest for the land to be acquired compulsorily. Section 123 of the 2008 Act requires that one of three conditions is to be met, namely:

a) the application for the Order included a request for compulsory acquisition of the land to be authorised;

b) all persons with an interest in the land consent to the inclusion of the provision; or

c) the prescribed procedure has been followed in relation to the land.

197. In addition, a number of general considerations from the former Department for Communities and Local Government 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' ("the compulsory acquisition guidance") need to be addressed to demonstrate that there is compelling evidence that the public benefits that would be derived from compulsory acquisition would outweigh the private loss suffered by those whose land would be acquired [ER 6.5.2].

198. The Secretary of State notes that the ExA, in reaching its overall conclusions, applied the relevant tests to the land over which compulsory acquisition powers are sought by the Applicant regardless of whether any objections or representations were raised [ER 6.7.1]. The ExA's consideration of compulsory acquisition powers and related matters is set out in sections 6, 7.3 and 7.5 of the Report.

Funding

199. The Secretary of State notes that as part of the Examination the ExA considered the funding statement submitted by the Applicant in support of their Application and concluded that there is sufficient funding available to meet any necessary compensation that might arise in connection with the Proposed Development [ER 6.6.13]. The Secretary of State sees no reason to disagree with the ExA's conclusion.

Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6

200. The Secretary of State agrees with the ExA that Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 are required for the construction and operation of the North, Central and South storage areas [ER 6.7.12] and that therefore the test in section 122(2)(a) of the 2008 Act has been met. The Secretary of State is aware that no objections were raised to the compulsory acquisition powers sought in respect of Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 [ER 6.7.11 and ER 6.4.3] The Secretary of State notes that the ExA considered that the proposed interference would be lawful, necessary, proportionate and justified in the public interest and that the compulsory acquisition powers sought are compatible with the Human Rights Act 1998 and the European Convention of Human Rights [ER 6.8.9]. It is noted that the ExA concluded that the acquisition of these plots would be necessary, proportionate and that any private harm would be outweighed by the public benefit from the Proposed Development and that section 122 has been met [ER 6.9.1]. The Secretary of State agrees with these conclusions.

Plot 9 – Land occupied by VWG

201. The Secretary of State notes that at the close of the Examination, VWG had not withdrawn its objection to the compulsory acquisition powers sought by the Applicant

over Plot 9 [ER 6.8.10] which would make up the proposed West storage area and is currently leased to VWG as a vehicle storage area [ER 6.7.2]. Overall, the ExA concluded that the Applicant had not clearly demonstrated that Plot 9 is required for the Proposed Development and had therefore failed to comply with section 122(2)(a) of the 2008 Act. The ExA was also of the view that the Applicant had not complied with section 122(3) of the 2008 Act because the Applicant has not clearly demonstrated that there is a compelling case in the public interest for Plot 9 to be subject to compulsory acquisition [ER 6.7.9] in that the public benefit would outweigh the private loss that could occur [ER 6.7.10]. The ExA's conclusions were based on its views that:

- the phased construction of the west storage area suggesting that this land was not essential for operation of the Proposed Development, while noting that the absence of the West storage area would reduce port resilience on the Humber and could affect the efficient operation of the Proposed Development [ER 6.7.8, first bullet];

- the need case for the Proposed Development being overstated, the capacity at the Port of Killingholme has being underestimated, and the physical capacity available at the Port of Killingholme meaning that it cannot be discounted as an alternative to the Proposed Development [ER 6.7.8, second bullet]; and

    - the lack of agreement between VWG and the Applicant could result in adverse effects on VWG's business continuity [ER 6.7.8, fourth bullet] and there would not be a compelling case in the public interest for Plot 9 to be acquired compulsorily. The ExA also considered that the proposed interference with VWG's interests would not be lawful, proportionate and justified in the public interest and that there would be incompatibility with the Human Rights Act 1998 and the ECHR [ER 6.8.10].

<u>The Secretary of State Consultations on Plot 9</u>

202. In light of the ExA's recommendation that she consult further on this outstanding issue, the Secretary of State consulted both the Applicant and VWG for an update on the status of their negotiations [ER 6.9.2]. The Secretary of State notes that both the Applicant's representation dated 23 July 2024 and VWG's representation dated 19 July 2024 state that while negotiations remain ongoing, a lease is expected to be agreed in the first quarter of 2025, and that this issue would not cause the Applicant difficulties in implementing the Proposed Development. The Secretary of State is aware that this is because the Applicant intends to concentrate works on the Northern and Central storage areas in advance to commencing any works in the West storage area (Plot 9), which VWG currently occupies. The Secretary of State notes that while both the Applicant and VWG state that they remain committed to securing a solution in relation to these works and are confident that negotiations will be successfully concluded, VWG has not withdrawn its objection, and the Applicant considers that it requires the compulsory acquisition powers seeks in order to ensure the delivery of the Proposed Development.

203. The Secretary of State does not agree with the ExA that the delay in the construction of the West storage area suggests that this area is not essential to the operation of the Proposed Development. The Secretary of State notes that the West storage area would have an area of 9.6ha and would accommodate 800 trailer bays

[ER 1.3.20, fourth bullet] and it is clearly a necessary and important part of the Proposed Development. The Secretary of State understands that while it is the Applicant's preference to implement the Proposed Development as a single entity, it has considered construction initially focusing on the North, Central and Soutth storage areas in order to allow VWG the time required to accommodate its move from the Port of Immingham to the Port of Grimsby The Secretary of State therefore considers that the ExA's conclusion that the possibility of the West storage area not being constructed, or construction being deferred for an indeterminate period [ER 3.2.89] is unlikely to materialise.

204. The Secretary of State does however agree with the ExA's conclusion that the absence of the West storage area has the potential to impact the Applicant's ability to operate efficiently if sufficient storage is not available at the Proposed Development [ER 6.7.8, first bullet]. It is for this reason that the Secretary of State is satisfied that Plot 9 is required for the Proposed Development and that the test in section 122(2)(a) of the 2008 Act is met.

205. On the ExA's conclusion that the need for the Proposed Development has been overstated and that the Port of Killingholme could be an alternative to the Proposed Development, as already set out above:

- the Secretary of State disagrees with the ExA's conclusions on need to the extent that it is based on there being spare capacity at the regional Humber level [ER 3.2.126]. The NPSfP sets out the need for developments of the type proposed by the Applicant to meet long-term demand at the national level, which is the Secretary of State's focus in taking a decision on this Application [ER 3.2.106];
- while the Secretary of State accepts that there may be spare capacity available at the Port of Killingholme, the Secretary of State is only able to place little weight on capacity that could in principle be released through permitted development or through future planning applications as there is no certainty that such capacity will come forward. In addition, the NPSfP accepts that new developments may result in surplus capacity; and
- The NPSfP is also clear that, from a policy perspective, it does not require an Applicant to consider alternatives or to establish whether a proposed development represents the best option. Therefore the Secretary of State is not required, in taking a decision on this Application, to consider whether the Port of Killingholme is a better option in comparison to the Proposed Development, or an alternative.

206. On the ExA's suggested exclusion of Plot 9 from the compulsory acquisition powers [ER 6.7.10] unless agreement has been reached about VWG's vacation of Plot 9 and availability at the Port of Killingholme [ER 6.9.2], the Secretary of State does not agree with the ExA that doing so would be consistent with the compulsory acquisition guidance. Paragraph 16 of the compulsory acquisition guidance states that circumstances where the Secretary of State might remove all or some compulsory acquisition provisions in a development consent order might include where the Secretary of State is not persuaded that all of the land the applicant wishes to acquire has been shown to be necessary, or where a scheme should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory

acquisition. As set out above the Secretary of State is satisfied that Plot 9 is necessary for the Proposed Development.

207. For the reasons set out above, the Secretary of State is satisfied with the purpose for which compulsory acquisition is sought and is also satisfied that the requirements of sections 122 and 123 of the 2008 Act are met. She is also content that the land to be acquired by powers of compulsory acquisition would be required and are proportionate to facilitate or to be incidental to the Proposed Development and that there is a compelling case in the public interest for the land to be acquired compulsorily for the reasons set out above. She notes that, as part of the Examination, the ExA considered the funding statement submitted by the Applicant in support of its Application and concluded that there is sufficient funding available to meet any necessary compensation that might arise in connection with the Proposed Development [ER 6.6.13]. The Secretary of State also considers that the public benefits associated with the Proposed Development would outweigh the private loss suffered by those whose land would be affected and that there is no disproportionate or unjustified interference with human rights.

Crown Land

208. The Secretary of State notes drafting amendments were made to the draft Order following comments from the Crown Estate Commissioners in a letter dated 25 January 2024. The ExA concluded that with the amendments that have been made to Article 40, there is no impediment under s135(2) of the 2008 Act to rights concerning Crown land within Plot 14 being included in the proposed Order [ER 6.8.3]. The Secretary of State agrees.

Protective Provisions

209. The Secretary of State notes that the proposed Order contains Protective Provisions for a number of Statutory Undertakers in Schedule 4. The ExA concluded that the protective provisions contained within the proposed Order would provide adequate protection for the following parties: the Statutory Conservancy and Navigation Authority for the Humber; the Environment Agency; Exolum, Northern Powergrid, Network Rail, North Lincolnshire Council (as the lead local flood authority) and the Operators of Electronic Communications Code Networks [ER 7.5.2].

210. The Secretary of State notes that at the end of the Examination, there remained considerable disagreement between the Applicant and the IOT Operators on protective provisions [ER 8.2.5]. The Secretary of State also notes that the ExA highlighted that all but two of the Statutory Undertakers have agreed to the Protective Provisions (“PP”) proposed by the Applicant in the draft Order [ER 7.5.1].

IOT Operators

211. The ExA records that at the end of the Examination, considerable disagreement between the Applicant and the IOT Operators remained regarding the protective provisions in the draft Order [ER 8.2.5]. The Secretary of State notes that the IOT operators considered the protective provisions in the Applicant’s draft Order inadequate and submitted an alternative set of protective provisions during the Examination [ER 7.3.29]. The ExA describes the disagreement between these Interested Parties as one of detailed contractual type drafting, and given the nature of

the disagreement was unable to offer much in the way of a recommendation other than to say that the protective provisions should apply to the Proposed Development's operational phase [ER 7.3.30]. The ExA therefore recommended the Secretary of State consult the Applicant and the IOT Operators regarding the status of the protective provisions for the IOT Operators and the ExA's recommended amendments to requirement 18.

212. In response to the Secretary of State's consultation during her decision-making period, the IOT Operators responded to say that negotiations had not progressed and there was no change in the positions to that at the close of the Examination. The Applicant responded to confirm that it was satisfied the protective provisions (the Secretary of State is aware that the Applicant was not necessarily agreeing that the protective provisions should apply to the operational phase and she considers that matter further below), together with the amendment to Requirement 18 proposed by the Secretary of State, are reasonable and provide all of the necessary protections. The Applicant also stated that it would inform the Secretary of State of any progress made in its discussions with the IOT Operators going forward.

213. In response to the Secretary of State's second round of consultation, the IOT Operators responded to reiterate the concerns they raised during the Examination regarding navigation safety and risks, and the need for additional impact protection measures beyond those proposed by the Applicant to address these concerns. The details of their concerns are set out in the navigational safety and risks section above. The IOT Operators also stated that even with the Secretary of State's proposed amendments to requirements 18 and 19, the level of impact protection would remain inadequate.

214. The Secretary of State agrees with the ExA that the protective provisions should apply to the Proposed Development's operational phase [ER 7.3.33]. Although the Applicant considers that the operation of the Proposed Development would not adversely affect the operation of the IOT's finger pier, the Secretary of State agrees with the ExA that, if that were to be the case, then the IOT Operators would have no need to make use of the protective provisions. The Secretary of State has therefore accepted the ExA's amendments to paragraph 34 of Part 4 of Schedule 4 of the draft Order.

215. The ExA also recommended that the Secretary of State should enquire as to whether any further consideration has been given to any need for a level of insurance cover to be incorporated into the protective provisions [ER 7.3.34], while noting that the Applicant is known to have financial strength and might not need to be so reliant on insurance to indemnify the IOT Operators. The ExA however also noted that this might not necessarily be the case if the benefit of any made Order was to be transferred to a party other than the Applicant pursuant to Article 9. However, a transfer of the benefit of any made Order would require the written consent of the Secretary of State and such matters would be addressed as part of that process.

Anglian Water

216. During the Examination, Anglian Water contended that the wording of paragraph 55 of Schedule 4 Part 6 of the protective provisions in the draft Order, which stated that the protective provisions for Anglian Water would cease to have effect once

the Proposed Development became operational, was not agreeable. [ER 7.3.35]. The Applicant argued that there would be no need for the protective provisions to be effective once the Proposed Development had become operational because the affected Order Limits contains no live Anglian Water assets and only one decommissioned asset [ER 7.3.36].

217. The Secretary of State agrees with the ExA that there would be no need for the protective provisions during the operational phase of the Proposed Development because the asset in question is a decommissioned pipe and it is unlikely that the Proposed Development's operation could affect the condition of a decommissioned asset [ER 7.3.37].

Cadent

218. During the Examination, Cadent contended that the protective provisions outlined in paragraph 99 of Schedule 4 Part 9 of the draft Order, intended only for the construction period, were inconsistent with the drafting of paragraph 107, which also covers the operational phase of the Proposed Development. Cadent further argued that the proposed indemnity in paragraph 107 should be supported by £50 million in insurance cover [ER 7.3.38].

219. The Applicant stated that the proposed West storage yard is already functioning as a port vehicle storage area and is protected by an existing easement for Cadent's gas main. Consequently, the Applicant believes there is no need to apply the protective provisions during the authorised operational phase. Additionally, the Applicant argued that providing an indemnity supported by a £50 million insurance cover as unnecessary due to their strong financial position [ER 7.3.39].

220. The Secretary of State agrees with the ExA's conclusion that it would be reasonable for the protective provisions for Cadent to apply to both the construction and operational phases of the Proposed Development. This is because the storage activity in this particular area might have different ground loading characteristics from its current use, with implications for the integrity of the below-ground gas main. The Secretary of State also agrees with the ExA that there is no need for the indemnity included in the protective provisions to be supported by the scale of insurance proposed by Cadent [ER 7.3.41].

CLdN

221. The ExA reported that the Applicant had not included protective provisions for CLdN in its draft Order, and that during the Examination, CLdN submitted a representation seeking protective provisions in its favour for the reasons set out by the ExA in the Report [ER 7.3.51]. The ExA concluded that:

- the Proposed Development would generate up to an additional six vessel movements per day and the ExA considers that volume of extra river traffic would be unlikely to interfere with the operation of the Port of Killingholme. The ExA therefore considers it would be unnecessary for the protective provisions the Applicant has included in the draft Order to be applied to the operational phase of any development authorised by any made Order for the Proposed Development [ER 7.3.54];

- the construction and operation of the Proposed Development would not affect the Port of Killingholme's access to the rail network, if at some future date the Port of Killingholme was to make use of the rail network [ER 7.3.56];
- as any approval of the landside CEMP and the operational freight management plan by North East Lincolnshire Council and National Highways would engage consideration by the relevant highway authorities, it would not be appropriate for a protective provision for CLdN to require consultation on those plans [ER 7.3.57]; and
- no evidence has been submitted demonstrating anything contained in the draft Order would contradict, limit or amend the statutory rights and powers vested with the Port of Killingholme's statutory harbour authority~~,~~

222. Overall, the ExA recommended that no changes are needed to the protective provisions for CLdN included in the draft Order [ER 7.3.59]. The Secretary of State agrees and has made no changes in the Order.

DFDS

223. The Secretary of State is aware that the Applicant's Order as initially drafted did not contain protective provisions for DfDS who repeatedly raised safety concerns both at the pre-application stage and the Examination of the Application [ER 3.3.55]. The Secretary of State is aware that DFDS sought protective provisions on the basis of its operations [ER 7.3.43]. The ExA reported that while the Applicant was generally of the view that protective provisions in favour of DFDS would be unnecessary, it indicated at Issue Specific Hearing 6 that it would be prepared to include protective provisions for DFDS [ER 7.3.44]. The ExA also reported that the Applicant has argued that protective provisions are not required during the operational phase as it would be able to manage the movement of the vessels to and from the proposed berths without prejudicing the operation of the rest of the Port of Immingham as part of its statutory harbour authority duties. The ExA concluded that it would be reasonable for the protective provisions to cover both the construction and operational phases of the Proposed Development to protect DFDS' interests, noting that if the Applicant is correct that there would be no interference to DFDS' operations during operation, the protective provisions for DFDS would never need to be relied on. The Secretary of State agrees with the ExA that were there to be interference with DFDS' operations during operation, then it is reasonable that protective provisions should be available to safeguard DFDS' interests [ER 7.3.49]. and has therefore accepted the ExA's proposed amendments so that the protective provisions for DFDS apply during both construction and operation.

<u>The Secretary of State's Overall Conclusions on Compulsory Acquisition</u>

224. For the reasons set out above, the Secretary of State is satisfied with the purpose for which compulsory acquisition is sought and that the requirements of section122 and section123 of the 2008 Act are met. She is also satisfied that the land to be acquired by compulsorily would be required and is proportionate to facilitate or to be incidental to the Proposed Development and that there is a compelling case in the public interest for the land to be acquired compulsorily. The Secretary of State accepts the ExA's conclusion that there is sufficient funding available to meet any necessary compensation that might arise in connection with the Proposed Development [ER 6.6.13].

225. The Secretary of State has considered the potential infringement of human rights by the Proposed Development as a result of the inclusion of compulsory acquisition powers in the Order. She considers that any interference with human rights arising from implementation of the Development in relation to Plots 1, 2a, 2b, 3, 4, 5a, 5b, 6 and 9 is proportionate, legitimate and strikes a fair balance between the rights of the individual and the public interest, and, that compensation would be available in respect of any quantifiable loss. The Secretary of State also considers that the public benefits associated with the Proposed Development would outweigh the private loss suffered by those whose land would be affected and that there is no disproportionate or unjustified interference with human rights.

LATE REPRESENTATIONS AND CONSULTATION RESPONSES

226. Following the close of the Examination, the Secretary of State received responses to her consultation questions and other representations which were outside of any consultation period. The Secretary of State has treated the correspondence as late representations and has published them as such alongside this letter on the Planning Inspectorate website. She notes that on 6 September 2024, Clyde & Co wrote on behalf of the Applicant on various matters but, in particular, indicating that discussions with the IOT Operators were about to recommence. Subsequent letters from Burges Salmon of 18 and 24 September 2024 on behalf of the IOT Operators acknowledged further meetings with the Applicant but confirmed that the position of the IOT Operators had not changed. While encouraging continued dialogue between the Applicant and the IOT Operators, the Secretary of State notes the lack of substantive progress so far. Unless addressed elsewhere in this letter, the Secretary of State considers that these late representations and responses to her consultation, do not raise any new issues that are material to the decision on the Proposed Development. As such, the Secretary of State is satisfied that there is not any new evidence or matter of fact in these late representations that need to be referred again to Interested Parties under Rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

GENERAL CONSIDERATIONS

Human Rights

227. In taking her decision, the Secretary of State has had regard to The Human Rights Act 1988. The Secretary of State agrees with the ExA's overall conclusions on CA related matters and notes in particular that:

- adequate and secure funding would be available for CA [ER 6.6.13]; and
- in examining the Application, the ExA has ensured a fair and public hearing and thus meeting the obligations set out in Article 6 (right to a fair hearing) [ER 6.8.8];
- Further, she notes that in respect of Plots 1, 2a, 2b, 3, 4, 5a, 5b, 6 and 14 that:
  - any interference with human rights arising from implementation of the Proposed Development would be for a legitimate purpose that would

justify such interference in the public interest and to a proportionate extent [ER 6.8.9].; and

- there would be no disproportionate or unjustified interference with human rights that would conflict with the provisions of the Human Rights Act 1998 [ER 6.8.9].

228. In respect of Plot 9, the Secretary of States notes that at the close of the Examination an agreement was not reached between VWG and the Applicant. The ExA concluded that the proposed interference with VWG's interests would not be lawful, proportionate and justified in the public interest and that there would be incompatibility with the Human Rights Act 1998 and the ECHR [ER 6.8.10]. The ExA therefore recommended that the Secretary of State should make further enquiries of the Applicant and VWG and that Plot 9 should be excluded from the CA powers sought in the draft Order unless agreement has been reached about the timing for vacating Plot 9 and the availability of replacement facilities at the Port of Killingholme [ER 6.9.2].

229. In regard to Plot 9, as set out in the Compulsory Acquisition section above the Secretary of State is satisfied that this land is required for the Proposed Development. Given the urgency for developments of the type proposed by the Applicant set out in the NPSfP, the Secretary of State is also satisfied that there is a compelling case in the public interest for the compulsory acquisition of this land. The Secretary of State has therefore decided, taking note of both the Applicant and VWG's commitment to successfully conclude their negotiations, to grant the CA powers sought by the Applicant in relation to Plot 9.

230. On the basis of her conclusions in relation to Plot 9, the Secretary of State does not share the view reached by the ExA [ER 6.7.10] in relation to the justification for the compulsory purchase powers for Plot 9 in the event that agreement was not reached.

The Equality Act 2010 and the Public Sector Equality Duty

231. The Equality Act 2010 established the Public Sector Equality Duty. which requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under that Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race.

232. The Secretary of State notes that the Examining Authority, in coming to its conclusions in the Report, has had due regard to the duties under this legislation in throughout the Examination and in its consideration of the issues set out in its Report [ER 6.8.11 and 8.1.10]. The ExA concluded that the Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic, and on that basis found no breach of the Public Sector Equality Duty [ER 8.1.10]. The Secretary of State agrees with the ExA's conclusions and is also satisfied that no evidence has been submitted to suggest that the Proposed Development would not accord with section 149 of the Equality Act 2010 and that she

has had due regard to the needs identified in the Public Sector Equality Duty in reaching her decision [ER 6.8.11].

Natural Environment and Rural Communities Act 2006

233. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 as amended by section 102 of the Environment Act 2021 has to consider what action she should take, consistently with the proper exercise of her functions, to further the general biodiversity objective and, in accordance with regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, having regard to the purpose of conserving and enhancing biodiversity and, in particular, to the United Nations Environmental Programme on Biological Diversity of 1992. She has had regard to both of these duties in deciding whether to grant development consent. The Secretary of State notes the ExA's conclusions that biodiversity, ecological and nature conservation issues have been adequately assessed, that the requirements of NPSfP, Marine Policy Statement of 2011 (MPS) and EIMP would be met. The Secretary of State agrees with these conclusions and, in reaching a decision to grant development consent, has had due regard to the duty of conserving and enhancing biodiversity.

DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

234. The Secretary of State has made a number of minor textual amendments to the ExA's recommended draft Order in the interests of clarity, consistency and precision. Further to the textual amendments the Secretary of State also makes the following modifications:

a) article 2(1) (interpretation) has been amended to:

- remove a number of definitions where those terms are only used in one provision elsewhere in the Order where those definitions can now be found,
- vary the definition of "HGV" as the term 'heavy goods vehicle' was not defined. The Order now defines this term by way of the definition of 'heavy goods vehicle' in section 58(1) of the Goods Vehicles (Licensing of Operators) Act 1995, and
- vary the definition of "tidal works" to refer to the authorised development as applicable, as the original definition referred to works, a term not otherwise defined in the order.

b) article 9(4) has been removed as the Order does not interfere with section 72(7) and (8) of the 2009 Act, so it is not necessary to provide that those provisions will continue to apply.

c) article 10 has been amended to account for a new Schedule 5 introduced by the ExA, rather than the book of reference as recommended by the ExA. Schedule 5 contains a list of the land to which the compulsory purchase powers are limited to the acquisition of rights as set out in that Schedule.

d) article 12(5)(a)(iv) has been amended to remove the reference to notice given by the undertaker "before the undertaker's taking possession of it". The

Secretary of State notes the ExA's conclusion that the Applicant is not seeking temporary possession powers as part of its application, and therefore, this provision has been deemed unnecessary.

e) article 24(4) has been amended, and a new paragraph (11) has been inserted to provide that the definition of "specified work" is the same as that set out in Part 13 of Schedule 4. The term specified work was previously not defined at any place in the Order outside that Part of Schedule 4. It is assumed that the intention was for the same meaning to be applied to this article.

f) article 24(9) has been amended to:

- insert the words "from the commencement of the authorised development" in relation to the duty to report to the Board. It was unclear when this duty was intended to be commenced. It is the Secretary of State's view that this aligns with requirement 9 in Schedule 2, and
- remove the obligation that the monitoring contemplated "be based on appropriate methods", as it is not clear what more is intended in this context.

g) requirement 1 has been amended to remove several definitions where those definitions are only used in one requirement elsewhere, or alternatively, where that definition has already been provided at article 2(1) of the Order.

h) requirement 6(3) has been amended to provide that "capital dredge" has the same meaning as found in Part 1 of Schedule 3 (the deemed marine license).

i) requirement 12(b) has been amended to insert the phrase "constituting Work No. 12" in relation to the "agreed works". It was unclear what the "agreed works" were originally referring to. Based on the context of the provision this has been amended to clarify that the agreed works would be Work No. 12, subject to any such agreements has contemplated by requirement 12(a).

j) paragraph 1 of Part 1 of Schedule 4 has been amended to vary the definition of "area of jurisdiction", to qualify that the area within the harbour limits refers to the area in which the powers of the dock master may be exercised. Originally, the extent of the harbour limits was not defined and this amendment provides clarity for the purposes of Part 1 of that Schedule.

SECRETARY OF STATE'S OVERALL CONCLUSION AND DECISION

235. For all the reasons set out in this letter, the Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

CHALLENGE TO DECISION

236. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A of this letter.

PUBLICITY FOR THE DECISION

237. The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

ANNEX A

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 (as made) is being published on the Planning Inspectorate website at the following address:

https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR030007

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).

The Planning Inspectorate
Yr Arolygiaeth Gynllunio

The Planning Act 2008

IMMINGHAM EASTERN RO-RO TERMINAL

Examining Authority's

Findings, Conclusions and

Recommendation

to the Secretary of State for

Transport

Examining Authority

Grahame Gould BA MPhil MRTPI (Lead member of the Panel)

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25 April 2024

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OVERVIEW

File Ref: TR030007

The application, dated 10 February 2023, was made under section 37 of the Planning Act 2008 and was received in full by The Planning Inspectorate on 10 February 2023.

The applicant is Associated British Ports.

The application was accepted for examination on 6 March 2023.

The examination of the application began on 26 July 2023 and was completed on 25 January 2024.

The development proposed comprises the construction of three new Roll on/Roll off berths and other marine infrastructure and associated landside works within the Port of Immingham.

Summary of Recommendation:

The Examining Authority recommends that the Secretary of State should make the Order in the form attached, subject to the Secretary of State and the Applicant entering into an agreement under section of 106 of the Town and Country Planning Act to secure the allocation of 1.0 hectare of the Outstrays to Skeffling Managed Realignment Scheme as compensatory habitat for habitat within the Humber Estuary Special Area of Conservation that would be affected by the Proposed Development.

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1. INTRODUCTION

1.1. BACKGROUND TO THE EXAMINATION

1.1.1. An application was submitted by Associated British Ports (the Applicant) to the Planning Inspectorate on 10 February 2023. for the construction of new roll on/roll off (Ro-Ro) terminal comprising three berths and associated landside works, including storage areas, terminal buildings and road bridge, within the existing Port of Immingham (PoI) on the Humber Estuary/river (the Proposed Development), reference TR030007. The Application was submitted under section (s) 31 of the Planning Act 2008 (PA 2008) and it was accepted for Examination under s55 of the PA 2008 on 6 March 2023. This document sets out the Examining Authority's (ExA) findings, conclusions and recommendations to the Secretary of State (SoS) for Transport (SoST).

1.1.2. The legislative tests for whether the Proposed Development is a Nationally Significant Infrastructure Project (NSIP) were considered by the Secretary of State for Levelling Up, Housing and Communities in its decision to accept the Application for Examination in accordance with s55 of the PA2008 [PD-001].

1.1.3. The Proposed Development would alter the PoI by increasing the number of Ro-Ro ship berths and it has been designed to increase the port's handling capacity *"… by at least …"* 250,000 units for embarkation or disembarkation per year [section 4 in APP-002]. Section 24(6) of the PA 2008 defines a unit as being "… *any item of wheeled cargo (whether or not self-propelled)*" that can be transported by a Ro-Ro ship. The Proposed Development therefore falls within s24(2) of the PA2008 and meets the definition for being an NSIP stated in s14(1) of the PA2008. The Proposed Development therefore requires development consent in accordance with s31 of the PA2008.

1.1.4. The Examination Library (EL) provides a record of all application documents and submissions to the Examination, each of which is given a unique reference number e.g. [APP-001, REP-001 etc]. The reference numbers are used below and some hyperlinks have been included to allow the reader to access directly any documents referenced in the text. To assist with locating matters referred to in some documents the ExA has quoted 'e-page' numbers. An e-page refers to an electronic page number in a document rather than to the numbers printed on the pages of that document.

1.1.5. The ExA has not provided extensive summaries of the documents and representations received. Regard has been paid to that material and to the important and relevant matters arising from it in all the conclusions and recommendations made by the ExA. Readers are referred to relevant material using hyperlinked EL references.

1.2. APPOINTMENT OF THE EXAMINING AUTHORITY

1.2.1. On 20 March 2023, Grahame Gould, Stephen Bradley and Sarah Witherley were appointed as the original Examining Authority (ExA) for the application under s61

and s65 of PA2008 [PD-004]. Following the ExA's appointment, Sarah Witherley resigned from the ExA under s66(3) and Mark Harrison was appointed as a replacement member of the ExA on 17 July 2023 under s68(2) [PD-007].

1.3. THE APPLICATION

LOCATION OF THE PROPOSED DEVELOPMENT

1.3.1. The location of the Proposed Development is shown in the Location Plan [APP-005] (extract shown in Figure 1 below). Other than an area of woodland, known as Long Wood, the marine and landside parts of the Order Limits are situated within the PoI. The Order Limits are wholly within the administrative area for North East Lincolnshire Council (NELC). While most of the PoI is within NELC's administrative area, parts of the port to the west beyond the Order Limits are within the administrative area for North Lincolnshire Council (NLC).

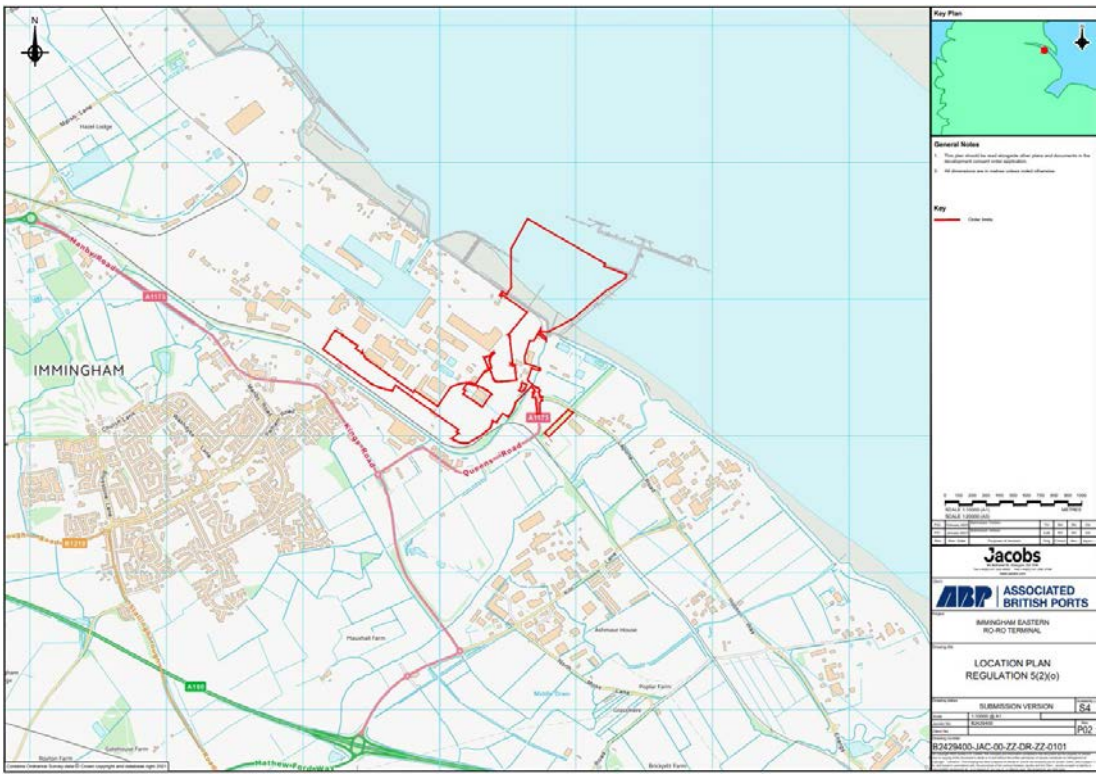

Figure 1: Location of the Application Site [APP-005]

1.3.2. The PoI comprises (enclosed) inner docks and an outer riverside port area, with the statutory port estate occupying 480 hectares [paragraph 1.1.3 in APP-036]. Figure 2 below shows the general layout of the PoI.

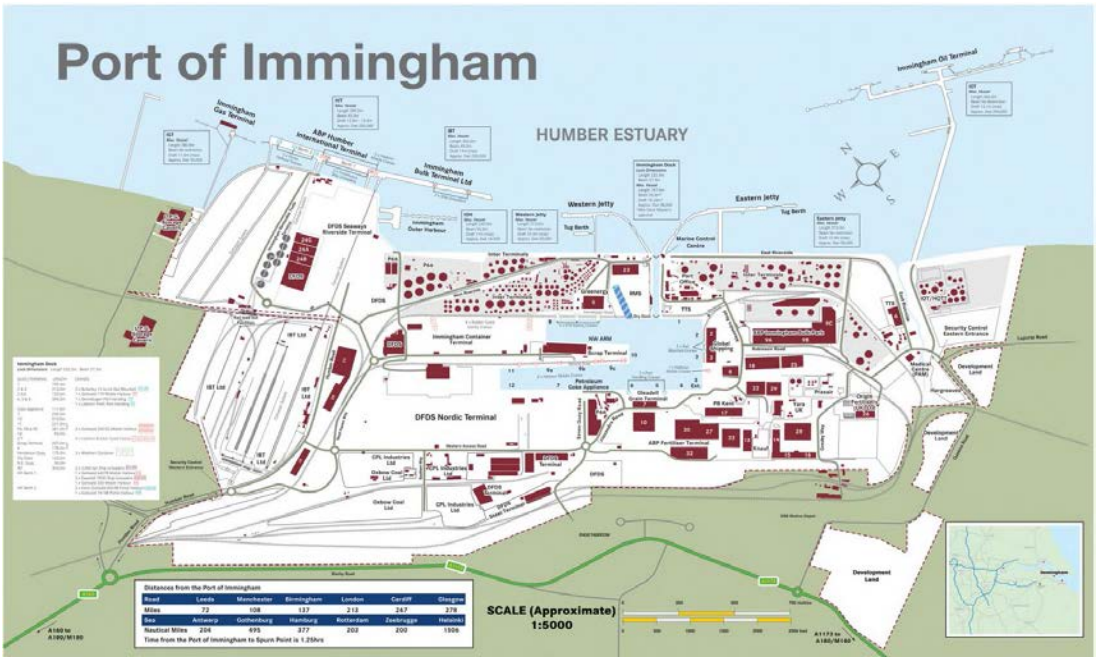

Figure 2: General layout for the Port of Immingham [Image 2.1 in AS-063]

1.3.3. The outer port area consists of a number of jetties or piers with direct access to and from the river Humber that variously handle bulk commodities (liquid fuels, solid fuels and ores, etc) and Ro-Ro freight.

1.3.4. The enclosed inner dock area is accessed via a lock (capable of taking maximum vessel dimensions of 197 metres length, 26.8 metres beam/width and 10.36 metres draft) as notated on Figure 2.1 in [AS-063]. The inner dock comprises quays and terminals that handle containerised freight (both Ro-Ro and lift on-lift off) plus bulk products. The riverward 'bellmouth' approach to the lock is flanked by the outer port's "Eastern Jetty" and "Western Jetty" which both handle liquid bulk products.

1.3.5. The landside PoI comprises a mixture of: open yards used for the storage and handling of containers, trailers, bulk commodities and vehicles; multiple warehouses; and a number of tank farms. As explained in Chapter 18 of the Environmental Statement (ES) [APP-054] and shown on the figures in [APP-073], some parts of the PoI are involved in the handling of hazardous substances (fuels, gases, fertilisers, other chemical products and explosives etc) and are subject to the Control of Major Accident Hazards (COMAH) regime.

1.3.6. The PoI is the UK's largest port by tonnage, handling around 46 million tonnes annually [paragraph 2.2.1 in APP-038].

1.3.7. DFDS Seaways Plc (DFDS) and Stena Line operate various Ro-Ro services between the PoI and northern mainland Europe. DFDS operates what is, in effect, a port within a port, equivalent to the eighth largest port in the United Kingdom (UK) in terms of unit throughput [paragraph 4 in REP2-040]. DFDS utilises a total of six berths, three within the inner dock and three in the outer port, known as the "Immingham Outer Harbour" (IOH) [paragraphs 5.5 and 5.8 in REP8-028].

1.3.8. Stena Line has access to one berth in the inner dock and operates one scheduled daily service to mainland Europe from that berth [paragraph 5.9 in REP8-028]. Stena Line commenced its operations at the PoI on a temporary basis in 2022 following the termination of one of its contracts to operate a service between the Port of Killingholme (PoK) and Europoort in Rotterdam [REP2-065]. The PoK is around 3.5 kilometres (2 miles) upriver of the PoI. The locations for the PoI and the PoK, as well as the Port of Hull and Port of Grimsby, are shown on Figure 3 below.

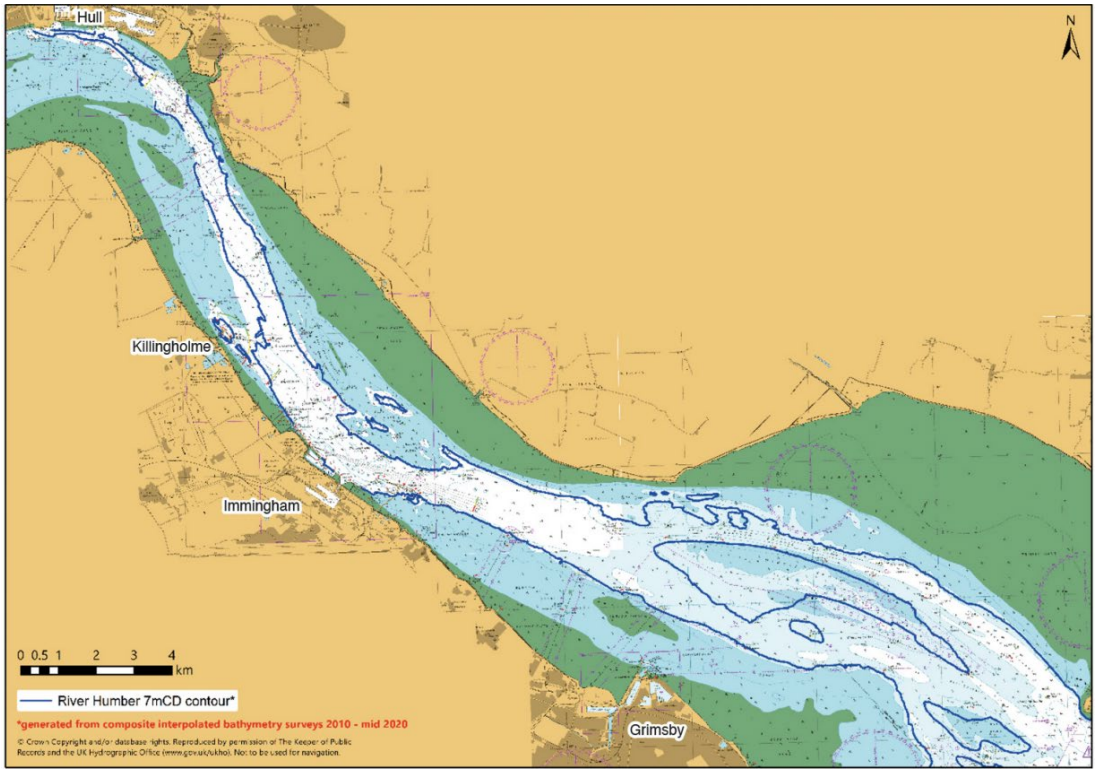

Figure 3: The location of the ports on the Humber [Extract from Figure 4.2 in APP-062]

1.3.9. On the eastern extremity of the outer port there are the marine elements of the "*Immingham Oil Terminal*" (IOT), which comprise: an in-river jetty with three berths (numbered 1, 2 and 3); a finger pier with four berths (numbered 6, 7, 8 and 9) for use by coastal tankers and bunker (refuelling) barges; and a pipeline trunkway (see plan in [REP1-037]. The IOT handles petroleum products and serves the Humber Refinery and the Lindsey Refinery (the refineries). The refineries are located outside of and to the north west of the PoI and together currently account for approximately 27% of the UK's refining capacity [paragraph 1.5 in RR-003].

1.3.10. The town of Immingham lies to the southwest of the PoI and is largely residential in character, apart from its industrial northern fringes which immediately adjoin the port.

1.3.11. Vehicular entry to and exit from the PoI is via either the port's East Gate or the West Gate. The primary route to the East Gate is via the A1173, while the West Gate can be accessed via either the A160 or the A1173. The A160 and A1173 both connect with the A180 which becomes the M180 further to the west. The PoI has an internal

rail network, that is under the Applicant's control and which connects with the national network.

1.3.12. The Humber Estuary has been designated as Special Area of Conservation (SAC) and a Special Protection Area for birds (SPA) and therefore forms part of the National Site Network. The Humber Estuary is also a Ramsar site.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

1.3.13. The Proposed Development would involve the establishment of a new Ro-Ro terminal, located on the eastern side of the PoI. The new Ro-Ro terminal would be sited wholly within the statutory port estate, with its marine elements being within the outer port, while the landside elements would occupy either currently used or disused operational port land. The Proposed Development would consist of three new in river berths (the proposed berths) and landside 'associated development' comprising: open storage divided into four areas (northern, southern, central and western); a terminal building; and facilities for UK Border Force. The layout for the Proposed Development is shown in Figure 3 below.

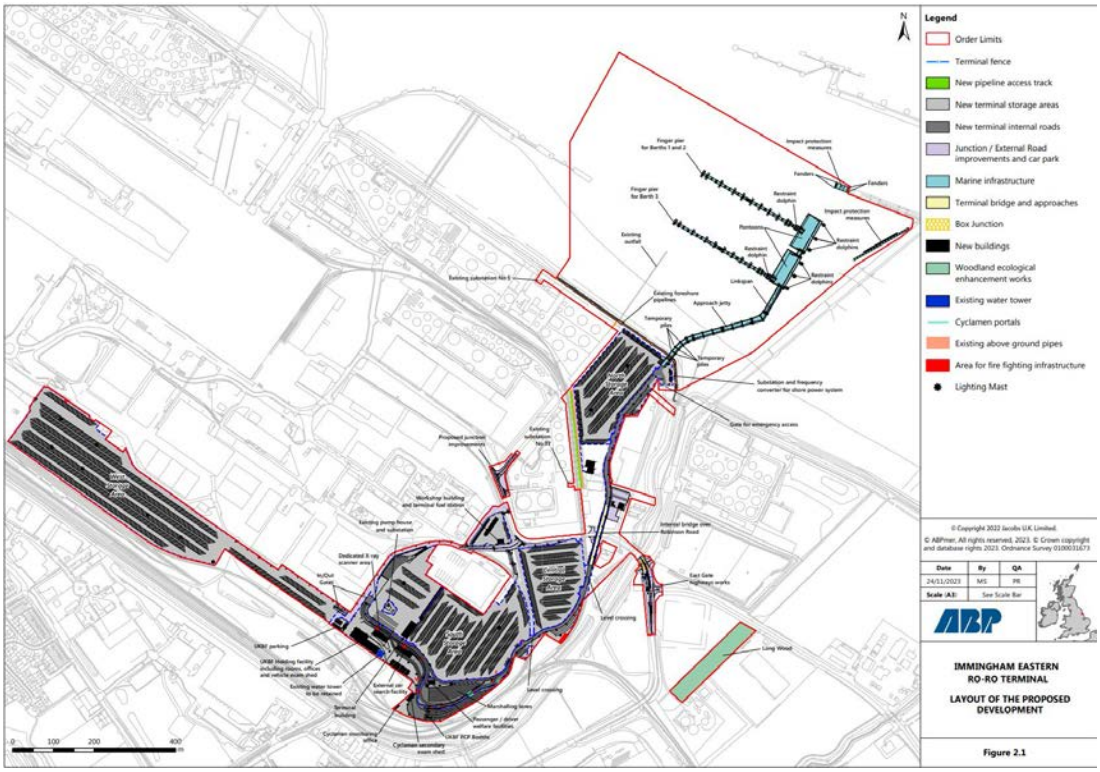

Figure 4: General layout for the Proposed Development [Figure 2.1 in AS-056]

1.3.14. A summary description of the works for the Proposed Development is provided below and includes alterations to the Application that were subject to the Applicant's change request of 29 November 2023 (see section 1.5 of this Recommendation for more details of the change request). A fuller description of the works is provided in section 2.3 of Chapter 2 of the ES [AS-063], which is a change request document. The proposed marine works comprise Works 1 to 3 in the draft Development

Consent Order (DCO), while the proposed landside associated development comprises Work Numbers 4 to13 [REP10-004].

Marine elements of the Proposed Development

1.3.15. The marine elements of the development would comprise:

- An approach jetty 250 metres long, ranging in width between 12.5 to 17 metres, and a 90 metre long and 10 metre wide linkspan providing two-way vehicular access to a pair of floating pontoons at the head of the proposed berths. With the exception of a crossing of the river wall the approach jetty would be up to 13.5 metres above Chart Datum and would be supported by up to 46 piles with a diameter of 1.422 metres.

- Two finger piers, orientated east/west, attached to the floating pontoons. The pontoons would be up to 90 metres and 40 metres wide and would be held in position by piled restraint *"dolphins"*. The finger piers would have a maximum length of 270 metres and would generally be 6.0 metres wide, each supported by up to 56 piles of up to 1.422 metres in diameter. The northernmost finger pier (furthest from the shoreline) would accommodate proposed berths 1 and 2, while the southern pier would accommodate proposed berth 3. The proposed northern pontoon, at its closest point, would be around 100 metres from the southern side of the IOT finger pier. At its closest, the western extremity of the southern pier would be around 225 metres from a tug berth that lies at the south-eastern extremity of the Eastern Jetty.

- Vessel impact protection measures (IPM) for the IOT infrastructure taking the form of:

    - A 160 metre linear structure adjacent to the IOT trunkway to the south of the IOT finger pier. This IPM would consist of a concrete beam supported by up to 20 piles (up to 1.52 metre diameter). Fendering would be attached to this IPM's outer (western) face.

    - A piled 'dolphin' structure sited at the western extremity of the IOT finger pier, which would be 30 metres long and 14 metres wide and would be supported by 12 piles with a diameter of 1.52 metres. There would be a separation of five metres between the proposed dolphin and the western end of the IOT finger pier. Additionally, one pile would be installed adjacent to each corner of the dolphin and those piles would act as fendering for this IPM.

1.3.16. The Applicant intends that the IPM would be an 'adaptive control' that would only be installed should it be established through the operation of proposed berth 1 that the structural integrity of the IOT's trunkway and/or the IOT finger pier would need to be safeguarded due to an increased likelihood of allision (accidental impact) of Ro-Ro

vessels with the IOT's infrastructure. The Applicant has submitted that any decision to install the IPM would be made by either the Harbour Master for the River Humber (HMH) or the PoI's Dock Master (DM). This is discussed in greater detail in other chapters of this Recommendation.

1.3.17. To facilitate the installation and operation of the proposed berths it would be necessary to undertake a capital dredge to create a new berth pocket with a maximum spatial extent of 70,000 square metres (m2) and a depth varying between 1.1 and 9.0 metres above CD. The Applicant has estimated that the capital dredge would give rise to 190,000 cubic metres (m3) of dredgings for disposal at two nearby licensed dredging disposal sites (Holme Channel (HU056) and Clay Huts (HU060). The locations of the dredging disposal sites are shown on Figure 2.1 in [APP-060]. Consent for the capital dredge is sought under Work Number 2 of the dDCO [REP10-004].

Landside elements of the Proposed Development

1.3.18. The Proposed Development has been designed principally to enable the embarkation and disembarkation of wheeled on and off unitised cargo, which would either be accompanied or unaccompanied while on board a vessel. An accompanied unit being one where the heavy goods vehicle (HGV) tractor unit and driver travel on a vessel with a road going trailer and disembark together at the destination port. Unaccompanied units are: dropped off at the port of embarkation by HGV tractors; wheeled onto vessels by port-based tractors (tugs); wheeled off vessels by tugs and stored at the disembarkation port; and then collected by HGV tractor units and drivers for onward delivery. It should be noted that some unaccompanied units can be transferred from road going trailers to *"cassette"* or *'MAFI'* type trailers (shipping trailers) that are wheeled on a vessel at the embarkation port and wheeled off at the port of disembarkation. The transferring between road going and shipping trailers taking place within the confines of a port. The use of shipping trailers and their implication for port unit throughput are matters considered further in Chapter 3 of this Recommendation.

1.3.19. Hereafter in this Recommendation the term unit is used as a general term for accompanied and/or unaccompanied Ro-Ro units, preceded by accompanied or unaccompanied when it is necessary to draw a distinction between these freight types.

1.3.20. The container and trailer storage areas and vehicle waiting areas associated with the Proposed Development would utilise existing open storage areas that would be upgraded through the undertaking of hard surfacing works. The main elements of the landside works would comprise:

- The northern storage area would have an area of 4.0 hectares (ha) and would accommodate: 266 trailer bays; 65 container (40 foot) ground slots; and 19 "trade unit" slots.

- The central storage area would have an area of 3.56ha and would accommodate: 211 trailer bays; 75 staff parking spaces; and 15 equipment

parking spaces. Within this area some search and welfare accommodation for use by UK Border Force would be provided. The southern approach to a new internal bridge linking the northern and southern storage areas would occupy part of the central storage area.

- The southern storage area would occupy an area of 11ha and would accommodate: 397 trailer bays; six trade unit ground slots; 50 pre-gate HGV parking spaces; and some parking for passengers and staff. Within the southern storage area provision would also be made for tug parking and holding/marshalling lanes for accompanied units and passenger vehicles. The main terminal building would be sited in this area and its maximum footprint would be 40 metres by 15 metres, while its height would not exceed 10.5 metres. The main accommodation for use by UK Border Force would be located in this area and would enable customs and passport functions to be exercised.

- The western storage area would have an area of 9.6ha and would accommodate 800 trailer bays.

- The proposed two-lane internal bridge would have a deck measuring 86 metres by 12 metres and its maximum height above the existing ground level would be 11 metres. This bridge would span an internal port road (Robinson Road). The installation of this bridge would require the demolition of four buildings and the partial demolition of a fifth building. It is proposed that the occupiers of the demolished buildings will be relocated to replacement buildings.

- To facilitate access to the new Ro-Ro terminal it is proposed that the PoI's East Gate would be altered to provide two lanes of entry through the widening of the existing entrance road by four metres and the installation of a replacement gate house. The Applicant anticipates that the provision of an additional entry lane would enable a doubling in the number of vehicles that can enter the port via the east Gate per hour. Allied to the widening of the East Gate's width it is proposed that the adjoining public highway (Queens Road) would be altered by relocating a bus stop, removing a lay-by and the installation of a new length of footway.

- Some alterations to two internal port roads, Robinson Road and Gresley Way, have also been proposed to assist with the Proposed Development's assimilation within the existing port's infrastructure.

- The Application includes some environmental enhancement works. Those works relate to a 1.2ha woodland, known as Long Wood, which is situated to the south of Laporte Road (east of East Gate). These works would take the form of woodland management intended to increase the biodiversity of Long Wood. The Applicant has submitted that the management of Long Wood would neither mitigate nor compensate for any effects the Proposed Development might have on the SAC, SPA or Ramsar site.

CONSTRUCTION AND OPERATIONAL PHASES

1.3.21. Descriptions for the construction and operational phase for the Proposed Development are provided in Chapter 3 of the ES [AS-065]. Summaries for those phases of the Proposed Development are set out below.

CONSTRUCTION PHASE

1.3.22. The construction programme would follow one of two scenarios. The first scenario, preferred by the Applicant, would involve constructing the marine and landside works concurrently over a period of around 18 months.

1.3.23. The second scenario would involve a sequenced construction period, starting with the construction of the northern finger pier (proposed berths 1 and 2) and the northern, central and southern storage areas and the undertaking of those works would take around 18 months. Thereafter the construction of the southern finger pier (berth 3) would be undertaken while proposed berths 1 and 2 were being operated and the construction of the western storage area would also be undertaken.

1.3.24. The landside construction works would be undertaken between 07:00 and 19:00 hours Monday to Friday and between 07:00 and 13:00 on Saturdays. The marine works would be undertaken on a 24 hour basis, seven days a week, subject to seasonal restrictions intended to safeguard the wellbeing of the qualifying features of the SAC, SPA and Ramsar site.

OPERATIONAL PHASE

1.3.25. Other than Christmas Day it is intended that the Proposed Development would operate 24 hours a day, seven days a week. It is intended that Stena Line would operate the Proposed Development, enabling that company to vacate the inner dock at the PoI and cease the service it currently operates at the PoK.

1.3.26. The proposed berths have been designed to accommodate a maximum 'design vessel' (DV) with an overall length of up to 240 metres, a beam of up to 35 metres and a draught of up to eight metres, with assistance for manoeuvring on and off the berths with tugs when necessary, as described in (paragraph 3.2.1 of [APP-035]). The Applicant confirmed during the course of the Examination that this DV does not currently exist as a vessel with characteristics suitable for operation at the Proposed Development.

1.3.27. On a worst case basis the annual capacity of the Proposed Development has been assessed by the Applicant at 660,000 Ro-Ro units, with that number of units having been included in Article 21 of the originally submitted dDCO [APP-013]. However, during the course of the Examination in the interests of clarity the Applicant agreed to the setting of a daily capacity limit of 1,800 Ro-Ro units and that has been incorporated into Article 21's drafting in the dDCO, including the final version submitted by the Applicant [REP10-004]. In terms of the units handled, the assessment reported in the submitted ES is based on approximately 72% of the embarking or disembarking units being unaccompanied, while 28% of the units

would be accompanied. As is explained in Chapter 3 below the Applicant expects the Proposed Development's daily efficient throughput would be 80% of the maximum assessed level, i.e., a daily average of 1,440 units.

1.3.28. The Applicant expects that all units handled at the Proposed Development would arrive and depart the PoI by road, with there being no use of the rail network.

1.3.29. While the Proposed Development has been designed to facilitate the handling of Ro-Ro units, its design includes a capability to handle up to 100 embarking (departing) passengers per day. That limit on embarking passengers reflects the proximity of the neighbouring COMAH sites and the time passengers might have to wait within the PoI prior to boarding a departing vessel. No limit has been proposed for the daily number of disembarking passengers because it is expected they would only remain within the PoI for as long as it took for border controls to be completed.

RELEVANT PLANNING HISTORY

1.3.30. The PoI's inner dock and the Eastern and Western approach jetties were built and became operational in the first decade of the twentieth century, having been authorised by the Humber Commercial Railway and Dock Act 1904 [paragraph 3.2.23 in AS-065]. From the 1960s onwards various outer port jetties have been constructed, having been authorised by various harbour empowerment or revision orders.

1.3.31. An NSIP application (TR030008) for the proposed hydrogen producing Immingham Green Energy Terminal was submitted by the Applicant on 21 September 2023 and was accepted for Examination on 19 October 2023. That Examination commenced on 20 February 2024 and its ExA will make recommendations to the SoST about the proposed Immingham Green Energy Terminal in due course. Amongst other things, the application for the Immingham Green Energy Terminal is seeking consent for the construction of a new jetty a little down river from the IOT's marine infrastructure. It is the ExA's understanding that the proposed Order Limits for the Immingham Green Energy Terminal are entirely outside the boundary of the PoI. There is some minor overlap between the Order Limits for the Proposed Development and those of the proposed Immingham Green Energy Terminal in respect of land at the PoI's East Gate and the public highway in Queens Road.

1.3.32. An NSIP application (EN070008) for the proposed Viking Carbon Capture and Storage scheme (was submitted on 23 October 2023 and accepted for examination on 17 November 2023. That Examination commenced on 27 March 2024 and its ExA will make a recommendation to the SoS for Energy Security and Net Zero in due course. The Viking Carbon Capture and Storage scheme is for an onshore pipeline of approximately 55.5 km in length, which will transport carbon dioxide from the Immingham industrial area to the Theddlethorpe area on the Lincolnshire coast where it will connect to an existing offshore pipeline. There is no overlap between the Order Limits for the Proposed Development and those of the proposed Viking Carbon Capture and Storage scheme.

1.4. THE EXAMINATION

START OF THE EXAMINATION

1.4.1. The Preliminary Meeting (PM) took place on 25 July 2023 [EV1-001]. The ExA's Procedural Decisions (PD) and the Examination Timetable took account of matters raised at the PM. They were provided in the Rule 8 Letter [PD-009], which was dated 2 August 2023.

1.4.2. The Examination began on 25 July 2023 and was concluded on 25 January 2024. The principal stages and events comprising the Examination are set out in the Examination Timetable and are summarised below. No party requested to join or leave the Examination, with the HMH having been granted the status of 'Other Person' prior to the PM.

PROCEDURAL DECISIONS

1.4.3. The PDs taken by the ExA are recorded in the EL referenced [PD-001, 002 etc]. They detail the ExA's decisions relating to the procedure of the Examination and did not bear on the ExA's consideration of the planning merits of the Proposed Development.

STATEMENTS OF COMMON GROUND

1.4.4. Further to the issuing of [PD-005], revised by [PD-016] and [PD-026], by the close of Examination the following Interested Parties (IPs) had signed final Statements of Common Ground (SoCG) with the Applicant:

- Able Humberside Ports Limited [REP10-009]
- Anglian Water Services Limited [REP9-006]
- Associated Petroleum Terminals (Immingham) Limited and Humber Oil Terminals Trustee Limited, collectively the Immingham Oil Terminal (IOT) Operators [REP10-012]
- Cadent Gas Limited [REP6-014]
- CLdN Ports Killingholme Limited (CLdN) [REP6-007]
- DFDS [REP10-010]
- Health and Safety Executive (HSE) [REP10-013]
- Historic England [REP6-006]
- Lincolnshire Wildlife Trust [AS-081]
- Marine Management Organisation (MMO) [REP10-011]
- Maritime and Coastguard Agency [REP6-005]
- Natural England (NE) [REP6-010]
- National Highways [REP5-009] and [REP9-005]
- Network Rail Infrastructure Limited (Network Rail) [REP6-017]
- North East Lincolnshire Council [REP10-014]
- North Lincolnshire Council [REP8-008]

1.4.5. Additionally, as a consequence of action points 5 and 30 arising from the holding of Issue Specific Hearing (ISH) 3 [EV6-012] the following topic specific SoCGs were concluded:

- Dwell times (the amount of time a freight unit spends landside within a port, either outbound or inbound prior to being loaded on or off a vessel) for unaccompanied Ro-Ro units, entered into between the Applicant, CLdN, DFDS and Stena Line [REP6-020]; and
- Traffic and Transport, entered into between the Applicant, CLdN and DFDS [REP6-011]

1.4.6. During the course of the Examination the ExA accepted that there would be no need for SoCGs to be entered to between the Applicant and the Corporation of Trinity House of Deptford Strond and between the Applicant and the Environment Agency (EA).

1.4.7. The submitted SoCGs have been taken account of in the relevant sections of this Recommendation.

WRITTEN QUESTIONS, SITE INSPECTIONS AND HEARINGS

1.4.8. The ExA asked four rounds of written questions [PD10-010], [PD-013], [PD-020] and [PD-022]. The ExA also found it necessary to make the following requests for further information and comments under Rule 17 of the Infrastructure Planning (Examination Procedure) Rules 2010: [PD-011]; [PD-016]; [PD-023]; [PD-024]; [PD-025]; [PD-027]; [PD-028]; [PD-029]; [PD-030]; [PD-031]; and [PD-032].

1.4.9. The ExA's need to ask four rounds of written questions and make so many requests for further information under Rule 17 towards the end of the Examination was, in part, because of the failure by the Applicant and many of the IPs to submit their final and signed SoCGs by deadline (D) 5 of the Examination (23 October 2023) and the inordinate delays that arose in concluding the discussions in relation to some matters.

1.4.10. The ExA undertook what it termed a "Familiarisation Site Inspection" (FSI) [Annex F in PD-006, PD-008 and EV4-001] the day after the PM, one Unaccompanied Site Inspection (USI) [EV9-001] and an Accompanied Site Inspection (ASI) [EV5-001]. The FSI being a bespoke form of inspection necessitated because the vast majority of the marine and landside areas of the Order Limits could not be observed from publicly accessible vantage points.

1.4.11. Six ISHs were held: ISH1 [EV2-002]; ISH2 [EV3-002, EV3-004, EV3-006, EV3-008 and EV3-010]; ISH3 [EV6-002, EV6-004, EV6-006, EV6-008 and EV6-010]; ISH4 [EV7-002 and EV7-004]; ISH5 [EV10-002, EV10-004, EV10-006, EV10-008, EV10-010, EV10-012 and EV10-014]; and ISH6 [EV11-002, EV11-004, EV11-006 and EV11-008]. One Compulsory Acquisition Hearing (CAH1) [EV8-002] was held. No requests for Open Floor Hearings were made and therefore none of this type of hearing were held.

1.5. CHANGES TO THE APPLICATION

1.5.1. Changes were made to a number of the Application documents, including to the provisions of the dDCO. The changes to those documents sought to address

matters raised by IPs and the ExA and to update or provide additional information resulting from changes and discussions that had occurred during the Examination.

1.5.2. Changes to the Application documents, together with any additional information submitted by the Applicant are detailed in the Application Guide, the final version of which was submitted at D10 [REP10-002].

1.5.3. The Applicant submitted a formal change request on 29 November 2023. Table A2 in Appendix A of this Recommendation sets out the documents included in the change request. The "Proposed Change Request Report" [AS-072] explains the details of the four proposed changes. Prior to the submission of the change request the Applicant undertook a month-long non-statutory consultation exercise.

1.5.4. In summary, the change request was for:

- **Change 1** - the realignment of the approach jetty and associated works to the marine infrastructure.
- **Change 2** - the realignment and shortening of the Proposed Development's onshore internal bridge.
- **Change 3** - the rearrangement of the UK Border Force facilities.
- **Change 4** - the potential installation of a 'dolphin' structure, as an impact protection measure at the western end of the IOT finger pier.

1.5.5. The ExA issued a procedural decision accepting all four of the Applicant's proposed changes for Examination on 6 December 2023 [PD-021]. That decision was made because the ExA considered that the proposed changes either individually or collectively would not be so substantial as to constitute a materially new project. In that regard it should be noted that the proposed changes did not invoke the provisions of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

1.6. UNDERTAKINGS, OBLIGATIONS AND AGREEMENTS

1.6.1. The Applicant had not entered into any undertakings, obligations or agreements with any other party by the close of the Examination.

1.7. OTHER CONSENTS

1.7.1. In addition to the consents required under the PA2008, the Applicant would require other consents to construct and operate the Proposed Development. The other consents that would or would possibly be required to construct and operate the Proposed Development have been identified by the Applicant in its *"Consents and Agreements Position Statement"* [APP-110].

1.8. STRUCTURE OF THIS REPORT

1.8.1. The structure of the remainder of this report is as follows:

- Chapter 2 identifies the planning issues and summaries the key legislation and policy context.

- Chapter 3 sets out the findings and conclusions in relation to the planning issues that arose from the Application and during the Examination.
- Chapter 4 provides a summary of the Habitats Regulation Assessment (HRA).
- Chapter 5 sets out the balance of planning considerations arising from Chapters 3 and 4 in the light of important and relevant factual, legal and policy considerations.
- Chapter 6 sets out the ExA's examination of land rights and related matters.
- Chapter 7 considers the implications of the matters arising from the preceding chapters for the DCO.
- Chapter 8 summaries all relevant considerations and sets out the ExA's recommendation to the SoST.

1.8.2. This report is supported by the following appendices:

- **Appendix A** – Reference Tables
- **Appendix B** – List of Abbreviations
- **Appendix C** – Habitats Regulations Assessment
- **Appendix D** – The Recommended DCO

2. HOW THE APPLICATION IS DETERMINED

2.1. INTRODUCTION

2.1.1. This chapter identifies the key legislation, policy and Local Impact Reports (LIRs) that the Examining Authority's (ExA) recommendations are made against.

2.2. LEGISLATION AND POLICY

2.2.1. This section identifies the key legislation and policy that the ExA considers to be important and relevant to its findings and recommendations to the Secretary of State for Transport (SoST). More detail is provided in Annex A to this report.

PLANNING ACT 2008

2.2.2. The Planning Act 2008 (PA2008) provides for a different basis for decision-making for Nationally Significant Infrastructure Project (NSIP) applications in cases where a relevant National Policy Statement (NPS) has effect and in those cases when no NPS has effect. The NPS for Ports (NPSfP) was designated in January 2012 and has effect in relation to the consideration of the proposed extension of the Port of Immingham (PoI). As the NPSfP has effect, the ExA considers that the Proposed Development should be assessed under section 104 (s104) of the PA2008.

2.2.3. Section 104(2) of the PA2008 sets out the matters the SoST must have regard to when making its decision. Those matters include any relevant NPS that has effect, any LIR, any matters prescribed in relation to the development and any other matters the SoST considers are both important and relevant. As the Proposed Development concerns an extension to a port, under s104(2)(aa) the SoST must also have regard to *"the appropriate marine policy documents (if any), determined in accordance with section 59 of the Marine and Coastal Access Act 2009"*. As explained later in this Chapter there are marine policy documents to which regard must be paid.

2.2.4. Section 104(3) of the PA2008 requires the SoST to decide the Application in accordance with any relevant NPS that has effect in relation to this application, subject to the exceptions in s104(4) to (8) as follows:

- Deciding the application in accordance with any relevant NPS would lead to the United Kingdom being in breach of any of its international obligations.
- Deciding the application in accordance with any relevant NPS would lead to the SoST being in breach of any duty imposed on her or him by or under any enactment.
- Deciding the application in accordance with any relevant NPS would be unlawful by virtue of any enactment.
- The adverse impact of the Proposed Development would outweigh its benefits.
- Any condition prescribed for deciding an application otherwise than in accordance with a NPS is met.

2.2.5. This report sets out the ExA's findings, conclusions and recommendations taking the above listed matters into account and applying s104 of the PA2008.

OTHER ACTS

MARINE AND COASTAL ACCESS ACT 2009 (MACAA2009)

2.2.6. The Proposed Development would be within tidal waters and accordingly it is subject to the MACAA2009. This provides for the preparation of the Marine Policy Statement and Inshore and Offshore Marine Plans (similar to a Development Plan for marine areas). In a case to be decided under s104 PA2008, subsection (2)(aa) requires the SoST to have regard to the appropriate marine policy documents determined in accordance with s59 of MACAA2009.

2.2.7. There are extant marine policy documents affecting the Humber and they are discussed further in section 2.4 below. Accordingly, regard must be paid to those marine policy documents as part of the determination of this Application.

HARBOUR AND PORT LEGISLATION

2.2.8. There are several national and local acts relating to the use of the Humber River and/or the establishment and use of the Humber's ports, including the Port of Immingham (PoI). That legislation, amongst other things, has given rise to the creation of a Statutory Conservancy and Navigation Authority (SCNA) combining the Statutory Harbour Authority (SHA) functions of conservancy and Competent Harbour Authority (CHA) responsibilities for pilotage for the Humber, plus SHAs for the individual ports on the Humber. The SCNA, in some instances, operates under the informal name of Humber Estuary Services (HES) [REP7-066]. The different responsibilities of the SCNA and PoI SHA and how they would relate to the Proposed Development are covered in greater detail in Chapter 3 of this report and have also been explained by the Applicant in [REP1-014] and by the Harbour Master for the Humber (HMH) in [REP7-066].

2.2.9. The Applicant owns and operates the PoI as a commercial entity and is also required to perform regulatory controls relating to maintaining the availability of safe waters for navigation (conservancy) and the control of vessel movements (pilotage) variously in the guises of the SHA for the Humber Estuary and the CHA for the Humber (through the auspices of the SCNA) and the SHA for the PoI.

2.2.10. Given the Applicant's roles as the promoter/undertaker for the Proposed Development and marine safety regulator for the PoI and the Humber and the impartiality concerns raised by some of the Interested Parties, the following legislation (in chronological order) is considered by the ExA to be important and relevant. The legislation listed below should not, however, be considered exhaustive.

- The Harbours Docks and Piers Clauses Act 1847 [AS-004]. The Applicant is seeking the incorporation of some of the 1847 Act's provisions into any made Development Consent Order (DCO) for the Proposed Development, see Article 4 of the draft DCO [REP10-004].

- The River Humber Conservancy Act 1852, the first of a series of acts establishing the River Humber Conservancy Commissioners, who were replaced by the Humber Conservancy Board when the Humber Conservancy Act 1907 (the 1907 Act) was enacted. Under the 1907 Act pilotage functions for the Humber were transferred to the Conservancy Board. Thereafter the Conservancy Board was replaced in 1967 by the British Transport Docks Board. The British Transport Docks Board further to the enactment of the Transport Act 1981 was reconstituted as Associated British Ports. Today the functions of the former Conservancy Commission/Board lie with the SCNA.

- The Humber Commercial Railway and Dock Act 1904 authorised the construction of the PoI.

- The Harbours Act 1964 (the 1964 Act), under which designated harbours have the responsibility for improving, maintaining or managing harbours. The PoI has been designated as a harbour authority for the purposes of the 1964 Act, pursuant to the Harbour Directions (Designation of Harbour Authorities) (No.2) Order 2015. Accordingly, in the event of a there being an intention to issue a general direction relating to the PoI under the 1964 Act, prior to its issuing a consultation with harbour users must take place and objections will be subject to an adjudication process. Therefore both the SCNA and the PoI SHA have powers to issue general directions [see paragraphs 20 to 21 in REP7-066].

- British Transport Docks Act 1972 (the 1972 Act) [REP8-053], which amongst other things, conferred powers on the British Transport Docks Board, a predecessor of the Applicant. Pursuant to the 1972 Act the Applicant exercises powers regulating navigation on the Humber and within the Ports of Goole, Grimsby, Hull and Immingham. The provisions of the 1972 Act include:

    - Section 5 - appointing a HMH.
    - Section 6 - the giving of general "… directions for the for the purpose of promoting or securing conditions conducive to the ease; convenience or safety of navigation in the Humber …". General directions can be applied to all vessels or to a class of vessels and may be applied to the whole of or part of the Humber at all times or specific times. General directions can be issued by the SCNA and the SHA for the PoI.
    - Section 7 - the issuing of special directions to specific vessels, with the purpose, amongst other things, of *"(b) regulating or requiring for the ease, convenience or safety of navigation the movement, mooring or unmooring of a vessel*". Although the HMH is an officer of the SCNA, under section 7 the HMH has the power to issue special directions to vessels in the Humber at the discretion of the post holder and without prior consultation.
    - Section 8 - the issuing of directions with the purposes not only of ensuring safety of vessels at the docks but also securing the efficient conduct of the business carried out at the docks. The power to issue

directions under section 8 are available to the Applicant as the SHA for the PoI.
    - Section 9 - the publication of general directions.
    - Section 12 - non-compliance with a general or special direction being an offence.
    - Section 13 - power of enforcement to remedy non-compliance with a special direction.
    - Section 23 - for the protection of the operators of the "*oil terminal at Immingham*" (now known as the Immingham Oil Terminal (IOT), not less than three months before giving a general direction which may affect the operations of the operators the operators shall be consulted (by what is now the Applicant) and the operators may appeal to the Secretary of State "... *on the ground that a general direction is prejudicial to the operations or rights of the operators, and the Secretary of State shall, having regard to the interests of ease, convenience or safety of navigation in the Humber, have power, by order, to amend the direction or, as the case may be, to annul the amendment or revocation* …".

- Under the Pilotage Act 1987 there is provision for CHAs, in the interests of safety, to issue pilotage directions making pilotage compulsory for the areas subject to any directions. Prior to the issuing of pilotage directions CHAs are required to consult the owners of ships that ordinarily navigate the area that would be affected by a direction and any other persons undertaking harbour operations within the area of control of the CHA. While the Applicant is the CHA for the Humber, the CHA's day to day pilotage functions are led by the HMH [paragraphs 10 and 11 in REP7-066].

- The Immingham Dock Bye-Laws of 1929 [REP8-055] provide the Applicant, via its appointed Dock Master (DM), the means to control and manage the way vessels move within the PoI, are moored and are unloaded or loaded.

ENERGY

2.2.11. Part 12 of the Energy Act 2023 (EA2023) addresses "*Core fuel sector resilience*". Section 267 (General objective) states "*The functions of the Secretary of State under this Part must be exercised with a view to- (a) ensuring the economic activity of the United Kingdom is not adversely affected by the disruptions to core fuel sector activities, and (b) reducing the risk to emergencies affecting fuel supplies*." (the Secretary of State referred to being that for Energy Security and Net Zero (SoSESNZ)). In section 268 of the EA2023, core fuel sector activity is defined to include, amongst other things, the handling, storing and carriage by sea or inland water of oil, albeit under sub-section (3) the handling, storing and carriage of crude oil yet to enter a refinery or terminal is excluded from being a core fuel sector activity.

2.2.12. Later sections in Part 12 of the EA2023 give the SoSESNZ the power to issue directions to site operators with the purpose of maintaining or improving core fuel sector resilience. Failure to comply with a direction will give rise to the committing of an offence and possible prosecution. Part 12 of the EA2023 came into force on

11 January 2024, pursuant to The Energy Act (Commencement No. 1) Regulations 2024. In view of the representations made by the Immingham Oil Terminal (IOT) Operators, for example during Issue Specific Hearing 3 and [paragraph 1.3(b) in REP4-034], the ExA considers that the provisions of Part 12 of the EA2023 are an important and relevant matter for the purposes of s104(2)(d) of the PA2008, a matter that the ExA will comment further on in Chapter 3 of this report.

2.2.13. Relevant legislation, including details of the Equality Act 2010, Human Rights Act 1998 and the Climate Change Act 2008 (as amended), can be found in Table A5 of Appendix A of this report.

2.3. NATIONAL POLICY STATEMENTS (NPSs)

2.3.1. NPSs set out Government policy on different types of national infrastructure development. With regard to the purposes of s104(2)(a) of the PA2008, the NPSfP is of direct relevance to the Application. Additionally, because the construction and operation of the proposed berths has been raised as potentially having an effect on the operation of the IOT, which serves the two nearby refineries and handles crude fuel oil and refined fuel products, the ExA considers that aspects of the Overarching National Policy Statement for Energy (EN-1), designated on 17 January 2024, (NPSEN1) have some relevance to the consideration of the Proposed Development. More detail is provided in Appendix A to this Recommendation.

NPSfP

2.3.2. The NPSfP identifies a need for new port infrastructure to be made available and sets out the assessment criteria to be taken account of when considering proposals for new port development. There is therefore a presumption in favour of granting consent to applications for ports development. That presumption applies unless any more specific and relevant policies set out in this or another NPS clearly indicate that consent should be refused (paragraph 3.5.2).

NPSEN1

2.3.3. NPSEN1 is of some contextual relevance to the consideration of the Proposed Development. That is because in section 2.3 of this NPS it is explained that as the United Kingdom transitions to a position of net zero greenhouse gas emissions by 2050 there will be a continuing need for crude oil fuels to "… enable secure, reliable, and affordable supplies of energy as we develop the means to address the carbon dioxide and other greenhouse gases associated with their use …" (paragraph 2.3.10). It is therefore likely that there will be a continuing role for the IOT to handle crude fuel and refined fuel products as part of the United Kingdom's energy security.

2.4. OTHER RELEVANT NATIONAL AND LOCAL POLICIES AND GUIDANCE

MARINE POLICY DOCUMENTS

2.4.1. The UK Marine Policy Statement (MPS) was adopted by Department for Environment, Food and Rural Affairs (Defra) on 30 September 2011 and sets out a high-level framework for preparing marine plans and taking decisions affecting the marine environment. The Proposed Development would be within the East Marine plan area, for which the East Inshore Plan was adopted in April 2014, concurrently with the East Offshore Plan, in a single document titled the "East Inshore and East Offshore Marine Plans". Only the East Inshore Marine Plan (EIMP) is of relevance to the consideration of the Proposed Development and hereafter no further reference is made to the East Offshore Plan.

2.4.2. Section 3.12 (Ports and Shipping) of the EIMP is of particular relevance to the determination of the Application, with Policy PS3 requiring consideration to be given to how new port development would integrate with the operation of an existing port or harbour. The full text for Policy PS3 and other relevant EIMP policies can be found in Table A4 in Appendix A to this Recommendation.

OTHER NATIONAL POLICIES AND GUIDANCE

2.4.3. Other relevant Government policy and guidance has been taken into account by the ExA, including the following:

- The National Planning Policy Framework (December 2023)
- Port Marine Safety Code (November 2016) [REP1-015]
- Guide to Good Practice on Port Marine Operations (February 2018) [REP1-016]
- MGN 654 (M+F) Annex 1 *"Methodology for Assessing Marine Navigational Safety and Emergency Response Risks of Offshore Renewable Energy Installations (OREI)"* [Annex 4 in REP4-008].

2.5. LOCAL IMPACT REPORT (LIR)

2.5.1. One LIR was submitted: by North East Lincolnshire Council (NELC) [REP1-023] at deadline (D) 1. The LIR identified that local development plan policies support the Proposed Development in principle and it covered the following issues:

- Development Plan policy
- Principle of the Proposed Development
- Character, Visual Amenity, Landscape and Heritage
- Impact on Neighbouring Land Uses
- Impact on the Highway Network
- Ecology
- Pollution, Air Quality and Contamination
- Drainage and Flood Risk

2.5.2. The issues raised in the LIR are considered in further detail in relation to the relevant planning issues in Chapter 3 of this report. Table A6 in Appendix A sets out the individual local policies that are relevant to the Proposed Development.

2.6. ENVIRONMENTAL IMPACT ASSESSMENT

2.6.1. The Applicant provided a notification under Regulation 8(1)(b) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations) of its intention to provide an Environmental Statement (ES). Therefore, in accordance with Regulation 6(2)(a) of the EIA Regulations, the ExA determined that the Proposed Development would be EIA development.

2.6.2. On 13 September 2021, the Applicant submitted a Scoping Report to the SoS under Regulation 10 of the EIA Regulations in order to request an opinion about the scope of the ES to be prepared (a Scoping Opinion). On 25 October 2021 the Planning Inspectorate provided a Scoping Opinion [APP-081].

2.6.3. Overall, the ExA considers that the ES, as supplemented with additional information during the Examination, is sufficient to enable the SoST to take a decision in compliance with the EIA Regulations.

2.6.4. The ExA considers that changes to the documentation, including amendments made to the ES during the Examination, together with the change requests (see section 1.5 of this report) did not individually or cumulatively undermine the scope and assessment of the ES. Chapter 3 below summarises the environmental effects in each topic section.

2.7. HABITATS REGULATIONS ASSESSMENT

2.7.1. The SoST is the competent authority for the purposes of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations). The Habitats Regulations were amended by the Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019.

2.7.2. The Proposed Development is one that has been identified as potentially giving rise to likely significant effects (LSE) on European sites and hence is subject to a Habitats Regulations Assessment (HRA). As is the convention and to inform SoST decisions prepared under the PA2008, a separate record of considerations relevant to HRA has been set out in Appendix C of this report, a summary of which can be found in Chapter 4.

2.8. TRANSBOUNDARY EFFECTS

2.8.1. A transboundary screening under Regulation 32 of the EIA Regulations was undertaken on behalf of the SoST on 31 January 2022, following the Applicant's request for an EIA Scoping Opinion. No significant effects were identified on the environment in a European Economic Area (EEA) member state.

2.8.2. A re-screening was undertaken on 31 March 2023 [OD-002]. Again, no EEA states were identified as being likely to have significant effects on their environment in terms of extent, magnitude, probability, duration, frequency or reversibility.

2.8.3. The Regulation 32 duty is an ongoing duty, and on that basis, the ExA has considered whether any facts have emerged to change these screening conclusions, up to the point of closure of the Examination on 25 January 2024. The ExA is content, on the basis of the information provided by the Applicant and Natural England's agreement that the correct sites had been considered in the HRA [REP8-014], that the Proposed Development would not have any LSE on European sites in any EEA States.

3. FINDINGS AND CONCLUSIONS IN RELATION TO THE PLANNING ISSUES

3.1. INTRODUCTION

3.1.1. This chapter sets out the Examining Authority's (ExA) findings and conclusions on the planning issues. The chapter is structured firstly to examine matters of principle, including need and alternatives, followed by the topics that the ExA considers were most to least contentious during the Examination.

3.1.2. In each section, the ExA identifies the policy background, followed by a summary of the Application as made, then reports on the main issues for each topic. Conclusions are then drawn for each topic and whether the effects carry little, moderate, great or very great weight for or against the making of a Development Consent Order (DCO).

INITIAL ASSESSMENT OF PRINCIPAL ISSUES

3.1.3. As required by section (s) 88 of the Planning Act 2008 (PA2008) and Rule 5 of the Infrastructure Planning (Examination Procedure) Rules 2010, the ExA made an Initial Assessment of Principal Issues (IAPI) arising from the Application in advance of the Preliminary Meeting (PM). This initial assessment of the issues was based on the Application documents and submitted Relevant Representations (RR). The list of issues relates to all phases of the Proposed Development. The IAPI was discussed at the PM and no other key topics were identified during the Examination. The IAPI can be found in Annex C of the Rule 6 letter [PD-006]. The issues identified alphabetically in the IAPI were as follows, in summary:

- Biodiversity, ecology and natural environment
- Climate change
- Compulsory Acquisition and/or Temporary Possession
- Cumulative and In-combination effects
- Draft Development Consent Order (dDCO)
- Landscape and visual effects
- Navigation and shipping effects
- Socio-economic
- Transportation – road and rail
- Water and flooding

3.1.4. The ExA considers that the issues raised by Interested Parties (IP) were broadly in line with the IAPI and were subject to written and oral questioning during the Examination. Those are the issues that the ExA has used to structure most of the following sections in this chapter. However, to facilitate efficient consideration of the relationships between certain issues the ExA has varied the order of its consideration of some issues from that set out in the IAPI. It should be noted that the IAPI is a high level framework. The ExA has nevertheless had regard to the important and relevant matters arising from IPs' submissions and has covered these, as required, within each section below.

3.1.5. The planning issues considered in this chapter have been sequenced as follows:

- The principle of the development, including the Applicant's need case and consideration of alternatives;
- Navigation and shipping;
- Marine ecology, biodiversity and natural environment;
- Terrestrial traffic and transportation;
- Climate change, flood risk and drainage and water environment;
- Socio-economic, commercial and economic effects;
- Uncontentious matters (for which no significant issues were identified during the Examination) comprising: air quality; airborne noise and vibration; landscape and visual; historic environment; coastal physical processes; waste management and dredge disposal; land use planning; and;
- Cumulative and in-combination effects.

3.2. THE PRINCIPLE OF THE DEVELOPMENT

INTRODUCTION

3.2.1. For reasons set out in Chapter 2 above, the ExA considers that the National Policy Statement for Ports (NPSfP) and the East Inshore Marine Plan (EIMP) (which forms part of the East Inshore and Offshore Marine Plans 2014) form the primary policy basis for the consideration of this issue.

POLICY BACKGROUND

NPSfP

3.2.2. NPSfP sets out the case for the need for the provision of new port infrastructure, with many goods arriving in the United Kingdom (UK) by either trucks and trailers that roll on/roll off vessels (Ro-Ro) or in lift-on/lift-off containers (Lo-Lo), which are both types of unitised freight. As of 2010, ports in England and Wales handled around 95% of the total volume of the UK's trade (paragraph 3.1.3). The NPSfP further recognises that ports have a vital role in the importation and export of energy supplies. Although that role will change with the transition away from reliance on fossil fuels, ensuring security of energy supplies through the UK's ports will be an important consideration (paragraph 3.1.5).

3.2.3. It is a feature of the UK's ports that the freight tonnage handled is concentrated amongst a small number of ports, with 15 ports accounting for 80% of the UK's total freight traffic (paragraph 3.2.1).

3.2.4. Given that background, the Government's policy (paragraph 3.3.1) seeks to:

- encourage sustainable port development to cater for forecasted long term growth in volumes of imports and exports by sea, with a competitive and efficient port industry meeting the needs of importers and exporters so as to contribute to economic growth and prosperity;

- leave the port industry or port developers to make judgements about when and where new port developments might be proposed; and

- ensure all proposed developments meet relevant legal, environmental and social constraints and objectives.

3.2.5. In order to help meet policies for sustainable development in paragraph 3.3.3 it is explained, amongst other things, that new port infrastructure should ensure competition and security of supply while being well designed both functionally and environmentally. Paragraph 3.3.4 goes onto explain that pursuing the outcomes identified in paragraph 3.3.3 will help to enhance the quality of outcome that might not be realised with reliance on market forces alone. The underlying port development policies support the fundamental aim of improving economic, social and environmental welfare through sustainable development, with international and domestic trade making an essential contribution to the national economy (paragraph 3.3.6).

3.2.6. Paragraph 3.4.1 explains:

"The total need for port infrastructure depends not only on overall demand for port capacity but also on the need to retain the flexibility that ensures that port capacity is located where it is required, including in response to any changes in inland distribution networks and ship call patterns that may occur, and on the need to ensure effective competition and resilience in port operations. …"

3.2.7. Given what is stated in paragraph 3.4.1 (and subsequent paragraphs in section 3.4 of the NPSfP) the Government's policy for new port development is not just about matching supply and demand, but also seeks to increase competition while making port capacity more resilient (i.e., adaptable to peaks in demand, weather conditions, accidents and other operational difficulties). Capacity therefore needs to be provided at a wide range of facilities and locations so that there is flexibility to match the changing demands of the market, *"… possibly with traffic moving from existing ports to new facilities generating surplus capacity"* (paragraph 3.4.11). The NPSfP purposely does not seek to dictate where new port development should take place, with new development needing to be responsive to changing commercial demands and competition being encouraged as a means of driving efficiency and reducing costs. Effective competition requires ports to operate at efficient levels, which is distinct from operating at full capacity (paragraphs 3.4.12 and 3.4.13).

3.2.8. In paragraph 3.4.14 it is recognised that ports can assist with decongestion by facilitating coastal shipping as a substitute for road haulage. Accordingly, the volume of coastal shipping is expected to grow and developers are expected to provide suitable facilities for that growth.

3.2.9. As at the date of the NPSfP's designation in 2012, the Government was of the view that there was *"… a compelling need for substantial additional port capacity over the next 20-30 years …"* (paragraph 3.4.16).

3.2.10. Paragraph 3.5.1 explains that the Secretary of State for Transport (SoST) in determining an application should accept the need for future capacity to: cater for long term forecasted growth in volumes of imports and exports; support the development of offshore sources of renewable energy; encourage coastal shipping; ensure effective competition amongst ports and provide resilience; and take account of the potential contribution port developments might make to regional and local economies. Paragraph 3.5.2 goes on to state:

"Given the level and urgency of need for infrastructure … the IPC should start with a presumption in favour of granting consent to applications for ports development. That presumption applies unless any more specific and relevant policies set out in this or another NPS clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008."

3.2.11. Paragraph 4.9.1 explains from a policy perspective there is no general requirement to consider alternatives to the proposed development and whether it would represent the best option. However, as advised in paragraph 4.9.2 an applicant is obliged to include in its Environmental Statement (ES) factual information relating to the alternatives that have been considered and the main reasons for the choice made for the proposed development. There may also be specific legislative requirements, for example under the Habitats Directive, when alternatives should be considered.

EIMP

3.2.12. Policy PS3 of the EIMP seeks to protect the efficiency and resilience of continuing port operations and further port development and is therefore complimentary to the policies stated in the NPSfP. To that end, in order to be compliant with Policy PS3 new port development should avoid or minimise interference with existing port activities and provide mitigation when interference cannot be avoided.

THE APPLICATION

Need

3.2.13. The Applicant's need case is stated in Chapter 4 of the ES (Need and Alternatives) [APP-040], supplemented by its Market Forecast Study Report (MFSR) [APP-079], and Planning Statement (incorporating Harbour Statement) [APP-019] and addendum [AS-056]. The MFSR considers the trade in shortsea unitised cargo (trailers and containers) between the UK and mainland Europe, with a particular emphasis on the trade between the UK's east coast ports and Europe and the role the Humber's ports play in that trade.

3.2.14. The Applicant has submitted that for the Humber there is an imperative need to provide additional Ro-Ro handling capacity, particularly for unaccompanied units with the demand for it expected to continue and be strong, while the growth for accompanied unit handling being weaker and its market share diminishing. That additional need being against the backdrop of the Department for Transport's (DfT) prediction for the growth in unitised Ro-Ro freight (both tonnage and units) increasing yearly by an average of 2.5% between 2016 and 2050. It was forecasted

that Ro-Ro unit handling would increase by 130%, rising from 7.94 million in 2016 to 18.2 million in 2050 [paragraph 4.5 in APP-019].

3.2.15. The majority of the UK's unaccompanied Ro-Ro and Lo-Lo freight is handled by the eastern ports (from Harwich to the Firth of Forth). Accordingly, because of the Humber's proximity to the UK's central and northern areas clear growth for unaccompanied Ro-Ro unit handling is predicted for the Humber region [APP-079].

3.2.16. The Applicant has forecasted that the number of unaccompanied Ro-Ro units handled by the Port of Immingham (PoI), the Port of Killingholme (PoK) and the Port of Hull (PoH) will increase from 746,000 to 1,580,000 between 2021 and 2050 [paragraph 4.8 in APP-019]. The Applicant considers there to be little spare capacity for unaccompanied Ro-Ro unit storage. The Applicant therefore expects the capacity for handling unaccompanied Ro-Ro trailers will be exceeded between 2024 and 2026, depending on macro-economic conditions and/or on the dwell times for trailers and containers. With respect to the sensitivity of changes in dwell times, the Applicant estimates an increase of 0.25 days reduces the handling capacity for unaccompanied Ro-Ro units by 10% [page 94 in APP-079].

3.2.17. Providing additional Ro-Ro handling capacity on the Humber would be consistent with the NPSfP's identification of an urgent need to provide additional capacity.

3.2.18. The Applicant considers the Proposed Development would strengthen the Humber's contribution to the effective, efficient, competitive and resilient handling of Ro-Ro freight [paragraph 4.1.3 in APP-040]. For the Humber, the Applicant's forecasts for increased demand for handling unaccompanied Ro-Ro units, expressed as compound annual growth rates (CAGR) will be: 4.5% between 2022 and 2027; 2.3% between 2028 and 2032; and 1.5% between 2032 and 2050 [paragraph 177a in APP-079]. For accompanied Ro-Ro traffic on the Humber the growth predictions, expressed in CAGR, are: 2.8% between 2022 and 2027; 1.7% between 2028 and 2032; and 1.4% between 2032 and 2050 [paragraph 177b in APP-079]. Given those growth forecasts in Ro-Ro demand, the capacity of the PoI, PoK and PoH to accommodate the unaccompanied trailers *"… is expected to be exceeded in 2026 using an average industry benchmark for dwell times. If dwell times were to increase by just 0.25 days storage capacity on the Humber would be exceeded by 2024 …"* [page 94 in APP-079]. The Applicant assumed a benchmark dwell time of 2.25 days for the purposes of its assessment.

3.2.19. The Proposed Development would primarily be used by Stena Line. In that regard it is envisaged that Stena Line would vacate the parts of the PoI it is currently using in connection with the running of its Immingham/Europoort service, a service currently handling around 100,000 Ro-Ro units per year [paragraph 4.2.60 in APP-040]. Stena Line is also expected to transfer the entirety of its Hoek/Killingholme service from the PoK, a service currently handling in the region of 125,000 units per year [paragraph 4.2.60 in APP-040]. Stena Line's transfer from the PoK being necessary because its contract to operate from there will cease on 1 May 2025 [REP2-065], following the PoK's owner, CLdN, having given Stena Line notice of the termination of its contract.

3.2.20. The Applicant has identified the need to accommodate Stena Line at PoI as being urgent because Stena Line is currently having to operate from two different ports on the Humber and must vacate PoK by 1 May 2025. The provision of three new berths together with appropriately scaled landside storage within a terminal at the PoI would give Stena Line the opportunity to introduce a third service operating between the Humber and another port, albeit the route for a third Stena Line service has not been identified in the Application, nor was it disclosed during the course of the Examination. It is proffered that there is no existing Ro-Ro infrastructure on the Humber with the capacity or characteristics capable of meeting Stena Line's needs and even if such infrastructure was available, it would be unsuitable. That is because any such infrastructure would be under the control of Stena Line's competitors [paragraph 4.2.68 in APP-040].

3.2.21. In line with the policy on need stated in the NPSfP, provision of new capacity should not be limited to matching supply with demand, but it is also about ensuring provision is made in the correct locations to facilitate competition and resilience in the supply chain. Expanding port capacity on the Humber would assist in providing greater resilience through reducing the volume of Ro-Ro freight making short straits crossings via the English Channel. The Proposed Development would also be consistent with the Government's levelling up agenda and the establishment of the Humber Freeport [paragraphs 4.2.69 to 4.2.71 in APP-040].

3.2.22. Regulation 6(3) of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 requires Applicants seeking consent for the construction or alteration of harbour facilities to submit a statement setting out why the making of a DCO would be desirable in the interests of:

"(a) securing the improvement, maintenance or management of the harbour in an efficient and economical manner; or

"(b) facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships."

3.2.23. The Applicant's Harbour Improvement Summary Statement forms section 5 of its Planning Statement [APP-019] and advises that the Proposed Development would provide for large Ro-Ro vessels, increasingly using the North Sea trade routes, while providing landside storage that would service the new berths in an efficient, effective and economic manner. The Application has submitted the Proposed Development would: provide for the current and future needs of an existing customer of the PoI; improve the resilience and competitiveness of the PoI; meet the objectives of local planning policies; make use of established marine and road connections; and as a purpose-built facility enable the efficient and economic handling of goods and passengers by sea.

Alternatives

3.2.24. The Applicant's consideration of alternatives is provided in section 4.3 of Chapter 4 of the ES [APP-040]. The Applicant has submitted that while the proposed berths would be in the Humber Estuary Special Area of Conservation (SAC), the Humber Estuary Special Protection Area (SPA) and the Humber Estuary Ramsar site there

would be no adverse effect on the integrity of those sites. Accordingly, the Applicant is of the view it is unnecessary for it to demonstrate that there would be no alternative to the Proposed Development for the purposes of undertaking an assessment under the Conservation of Habitats and Species Regulations 2017 (the Habitats Regulations) [paragraph 4.3.5 in APP-040].

3.2.25. The Applicant submitted that, given the Humber's identified need for additional Ro-Ro capacity, neither *"do nothing"* (providing no additional port capacity), nor relying on a port location other than on the Humber would be suitable alternatives to the Proposed Development. That is because those options would not: be market led; contribute to either market competitiveness or resilience; have good inland connectivity with urban centres and distribution hubs; and meet, in particular, the needs of Stena Line.

3.2.26. To accommodate Stena Line's needs, berthing requirements for the Proposed Development have been based on a maximum 'design vessel' (DV) with dimensions of up to 240 metres (length), 35 metres (beam/width) and 8.0 metres (draught). Given those maximum dimensions, none of the enclosed docks (accessed via a lock) at the Port of Grimsby (PoG), the PoI, the PoH or the Port of Goole could physically accommodate the DV. Accordingly, the berths forming part of the Proposed Development would need to be 'in-river'. Three berths would be required to accommodate Stena Line's two existing routes and to allow it to expand the number of routes it operates. The Applicant submitted providing three new berths would only go some way to meeting forecasted need for extra capacity on the Humber by 2050.

3.2.27. In terms of supporting the operation of the proposed berths, the Applicant has identified a requirement for 8.0 hectares (around 20 acres) of storage land per berth. Allowing for the increasing dominance of unaccompanied Ro-Ro freight, a three berth terminal at a minimum would need 24 hectares (60 acres) of storage land [paragraph 4.3.38 in APP-040]. Storage space for Ro-Ro services needs to be close to the berths, to enable unaccompanied units to be transferred to and from vessels efficiently without affecting their sailing schedules.

3.2.28. Taking account of the above-mentioned factors, the Applicant considered river frontage locations at the PoG, the PoH and between the PoK and the PoI might be capable of accommodating new berths. However, a new terminal at the PoG was discounted because of the scale of dredging needed to access new berths and the potential difficulty in maintaining that access because of the dynamic nature of the estuary in the vicinity of the PoG. The PoG's two in-river berths lack the capacity to accommodate the Proposed Development's throughput. It was further considered that insufficient or readily accessible storage land would be available at the PoG.

3.2.29. The Applicant discounted the PoH because: while berths could physically be provided their use would entail one and half hours of extra sailing time each way; insufficient landside storage could be provided; and all of the landside traffic would need to route via Hull's built-up area.

3.2.30. The river frontage between the PoI and the PoK is either occupied by fuel handling port infrastructure or is the location for the Able Marine Energy Park, which benefits from an extant Development Consent Order (DCO). That section of the Humber's frontage was therefore discounted.

3.2.31. The Applicant in preparing its ES assumed the PoK was being *"heavily utilised"* for the handling of Ro-Ro freight and vehicle imports, with the five of six serviceable berths being *"extensively used"*. Some of the serviceable berths approximating to the size of the DV [paragraph 4.3.70 in APP-040]. For the PoK it was assumed its southern and southwestern parts were not being used for Ro-Ro storage because of the distance from the port's berths. In paragraph 4.3.73 of [APP-040] the ES reports that there did not appear to be opportunities for substantial expansion within the PoK's footprint. Irrespective of whether or not expansion of the PoK's capacity would be possible, the Applicant discounted the PoK as an alternative because it was considered incapable of meeting Stena Line's needs [paragraph 4.3.78 in APP-040].

3.2.32. With the riverside within the PoK or between the PoK and the PoI having been discounted, the in-river space between the existing Immingham Oil Terminal (IOT) and the PoI's Eastern Jetty was identified as being the suitable location, (subject to capital dredging) for the Proposed Development [paragraphs 4.3.79 to 4.3.94 in APP-040].

ISSUES CONSIDERED DURING THE EXAMINATION

Need for the Proposed Development

Introduction

3.2.33. CLdN, in particular, challenged the Applicant's need case and [REP9-022] provides a summary of the contrary case it made in its Written Representation (WR) [REP2-031] and other written and oral submissions.

3.2.34. CLdN does not object to the principle of providing additional Ro-Ro capacity on the Humber, with the NPSfP identifying a need to provide additional capacity throughout the UK [paragraph 2.1 in REP2-031]. At issue from CLdN's perspective is whether the Proposed Development would be a sustainable form of port development benefiting from the presumption for it stated in the NPSfP.

3.2.35. CLdN submitted the Proposed Development would be unsustainable because *"… it is not functionally well designed and does not provide a positive contribution to competition and resilience and therefore cannot benefit from the presumption in favour of grant …"* [paragraph 1.3.1 in REP9-022]. Alternatively, CLdN contends that if the presumption in favour of granting consent applies, limited weight should be attached to it, because the need identified by the Applicant does not exist, relying on inaccurate assumptions concerning dwell times and the PoK's capacity. CLdN's evidence contends that shows *"… there is no urgent and imperative need for the Proposed Development and that any residual need which does exist can be met by making best use of the existing facilities and realisable capacity at the Port of*

Killingholme.", with the development's benefits being outweighed by its harms [paragraphs 1.3.2 and 1.3.4 in REP9-022].

3.2.36. The Applicant's closing position is that CLdN's approach to need is contrary to the NPSfP, submitting:

"… It is for the Applicant to assess what it considers to be the need and the Applicant is then encouraged to bring forward development to reflect that, making its own decision as to what to bring forward and when in a free market environment, rather than the Examining Authority or the Secretary of State making those decisions, let alone CLdN – a competitor – restricting the Applicant's ability to do so and so restricting that competition." [paragraph 5.7 in REP10-017]

3.2.37. Importantly, the NPSfP neither prescribes where nor how much new port infrastructure will be required to meet the need. Meeting the need for port infrastructure will, amongst other things, involve ensuring there is effective competition and resilience in port operations (paragraph 3.4.1 of the NPSfP). The Government also expects that all of the forecasted demand underpinning the need for additional port infrastructure is likely to arise, but not necessarily by 2030 (paragraph 3.5.1 in the NPSfP).

3.2.38. During the Examination counter submissions were made by the Applicant (for example in Appendix 6 in [REP1-009] and [AS-083]) and CLdN (in [REP1-025], [REP2-031] and [REP9-022]) about the appropriateness of considering the Applicant's need case. That disagreement included attention being drawn to the court judgements concerning: Regina (ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy [2020] EWHC 1303 (Admin) [2021] EWCA Civ 43; and Scarisbrick v Secretary of State for Communities and Local Government [2015] EWHC 1303 (Admin) [2017] EWCA Civ 787.

3.2.39. Having regard to the previously mentioned judgements, the ExA considers that while the starting premise is that the need for port infrastructure has been established by the Government in the NPSfP it is appropriate for the ExA and the SoST to consider what contribution the Proposed Development would make to meeting the need for additional port development. That is because when regard is paid to paragraph 4.2.2 of the NPSfP it is necessary to weigh any suggested benefits, including the contribution that the scheme would make to the national, regional or more local need for the infrastructure, against any anticipated adverse impacts, including cumulative impacts.

3.2.40. Given the issues concerning the Applicant's need case that arose during the Examination, the ExA has covered the matters listed below in the remainder of this subsection:

- Existing Ro-Ro capacity on the Humber
- The need for additional Ro-Ro capacity on the Humber
- The Proposed Development's capacity
- Contribution to Ro-Ro service competition on the Humber
- Contribution to port capacity resilience on the Humber

- Urgency for the Proposed Development

Existing Ro-Ro capacity on the Humber

3.2.41. CLdN has argued that there is existing capacity at the PoK capable of meeting realistic forecasted growth for port capacity on the Humber and the need to increase the Humber's unaccompanied unit handling capacity has been overstated by the Applicant. In that regard it is contended that the Applicant's original MFSR underestimated the PoK's annual storage capacity for unaccompanied units at 290,000 units. That was because the Applicant estimated the PoK's capacity using aerial photographs, which do not show the stacking heights for containers, while the dwell times used were not reflective of those at the PoK.

3.2.42. Additionally, CLdN submitted the Applicant had made no allowance for the expansion of the PoK. CLdN is currently expanding the PoK's landside storage capacity with the benefit of an express planning permission. Further expansion is expected to be undertaken using the permitted development rights available to a statutory harbour authority or by obtaining any necessary express planning permission(s). CLdN submitted that planning permission would be likely to be forthcoming because the works would relate to existing port land or previously developed land. With respect to the PoK's berths, CLdN advised that the existing Berth 3 is 262 metres long and that Berths 1 and 2 could be extended from 246 metres to match the length of Berth 1 by installing one or more extra piles. Extending Berths 2 and 3 in that way would enable them, like Berth 1, to be used by CLdN's 'G9' class vessels (the 'G9') [REP4-021]. The G9 has the longest *"lane metre"* length for any Ro-Ro vessel currently using the Humber. Lane metres being a measure for Ro-Ro vessel capacity.

3.2.43. CLdN contended that the MFSR's reliance on an average dwell time of 2.25 days was unrepresentative of the real world, not least because of the inclusion of a *"resilience uplift"*. Ten years' worth of the PoK's operational data demonstrates dwell times of between 1.0 and 1.5 days. CLdN has therefore submitted that the Applicant's reliance on a dwell time of 2.25 days was intended to show that the Humber is lacking Ro-Ro capacity leading to an *"… alleged 'imperative and urgent need' to bring forward further Ro-Ro capacity … through the Proposed Development …"* [section 5 in REP4-019].

3.2.44. In response to the inaccurate assumptions considered to have been made by the Applicant, CLdN commissioned a *"Needs Case Review"* (NCR) [Appendix 1 in REP2-031]. The main corrections that CLdN considered needed to be made to the Applicant's assumptions were set out in paragraph 3.17 of [REP9-022] and are:

- In 2023 the PoK's existing capacity for unaccompanied Ro-Ro units was between 521,551 and 625,861;
- The PoK's capacity for unaccompanied Ro-Ro units will increase to between 623,556 and 748,268 by 2025 once the current expansion works have been completed; and
- Dwell times for containers and trailers at the PoK should be treated as being between 1.25 and 1.5 days, hence the ranges quoted for 2023 and 2025 in the

NCR. The actual dwell times in 2023 for containers and trailers having been confirmed at 1.16 and 0.92 days respectively.

3.2.45. In the NCR it is explained that notwithstanding the underestimation of ground slots at the PoK, the stacking height for containers is between two and four, with a current average just over two and there is an intention to achieve a stack efficiency of 0.8, compared with the 0.6 assumed by the Applicant in the MFSR.

3.2.46. Following the finalisation of the dwell time Statement of Common Ground (SoCG) [REP6-020] CLdN in its deadline (D) 6 submissions revisited its assessment of the Humber's annual Ro-Ro storage capacity. In [REP6-036] CLdN estimated the Humber's annual capacity in 2023 at 1,664,000 units, rising to 1,795,000 units in 2025, as opposed to the Applicant's estimate of 962,000 units. CLdN's higher capacity estimates allow for the PoK's expansion and utilise the dwell times that CLdN, DFDS and Stena Line had identified for inclusion in the dwell time SoCG.

3.2.47. CLdN contend that because of the Applicant's underestimation of the PoK's capacity and use of an inaccurate dwell time the Humber's capacity for unaccompanied Ro-Ro units would not be exceeded until sometime between 2031 and 2044, later than 2026 as claimed by the Applicant in the MFSR [paragraph 3.12 in REP9-022].

3.2.48. With respect to dwell times, it is argued in the NCR that the claimed *"industry standard"* of 2.25 days was not supported by evidence, with freight being non-income earning when it is static and that catering for longer dwell times would be a commercial decision rather than a logistical requirement for a port. With respect to the identification of appropriate dwell times, attention has been drawn to a paper titled *"The design of terminals for Ro-Ro and ROPAX vessels"* published in September 2023 by the World Association for Waterborne Transport Infrastructure (which uses the abbreviation of PIANC) [AS-079]. That PIANC report notes that Ro-Ro operators, for commercial reasons, are reluctant to reveal detailed information about terminal performance. However, in the PIANC report it is suggested dwell time allowances of 0.25 and 2.0 days respectively can be made for embarking and disembarking trailers.

3.2.49. Notwithstanding the reluctance, as referred to by PIANC, of Ro-Ro terminal operators to disclose detailed information about the performance of their facilities CLdN, DFDS and Stena Line have been prepared to make known the dwell times for the Humber terminals they operate. That information having been included in the dwell time SoCG [REP6-020]. The ExA is therefore of the view that this is an instance when the use of actual dwell time data would, whenever possible, be preferable to relying on estimates.

3.2.50. Although the Applicant's Humber Ro-Ro capacity projections were presented in the MFSR [section 4.5 in APP-079] as being a *"high-level estimate",* given the apparent disparity between assumptions made by the Applicant and CLdN's firsthand knowledge of the PoK, the ExA was concerned about the veracity of the MFSR's content. Accordingly, during the course of Issue Specific Hearing (ISH) 5

[EV10-016] the ExA requested the Applicant to consider updating its MFSR. That was because, amongst other things:

- there were apparent factual inaccuracies relating to the PoK's existing capacity (dwell times, stack heights and use of cassette/MAFI trailers (hereafter referred to as shipping trailers)). Those inaccuracies calling into question the reliability of the Applicant's conclusions about the PoK's Ro-Ro unit handling capacity; and
- there was evidence, including the ExA's own observations when undertaking its Accompanied Site Inspection on 26 September 2023, that some expansion works at the PoK were being implemented [EV5-001].

3.2.51. At the PoK one shipping trailer can be used to handle up to four containers, a practice which the Applicant appeared to be unaware of. That has implications for the unit handling data recorded in the returns submitted to the Department for Transport, with that data having been used to inform the Applicant's capacity assessment.

3.2.52. The Applicant's MFSR update [REP8-028], amongst other things, addresses the utilisation of the PoK's capacity and the volume of unaccompanied units handled using road going and shipping trailers. See Chapter 1 above for a fuller explanation of the distinction between the two trailer types. The originally submitted MFSR did not account for the use of shipping trailers, nor was any allowance made for the expansion of the PoK. When the use of shipping trailers is allowed for and added to an annual unexplained under reporting of around 8.6% between 2018 to 2022 for the PoK, then in the region of 14% more units have been handled by the Humber ports than was identified in the original MFSR. For 2022 an extra 199,000 units were handled at the PoK than would have been accounted for had the assumptions underpinning the originally submitted MFSR been applied to that year [paragraphs 3.5 and 3.6 in REP8-028].

3.2.53. In the MFSR update the Applicant has estimated the Humber's maximum unaccompanied unit capacity for 2023 at 1,350,000 units [Table 5.1 in REP8-028]. That compares with an originally assessed maximum of 1,270,000 units (based on a dwell time of 1.75 days) or 990,000 units (based on a dwell time of 2.25 days) [Table 8-3 in APP-079]. The revised 2023 figure includes allowances for recent works increasing the PoK's capacity and the 2022 throughput of unaccompanied units at the PoI and PoH, including some rounding upwards.

3.2.54. With respect to the PoK's existing and future capacity, the ExA finds the evidence submitted by CLdN to be far more persuasive than the Applicant's. That is because CLdN's evidence, unsurprisingly, is based on its detailed knowledge of a port it owns and operates, with it having firsthand access to information concerning, amongst other things: the extent of the storage yards and the precise way those areas are used; container stacking heights; the use of shipping trailers; and dwell times. In a similar way, the ExA would expect the Applicant's evidence about operations at the PoI to be more reliable than anything CLdN could proffer.

3.2.55. If ten years' worth of real time data for the PoK indicates dwell times there have ranged between 1.0 and 1.5 days, then the ExA considers that evidence should

have been accepted as being representative of what happens at the PoK. In that regard the Applicant indicated in the dwell time SoCG, by aligning with Stena Line's position, that it could neither agree nor disagree with dwell times identified by CLdN [REP6-020]. Notwithstanding the understandable lack of detailed knowledge about a rival port, the Applicant throughout the Examination doggedly persisted in treating CLdN's capacity evidence for the PoK with scepticism, commenting in the MFSR update that the capacity of 675,764 units in 2023 claimed by CLdN *"… has been taken at face value … That is even though un-answered questions remain … as to whether this claimed capacity reflects the reality of what is occurring at the Killingholme facility. In fact the Applicant anticipates that this capacity is likely to be lower …"* [paragraph 5.25 in REP8-028].

3.2.56. In the MFSR update the Applicant revised its estimate for the Humber's maximum Ro-Ro capacity from 1,270,000 to 1,350,000 unaccompanied units. However, in so doing the Applicant observed that *"… figure is actually likely to be too high"* [paragraph 5.31 in REP8-028].

3.2.57. The disagreement about the Humber's capacity and the PoK's role in that may, in part, be due to the difference in the operational cultures for the PoI and the PoK. That being something the Applicant did not seem to have appreciated when preparing its Application documents, notwithstanding Stena Line's intended use of the Proposed Development and its presence at the PoK since May 2000 [REP2-065]. For the PoI, the Ro-Ro shipping lines operate from clearly defined parts of the port, as per the leases or contracts they have with the Applicant. However, at the PoK shipping lines enter into contracts to use the port without being bound to occupy specific areas, with the storage of unaccompanied units being managed on a more fluid basis in response to current need.

3.2.58. It is also evident that the vehicle storage areas within the PoI are being adapted, through the undertaking of ground reinforcement works, to enable them to be used for container storage when the need arises. See part 1 of [REP4-021] for a fuller explanation of the differences between the PoI and PoK.

3.2.59. From all of the evidence that has been put to the ExA it considers it is clear that a port's handling capacity for Ro-Ro unaccompanied units is sensitive to both the amount of storage space available and the dwell times for units. Accordingly, for a given area of storage it is highly likely the shorter the dwell time the greater the unit throughput, with there being scope for changes in operational practices, for example increased stack efficiency, to alter throughput. The making of what might be quite significant operational changes will not necessarily require an express planning permission/consent. For example, the works at the PoK to reinforce some of the vehicle storage areas so that they can be used for container storage.

3.2.60. The ExA recognises the general point made by the Applicant about the availability of berths also having a role to play in determining Ro-Ro handling capacity [paragraph 112 in APP-079 and paragraph 5.12 in REP10-017]. However, the ExA is not persuaded that berth numbers and/or sizes are as significant as the amount of storage space and dwell times in establishing port capacity. That is because the

maximum size of a Ro-Ro vessel that can use a berth is determined by the latter's physical dimensions and if a berth can accommodate a vessel with say up to 6,000 lane metres of capacity, then vessels with that capacity would be able to use the berth, subject to any other operational controls that might apply the berth's use.

3.2.61. So for example, if a Ro-Ro terminal had three berths, each capable of accommodating vessels of up to 6,000 lane metres capacity, but did not have the capacity to accommodate up to 18,000 lane metres' worth of units at once, then some or all of the vessels: when arriving or departing could not be fully loaded; or could arrive or depart fully laden but would have to remain berthed for as long as it took for sufficient landside capacity to become available to enable full loading or unloading to take place. It therefore appears to the ExA that while the number and size of berths influence the capacity of Ro-Ro terminals, a terminal's overall throughput is more sensitive to the terminal's landside capacity. This ExA finding being consistent with the Applicant's response to Examination written question (ExQ) BGC.4.04, namely for the Proposed Development *"… it is the landside storage capacity which is considered the controlling factor in respect of the overall capacity of the facility …"* [REP8-057].

3.2.62. While differences of professional judgement are to be expected, the ExA finds the Applicant's general reluctance to accept CLdN's factual evidence about the PoK's operations to be lacking in credibility. Based on the evidence made available during the Examination the ExA considers the PoK's capacity is not currently constrained, with the PoK's operator actively expanding its capacity and adapting some of the yard space so that it can accommodate containers or parked vehicles. The ExA also considers that the Applicant's early reliance on a dwell time of 2.25 days was excessive, resulting in an underestimate of the Humber's current unaccompanied Ro-Ro unit handling capacity. The ExA is therefore of the view that because of inaccuracies surrounding the Applicant's assessment of the PoK's capacity, the starting position for its need assessment was severely flawed.

3.2.63. The ExA therefore finds that any shortage in the Humber's existing unaccompanied Ro-Ro handling capacity has been overstated by the Applicant. That flawed starting point in the ExA's view has implications for the weight to be attached to the Applicant's claim that there is a compelling and urgent need for the Proposed Development, as referred to for example in the Applicant's Planning Statement [APP-019], or a more nuanced need case that places greater emphasis on increasing competition or resilience on the Humber.

The need for additional Ro-Ro capacity on the Humber

3.2.64. CLdN, in challenging the Applicant's need case, acknowledges there will be a need to expand unaccompanied Ro-Ro freight handling capacity on the Humber going forward. However, CLdN considers that the Applicant has overstated the quantum of the extra capacity required, particularly in the short to medium term. That in part being because CLdN considers the Applicant's has relied on more *"bullish"* Gross Domestic Product (GDP) forecasts prepared by Oxford Economics rather than the more reliable and conservative forecasts of either the Treasury or the Office for Budget Responsibility (OBR). In that regard the Applicant's MFSR includes a GDP

growth forecast for 2023 of 1.7%, while the forecasts used by the OBR and Treasury were respectively 0.2% and 0.1%.

3.2.65. In the NCR the reliability of the following forecasts, in particular, were questioned:

- an increase of more than 300,000 of accompanied units per year by 2050;
- 1,580,000 unaccompanied Ro-Ro units being handled per year by 2025; and
- the handling of over 750,000 Lo-Lo units by 2050.

3.2.66. A particular concern was raised in relation to the forecasted increase in the export of accompanied units from 63,000 in 2021 to 140,000 in 2022. CLdN questioned the reliability of that because the data released since 2022 shows only 65,585 units were handled [paragraph 5.17 in Appendix 1 of REP2-031].

3.2.67. Within the NCR, three adjusted growth scenarios are identified by CLdN, as a way of demonstrating the sensitivity of GDP based forecasting for unitised freight demand. For the Humber, under those scenarios the predicted total volume of Ro-Ro and Lo-Lo units imported and exported by 2050 would respectively be between 12% to 19% and 22% to 29% lower than the Applicant's forecasts [Table 5.2 in Appendix 1 of REP2-031].

3.2.68. CLdN contend that when the current capacity for the Humber ports is corrected and less bullish forecasts are applied, the storage capacity for unaccompanied Ro-Ro units would not be exceeded by 2026 (as submitted by the Applicant). Without the Proposed Development, CLdN has suggested the capacity would be exceeded sometime between 2031 and 2044 and might not occur at all by 2050 if dwell times for the PoI and the PoK were in the region of 1.25 to 1.5 days [paragraph 6.4 in Appendix 1 of REP2-031]. CLdN therefore contends the Proposed Development could give rise to the over provision of Ro-Ro handling capacity on the Humber, which would be economically inefficient and amount to an unsustainable form of development. That being because freight handling would be displaced from the PoK resulting in idle capacity there.

3.2.69. In response to CLdN's NCR the Applicant submitted Oxford Economics' GDP forecasts were more conservative than those of the OBR at the time of the MFSR's preparation. The Applicant therefore contended that the GDP projections used in the MFSR were reliable and had the OBR's forecasts been used the Ro-Ro growth projections would have been higher [paragraphs 3.45 and 3.46 in REP3-007]. Notwithstanding that in the MFSR update [REP8-028] the Applicant revised its forecasts, substituting the OBR's June 2023 projections for Oxford Economics projections of July 2022.

3.2.70. In the MFSR update [REP8-028] revised CAGR demand forecasts for Ro-Ro units on the Humber have been applied. For unaccompanied units the revised CAGR were: 3.6% between 2023 and 2028; 2.5% between 2028 and 2032; and 1.6% between 2032 and 2050. For accompanied units the revised CAGR forecasts were: 1.8% between 2023 and 2028; 1.6% between 2028 and 2032; and 1.2% between 2032 and 2050.

3.2.71. For unaccompanied units the CAGR of 3.6% predicted for 2023 to 2028 is lower than the 4.5% for 2022 to 2027 used in the MFSR. That lower rate reflecting the current economic conditions, while the rates for the medium to longer term were relatively unaffected. The Applicant has submitted that while the growth in trade may currently be *"sluggish"*, the old growth trajectory is expected to pick return in the medium and long terms [paragraph 6.2 in REP8-028].

3.2.72. The Applicant's estimate for the volume of unaccompanied units needing to be handled by the Humber's ports show a rise from a current level of around 1.05/1.06 million to 1.92 million units by 2050 [paragraphs 6.12 and 6.13 in REP8-028]. The Applicant considers the imbalance between port capacity and future demand demonstrates the need for the Proposed Development, with the additional capacity it would provide needing to be available prior to the existing capacity being exceeded. That latter point is one which primarily relates to the provision of greater resilience and is something that is considered in more detail below.

3.2.73. The MFSR update's submission addressed some of CLdN's concerns. However, by the close of the Examination CLdN remained of the view that the Applicant's forecasting remained bullish, particularly for the short term period, with an assumed growth rate of 5% per year between 2022 and 2025 having been identified in Table 1 in [REP7-023]. CLdN therefore expressed the following view in paragraph 2.2 of Appendix 1 of [REP9-023]:

> *"… There continues to be no quantitative evidence to back up these exceptionally high short term growth rates in demand relied upon by the Applicant. The latest OBR forecasts, historic annual growth rates in freight on the Humber, and the Applicant's own finding in paragraph 1.2 of the Updated Market Study – "in terms of units the 2022 volumes were almost equal to the 2021 figures" – indicate that in fact growth is likely to be much lower in the short term than the Applicant's unsubstantiated forecasts. This unexplained short term increase matters because it serves to overestimate and compound the demand on the Humber in the long term, given that the levels of demand forecast start from an unrealistically high base level."*

3.2.74. The ExA agrees with CLdN that the Applicant's identification of a 5% CAGR between 2022 and 2025 in [REP7-023], was potentially inconsistent with both the current macro-economic conditions and the absence of evidence of strong year on year growth in recent years in unitised freight handling on the Humber. However, the Applicant has explained that in the MFSR update (for example Table 6-1) the previously mentioned 5% CAGR for 2022 to 2025 was downgraded [paragraph 5.8 in REP10-017], albeit for a time period that is not directly comparable, i.e. 2023 to 2030. Interpreting the Applicant's forecasts, particularly the shorter-term ones, has not been straightforward because different periods were used in the Application documents compared with subsequent Examination submissions. That said, the ExA is content the MFSR update's shorter-term predictions are more realistic than those that preceded them.

3.2.75. The Applicant and CLdN have submitted copious amounts of evidence concerning what the Humber's future unaccompanied Ro-Ro freight handling capacity might

need to be through to 2050. In that regard Figure 2 in [REP5-032] provides a graphic representation of eight different scenarios for unaccompanied Ro-Ro unit handling on the Humber between 2022 and 2050. Those scenarios cover the Applicant's original forecast (as reported in the MFSR), CLdN's three alternatives and other variants prepared by the Applicant during the Examination.

3.2.76. The eight scenarios suggest that the annual volume of units handled by 2050 could be anywhere between around 1.6 million and 2.2 million, a sizeable variance. It might be trite to say, but what Figure 2 in [REP5-032] clearly highlights is that forecasting for a 28 year period is subject to a high level of uncertainty, with the forecasting outcomes being affected by the base data inputs and the assumptions made. In that regard it should be borne in mind there will be economic upturns as well as downturns over a period of exceeding a quarter of a century.

3.2.77. The ExA considers it is likely that further Ro-Ro freight capacity on the Humber will be required, with its magnitude being affected by changes in the UK's GDP and the Humber Freeport initiative. The ExA therefore considers that amongst the growth forecasts that have been presented there is probably currently too much uncertainty to rely on any particular one.

3.2.78. There can be no doubt that the Proposed Development would contribute to the expansion of handling capacity for unaccompanied Ro-Ro units on the Humber. That is something gaining policy support under the NPSfP, not least because the NPSfP, in promoting the provision of additional port infrastructure, does not prescribe where or how much extra port capacity should be provided. However, given the Humber ports' existing capacity, which for the reasons given in the preceding subsection may be greater than identified by the Applicant, the ExA considers the compelling and urgent need case made by the Applicant has been exaggerated.

The Proposed Development's capacity

3.2.79. CLdN contends in its NCR and other written and oral Examination submissions, for example in [REP4-017], that if the Proposed Development operated with an average dwell time of 2.25 days then an annual maximum throughput of 660,000 units would not be possible. Instead CLdN's estimate is that a dwell time of 2.25 days would yield an annual throughput of 195,000 unaccompanied units, with the dwell time needing to be around 0.92 days if 475,000 unaccompanied units were to be handled annually [paragraph 2.39 in REP2-031]. The figure of 475,000 unaccompanied units handled being based on the Applicant's assumed handling split for unaccompanied and accompanied units being 72% and 28% respectively.

3.2.80. CLdN has further argued that the Applicant's approach to the application of dwell times has been inconsistent. If a dwell time of 2.25 days is correct and is used to establish the Humber ports' existing handling capacity, then that figure should equally be applied in assessing the Proposed Development's capacity. When that is done the annual throughput for unaccompanied units would only be around 195,000 units.

3.2.81. In the context of the Proposed Development's predicted effects on the operation of the public highway, the Applicant clarified in response to ExQ TT.1.1 [PD-010] that the *"efficient throughput"* would be around 80% of the worst case capacity stated in the ES. Accordingly, the Applicant's expectation is that the Proposed Development would on average be capable of efficiently handling 1,440 units per day rather than 1,800 units per day. In its subsequent written submissions the Applicant variously summed the efficient annual throughput as 525,000 or 528,000 units per year [REP2-009]. The Applicant has described an annual throughput of 525,000 units as *"… the efficient upper level of activity …"* or *"practical"* level of activity in [paragraphs 6.3 and 6.4 in REP5-032].

3.2.82. The Applicant also stated in response to CLdN's WR that, in line with its answer to ExQ TT.1.1, the design for the Proposed Development was being refined and once that exercise was complete *"… the Applicant will provide a further level of reassurance that the IERRT facility will be capable of handling 660,000 units, albeit that in reality that is not a level of throughput which it is expected to handle"* [paragraphs 3.31 and 3.32 in REP3-007].

3.2.83. In section 6 and Appendix 4 of [REP5-032] the Applicant provided a further assessment of the Proposed Development's capacity, with the purpose of demonstrating a capability for handling either 528,000 or up to 660,000 units per annum. That assessment was based on *"westbound"* (disembarkation) and *"eastbound"* (embarkation) dwell times respectively of 2.45 and 0.35 days and increases in the number of trailer ground slots from 1,430 to 1,674 units (an increase of 17%) and container ground slots from 40 to 65 (an increase of 62%). The higher numbers of trailer and container slots were incorporated into the Applicant's subsequent change request.

3.2.84. The capacity analysis included in [REP5-032] suggests at an efficient throughput level of 80% 147,840 accompanied units would be handled annually by the Proposed Development (73,920 eastbound and 73,920 westbound). CLdN has questioned how realistic that handling volume would be, as it would require a doubling in the demand for accompanied unit handling despite this market sector being in decline [paragraphs 3.41.1 in REP9-022].

3.2.85. The difference between what was a worst case (Rochdale envelope) assessment for the purposes of complying with the Environmental Impact Assessment (EIA) Regulations and a practical/efficient operating level was not readily apparent in the Application documents. The ExA considers that difference is relevant to any consideration of what contribution the Proposed Development might make to meeting the need for increased port capacity on the Humber. The ExA explored this further with the Applicant and Stena Line by asking what 80% efficient throughput would mean in terms of the number of daily sailings and units handled per sailing [ExQ BGC.4.04 PD-022].

3.2.86. Stena Line advised that its capacity utilisation per vessel historically has been in the region of 60 to 75% [REP8-059]. Stena Line also provided two hypothetical daily scenarios, each using a mix of vessel types and capacity utilisation at 75%. Both of

those scenarios included the disembarkation and embarkation of one ship of the DV's maximum size. The utilisation information provided by Stena Line indicates the Proposed Development might in practice operate significantly below the 80% efficient throughput level identified by the Applicant. If three DVs were used on a daily basis, then to keep within a daily cap of 1,800 units the maximum capacity utilisation per vessel could not exceed 70%, i.e., 300 units per sailing. If the 80% efficient throughput level of 1,440 units per day is applied to the running of three DVs, then on average each of those vessels would operate at around 56 % of their capacity (240 units per sailing).

3.2.87. In responding to ExQ BGC.4.04 [REP8-020], the Applicant advised that neither the maximum capacity for the Proposed Development (1,800 units per day or 660,000 units per year) nor the 80% efficient throughput level were targets needing to be met. The throughput capacity for a Ro-Ro terminal is determined by a number of factors, including berth capacity and capability and landside storage capacity and capability. For the Proposed Development the Applicant considers the landside storage capacity to be the controlling factor, with the theoretical capacity of the proposed berths exceeding the landside capacity, providing flexibility and resilience. The Applicant therefore expressed the view that:

"In practice the 80% level of activity identified is easily delivered by three sailings from the facility per day (consisting of three vessel arrivals and three vessel departures per day) with the vessels used on those sailings not exceeding the largest vessel parameters identified by the Applicant in its application." [REP8-020]

3.2.88. Based on the replies to ExQ BGC.4.04, it is evident that the Proposed Development's throughput would be sensitive to the capacity of the vessels used and their capacity utilisation. That would have implications for the contribution the Proposed Development would be capable of making to meeting the need for additional port capacity. There is a possibility that the annual throughput could be more modest than the 'headline' figures of 525,000/528,000 units (efficient level of operation) or 660,000 units (maximum) referred to in the Application documents and Examination submissions.

3.2.89. In Chapter 3 of the ES, the Applicant has advised its preference would be for all of the Proposed Development's elements to be built at the same time. A second option would involve a phased implementation. Under the second option, two berths and the Northern, Central and Southern storage areas would be built and brought into use. Thereafter, the third berth and the Western storage area would be constructed in a second phase [paragraphs 3.1.61 and 3.1.62 of AS-065]. While recognising that it is the Applicant's preference to implement the Proposed Development as a single entity, the ExA considers there is a possibility that the third berth and the western storage might not be constructed, or their construction might be deferred for an indeterminate period. Should there be a partial or phased implementation of the Proposed Development that would reduce the contribution that could be made to meeting the need for additional port capacity.

3.2.90. To conclude, the ExA accepts that the Proposed Development would contribute to meeting the need for additional port capacity identified in the NPSfP,

notwithstanding how much of that capacity might actually be utilised. The Proposed Development would therefore accord with the policy support for providing new port infrastructure stated in the NPSfP. The ExA also considers that the Proposed Development would be consistent with the EIMP, most particularly Policy PS3, so long as the additional port capacity provided would not unacceptably interfere with other current activity at the PoI, a matter considered in section 3.3 below.

Contribution to Ro-Ro service competition on the Humber

3.2.91. CLdN has argued, for example in its WR (including the accompanying NCR) [REP2-031], that the Proposed Development would weaken rather than support competition. The Applicant considers that *"… argument to be fundamentally flawed …"*. That is because the Applicant *"… acts solely as an independent port infrastructure provider for Ro-Ro shipping lines. Given the characteristics of the Ro-Ro sector it, therefore, has limited ability to influence market forces other than by ensuring that the shipping lines have access to adequate facilities"* [section 3 in REP3-007].

3.2.92. The Applicant contends that the Proposed Development would increase competition, commenting that the Proposed Development:

> *"… would in fact improve competition because, in summary, it would provide an existing and established Ro-Ro operator – Stena Line, who want to grow and expand its operations and activities on the Humber Estuary – with an appropriately located facility with the ability to accommodate large Ro-Ro vessels in a suitably unconstrained way, with sufficient storage and cargo handling areas and where, as the terminal operator, they will have control over their own operations and future activities – which is certainly not the case should they stay at the Port of Killingholme, as evidenced by the fact that CLdN served notice to quit on Stena in respect of their Europoort* [sic] *service in December 2021.* [paragraph 4.7 in REP9-010]

3.2.93. However, the ExA considers that the Applicant's case with respect to facilitating competition has been exaggerated. That is because the number of ports with Ro-Ro terminals within them would remain at three, namely PoI, PoK and PoH, with the first and third of those ports being owned and operated by the Applicant. Providing another Ro-Ro terminal within the PoI would strengthen the Applicant's position as a provider of Ro-Ro terminals on the Humber without necessarily adding competitive choice amongst the terminal providers. Although the Applicant is a port owner rather than a Ro-Ro terminal operator, it nevertheless decides which companies get to operate the terminals at the PoI and PoH. It would be the Applicant rather than any other party who would determine who could or could not use the Proposed Development.

3.2.94. While the implementation of the Proposed Development would increase Ro-Ro handling capacity on the Humber, that increased capacity would not as a matter of course lead to greater choice amongst the Ro-Ro service providers. Instead, an existing Humber Ro-Ro service provider, Stena Line, would relocate the two services it is currently operating from the PoI's inner dock and the PoK to the

Proposed Development. Stena Line has also submitted there would be potential at some stage in the future for it operate one or more additional services from the new facility.

3.2.95. The implementation of the Proposed Development would mean there would still be five Ro-Ro operators offering services to and from the Humber, namely CLdN, DFDS, Finnlines, P&O and Stena Line, variously using the PoK, the PoI and the PoH [APP-079]. The ExA is therefore of the view that the Proposed Development would only meaningfully contribute to greater Ro-Ro service competition if the capacity vacated by Stena Line at the PoI's inner dock and the PoK was 'backfilled' by a Ro-Ro shipping line that was a new entrant to the Humber ports market. In that regard, while the Applicant and CLdN both advised at ISH5 [EV10-002] that it is expected the capacity vacated at the PoI and the PoK by Stena Line would be re-used, there was no evidence presented that such 'backfilling' would involve any new entrant Ro-Ro shipping lines for the Humber.

3.2.96. The Applicant has also submitted that once Stena Line vacated the PoI's inner dock there would be no guarantee that part of the port would remain in Ro-Ro use, with the vacated area being *"… of potential value to a number of other trades handled at the Port of Immingham … meaning that it cannot be relied upon in any future capacity calculations"* [paragraph 5.19 in REP7-023]. Should that be the case, then it is clear there would be no change in the number of Ro-Ro operators using the PoI.

3.2.97. The Applicant disagrees with CLdN's contention that the Proposed Development would not add to competition given the intention for it to be occupied by Stena Line. However, the ExA considers the Applicant's stance lacks credibility and is inconsistent with some of the dDCO's provisions, most notably Articles 4 (Incorporation of the Harbours, Docks and Piers Clauses Act 1847 (the 1847 Act)) and 22 (Power to appropriate) [REP10-004]. That is because while under Article 4 the open ports duty under section 33 of the 1847 Act would afford all persons with a general right to use the Proposed Development, that right would be capable of being withdrawn under the appropriation powers afforded by Article 22. Article 22 of the dDCO stating that *"… the undertaker may from time to time set apart and appropriate any part of the authorised development for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods …"*.

3.2.98. So, while the Applicant is not a Ro-Ro terminal operator, as the owner of the PoI (and intended undertaker), it would be able to control by means of Article 22 of the dDCO precisely who could or could not make use of the Proposed Development. Based on the submitted Application and the evidence presented by both the Applicant and Stena Line during the Examination it is clear the intention is for Stena Line to operate the Proposed Development.

3.2.99. Although the Applicant has confirmed that it would not preclude other shipping lines from using the Proposed Development, it has stated that would be *"… subject to availability and agreement"* [paragraph 3.33 in REP3-007]. The Applicant has gone

on to state in paragraph 3.34 of [REP3-007] that while Stena Line's business development plans are confidential, it is looking to expand its operations on the Humber to be better able to compete with other shipping lines. The ExA considers those submissions indicate that Stena Line would be the primary user of the Proposed Development, with the result that the Proposed Development's contribution to increased competition would be limited. Adding to competition would rely on what, if any, new services Stena Line introduced.

3.2.100. In conclusion the ExA finds it difficult to comprehend how the Proposed Development would make any significant direct contribution to increasing competition in the Ro-Ro sector on the Humber, with a basic tenet of competition being the presence of multiple suppliers in a market. The Applicant is one of two port owners with Ro-Ro terminals, a position which would be unaltered by the implementation of the Proposed Development. Stena Line is already a service provider on the Humber and were it to be the sole operator for the Proposed Development the number of Ro-Ro service suppliers would be no different to the current position.

3.2.101. The ExA is of the view that it has not been demonstrated that the Proposed Development would either *"… ensure effective competition …"* or make available spare capacity to *"… ensure real choices for port users …"* (respectively paragraphs 3.4.1 and 3.4.13 of the NPSfP). The ExA therefore considers that little positive weight can be attached to the increased competition case made by the Applicant.

Contribution to port capacity resilience on the Humber

3.2.102. CLdN has submitted that the Applicant's reliance on expanding Ro-Ro handling capacity infinitely to meet the NPSfP's policy objective of improving port resilience is a flawed argument. That is because providing more and more capacity when there was no demand would be an economically inefficient use of land and there would be diminishing benefits arising from that [paragraph 3.11 in REP6-036]. CLdN has further submitted that the only historic incidence of the Humber ports' resilience being tested was during the transition period for the UK's exit from the European Union (EU), which raised unique issues that have now been resolved [paragraph 3.49.1 in REP9-022].

3.2.103. In paragraph 3.49.4 of [REP9-022] CLdN commented that when assessing the existing realisable capacity, it applied in line with standard industry practice a *"peak multiplier of 1.25"*. CLdN's estimates have resilience built into them, therefore addressing market fluctuations that could give rise to any short-term capacity-related inefficiencies. Resilience at the PoK could be enhanced, if necessary, through expanding the port.

3.2.104. In section 5 of the MFSR update [REP8-028] the Applicant has estimated the Humber's current realisable handling capacity for unaccompanied Ro-Ro units at 1.35 million per year, while CLdN considers that figure should be 1.7 million units. That compares with a current demand for the handling of 1.05 million unaccompanied units per year, a figure also found in Table 5.1 in the MFSR update [paragraph 3.49.7 in REP9-022].

3.2.105. The ExA considers that by providing extra Ro-Ro unit handling capacity the Proposed Development would add to port resilience amongst the Humber's ports. However, as has been explained above there is significant disagreement between the Applicant and CLdN about the scale of current Ro-Ro unit handling capacity on the Humber and what the future demand for handling capacity might be.

3.2.106. The ExA has formed the view that the Applicant has understated the current handling capacity, most particularly in connection with the facilities available at the PoK, while there is considerable uncertainty about how much additional capacity will be required to meet future demand. However, paragraph 3.4.14 of the NPSfP advises the availability of spare capacity will help ensure there is resilience, with capacity being needed in a variety of locations and covering a range of cargo so that the port sector can respond to short terms peaks in demand, the impacts from adverse weather conditions, accidents and other operational difficulties without causing economic disruption to the flow of imports or exports.

3.2.107. The NPSfP clearly supports the provision of additional port infrastructure that contributes to resilience and that support is unqualified by any reference to where and how much additional capacity should be provided for resilience purposes. While there is disagreement surrounding what if any additional Ro-Ro handling capacity is needed on the Humber, the ExA considers that the Proposed Development would be consistent with the NPSfP's encouragement for building resilience into the port sector. That said, under the provisions of Policy PS3 of the EIMP there is a need to consider whether providing additional port capacity would or would not interfere with the PoI's operation, a matter considered in section 3.3 below.

Urgency for the Proposed Development

3.2.108. With respect to the claimed urgency of the need for the Proposed Development, the ExA considers that any urgency stems from the breakdown of the contractual relationship between Stena Line and CLdN and the need for the former to cease operating at the PoK by May 2025. In May 2025 Stena Line's contract for the route between the PoK and the Hoek van Holland will cease to have effect because of its termination. Evidence has been submitted by CLdN, for example [REP4-021], that it is expanding the PoK's capacity and has plans to further extend that capacity.

3.2.109. During the course of the ExA's accompanied site inspection in September 2023 some of those PoK expansion works were observed. At ISH3 [EV6-002] Stena Line and CLdN were asked by the ExA whether the PoK was physically capable of accommodating Stena Line's operational needs. CLdN responded yes, while Stena Line said not. Stena Line's response and subsequent written submissions [REP4-038] refer to it being unable to agree acceptable financial terms with CLdN.

3.2.110. The ExA considers that physically there would be sufficient land available at the PoK for Stena Line to operate its two established routes between the Humber and the Hoek van Holland and Europoort. That is because historically Stena Line has operated both of its two existing Humber services from the PoK, while CLdN's Examination evidence indicates the PoK has not reached its capacity limit, a matter addressed above in the ExA's consideration of the Humber ports' existing Ro-Ro

unit handling capacity. The ExA has explained above that it has reached the view that the Applicant's initial assumptions about the existing capacity were inaccurate and did not take account of the expansion of the PoK's capacity.

3.2.111. The contract renewal disagreement between Stena Line and CLdN, based on their written and oral evidence, appears primarily to be a commercial one. However, that does not mean that Stena Line's needs could not physically be accommodated at the PoK, as had historically been the case prior to the breakdown of negotiations in 2021.

3.2.112. Notwithstanding the breakdown in negotiations in 2021, as late as January 2023 CLdN was making contractual offers to Stena Line [Appendix 1 in REP4-021]. It also appears that uncertainties caused during the transition period for the UK's exit from the EU did not help the contractual discussions, with CLdN finding it necessary in the early part of 2021 to impose trailer slot limits on Stena Line as well as its other customers, including CLdN's own shipping line, because of EU exit related customs clearance issues amongst other things [see Part 4 in REP4-021 and Appendices 1 and 2 in AS-087].

3.2.113. Given the available evidence, the ExA considers any urgency for the Proposed Development is not as straightforward as portrayed by the Applicant. That is because current capacity across the Ro-Ro terminals on the Humber is not as constrained as was implied by the Applicant in its MFSR [APP-079] and it is only because of the breakdown of negotiations between Stena Line and CLdN that the former is seeking to move all of its operations from the PoK. Were it not for the breakdown of the contract negotiations, the ExA considers it reasonable to believe that Stena Line would be in a position to operate its services to and from the Humber and Hoek of Holland and Europoort from the PoK beyond May 2025.

3.2.114. The urgency in this case is simply about Stena Line needing to cease operating its Hoek of Holland service from the PoK and relocate it to the PoI, where it could then be operated alongside Stena Line's Europoort service at an entirely new Ro-Ro terminal. The circumstances of this case do not involve an incoming Ro-Ro service operator, capable of adding to competition, identifying a location where there is clearly an imbalance between the supply and demand for Ro-Ro handling capacity.

3.2.115. Given the decision period for this Application and a minimum construction period of around 18 months, were a DCO to be made, it is unlikely the Proposed Development would be available before Stena Line would have to vacate the PoK.

3.2.116. The ExA considers the urgency in this instance is not necessarily of the kind envisaged by the NPSfP, most particularly the categories listed in paragraph 3.5.1. That is because:

- Although the Proposed Development would allow for the handling of freight, it would be in a location where it has not been demonstrated there is clear absence of capacity in the short to medium term.
- The Proposed Development would not support the development of offshore sources of renewable energy.

- The Proposed Development would not contribute to offering a sufficiently wide range of facilities at a variety of locations to match existing and expected trade, ship call and inland distribution patterns and to facilitate and encourage coastal shipping.
- While the Proposed Development would provide resilience in national infrastructure, it has not been demonstrated that it would ensure effective competition among ports; and
- The Proposed Development would facilitate the relocation of a Ro-Ro service provider already established on the Humber. However, the Proposed Development would not significantly change the contribution made to the regional and local economies unless the intended operator was to increase its level of trade through the introduction of one or more new services.

3.2.117. Accordingly, for the reasons given above, the ExA considers that while the NPSfP has identified an urgent need for the provision of port infrastructure in this instance the Applicant's urgency case attracts little positive weight.

Alternatives

3.2.118. CLdN acknowledges that as a matter of law the consideration of alternatives is not usually relevant. However, CLdN argues that it may be relevant and necessary to consider alternatives when there are clear planning objections to a development and the major argument put forward in support is that the need for the development outweighs its planning disadvantages or where the absence of alternatives is used to justify the development. Under those circumstances, decision-makers can take account of evidence suggesting that the need for the development could be met elsewhere [paragraph 2.13.2 in REP9-022]. The consideration of alternatives will be necessary if, for the purposes of an assessment under the Habitats Regulations, an adverse effect on the integrity of a designated site or sites cannot be ruled out.

3.2.119. The Applicant is of the view that there is no alternative to locating the Proposed Development within the PoI. There is agreement amongst the IPs that the PoG, the PoH and the riverside between the PoI and PoK would be unable to accommodate the Proposed Development and the ExA sees no reason to reach a contrary position in that regard.

3.2.120. As has been explained above, CLdN contends that the PoK would be able to accommodate the Proposed Development's capacity, not least because expansion works have been begun there. The Applicant is of the view that if there is to be any consideration of alternatives in the determination of this Application the PoK should not be considered as an alternative. That is because the PoK would not be a commercially viable alternative due to Stena Line and CLdN having been unable to renegotiate contracts for the former to operate from the PoK.

3.2.121. As the ExA has explained above, it considers that the PoK would be capable physically of accommodating the Ro-Ro services operated by Stena Line, not least because those services have historically been operated from the PoK. Given that background the ExA therefore considers the PoK cannot be entirely discounted as a possible alternative for the Proposed Development, albeit there is considerable

uncertainty as to whether Stena Line and CLdN would be able to agree new contracts enabling the former to run services at the PoK. Stena Line's written and oral evidence does not envisage any circumstances under which it would be able to reach commercial terms agreeable to it and CLdN.

3.2.122. Section 4.9 of the NPSfP sets out the approach that should be taken to the consideration of alternatives, with it being stated that from a policy perspective there is no general requirement to consider alternatives or to establish whether a proposed project represents the best option. The Proposed Development's implications for the integrity of the designated habitats is considered by the ExA in Chapter 4 below and in Appendix C.

CONCLUSIONS

3.2.123. For the reasons given above, the ExA is content that the Proposed Development in principle would be acceptable because it would contribute to meeting the broad need for additional port capacity in the UK. The ExA therefore considers that the Proposed Development benefits from the presumption in favour of granting consent to applications for port development stated in paragraph 3.5.2 of the NPSfP. However, as explained above the ExA considers there are matters which it considers are important and relevant that affect the weight that should be attributed to the contribution the Proposed Development would make to meeting the UK's need for additional port capacity.

3.2.124. Importantly, the ExA has concluded the Humber's ports have more unaccompanied Ro-Ro unit handling capacity than was identified in the submitted Application. Significantly the Applicant's assessment of the current handling capacity at the rival PoK was underestimated and no allowance was made for expanding that port, which has commenced. The freight unit 'dwell time' used in the Applicant's assessment was challenged during the Examination for being too long and the ExA considers that for the PoK, at least, the evidence of CLdN should be preferred. Longer 'dwell times' affect a port's handling capacity. The ExA therefore considers that the general need for additional Ro-Ro freight unit handling capacity on the Humber has been exaggerated by the Applicant. Consequently, that aspect of the Applicant's case attracts little positive weight in favour of the making of a DCO.

3.2.125. For the purposes of the Environmental Impact Assessment of the Proposed Development the Applicant identified an annual handling capacity of 660,000 Ro-Ro units. The Applicant considers the Proposed Development's efficient level of operation would be around 80%, i.e., around 528,000 units handled per year. However, the Applicant's Examination evidence was neither 528,000 nor 660,000 units handled were fixed targets needing to be met.

3.2.126. The ExA therefore considers there is doubt about precisely what contribution the Proposed Development would make to meeting the need for additional Ro-Ro handling capacity on the Humber. That doubt is compounded by the fact that the Applicant expects the Proposed Development would be operated by Stena Line, who would transfer its two existing Humber Ro-Ro services to the proposed Ro-Ro terminal, with Stena Line then possibly adding to those services. The ExA therefore

considers the Proposed Development's use could be less than the efficient level of operation identified by the Applicant.

3.2.127. The ExA, however, accepts that whatever the volume of units ultimately handled by the Proposed Development, that volume would add to the resilience of the Humber's ports because additional capacity would be made available. As explained above that would be consistent with the NPSfP and the EIMP, provided the provision of that additional capacity did not prejudice the PoI's existing operation, a matter considered further in section 3.3 below.

3.2.128. Given the Applicant's expectation that the Proposed Development would be operated by Stena Line, an established Ro-Ro service operator on the Humber, the ExA considers that this development would do little to add to effective competition amongst the Humber's ports. That is because, firstly, the Applicant would continue to be one of two port owners on the Humber. Secondly, no clear evidence has been presented demonstrating either that Stena Line would add to its services, or other new entrant Ro-Ro shipping lines would start running services on the Humber either at the Proposed Development or by backfilling capacity at the terminals vacated by Stena Line.

3.2.129. The Applicant has claimed that there is an urgent need for the Proposed Development. However, that urgency primarily stems from Stena Line's need to vacate the PoK by 1 May 2025 for contractual reasons. Although the contract renewal discussions between Stena Line and CLdN have broken down, the ExA considers the PoK could physically accommodate Stena Line. That is because Stena has historically operated both of its Humber services from the PoK and the PoK is currently being expanded. Accordingly, the ExA considers that because of the very specific circumstances of this case the urgency identified by the Applicant attracts little positive weight.

3.2.130. Based on the considerations discussed above, the ExA concludes that:

- the Proposed Development's contribution to meeting the generalised need for additional port capacity attracts little positive weight for the making of a DCO;
- the additional resilience amongst the Humber's ports attracts moderate positive weight for the making of a DCO;
- the potential for increased competition neither weighs for nor against the making of a DCO; and
- the urgency for the Proposed Development attracts little positive weight.

3.3. NAVIGATION AND SHIPPING

INTRODUCTION

3.3.1. This section considers the potential navigation and shipping effects of the Proposed Development that were not agreed at the Examination's close, specifically:

- Risks to maintaining safe navigation;

- Risks of accidental damage to existing infrastructure or moored vessels; and
- Risks of interference to existing shipping services.

3.3.2. Central to the safe navigation issue is the proposed introduction of three Ro-Ro berths in a fast-flowing river tideway, with navigational conditions that are accepted by the Applicant as being *"challenging"* (paragraph 4.12 in [AS-083]), located close to existing jetty and pier infrastructure handling petroleum products and other hazardous substances. The Immingham Oil Terminal (IOT), which serves two refineries at Immingham, is nationally critical infrastructure for energy supply security. Proposed Berth 1 would be around 95 metres distant from the IOT's finger pier.

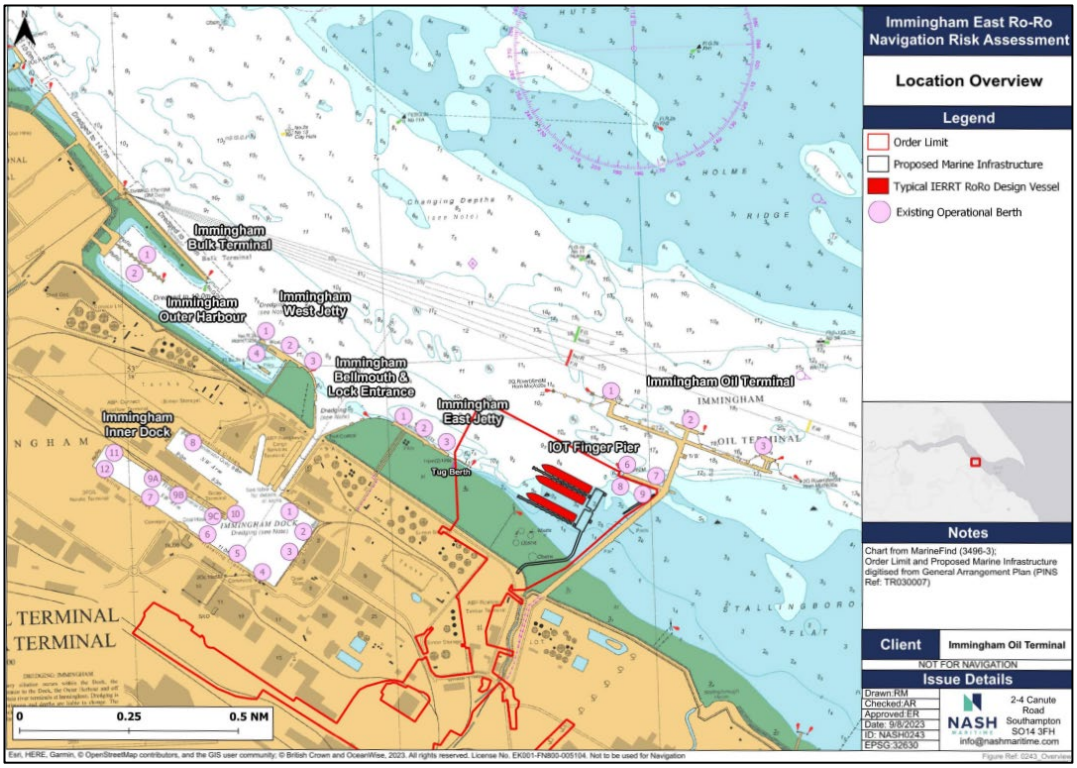

Figure 5: The proposed new berths in the context of the PoI's existing marine infrastructure [included by the IOT Operators in REP1-037]

3.3.3. Relevant Representations (RRs) concerned with navigational safety were received from IPs who have nearby operations that could be adversely affected by the Proposed Development, namely: Humber Oil Terminals Trustee Limited and Associated Petroleum Terminals (Immingham) Limited (collectively referred to as the IOT Operators) who jointly run the IOT; DFDS Seaways; and CLdN Port of Killingholme.

3.3.4. The IOT Operators' RR explains that the IOT handles marine movements of products to and from the Humber Refinery and the Lindsey Oil Refinery and emphasises the national importance of the two refineries [paragraphs 1.4 and 1.5 of RR-003].

3.3.5. The Examination considered whether operational controls for the movement and mooring of ships would adequately manage the risk of damage to the IOT's finger pier and pipeline trunkway to a level that would be tolerable not only to the Applicant, as owner and operator of the port, but also for the IOT Operators, given the latter's responsibilities as the operator of a Control of Major Accident Hazards (COMAH) site with national energy security obligations. Throughout the Examination the IOT Operators, supported by DFDS, contended that the IOT's marine infrastructure should have physical vessel Impact Protection Measures (IPM) installed prior to proposed berths being brought into use, in order to control risks to acceptable levels.

3.3.6. Section 2.2 of this Recommendation explains the Statutory Harbour Authority (SHA) arrangements empowered to control navigation and conservancy in the Humber Estuary and the Humber ports.

3.3.7. Below, consideration is given to:

- Policy, legislation and guidance relevant to navigation and port marine safety;
- The Application proposals; and
- Issues considered during the Examination.

POLICY, LEGISLATION AND GUIDANCE RELEVANT TO NAVIGATION AND PORT MARINE SAFETY

NPSfP

3.3.8. Key paragraphs of NPSfP relevant to effects on navigation safety and other port operations are:

- "*The decision-maker may need to make judgements as to whether possible adverse impacts would arise from the impact of the development on other commercial operators*" [NPSfP 4.4.1]

- "*Objections from port users adversely affected by the development should be considered in the light of the proposal from the applicant to mitigate those impacts, taking into account any benefits the decision-maker believes, on the evidence presented, will accrue to those users from the development*" [NPSfP 4.4.3]

- "*In considering applications, the decision-maker should take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy*" [NPSfP, 4.10.4]

3.3.9. The NPSfP also states that in order to "*help meet the requirements of the Government's policies on sustainable development*", new port infrastructure must be well-designed functionally [NPSfP, 3.3.3].

Overarching National Policy Statement for Energy (NPS EN-1)

3.3.10. Part 12 of the Energy Act 2023 addresses core fuel sector resilience and this legislation, amongst other things, applies to the handling and carriage of oil. NPS

EN-1 (designated in January 2024) is therefore an important and relevant consideration because of the Proposed Development's potential effects for adjoining critical national energy infrastructure and operations.

3.3.11. Paragraph 2.3.11 of NPS EN-1states:

"*The UK's oil and gas sector recognises the demand for oil and gas will be much reduced in the future, but also recognises the key role that it can play in helping the UK meet its net zero commitment*." NPS EN-1 paragraph 3.6.7 states "*The UK needs to ensure it has safe and secure supplies of the oil products it requires. Sufficient fuel and infrastructure capacity are necessary to avoid socially unacceptable levels of interruption to physical supply and excessive costs to the economy … This in turn highlights the need for reliable infrastructure including refineries, pipelines and import terminals* ..."

Marine and Coastal Access Act 2009

3.3.12. Section 69(1)(c) of the Marine and Coastal Access Act 2009 (MACAA2009) provides for marine licence decisions to "*have regard to the need to prevent interference with legitimate uses of the sea".*

Marine Policy Statement (MPS)

3.3.13. Paragraph 3.4.7 of the MPS states:

"*Marine plan authorities and decision makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety … Marine plan authorities will also need to take account of the need to protect the efficiency and resilience of continuing port operations, as well as further port development*"

EIMP

3.3.14. The EIMP Policy PS3 explains that proposals for development, if they would *"interfere with current activity*" of ports, should demonstrate the following in order of preference:

a. that they would not interfere with current activity and future opportunity for expansion of ports and harbours; or
b. how they would minimise any such interference; or
c. if the interference cannot be minimised, how it would be mitigated; or
d. the case for proceeding if it is not possible to minimise or mitigate the interference.

3.3.15. Policy ECO2 of the EIMP states: "*The risk of release of hazardous substances as a secondary effect due to any increased collision risk should be taken account of in proposals that require an authorisation*".

National port marine safety guidance

3.3.16. The Maritime and Coastguard Agency (MCA), as national authority for maritime safety matters, defers to the relevant SHA on risk assessment and safety systems for specific harbour and port operations. In its Relevant Representation, the MCA pointed "*the developers in the direction of the Port Marine Safety Code (PMSC) and its Guide to Good Practice, they should liaise and consult with the Statutory Harbour Authority to develop a robust Safety Management System (SMS) for the project under this code*" [RR-013].

3.3.17. The Executive Summary of the PMSC advises:

"*The Port Marine Safety Code ("the Code") sets out a national standard for every aspect of port marine safety. Its aim is to enhance safety for everyone who uses or works in the UK port marine environment. It is endorsed by the UK Government, the devolved administrations and representatives from across the maritime sector and,* ***while the Code is not mandatory*** [emphasis added by the ExA]*, these bodies have a strong expectation that all harbour authorities will comply. The Code is intended to be flexible enough that any size or type of harbour or marine facility will be able to apply its principles in a way that is appropriate and proportionate to local requirements*" [paragraph 1 in REP1-015].

3.3.18. The PMSC explains that:

"*The Code … provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the port marine environment and to clarify the responsibilities of organisations within its scope*" [paragraph 6 in REP1-015].

3.3.19. The PMSC elaborates that organisations must develop and maintain an effective Marine Safety Management System (SMS) and that:

"*…Plans and reports should also be published as a means of improving the transparency and accountability of organisations as well as providing information and reassurance to users"* [paragraph 2.1 in REP1-015].

3.3.20. The Guide to Good Practice (GtGP) on Port Marine Operations, that has effect in conjunction with the PMSC, clarifies the legal background, duties and obligations of SHAs with regard to "*what legal powers and duties they have or should seek in order to promote navigation safety*" [paragraph 1.2.1 in REP1-016]. The GtGP notes applicable general legislation, such as the Merchant Shipping Act 1995, but advises that many of the principal duties and powers of a harbour authority are in local Acts or orders made under the Harbours Act 1964 [paragraph 1.5.1 in REP1-016].

THE APPLICATION

3.3.21. The Application was accompanied by a Navigation Risk Assessment (NRA) as an Appendix to ES Chapter 10 [APP-089, superseded by REP7-011] and supported by three further ES appendices reporting on navigational simulations ('bridge simulations') [APP-090, APP-091 and APP-092].

3.3.22. In that NRA the risks of allision (collision with a stationary object) between a vessel and the IOT's marine infrastructure or with the PoI's Eastern Jetty (both located immediately adjacent to the proposed berths) or with a moored vessel were considered intolerable if unmitigated. However, with *"applied risk controls"* (mitigation measures) as listed in the NRA (including berthing criteria for each of the proposed berths) those risks were assessed as tolerable and reduced to As Low as Reasonably Practicable (ALARP) [paragraph 10.11.73 in APP-046].

3.3.23. The applied risk controls identified by the Applicant included project-specific adaptive procedures, and the NRA explained that protection of the IOT trunkway (Work No.3 in the Application dDCO) for risk of allision was

"not ruled out (as an adaptive control during operation however and may form part of the operational 'adaptive procedures' control of which the specific details will be determined on a progressive basis)" [paragraph 9.9.3 in APP-089]; and

"*If, during the management of this risk in the future, HES determines that (for example) to berth without tugs on an ebb tide would require impact protection as mitigation then this is included within the context of 'adaptive procedures'"* [APP-089 paragraph 9.9.24].

3.3.24. The NRA and the acceptability of risk subject to applied risk controls were accepted by the Applicant's Harbour Authority and Safety Board (HASB) at its meeting in December 2022. That acceptance was preceded by a review by the ABP Steering Committee chaired by a *"Duty Holder representative"* [paragraphs 7.1.14 to 7.1.16 in APP-089].

3.3.25. The HASB is the Duty Holder under the PoI's SMS. Acceptance by the HASB serves as Stage 5 of the formal safety assessment process promoted under the PMSC [paragraphs 11.1 to 11.4 in REP1-014].

ISSUES CONSIDERED DURING THE EXAMINATION

REPRESENTATIONS BY IPS

Representations by the Marine Management Organisation (MMO) the MCA and Trinity House

3.3.26. The MMO, as the competent authority for licencing marine development below the Mean High Water line, deferred to the MCA and Trinity House on matters of shipping and navigation [RR-014]. Trinity House had no matters to raise during the Examination [REP2-029]. The MCA's WR following ISH2 confirmed its role in providing advice and guidance to the relevant regulator of "*works and activities*" and

confirmed the jurisdiction of the Humber SHA. The MCA "*would expect every attempt to be undertaken by the applicant to resolve the concerns raised by the interested parties, with more detailed justification where consensus cannot be achieved*" [REP1-021].

Representations by the IOT Operators

3.3.27. The principal areas of disagreement between the IOT Operators and the Applicant throughout the Examination concerned the risk of vessel allision with the IOT's finger pier or trunkway and the need for IPM to control risk to ALARP. The IOT Operators also considered that there are inherent conflicts of interest in the Applicant's safety governance.

3.3.28. The IOT Operators RR outlined their safety and operational concerns about the Proposed Development which they argued would be prejudicial to the operation of the IOT and thereby to the continuous operations of the refineries [paragraphs 1.6 to 1.8 in RR-003].

3.3.29. The IOT Operators major concerns, which had previously been raised during statutory consultation responses, were:

- damage and interruption to service caused by allision between Ro-Ro vessels or dredger/construction vessels and IOT infrastructure and/or tankers berthed at the IOT [paragraph 1.11 in RR-003];
- the potential adverse consequences of increased navigational risk on the IOT Operators' COMAH safety case [paragraph 1.11 in RR-003]; and
- the lack of clear commitment to IPM in the dDCO [paragraphs 1.13 and 1.14 in RR-003].

3.3.30. The IOT Operators contended that because of the critical national importance of the IOT for energy security, additional levels of risk control are merited [paragraph 1.2 in REP1-036].

3.3.31. The IOT Operators submitted with their WR their own partial NRA, supplementing their criticism of the Applicant's NRA [REP2-064]. The IOT Operators referred to this supplementary NRA as a "shadow NRA" or "sNRA". However, it cannot be considered as being a full NRA because it has not been subject to stakeholder engagement. Hereafter the ExA therefore refers to the IOT Operators shadow NRA as a 'NRA critique'.

3.3.32. The IOT Operators' NRA critique included a cost-benefit analysis to justify their conclusion that additional risk control measures would need to be implemented in order to reduce intolerable risks to a tolerable and ALARP residual level. Control measures recommended by the IOT Operators consultants included physical protection of infrastructure against vessel impact, but a case was presented that the IOT finger pier would be so constrained and vulnerable that it should be relocated [pages 124 to 127 in REP2-064].

3.3.33. The IOT Operators' NRA critique promoted an elevated risk rating for the allision hazard because the IOT is critical national infrastructure serving the refineries which

account for 27% of the UK's refining capacity. The operation of the refineries being dependent on the continued and safe operation of the IOT's infrastructure and the adverse consequences of an impact with the IOT's infrastructure could be far reaching [pages 66 to 74 in REP2-064].

3.3.34. The IOT NRA critique also provides additional information about the IOT and how it is operated, including Automatic Identification System (AIS) vessel track data supplementing the Applicant's data and analytical illustrations of tankers and fuel barges arriving at or departing from the IOT's finger pier. This NRA critique clearly shows the spatial constraint that the Proposed Development would present for the IOT [REP2-064 pages 66 to 74].

3.3.35. At ISH2, the IOT Operators argued that the "agent of change" concept was applicable in this instance:

"*… the agent of change principle means that because the Applicant wishes to develop the IERRT, it must demonstrate that it is not having an adverse effect on the safety or operations of existing facilities at the port nor that it will impose unreasonable restrictions on those existing operations given their significance.*" [paragraph 2.2 in REP1-036].

3.3.36. At D1 the IOT Operators submitted alternative proposed Protective Provisions that included an obligation for the Applicant to provide the additional risk mitigation measures sought by the IOT Operators, as well as an indemnity for any damage caused to IOT infrastructure [REP1-039].

3.3.37. The need for physical risk control measures was further argued by the IOT Operators in their WR at D2 and responses at D3 [REP2-062] and [REP3-026].

3.3.38. In response to ExA questioning, at D4 the IOT Operators' critique of the Applicant's NRA was expanded on, including the lack of information about the cost-benefit analysis carried out to establish if risks would be mitigated to ALARP and conflation of embedded and additional procedural controls such that residual risk levels would be higher than claimed. The IOT Operators also emphasised that vessel allision with IOT infrastructure is a risk identified in the COMAH safety case for the IOT. The IOT Operators argued that increased vessel movements in reduced water space in the vicinity of the IOT finger pier would inevitably increase the likelihood of that allision risk, requiring additional mitigation [pages 4 to 18 and pages 32 and 44 in REP4-035].

3.3.39. Consultation with the IOT Operators after ISH3 resulted in a compromise IPM engineering scheme being presented by the Applicant as part of its notification of an intention to submit a change request [AS-027] and [sheet 1 in AS-029]. That submission was without prejudice to the Applicant's position that it continued to be of the view that the installation of IPM would be unnecessary, albeit that may change in future [paragraphs 3.35 to 3.37 in AS-027]. The IOT Operators argued that the compromise IPM solution would not be *"betterment"*, as contended by the Applicant, with the presence of the proposed berths being a potential disbenefit for IOT operations [pages 28 and 29 in REP5-035].

3.3.40. At ISH 5, the IOT Operators continued to challenge: the "*ambiguity of control measures as proposed by the Applicant*"; the "*structural independence*" of the SHA from the Applicant/undertaker; the need to assess at the "*root consent stage*" the safe use of the maximum DV; and the realism of the simulations carried out by the Applicant. The IOT Operators, in particular, raised a concern about the "*staged management"* of an *"anchor drop"* to arrest a drifting Ro-Ro vessel with a simulated loss of power, compared with the delay in deploying an anchor that would arise in a real-world emergency [paragraphs 1.4 to 1.7 in REP7-070].

3.3.41. The Applicant's changes to the Application, discussed in greater detail below, included additional IPM in the form of a piled dolphin structure sited at the western end of the IOT's finger pier as shown in [AS-049].

3.3.42. At D7 the IOT Operators pressed their case that a DCO should not be made for a scheme without IPM for the IOT because the residual risk of catastrophic consequences of allision would outweigh the Proposed Development's claimed benefits [paragraphs 22 to 29 in REP7-069].

3.3.43. The IOT Operators highlighted the additional challenges of navigating a tanker to and from the finger pier's berth 8 arising from the proximity and the wind shadowing effect of vessels berthed at the proposed berths. They argued that even with the additional simulations that followed the proposed changes to the Application, the magnitude of risk for tankers moving to and from the IOT's finger pier had not been adequately assessed by means of a reasonably probable worst-case simulation that included gusting and shadowed wind as well as modified current direction [paragraphs 65 to 76 in REP7-069].

3.3.44. By the end of the Examination the IOT Operators maintained their objections, expressing frustration that the Applicant had still not adequately assessed a navigational risk *"failure scenario"* or the impediment the proposed berths would present for vessels manoeuvring to and from the IOT's finger pier [REP8-057] and REP9-028]. At paragraph 83 in [REP8-057] the IOT Operators expressed further concern about the continued lack of a transparent and evidenced cost-benefit analysis for risk controls.

3.3.45. In making their final Examination submission, the IOT Operators reiterated their case for IPM to be installed in addition to the implementation of the operational risk controls proposed by the Applicant to safeguard the IOT's infrastructure, because:

"*… minor damage, with even small repairs taking the IOT out of service for several months, would have considerable economic impact on the energy sector … a precautionary approach is required given the importance or the facilities, the Energy Act 2023 and the agent of change principle, and this is absent from ABP's considerations or assessments*" [paragraph 3.9 in REP9-028].

3.3.46. The IOT Operators also repeated their contention that it would be unlawful for a DCO to be made allowing use at the Proposed Development of vessels as large as the maximum DV identified in the Application, arguing that the ES is defective under the *"Rochdale envelope"* principles "… *since the NRA (even as revised) does not*

assess the likely significant effects of using such a large vessel and does not assess the worst case scenario of the use of those vessels …" [paragraphs 4.3 to 4.6 REP9-028].

Representations by DFDS

3.3.47. DFDS raised multiple concerns with regard to safe navigation and potential adverse effects for DFDS' operations, essentially disputing the Applicant's NRA methodology, the adequacy of the supporting navigational simulations and the conclusions reached on safety risks [RR-008].

3.3.48. DFDS criticised the Applicant's berthing simulations as being unrepresentative of real-world conditions, including wind speed, current direction, the use of particularly manoeuvrable vessels, an over-reliance on supplementary power, towage and pilots [paragraphs 3.7 to 3.10, 3.1.8 to 3.1.11 in RR-008]. DFDS also criticised the adequacy of the Applicant's engagement with stakeholders [paragraphs 3.1.13 and 3.1.14 in RR-008].

3.3.49. DFDS argued in its RR that the Proposed Development would present pilotage difficulties and place demands on towage services, leading to congestion in the PoI and its approaches, which would adversely affect the running of DFDS' scheduled Ro-Ro services [RR-008].

3.3.50. In its WR, DFDS expanded on its concern about potential congestion in the approach to the PoI's lock entrance, because the 'stemming area' for vessels preparing to enter the inner dock would overlap with the approach area for the proposed berths. DFDS contending that congestion could potentially impede the efficient use of the lock [paragraphs 36 to 39 in REP2-040].

3.3.51. DFDS elaborated its concerns at ISH5, citing paragraph 3.4.7 in the UK MPS and EIMP Policies PS2 and PS3. DFDS contend that delays to scheduled Ro-Ro liner services at the PoI could have knock-on effects at European destination ports with potential adverse economic and transport effects that have not been assessed in the ES. DFDS submitting that any delay in departing the PoI would need to be made up by faster passage across the North Sea leading to increased Carbon Dioxide emissions, which shipping companies are incentivised to reduce [paragraphs 2.53, 2.55 to 2.60 and 2.69 in REP7-059].

3.3.52. DFDS's WRs were accompanied by a partial NRA, supplementing its criticism of the Applicant's NRA [REP2-043]. Although DFDS referred to its NRA as a *"shadow NRA"* or *"sNRA"* it is not a full NRA because its preparation did not include the necessary stakeholder engagement. Hereafter the ExA has therefore referred to DFDS' sNRA as a 'NRA critique'.

3.3.53. DFDS' NRA critique concluded:

"*The Risk Assessment Team reached consensus and agreement that the credible potential for catastrophic consequences resulting from a single hazard involving the IOT trunkway, vessels at the IOT Finger Pier, and/or chemical tankers at the*

Eastern Jetty, would not be effectively mitigated by procedural Risk Controls alone" [paragraph 10.5.1 in REP2-043].

3.3.54. Of particular note in DFDS' NRA critique, the highest rated identified hazard was that of Ro-Ro vessel allision with a liquid bulk tanker moored at the PoI Eastern Jetty, being part of a COMAH site in close proximity to the approach and departure paths for proposed berths 2 and 3 [paragraph 9.1.1.1 in REP2-043].

3.3.55. DFDS' WRs emphasised that it had repeatedly raised safety concerns about the Proposed Development throughout the pre-application stage [paragraph 68 in REP2-040]. DFDS explained the contrasting conditions for berthing manoeuvres at DFDS' own terminal at the Immingham Outer Harbour with those of the Proposed Development, stating:

"*The manoeuvre for the Immingham Outer Harbour (IOH) is by it's* [sic] *very nature a completely different operation in that the vessel is moving from an area of high tidal flows into an area of slack water, so once inside the IOH the vessel is no longer subject to these forces and is therefore able to complete the manoeuvre for the berth with a much higher degree of control…it is unusual for IOH vessels to get within 200m of the Chemical Tankers berthed on the Western Jetty*" [item 178 in REP2-039].

3.3.56. At the Examination's close, DFDS maintained its objections with respect to the Applicant's approach to the assessment of navigational risk [paragraph 11 in REP8-045]] and [paragraphs 19 to 21 in REP9-025] as well as the potential interference with DFDS' operations at the PoI [paragraph 119 in REP8-045].

3.3.57. DFDS agree with the IOT Operators that the degree of risk arising from the Proposed Development's proximity to a nationally critical existing liquid bulk terminal is unique and without precedent. DFDS emphasised that the Applicant had failed to properly assess the "*commercial and operational implications of the Proposed Development*" [paragraphs 13 and 19 to 20 in REP9-026].

Representations by CLdN

3.3.58. CLdN is the owner, operator and SHA for the PoK, a port located on the Humber further upstream of the PoI. CLdN operates its own Ro-Ro services running to and from the PoK.

3.3.59. In its RR [RR-007] and during the Examination, CLdN raised concerns about the potential for the Proposed Development's construction to interfere with the running of the scheduled services operating at the PoK, commenting:

"…*construction activity or a safety incident that results in traffic restrictions on the river or, in the worst case scenario, closure of the river, would evidently impact CLdN's operations…On this basis, CLdN has a keen interest in ensuring that the NRA [APP-089] is robust and that risks to navigational safety are tolerable*. *These concerns also provide context to CLdN's request for Protective Provisions.*" [item 5 in REP1-025].

CLARIFICATIONS AND CHANGES BY THE APPLICANT

Clarifications on safety governance

3.3.60. Clarifications made by the Applicant during the Examination included a briefing note about its governance and management of navigational safety [REP1-014]. The Applicant is the owner and operator of the PoI and is also the SHA for the PoI. That SHA is led by the Dock Master (DM), an employee of the Applicant [paragraph 1.1in REP1-014].

3.3.61. The Applicant clarified that the Harbour Master for the Humber (HMH) leads both the tidal Humber's SHA and the Humber's Competent Harbour Authority (CHA). Those authorities have been combined and are known as the Statutory Conservancy and Navigation Authority (SCNA), which is also informally known as Humber Estuary Services (HES) when performing its functions, including operating Vessel Traffic Services (VTS) and the regulation and allocation of pilotage services [paragraphs 1.2, 1.3, 4.1, 5.4, 6.4 and 7.1 in REP1-014].

3.3.62. The Applicant's corporate governance includes its HASB, which has the role of ensuring that "*all marine risks that may potentially arise with regard to a given project will be thoroughly assessed and considered*". The HASB is the *"Duty Holder"* for the purposes of the PMSC [paragraphs 1.5 and 1.6 in [REP1-014]. The HASB is chaired by the Applicant's Chief Executive Officer and includes several other group executive directors including the Director of Safety, Engineering and Marine [paragraph 10.24 in REP1-014].

3.3.63. The Applicant explained that the Director of Safety, Engineering and Marine (sometimes referred to as *"Group Safety Director", "Technical Authority Marine"* or *"Marine Advisor"*), is a group role distinct from any other operational or commercial parts of the Applicant company. From early 2023 to the Examination's close, pending a new postholder taking up the appointment, the Director of Safety, Engineering and Marine also held the position of the *"Designated Person"* (DP), providing independent advice to the Duty Holder as part of the Applicant's Marine Safety Management System (MSMS) [paragraph 10.30 in REP1-014].

3.3.64. At ISH3 the Group Director, Safety Engineering and Marine responded to questions about a perceived lack of independence of roles between the members of the HASB, other employees of the Applicant and the DP. The Director, Safety Engineering and Marine confirmed that he has no direct connection with the PoI's commercial management or the promotion of the Proposed Development and is therefore able to act independently as the DP under the MSMS to:

"*… ensure that the right assurance is provided to the duty holder and that an audit function is provided. The designated person attends the HASB. In addition, the designated person attends the Audit and Risk committee at least once a year to ensure his role is independent*" [REP4-009 page 26 and Appendix 4].

3.3.65. In response to ExQ2 [PD-013] and Action Points from ISH3 seeking clarifications on various matters of safety governance [EV6-012], the Applicant submitted the

minutes of and a briefing paper for the 12 December 2022 HASB meeting [Appendices 4 and 5 in REP4-009].

Clarifications and additional tidal flow modelling work by the Applicant

3.3.66. Responding to criticisms by IPs of the tidal flow conditions modelled in the 2022 navigational simulations, the Applicant re-submitted the ES Simulation Study Reports with minor corrections to tidal flow data [REP6-021] and [REP6-022], plus a report of additional modelling of the tidal flow conditions [REP6-033] and a report of an additional navigational simulation study carried out in November 2023 [REP6-035].

3.3.67. The IOT Operators further commented that the November 2023 simulations were potentially relying on misleading current flow effects because they did not incorporate the Proposed Development's changed pontoon design. The Applicant therefore carried out additional modelling in December 2023 reporting an insignificant differential in current speed and direction, limited to a very short period in the tidal cycle [REP7-035] and [REP8-019]. The effects of the revised tidal current model were incorporated into further simulations carried out in December 2023 [REP8-029].

Changes to the application

3.3.68. The intention to propose changes to the Application was signalled in principle by the Applicant early in the Examination, however, the possibility of making alterations to protect the IOT's finger pier was introduced during ISH3 at the end of September 2023 by the Applicant's reading in public (with the agreement of the IOT Operators) of a *"without prejudice"* letter to the ExA [AS-020].

3.3.69. The Applicant's formal change request dated 29 November 2023, which was subsequently accepted by the ExA as explained in Section 1.5 above, included provision for additional IPM, namely a piled 'dolphin' structure at the western end of the IOT's finger pier (change 4) as well as structural enhancements to the pontoons and piers of the Proposed Development (change 1). The change request included an amended construction method statement [AS-065], an amended CEMP [AS-067], an addendum environmental statement [AS-070] and a report of additional navigational simulations [AS-071].

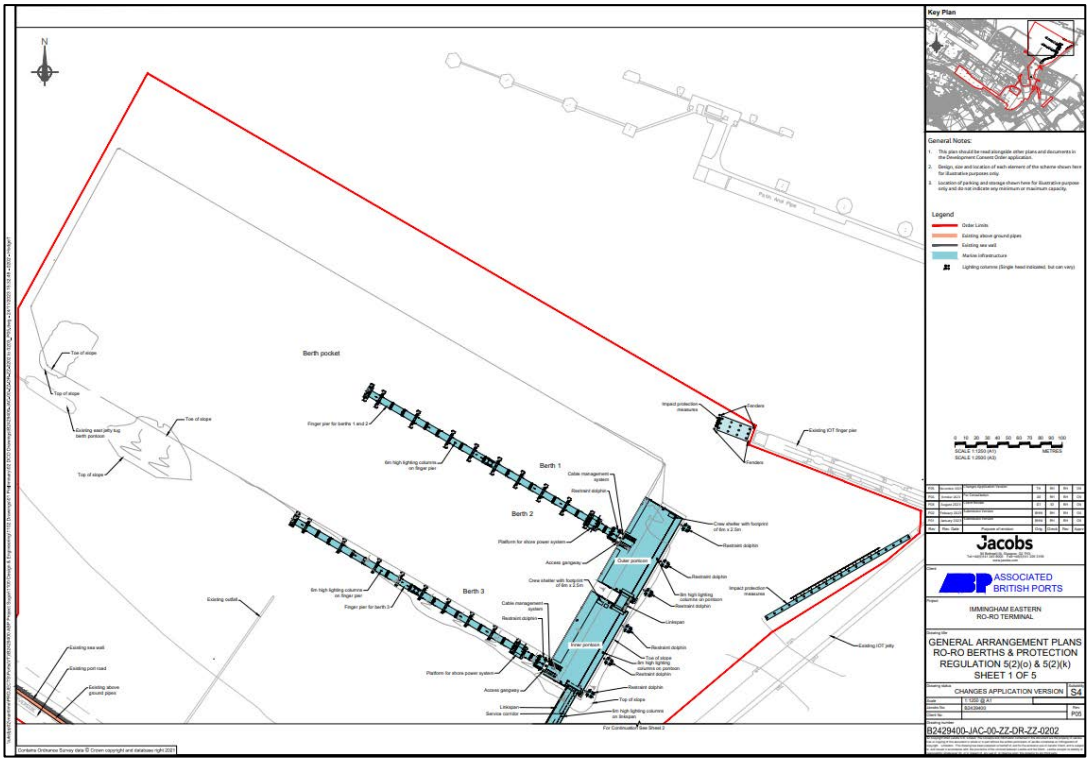

Figure 6: General Arrangement - Proposed Changes to the Application [AS-049]

3.3.70. Further to Action Points arising from ISH5 seeking clarifications (mainly about risk tolerability) [EV10-016] the Applicant submitted an updated NRA report [REP7-011], which should be read together with the tracked changes version [REP7-012] for clarity.

3.3.71. The updated NRA not only clarifies the conclusions of the risk assessment as requested, but also clarifies tolerability or acceptability of risk [paragraphs 1.14.13 to 1.14.17 in REP7-011] and how the Application NRA fits into the MSMS for a port [paragraph 3.2.5 in REP7-011]. The Applicant's tolerability matrices have been inserted into the updated NRA [Figure 24 in REP7-011]. The updated NRA also responds to the alterations included in the Applicant's change request.

Supplementary Navigational Information Report submitted by the Applicant

3.3.72. The Applicant also submitted at D7 a Supplementary Navigation Information Report (SNIR) with the purpose of collating:

"*… all key information in respect of navigational issues and to identify the key matters that have arisen during the course of the examination in terms of navigational risk. This will enable the HASB, in its capacity as Duty Holder, to undertake a fresh review of all of the information that has been provided during the examination.*" [paragraph 1.8 in REP7-030]

3.3.73. The SNIR explains in detail the sequence and purpose of the modelling and simulations supporting the NRA and further explains the additional assessment of navigational risk and proposed risk controls associated with the November 2023 changes to the application [REP7-030].

3.3.74. Appended to the SNIR are briefing papers and minutes for two further HASB meetings held in November and December 2023 which reviewed the NRA critiques of the IOT Operators and DFDS as well as the changes to the application [Appendix E in REP7-030].

3.3.75. The purpose of the HASB meeting 20 November 2023 being to enable it, as the Duty Holder, to decide "*how it should proceed in regard to the NRA as previously approved by the Board and the two alternative navigational risk assessments which had been put forward by IOT and DFDS*." The minutes record that the HASB considered the briefing put to it and the advice of the DP and re-affirmed the decision to accept the risk assessment as presented, subject to any further considerations arising from the Examination [REP7-030 Annex 1].

3.3.76. That HASB meeting on 8 December 2023 approved the submission of the updated NRA and the SNIR "*solely to increase clarity. None of the risks have changed, nor the risk scoring nor the conclusions drawn as to tolerability and ALARP*". The HASB was "*satisfied with the approach taken to the marine navigational risk in relation to the future development of IERRT*" and "*it agreed with and approved the conclusion that the risks identified were as low as reasonably practicable (ALARP) and tolerable*" [Annex 1 in REP7-030].

3.3.77. Responding to criticisms by IPs of the limitations of using anchor drop as a risk control for vessels losing power, the Applicant carried out additional simulations in December 2023 to test the use of a tugboat to arrest drift of a *"Stena 'T' class Ro-Pax"* (the Stena T class) vessel after losing all power on the approach to the proposed berths, in challenging wind and tidal conditions. These simulations were successful in avoiding allision of the Stena T class vessel with either the proposed berth infrastructure or the IOT's finger pier [REP8-029].

3.3.78. The tests also simulated (as a proxy for the Proposed Development's maximum DV) a G9 class vessel of 50,600 tonne displacement, as a 'dead ship' having lost all power in the worst conceivable case of a peak spring ebb tide and a mean wind speed of 27.5 knots blowing across the berths. The conclusion was that two tugs with 70 tonne *"bollard-pull"* rating would be sufficient to control the G9 without allision with the IOT structure as extended with IPM, "*except where exceptional north-west winds and strong tides are combined*" in which "*extremely rare*" cases "*additional controls would need to be in place to restrict such a vessel's operation*" [pages 4 to 5 in REP8-029]. This is discussed further, below.

Additional simulations by the Applicant of berthing in proximity to the Eastern Jetty

3.3.79. Discussion at ISH3 failed to resolve the disagreement between DFDS and the Applicant about the adequacy of the simulations and assessment of risk with respect to the Proposed Development's proximity to the Eastern Jetty. The ExA therefore required the Applicant to consult with stakeholders and to develop appropriate parameters for the undertaking of and reporting on additional berthing simulations [EV6-012].

3.3.80. The Applicant consequently carried out additional berthing simulations in proximity to the Eastern Jetty, introducing a differential in current direction and demonstrating with stakeholder participation that manoeuvring to and from the proposed berths nearest to the Eastern Jetty would be safe in conditions considered to be within normal expected operating limits [REP6-035].The additional simulations were reviewed by the Applicant against the Application NRA and found to be consistent with the risk assessment already made. Those results were also reviewed by the HASB at the end of November 2023 [REP7-011] and [REP7-030].

ADDITIONAL EVIDENCE FROM THE HARBOUR MASTER HUMBER

3.3.81. The HMH confirmed that whilst employed by the Applicant, the SHA and the CHA are statutory bodies *"independent of ABP in its capacity as owner and operator of ports on the Humbe*r" [paragraphs 1 to 4 in REP2-054]. The HMH "*manages the safety of navigation on the Humber estuary*" and maintains a MSMS for the Humber based on the management of risk using formal safety assessment [paragraph 23 in REP2-054]. Under the statutory powers of the SHA and CHA, the HMH may issue from time-to-time byelaws and General Directions controlling operations in the Humber and exceptionally, special directions to specific vessels [paragraphs 13 to 19 in REP2-054].

3.3.82. The PoI's SHA, headed by the DM, is constituted as a separate body from the Humber SHA. The PoI's territorial extent extends 200 metres seaward of the port infrastructure [Appendix 1in REP1-014]. The PoI has its own MSMS and under it the DM has day to day responsibility for the safe operation and navigation within this port [paragraph 1.8 in REP3-017]. The PoI's MSMS Manual (September 2023 revision), explains in greater detail the Applicant's governance structure in relation to the PMSC.

3.3.83. At ISH3 the HMH explained the apparent overlap and relative responsibilities of DM and the HMH in relation to marine safety management matters. Oversight of safe navigation through the river as far as the dock berths or lock entrance is the responsibility of the HMH, while matters relating to safety at dock berths (including towage, vessel mooring and maintenance of infrastructure) are the DM's responsibility [point 28 in Table 1 of REP4-009].

3.3.84. The HMH explained how the NRA for the Proposed Development to date would be part of an iterative process. The work done so far has allowed a working hypothesis to be developed for the Proposed Development's safe operating limits and assumptions would subsequently be tested cautiously in a *"soft start"* process, starting with slack water and good visibility conditions [page 3 in REP4-027].

3.3.85. The HMH subsequently expanded on how both procedural risk controls for the proposed berths and training of pilots and pilot exemption certificate (PEC) holders for operating at the Proposed Development would also be worked up progressively [REP5-039].

3.3.86. The HMH responded to a series of ExA questions at ISH5, confirming that before any vessel that was significantly different in size and/or with different handling

characteristics to those already simulated could be used at the Proposed Development, the HMH would require thorough risk assessment. That would involve the operator submitting a set of proposed controls for consideration by the SCNA and the PoI's SHA because operating controls would be vessel specific. The HMH "*confirmed that he was absolutely comfortable that the risks can be managed in terms of the controls which the SHA can apply*" and the HMH emphasised that it was important that he should not be hampered or fettered by any made DCO from applying additional controls or rapidly issuing special directions under the existing statutory regime to meet changing circumstances [paragraphs 9, 10, 12, 16, 17, 25 and 27 in REP7-067].

3.3.87. The HMH argued that there was no reasonable foundation to doubt the ability of the two SHAs (either jointly or separately) to exercise suitable control over the safe operation of the port under their existing statutory powers [section 3 in REP7-061].

3.3.88. Further to the holding of ISH5 the HMH and Applicant submitted a joint briefing note clarifying that new marine operational procedures would be issued for the PoI as *"guidance to be related initially through Notices to Pilots and PECs as well as VTS and Dockmaster Standard Operating Procedures. It would also be included in Pilot Handbook in due course*" [paragraph 9 in REP7-066]. The briefing note explains that the SCNA does not nor should have powers to require the construction of any works, which would ultimately be a decision for the port owner and operator. However, *"the SCNA has the power to prevent operations in the absence of satisfactory measures overall*" [paragraph 42 in REP7-066].

3.3.89. The HMH also argued that a DCO requirement applying operating limits for particular berths or "*minimum operating parameters for specific vessels visiting each berth in specific conditions*" made as General Directions would in practice be unwieldy and would inhibit the rapid adjustment of operational controls as authorities, pilots and masters become familiar with the Proposed Development under 'soft start' conditions. The HMH explained that each SHA and the CHA has in any case the over-riding power to control or prohibit any vessel from operating at a terminal or dock if its recommendations for safety risk control were to be disregarded [paragraphs 47 to 49 in REP7-066]. Under powers conferred by the British Transport Docks Act 1972, the HMH may issue *"special directions"* prohibiting a vessel from entering the port or berthing at the Proposed Development if he considered at any time that any navigational procedure would be unsafe [paragraphs 13 and 14 in REP7-066].

3.3.90. The HMH further clarified any imposition of enhanced controls (for example requiring tug assistance for berthing vessels above and beyond those required by existing directions and operating procedures) would be imposed by the PoI's DM following consultation with the SCNA "*and, in the unlikely event that the extra tugs alone are not effective in certain environmental conditions, then operational windows would need to be reduced to ensure effectiveness*" [paragraphs 3.2 and 3.3 in REP7A-002].

3.3.91. Taking account of the examples provided in [Appendix 1 of REP4-009] the ExA considers that the physical siting arrangements for the proposed three berths for large Ro-Ro vessels, positioned in a fast-flowing tideway around 95 metres (at their closest) from the infrastructure of a liquid bulk terminal handling fuel oils and therefore regulated by the HSE as a COMAH site, are without precedent in the UK.

3.3.92. In response to ExA questioning, the Applicant presented examples of Ro-Ro berths adjoining COMAH sites [page 52 in Appendix 1 in REP4-009]. The ExA considers that the two sites presented of most relevance were:

- the Immingham Outer Harbour (IOH - operated by DFDS), which is 800 metres from the Western Jetty; and
- CLdN's Ro-Ro jetty at Purfleet on the Thames and jetties serving nearby liquid bulk terminals.

3.3.93. Those Ro-Ro berths both present less challenging navigational conditions when compared with the Proposed Development. While the PoI Western Jetty forms part of a COMAH site, the distance between it and the IOH is significantly greater than the distance between proposed Berth 1 and the IOT's finger Pier.

3.3.94. In [REP5-041] CLdN explained that the context for its Purfleet Ro-Ro terminal and the adjoining fuel terminal jetties is not comparable with what is being proposed at the PoI. That is because the Purfleet oil storage COMAH site handles fuel delivered by pipelines and not vessels. The jetty at Purfleet 130 metres upriver of the CLdN Ro-Ro berths does not handle oil, while the jetty 70 metres downriver of CLdN's berths handles vegetable oils rather than petrochemicals [pages 5 and 6 of [REP5-041]. Further to the Applicant's submissions made in paragraphs 3.5 to 3.7 of [REP6-027] CLdN commented:

"… the Applicant has fundamentally misunderstood the relevant point. CLdN is not berthing Ro-Ro vessels at Purfleet behind or adjacent to any oil terminal in the same way that the Applicant is proposing for IERRT – there is no manoeuvring in the vicinity of oil jetties and there are no related impact protection measures as proposed for IERRT. Therefore, the operating conditions at CLdN Ports London are not at all comparable to the situation proposed at the Port of Immingham (Immingham) as a result of the Proposed Development, and are therefore irrelevant to the consideration of the Application." [paragraph 2.1 in REP7-039]

3.3.95. CLdN further commented with respect to the eastern jetty of the Esso Oil Purfleet Terminal, referred to by the Applicant in [REP6-027], that it is a jetty:

"… in fact owned by CLdN. It is a redundant jetty, which previously served as a lubes oil facility, that has not been in use for many years. The site of the lubes oil facility and the berth are both owned by CLdN, and the lubes oil site is used for port storage – no petroleum products are handled here." [paragraph 2.4 in REP7-039]

3.3.96. The liquid handling jetties at Purfleet are not being used in connection with the operation of COMAH sites. The ExA therefore considers that the siting of jetties and

berths at Purfleet are not comparable with the siting of proposed Berth 1 relative to the IoT's finger pier, with the latter forming part of a COMAH site.

3.3.97. DFDS submitted additional information on this matter, noting that Port of Belfast ferry operations are 460 metres from small liquid bulk terminals. Other known Ro-Ro operations in the UK are 2,500 metres or more away from the nearest liquid bulk facility [pages 3 to 5 of REP4-023].

3.3.98. An example of Ro-Ro operations in proximity to liquid bulk facilities in the Port of Rotterdam has been provided by Stena Line [REP9-029]. However, that example was presented late in the Examination without contextual information relating to that port's wind and current conditions. No details relating to the regulatory remine for the Port of Rotterdam have been provided. The ExA therefore considers no weight can be attached to this aspect of the case made by Stena Line.

3.3.99. The Applicant and other IPs have agreed that berthing and unberthing manoeuvres at the Proposed Development would be *"challenging"* when both current flow speed is high and wind speed is high or gusting. Current speed at times of peak spring ebb tides is approximately 4 knots in the vicinity of proposed berth 1. The wind direction most frequently experienced is across the direction of the current and the alignment of the berths, creating extra pilotage challenge in strong winds. The ExA also notes that berthing of coastal tankers at the IOT's finger pier is restricted and only takes place on flood tide (the current moving north-westwards and away from the IOT trunkway).

3.3.100. The ExA's findings on navigational safety and risk assessment matters focus on the following sub-issues of:

- safety governance;
- appropriateness of the Applicant's NRA;
- compliance with Environmental Impact Assessment regulations;
- control of risk of allision with existing port infrastructure; and
- security for navigational risk controls.

Safety governance

3.3.101. IPs questioned the adequacy of the Applicant's corporate and local safety management governance, the definitions of tolerability applied by the Applicant, the cost-benefit analysis applied by the Applicant to the assessment of risk mitigation alternatives; and the independence of the key personnel overseeing the MSMS and assessing the Proposed Development.

3.3.102. The ExA agrees with objecting IPs that the Application documentation lacked clarity about the Applicant's organisational safety culture and processes. At ISH2 the Applicant expressed initial reluctance to disclose material about its MSMS for the PoI or about the process of risk acceptance carried out by its corporate board. Nonetheless, the Applicant subsequently submitted additional documents which included a key part of the MSMS manual for the PoI [REP3-017] and clarification about how risk acceptance by the HASB for the Proposed Development has been based on a tolerability matrix used across the Applicant's ports.

3.3.103. Based on the evidence presented by the Applicant and separately by the HMH, the ExA has no reason to doubt the soundness and effectiveness of the safety processes and management systems applicable to the PoI and across the Humber, which are audited periodically.

3.3.104. The SCNA, as the Humber's SHA and CHA, is responsible for navigational safety for vessels entering the port and approaching or departing berths. The HMH as head of the SCNA has made it clear that his judgements on the proposed safety and risk controls are provisional, based on the NRA and simulation work as reported. The HMH's initial assessment will be subject to further and more rigorous appraisal of the operational limits in the event of the Proposed Development being consented.

3.3.105. The PoI's DM represents a separate and relevant SHA and would liaise closely with the SCNA on navigational safety matters within the port, with the DM's primary focus being on the towage, berthing and mooring of vessels.

3.3.106. The ExA recognises that the independent judgement of the HMH, the Marine Operations Manager for the Humber and the Group Safety Director are each important to the maintenance of suitable safety management systems. On the evidence of the attitude shown by the Applicant through the Examination and the concerns raised by IPs, the ExA considers that the safety culture and risk appetite of the project team itself may be influenced by commercial considerations. However, on the basis of evidence presented, the ExA considers the HMH, as an officer of a statutory body, would not be influenced in that way.

3.3.107. The ExA is content that the Applicant as a corporate entity is the correct body to establish its own risk tolerability standards and that the standards included in the NRA for the Proposed Development would be consistent with those applied across the portfolio of other ports operated by the Applicant.

3.3.108. On the basis of evidence presented by HMH, the Group Safety Director and the Marine Operations Manager for the Humber, each of whom is an experienced mariner, the ExA has no reason to doubt that in considering the Proposed Development each would exercise safety judgements independently from commercial interests, despite the Applicant's line management structure which involves some reporting via the Humber's regional director, who is also the Proposed Development's project sponsor.

3.3.109. However, the ExA agrees with objecting IPs that concerns remained at the end of the Examination as to whether the safety governance overview as exercised by the HASB is sufficiently independent from commercial interests of the Applicant as the owner and operator of the PoI. Furthermore, the DP (a role defined by the PMSC as an independent advisor for the Duty Holder) is currently one of the Applicant's group directors and a member of that HASB. The ExA found the current DP (the Group Safety Director) to be a reliable witness and has no reason to doubt the integrity of that person but considers this 'wearing of two hats' presents the potential for a conflict of interest to arise. The ExA also notes that risk appetite inevitably varies from one entity to another and that the risk appetite in relation to operating a

COMAH site within a port (for example the IOT Operators) will differ from the risk appetite applied port-wide by the Applicant.

Appropriateness of the Applicant's NRA

3.3.110. The PMSC and the GtGP, to which attention was drawn by the MCA in [RR-013], advise how Marine SMSs for ports are to be established, consistent with obligations in international and national law. Whilst not mandatory, the provisions of the PMSC and GtGP are endorsed by the UK Government and all harbour authorities are expected to comply with them [paragraph1 of the Executive Summary in REP1-015]. In particular, the PMSC requires consideration by all organisations, including SHAs, of the need to:

"*Ensure that marine risks are formally assessed and are eliminated or reduced to the lowest possible level, so far as is reasonably practicable, in accordance with good practice*" [item 5 of paragraph 10 in REP1-015].

3.3.111. The GtGP elaborates that:

"…*duties and powers in relation to marine operations in ports should be discharged in accordance with a Safety Management System. That system should be informed by and based upon a formal risk assessment. The aim is to establish a system covering all marine operations in ports which ensures that risks are both tolerable and as low as reasonably practicable."* [paragraph 13.1.3 in REP1-016].

3.3.112. IPs raised a number of objections to the methodology used in the Applicant's, arguing that it mixed guidance from the PMSC and GtGP with that of the MCA's marine guidance note MGN654 (M+F) Annex 1 'Methodology for Assessing Marine Navigational Safety, etc.'. However, the ExA is content with the Applicant's explanation at ISH3 that the GtGP draws on the International Maritime Organisation's (IMO's) guidance for Formal Safety Assessment (FSA) which is also the basis for MGN654, both of which were submitted as annexes to [REP4-008].

3.3.113. At ISH3, DFDS argued that, for the highest rated risks, likelihood and frequency should be defined quantitatively by numerical probability based on historical incident data, in order to remove subjective interpretation [pages 4 to 6 in REP4-025]. The Applicant contended that its mariner stakeholders (including pilots and PEC holders) engage more effectively with a plain words description of risk likelihood and frequency (i.e. "*word pictures*") rather than with mathematical/statistical numbers [pages 14 to16 in REP4-009].

3.3.114. There was disagreement during ISH3 about the Applicant's method of rating risk tolerability and ALARP, although the Applicant and DFDS agreed that judgement about whether a risk is ALARP and tolerable is a matter for the Duty Holder, not the stakeholders. However, DFDS continued to assert that the Applicant has muddled what ALARP rating means in relation to the reduction of an intolerable risk to tolerable level, and DFDS continued to argue the need to involve additional stakeholders in the judgement of "*an appropriate standard of acceptability*" as noted in the PMSC [points 3 and 4 in REP5-042].

3.3.115. The ExA is content that there is no reason to doubt the overall methodology adopted by the Applicant. Importantly, the MCA confirmed its satisfaction with the methodology used, whilst deliberately forming no judgement on the conclusions drawn in the NRA [REP6-005].

3.3.116. The GtGP explains that in identifying and rating hazards:

"*A method which combines an assessment of the likelihood of a hazardous incident and its potential consequences should be used. This is likely to be a matter of judgement best taken by those with professional responsibility for managing the harbour … The frequency of incidents … can be determined using a qualitative scale or on a per-shipping movement basis, or a combination of the two ... any assessment of frequency and consequence is likely to rely to a certain extent upon the judgement of the assessors …*" [paragraphs 4.3.15 to 4.3.17 in REP1-016].

3.3.117. Additional work carried out during the Examination by the Applicant added greater granularity to the NRA. Although the NRA critiques submitted by the IOT Operators and DFDS helpfully highlighted areas of difference of judgement their conclusions and recommendations did not fundamentally cast doubt on the appropriateness of methodology for the Applicant's NRA.

3.3.118. The IMO FSA guidance states that:

"*In applying expert judgment, different experts may be involved in a particular FSA study. It is unlikely that the experts' opinions will always be in agreement. It might even be the case that the experts have strong disagreements on specific issues. Preferably, a good level of agreement should be reached. It is highly recommended to report the level of agreement between the experts in the results of an FSA study…*" [page 119 in REP4-008].

3.3.119. IPs were concerned that the simulations carried out pre-application were based on inaccurate modelling of tidal current. The ExA is content that by the Examination's close the Applicant had adequately assessed tidal current effects on pilotage, having carried out surveys and additional modelling of the Humber's current flow direction and speed to optimise the orientation of the proposed berths in line with the current direction at peak flows.

3.3.120. IPs also objected to the meteorological data used to determine the wind effects applied during the navigation simulations. However, the ExA is content, because of the additional wind conditions tested in the further simulations, that by the Examination's close there had been an adequate assessment of wind effects during berthing/unberthing manoeuvres.

3.3.121. Policy ECO2 of the EIMP requires the risk of release of hazardous substances consequent on increased collision risk to be considered in development proposals. The ExA is content that by the Examination's close this had been adequately addressed in the Applicant's NRA.

3.3.122. During the Examination the ExA enquired as to whether the Applicant had had adequate regard to potential effects for the operation of the adjoining COMAH sites. The ExA is content that the Applicant's NRA has assessed navigational hazard consequences for people and property and has put forward proposed controls to reduce the risk to tolerable levels, from the perspective of navigation. However, potential consequences to people and property for the COMAH sites would need to be addressed by the operators of those sites rather than the Applicant.

3.3.123. Following the submission of the Applicant's additional evidence, including further berthing simulations, the SNIR and deliberations by the HASB, the ExA is content that the Applicant has appropriately assessed the Proposed Development's marine navigational risks. That is because the HASB, as the Duty Holder, has considered appropriate advice in concluding that all risks assessed can be mitigated to a tolerable (acceptable) residual level, subject to the identified risk controls being applied.

3.3.124. The ExA therefore finds that by the end of the Examination an appropriately comprehensive NRA had been carried out by the Applicant.

Compliance with the Environmental Impact Assessment Regulations

3.3.125. As explained above, objecting IPs considered that the Applicant's pre-application navigational simulations had been inadequate. At the request of the ExA, further simulations were run, applying challenging current and wind conditions close to and above those that the HMH expected would limit the operation of the proposed berths.

3.3.126. At ISH2 the Applicant robustly refuted DFDS' criticisms of the berthing simulations and defended the value of those which had been classed as *"aborted"* or *"failed"*. The Applicant explained that the aborted and failed simulations were by their nature intended to explore the Proposed Development's limits [REP1-009] and [REP1-013].

3.3.127. The Applicant responded to sustained DFDS criticism of the simulated vessels stating "… *the berths are not designed for a single vessel. The Applicant has identified a key design parameter (size) of a likely vessel and has conducted simulations with vessels that may represent this*" [point NS.1.19 in REP3-016].

3.3.128. The Applicant and the HMH have separately concluded from the simulations carried out that the proposed berths could be operated safely, subject to a set of pilotage controls that would be published by the SCNA and the PoI's SHA, together with 'soft start' training and adaptation using simulation and then on-the-water practice for pilots and PEC holders.

3.3.129. Most of the simulations have been carried out using a model for the Stena T class vessel that is already being used by Stena Line on the Humber. Some simulations have been carried out using a model for the larger 'Jinling' class of Ro-Ro vessel operated by DFDS at the nearby Immingham Outer Harbour (IOH). The Jinling class is closer in dimensions to the maximum DV used for assessing the Proposed

Development in the ES. The Jinling is considered by the Applicant and other IPs to be a highly manoeuvrable vessel, with its simulation model having been used during the development of the IOH.

3.3.130. However, use of the Jinling vessel type is not being considered for the Proposed Development and its displacement is substantially less than that of the maximum DV. As a closer proxy for the displacement of the DV, a model of the G9 class vessel used by CLdN at the PoK was used for one of the early simulations. However, the G9 does not have the manoeuvrability and propulsion characteristics required of the DV and was therefore considered by the Applicant and IPs to be unsatisfactory for simulating berthing at the Proposed Development, although its model was used in December 2023 for the *"dead ship"* (loss of power) simulations.

3.3.131. Based on all the simulation work undertaken to date, the ExA is content that, at the very least, the Stena T class vessel could be safely berthed/unberthed at the Proposed Development; and secondly the Jinling vessel simulations have demonstrated that a vessel of its handling characteristics would be likely to be acceptable.

3.3.132. At ISH5 the IOT Operators argued that the ES should have assessed effects at the extreme of the Rochdale Envelope for the Application, while the simulations had used a vessel with a significantly smaller displacement and windage than the DV. The IOT Operators highlighted that a larger displacement vessel at the extreme of the Application's Rochdale Envelope would have 100% more kinetic energy in an impact for the same velocity as the simulated smaller displacement Stena T class vessel [paragraph 1.6 in REP7-070].

3.3.133. At ISH5 the Applicant responded that a vessel with the dimensions, manoeuvrability and power characteristics of the maximum DV does not yet exist and that it would be misleading to adapt an existing simulation model, such as the G9 class, because the G9 has significantly different handling characteristics compared with what would be needed at the Proposed Development. The recent simulations had therefore used the Stena T class as a familiar vessel that would be operated at the Proposed Development for the foreseeable future, with further simulations to be undertaken with a larger vessel to establish necessary risk controls once it has been specified and designed, as would be normal in a port safety assessment [items 29 and 30 in REP7-020].

3.3.134. The IOT Operators submitted that the vessel type permissible should be restricted by a requirement in the DCO, particularly because of the unique set of hazards applying in this instance [paragraphs 1.11 and 1.12 in REP7-070].

3.3.135. The IOT Operators subsequently developed their argument that a failure to demonstrate that the DV could be accommodated safely meant that the Applicant's Environmental Impact Assessment was incomplete and that such an assessment may not lawfully be deferred to a later date [paragraphs 57 to 61 in REP7-069]. The IOT Operators contend a DCO should not be made unless "…*a condition is imposed limiting use of the berths only to vessels no larger than the Stena Class T or Jinling ferries modelled in the NRA*…" [paragraph 62 in REP7-069].

3.3.136. CLdN provided in a post-hearing note the principal characteristics of the vessels operated at the PoK, namely the G9 class which has a displacement of 51,235 tonnes and 8.11 metre draught, and the 'H5' class which has a displacement of 35,690 tonnes and 8.2 metres draught. The Jinling class, by contrast has a displacement of 37,000 tonnes and 7.4 metre draught [Appendix 2 of REP7-040] while the Stena T class vessel has 6.3 metre draught and 23,400 tonne displacement answer to NS.4.02 in [REP8-020]. A more detailed description of the characteristics of Stena's T class vessels was provided in [Appendix 1 of REP7-020].

3.3.137. The ExA agrees with the objecting IPs that the Applicant's NRA to date has not yet definitely demonstrated that a vessel of the proposed dimensions of the maximum DV could be operated safely at the Proposed Development. However, the ExA does not accept that means it would be unlawful for a DCO to be made, as argued by the IOT Operators [section 5 in AS-091]. That is because the ES has paid regard to the siting of the proposed berths relative to existing port infrastructure and the maximum physical dimensions of the proposed DV, albeit that the propulsion and manoeuvrability characteristics for that DV are currently unknown. In that regard, the ExA considers it important to note that consent is sought for the siting and dimensions of the proposed berths rather than for the vessels that would use those berths. It would only be possible to ascertain that the Proposed Development could be used safely by the maximum DV (the largest vessel it has been designed to accommodate) when that DV has been fully specified and designed.

3.3.138. Importantly, the HMH has raised no objections to the use of the Proposed Development and considers the proposed berths could be operated safely. The HMH has, however, made it clear that the SCNA might restrict the types of vessel authorised to use the proposed berths, in the interests of navigational safety. Decisions about imposing such restrictions would be made by the HMH, acting for the SCNA, disregarding commercial considerations: The HMH confirmed that "*It is the SCNA that has statutory powers – through Parliament – to regulate for, and maintain, the safety of vessels using the Humber*" [paragraph 13 in REP5-039] and "*Were there to be any conflict between commercial expediency and safety, he (HMH) would always put safety first*" [paragraph 9 in REP5-040].

3.3.139. The Applicant has cited the Court of Appeal's judgement for Gateshead Metropolitan Borough Council v Secretary of State for the Environment [1994] (the 'Gateshead' judgement) which concerned the interplay between planning permissions and authorisations under other legislation for a waste incinerator [section 4 in AS-083]. The IOT Operators sought to rebut those submissions on the basis that there were unknowns about the Proposed Development's acceptability that should not be left to a regulator to resolve following the making of the DCO that has been sought [sections 5 and 6 in AS-091].

3.3.140. Responding to additional questions asked by the ExA about the December 2023 simulations [PD-030], the HMH advised that the results of those simulations:

"…*highlight to HMH that these conditions (a combination of peak ebb tide and strong North-westerly winds) are likely to be the main focus when carrying out more detailed work ahead of permitting a particular vessel to use a particular berth once the DCO is made, which would also consider other controls when assessing a vessel and applying operating conditions and may prohibit berthing in certain conditions*" [REP10-024].

3.3.141. The ExA is therefore content that the HMH would be able to prohibit the use of the Proposed Development by vessels of the DV's dimensions, until it had been demonstrated to the HMH for the SCNA that the proposed berths could safely be used by such vessels.

3.3.142. For reasons given above, the ExA is persuaded that it would be reasonable for the assessment of the Proposed Development's ability to accommodate safely vessels of the DV's dimensions to be completed by the SCNA and the PoI's SHA subsequent to the making of a DCO, and that this would be consistent with the Gateshead judgement.

Control of risk of allision with existing port infrastructure

3.3.143. Paragraphs 4.10.3 and 4.10.4 of the NPSfP require the decision-maker to be satisfied that applicants have adequately considered functionality in their designs, including both fitness for purpose and sustainability in relation to operational, safety and security requirements.

3.3.144. Policy PS3 of the EIMP requires proposals, if they would interfere with existing port operations, to demonstrate how such interference would be minimised or mitigated, or to make the case for proceeding if it would not be possible to mitigate the interference.

3.3.145. Risk is inherent in maritime port operations and has to be managed by safety management systems which require identified unavoidable risks to be accepted as tolerable by the risk owner and mitigated (controlled) to ALARP.

3.3.146. The IMO FSA guidance advises that:

"*Risk is to be reduced to a level as low as is reasonably practicable. The term reasonable is interpreted to mean cost-effective. Risk reduction measures should be technically practicable and the associated costs should not be disproportionate to the benefits gained. This is examined in a cost-effectiveness analysis*" [paragraph 4.1.3 of Annex to REP4-008].

3.3.147. The PMSC states that:

"*Risks should be judged against objective criteria, without being influenced by the financial position of the authority, to ensure they are reduced to the lowest possible level, so far as is reasonably practicable (that is such risks must be kept as low as reasonably practicable or 'ALARP'). The greater the risk, the more likely it is that it is reasonable to go to the expense, trouble and invention to reduce it*." [paragraphs 2.7 and 2.8 of REP1-015].

3.3.148. The GtGP explains the non-negotiability of reducing risks identified as intolerable to a tolerable level:

"*Measures must be taken to eliminate these so far as is practicable. This generally requires whatever is technically possible in the light of current knowledge, which the person concerned had or ought to have had at the time. The cost, time and trouble involved are not to be taken into account in deciding what measures are possible to eliminate intolerable risk …The application of environmental consequences to the safety management system (and appropriate risk control measures) is essential."* [paragraphs 4.3.25 and 4.3.26 of REP1-016].

3.3.149. The GtGP also clarifies that:

"*The degree of risk in a particular activity or environment can, however, be balanced on the following terms against the time, trouble, cost and physical difficulty of taking measures that avoid the risk. If these are so disproportionate to the risk that it would be unreasonable for the people concerned to incur them, they are not obliged to do so. The greater the risk, the more likely it is that it is reasonable to go to very substantial expense, trouble and invention to reduce it..."* [paragraph 4.3.24 of REP1-016].

3.3.150. Risk of allision (accidental impact of vessels with existing infrastructure, moored vessels, or other objects) was a contentious matter during the Examination. The hazards identified concern both Ro-Ro vessels arriving at or departing from the proposed berths or other vessels arriving at or departing from the same part of the PoI.

3.3.151. The ExA is content with the Applicant's case that the risks of Ro-Ro vessels arriving at or departing from the proposed berths alliding with vessels moored at the adjacent Eastern Jetty could be mitigated to tolerable and ALARP levels by means of adaptive operational controls, regulated by the SCNA and the PoI's SHA.

3.3.152. The fundamental disagreement between the Applicant and other IPs was about what degree of control for allision risk with the IOT's infrastructure would be 'reasonably practicable' and how that could be secured in any made DCO.

3.3.153. The ExA finds that the risk of allision for coastal tankers with the western end of the IOT's finger pier would be increased because of the spatial constraints on pilotage arising from the proximity of the proposed piers and pontoons to the IOT. That effect would be exacerbated by the presence of a moored vessel at proposed Berth 1.

3.3.154. That finding is based on the Applicant's NRA and submission in response to ExQ1 [Figure 1 in Appendix 2 of REP2-009] and multiple submissions from the IOT Operators including their NRA critique [Figures 30 to 31 in REP2-064].

3.3.155. It is clear from the surveyed AIS tracks that vessels normally take a swept path in the final approach to the finger pier's Berth 8 to adjust to both current and wind. The Applicant's evidence is the crosswind is predominantly south-westerly (blowing

vessels onto Berth 8), with wind strength between 20 and 30 knots for 3.9% of the year [Figure 2 and Table 1 in APP-089].

3.3.156. The proximity of proposed Berth 1 to the western end of the IOT's finger pier would substantially constrain how tankers could approach Berth 8 [Figures 26 to 29 in REP2-064]. Towards the end of the Examination the Applicant's additional simulations demonstrated the challenging nature (even with tug assistance) of avoiding 'hard contact' (allision) with the finger pier while berthing in moderately strong south-westerly winds [Figures 17, 22 and 23 in REP8-029].

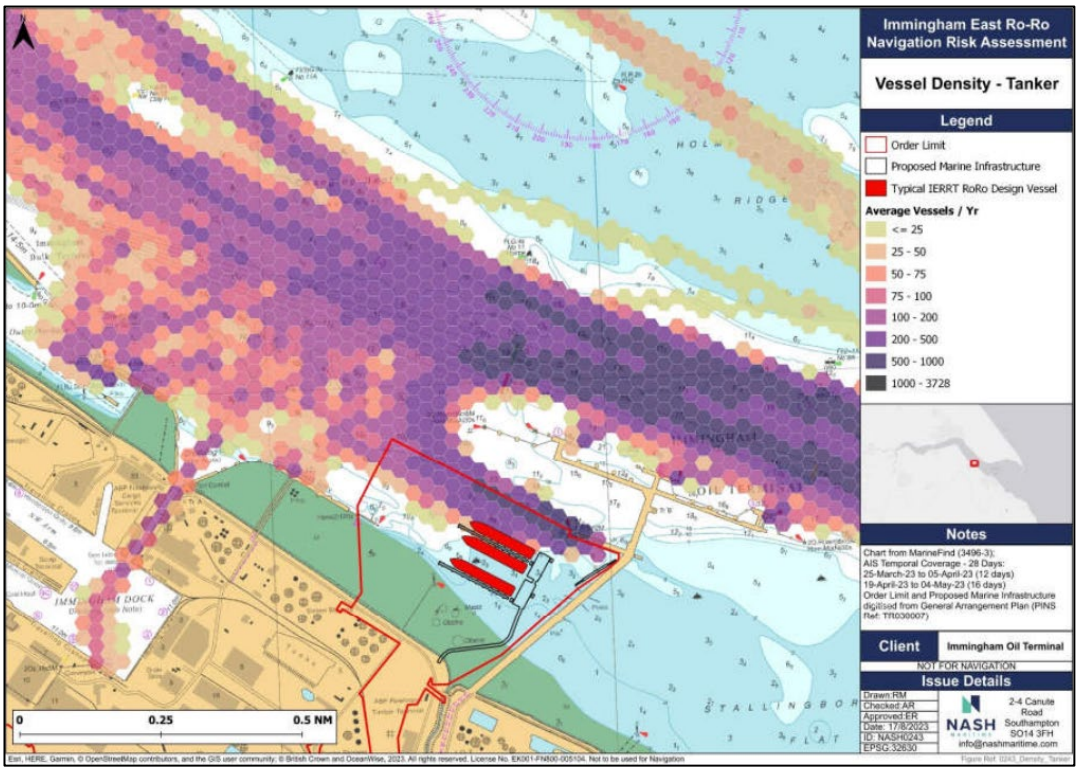

Figure 7: Analysis of tanker movements at the IOT [Figure 25 in REP2-064] submitted by the IOT Operators

3.3.157. The simulations also show the challenge of preventing allision of a coastal tanker with a Ro-Ro vessel at proposed berth 1 in a moderately strong north-westerly wind of about 25 knots, using one tug pushing and one tug pulling [Figure 16a in REP8-029].

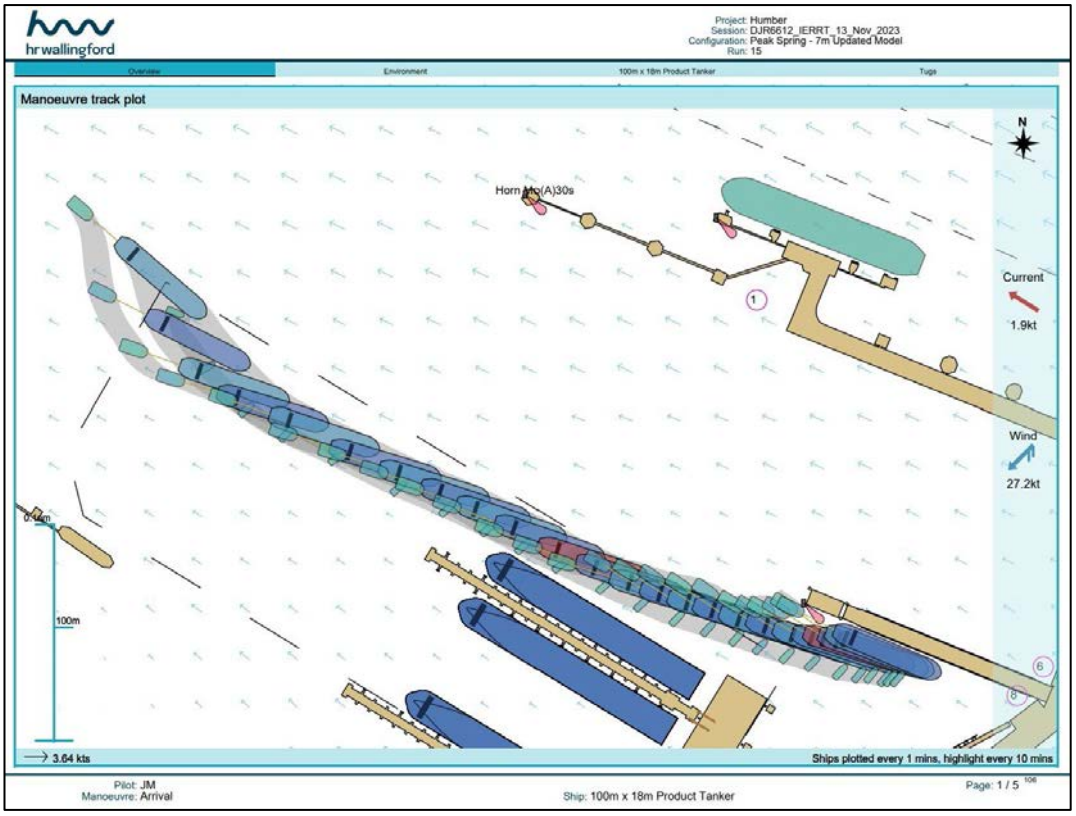

Figure 8: Coastal tanker berthing simulation Run 15 in challenging conditions, tug-assisted [AS-071]

3.3.158. The ExA also accepts the argument made by the IOT Operators during the Examination that manoeuvring could also be affected by gusting or increased force crosswinds from the south-west as tankers emerge from the *"wind shadow"* of a larger berthed Ro-Ro vessel.

3.3.159. The Energy Act 2023 and paragraph 3.6.7 of the Overarching National Policy Statement for Energy (EN-1) (NPSEN1) address the safety and security of oil products supplies and are important and relevant considerations. The ExA considers from the evidence presented that the Applicant's cost-benefit analysis paid insufficient regard to the consequences to the IOT Operators of allision hazard occurrence and to the difference in their risk appetite due to responsibilities for running a COMAH site of critical national importance to energy security.

3.3.160. The IOT Operators had initially sought the IOT finger pier's relocation to avoid the risk of allision. The Applicant rejected that on the grounds of it not being reasonably practicable and it amounting to *"betterment"* for the IOT Operators. During the course of ISH3 the Applicant agreed, on a without prejudice basis, to add IPM for the IOT's finger pier. The finger pier's relocation was not pursued further by the IOT Operators. However, their cases for adequate IPM and mitigation for the interference with their operations were summarised at D9 [REP9-028].

3.3.161. The ExA agrees with the IOT Operators that the most likely consequences of allision with the IOT's infrastructure (or a vessel moored there) would, at least, incur major inconvenience to the IOT's fuel handling operations, due to the suspension of

operations while an incident was investigated, and any damage was surveyed. The worst credible consequences, including potential pollution spill and/or collateral damage to the main IOT trunkway, would be catastrophic for the environment, for reputation, for property and potentially for human safety. Policy ECO2 of the EIMP requires the Applicant to take into account risk of release of hazardous substances as potential secondary effects of accidental damage and the ExA notes that the SHA has in place a contingency plan for emergency pollution response [Appendix 2 of REP4-008].

3.3.162. Despite the HMH's view that the installation of IPM may not be warranted until demonstrated by progressive testing and operational experience, the ExA considers that a precautionary approach should be applied, requiring the installation of IPM for the IOT's finger pier prior to the first use of the proposed berths.

3.3.163. Given the increased risk of allision with the IOT's infrastructure arising from the proximity of the proposed berths (95 meters at its closest point), the ExA considers that in order to demonstrate risk control to ALARP it would be reasonably practicable to construct Work No. 3(b), the 'dolphin' IPM at the western end of the IOT's finger pier as included in the Applicant's change request, prior to the first use of the proposed Berth 1 and that would provide mitigation for the increased risk of allision of a coastal tanker with the IOT's finger pier and is justified irrespective of the separate risk of allision of a Ro-Ro vessel with IOT's finger pier or moored vessels.

3.3.164. The ExA considers Work No. 3(b), secured by an amended requirement in the ExA's recommended DCO (rDCO), should be constructed prior to the first use of Berth 1 as addressed in the DCO chapter below, rather than prior to the commencement of the construction works for the proposed berths. That is because during the construction and overlapping construction and operational phases for the Proposed Development, the additional risk of allision could be mitigated by temporarily increased operational restrictions on coastal tanker movements.

3.3.165. The ExA does not accept the Applicant's argument that a dolphin IPM at the end of the IOT's finger pier would be betterment for the IOT Operators. That is because the presence of the proposed berths would inconvenience IOT's operations and the dolphin's installation, of itself, would simply provide mitigation for the risk resulting from the proposed berths' presence.

3.3.166. The ExA accepts the Applicant's argument that the likelihood of allision between Ro-Ro vessels and the IOT's trunkway would be much less than the risk of allision with the finger pier, although the consequences could be more severe. The Applicant and Stena Line contended that a 'dead ship' would be arrested prior to reaching the IOT's trunkway by any combination of tug assistance and/or anchor drop and/or allision with the IOT's finger pier IPM or with the proposed berths and/or a moored vessel. The ExA is persuaded by Stena Line's submission [e-page 83 in REP7-020] that it would be a "*completely remote*" possibility for a Ro-Ro vessel to first lose all primary and reserve power systems and controls, then subsequently fail to be arrested in its drift down current as a *"dead ship"*, and finally to drift

uncontrolled further downstream through the gap between the IOT's finger pier and proposed Berth 1 to allide with the trunkway about 150 metres downstream.

3.3.167. Simulations carried out by the Applicant near the end of the Examination demonstrated that a dead ship of 50,600 tones displacement in a peak spring ebb tide could be controlled by tug support before passing through that gap between proposed berth 1 and IOT berth 8.

3.3.168. The ExA also accepts the Applicant's argument that the potential for a 'dead ship' (not under control) drifting down current to allide with the IOT's trunkway is a hazard that exists prior to the Proposed Development, and that the proposed berths would serve to arrest drifting vessels before they could reach the trunkway.

3.3.169. The ExA therefore concludes that it is reasonable for the requirement for the installation of the IPM for the IOT's trunkway (Work No. 3(a)) to be left as a matter for consideration by the SHAs following the commencement of the use of the proposed berths and the further testing of operational controls including tug assistance.

3.3.170. The ExA acknowledges the disagreement between CLdN and the Applicant as to whether the Proposed Development would be sustainable having regards to its design, layout and impacts for navigation. However, subject to the mitigation discussed above, the ExA considers the Proposed Development would be functionally acceptable for the purposes of paragraph 3.3.3 of the NPSfP.

Security for navigational risk controls

3.3.171. The ExA has considered concerns of IPs that the risk controls proposed by the Applicant would not be adequately secured via the dDCO.

3.3.172. For the reasons discussed above, the ExA recognises that the mitigation for navigational risks to a level tolerable to the Applicant under the PMSC would rely on adaptive controls to be determined progressively, which may include restrictions on whether or when certain vessels could be operated. Those controls would be established following further navigational risk assessment involving the HMH and the PoI's DM.

3.3.173. The ExA accepts the Applicant's view that navigational and mooring risk controls for construction vessels, plant and equipment would be subject to the provisions of the Offshore Construction and Environmental Management Plan (Offshore CEMP) that would be secured via the Deemed Marine Licence in any made DCO.

3.3.174. The ExA agrees with the Applicant's case that, under the 'Gateshead' judgement (referenced in the Recommendation subsection above), imposition of adaptive operational controls to reduce residual navigational risks to ALARP could reasonably be left to post consent approval by the SCNA under its protective provisions in any made dDCO.

3.3.175. The HMH explained clearly why the SCNA is not empowered to require the Applicant to carry out any physical works. A made DCO could not require the SCNA

to do anything other than determine and recommend to the Applicant that protective safety works should be provided. The HMH's separation of functions note cites case law to explain why it would not be:

"…appropriate in law to approach the DCO on the basis that it needs to cater for ABP (as port authority or conservancy) acting ultra vires. It must be assumed that ABP will give proper consideration to any recommendation received from the SCNA and that it will not unreasonably refuse to implement the works"
[paragraphs 45 to 49 in REP7-066].

3.3.176. The HMH re-confirmed his strong recommendation that operational navigational risk controls should not be a matter for the DCO "*given that Parliament has already determined where the statutory powers to make these operational decisions should lie*" [paragraph 3.4 in REP7A-002].

3.3.177. The ExA recognises that the HMH has given conditional support to the navigational risk controls on which the Applicant is relying for a judgement of acceptability of risk, and that this conditionality is necessary at the planning stage of the Proposed Development. Additional testing and progressive adaptation of operational procedures for defined vessels would need to be carried out to achieve the SCNA's acceptance.

3.3.178. The ExA accepts the Applicant's argument that such development and testing of increasingly larger vessels and their operability is a normal port management process and that the regulation of vessel use should be left to the SHA as appropriate statutory authority. A practice that has recently been followed when DFDS' use of Jinling vessels was introduced to the PoI's IOH.

PORT CAPACITY INCLUDING PILOT AND TUG AVAILABILITY

3.3.179. This subsection concerns the capacity of the Humber and the PoI to accommodate the shipping movements that would be generated by the Proposed Development, including implications for vessel waiting areas, the availability of pilots and tugs and the operation of the PoI's lock.

3.3.180. Paragraphs 4.4.1 and 4.4.3 of the NPSfP indicate that decision-makers may need to make judgements as to whether developments would give rise to adverse impacts for other commercial operators and how any such adverse impacts would be mitigated.

3.3.181. Section 69(1)(c) of the MACAA 2009 provides for marine licence decisions to "*have regard to the need to prevent interference with legitimate uses of the sea*".
Policy PS3 of the EIMP requires development proposals to demonstrate how they would minimise or mitigate any interference with *"current activity"* of ports, or if that is not possible, the case for proceeding.

3.3.182. The HMH explained how vessels arriving at the PoI are managed by VTS, including using dedicated water space for 'stemming' the current preparatory to final berthing

manoeuvres or entering the lock, and submitted a diagram [REP4-029] illustrating those zones.

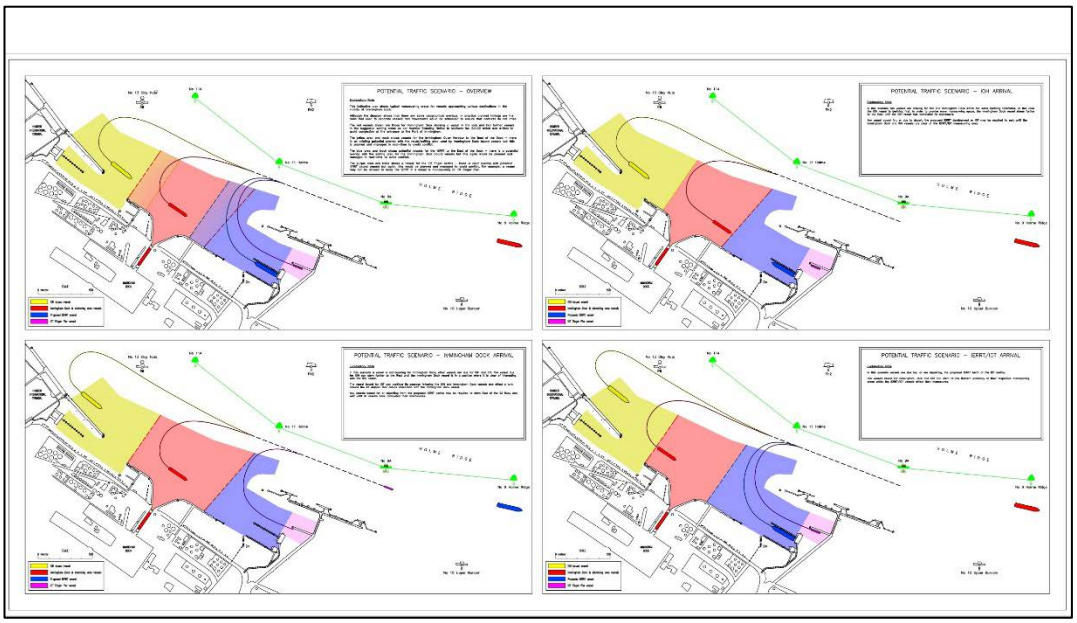

Figure 9: Stemming zones for vessels waiting to berth or enter the lock at the PoI submitted by the Harbour Master Humber in [REP4-029]

3.3.183. The HMH advised that because the number of shipping movements being managed by the Humber VTS is now significantly less than a decade ago, there would be adequate capacity to handle the movements in and out of the PoI generated by the Proposed Development. The HMH also advised that a sufficient number of pilots would be available to avoid congestion arising in anything other than the most extreme weather conditions.

3.3.184. Following ISH5 the Applicant produced a spatial analysis of traffic movements to and from the PoI throughout a day with challenging wind and tide conditions [REP7-031] and [REP7-032]. In answering ExQ3 the Applicant confirmed that the ES had taken account of the proposed applied operational navigational controls and that applying those controls would not cause congestion within the PoI or in the Humber estuary [response to BGC.3.03 in REP7-022].

3.3.185. The Applicant also submitted statements from both companies operating marine towage services at the PoI confirming their readiness to procure and deploy additional tugs to meet additional demand associated with the Proposed Development that, if necessary, would involve chartering or transferring tugs from other ports in the short to medium term. Tug availability shortages arising from the operation of the Proposed Development are not expected [Appendix 5 in REP4-008] and [Appendix 2 in REP7-020].

3.3.186. In responding to ExQ3, HMH provided details about the availability of PECs, pilots and tugs [item NS.3.04 in REP7-065].

3.3.187. Based on the evidence presented, the ExA is content that congestion or interference to the operations of other scheduled services would be unlikely because:

- Capacity of the river approaches to the PoI could be appropriately managed by HES to avoid interference to the operations of other port users in anything other than exceptional weather conditions affecting tidally constrained vessel operations.

- The current volume of shipping movements being handled by HES is less than was historically the case and the additional maximum of six Ro-Ro vessel movements per day generated by the Proposed Development would lie within a normal capacity range for the VTS and pilotage services.

- Towage services providers have confirmed ability to respond to increased demand with supply of additional vessels within the timeframes of new services being introduced at the Proposed Development.

3.3.188. The ExA therefore finds that the Application would comply with policy PS3 of the EIMP because it would not unacceptably interfere with the use of the Humber or the PoI by other port users.

IMPLICATIONS OF CHANGES TO BATHYMETRY ON SHIPPING MOVEMENTS

3.3.189. The IAPI subsection 'Implications of changes to bathymetry on movement of shipping' was only considered in the Examination in respect of any changes to current flow arising from the presence of the proposed jetty, pontoon and pier structures and any consequential effects for vessel manoeuvrability.

3.3.190. The Applicant submitted additional flow modelling data during the Examination. By the Examination's close this matter was sufficiently resolved to be immaterial to the Application's determination.

CONCLUSIONS

3.3.191. The siting of the proposed Ro-Ro berths relative to existing jetties handling fuel oils and other bulk liquids which form parts of COMAH sites would be without precedent in the UK, as explained above. Proposed Berth 1, for example, would be sited in a fast-flowing part of the Humber around 95 metres from the IOT's finger pier. The Applicant, other IPs and the HMH agree that berthing and unberthing manoeuvres for the proposed berths in the PoI would be challenging when current speed is high and wind speed is high or gusting from certain directions.

3.3.192. The Applicant has undertaken numerous simulations for navigational conditions close to and above those expected by the HMH to be the operational limits for the proposed berths. Opportunities for stakeholder engagement in the early simulation exercises appears to have been unsatisfactory. However, additional simulations were undertaken during the Examination with an increased effort to engage stakeholders.

3.3.193. The navigational risks identified by the Applicant's NRA have been accepted as tolerable by ABP's HASB as the 'Duty Holder' under the port marine safety system, subject to the application of adaptive risk controls. Those controls would be applied under the statutory powers exercised by the HMH on behalf of the SCNA and/or the DM on behalf of the PoI's SHA. That would include determining what vessels could use the proposed berths, under what restrictions including requirements for tug assistance in specified conditions. The ExA, on the basis of the evidence put to it, is content that the SHAs and CHA for Humber pilotage would be able to exercise their statutory duties in the interests of navigational safety without there being any unacceptable conflict with the Applicant's commercial interests as a port operator.

3.3.194. The ExA is content that the Applicant has demonstrated through simulations with broad stakeholder contentment that the 'Stena T' class vessel, as currently operated by Stena Line at the PoI, could safely use the proposed berths. The simulations for the 'Jinling' class vessel have also demonstrated that vessels of its size and handling characteristics would also have the capability of being operated safely at the proposed berths, subject to a set of pilotage controls being formulated and tested through 'soft start' training and adaptation for marine pilots and PEC holders.

3.3.195. The ExA agrees with the objecting IPs that the Applicant has not yet demonstrated that a vessel of the DV's dimensions could safely use the proposed berths. However, for the reasons given above, the ExA does not accept that would preclude a DCO being made. That is because the Gateshead judgement establishes that it is permissible for a statutory regulator raising no objections at the planning stage, such as the SCNA, to issue an authorisation following the granting of a permission/consent. With regard to this DCO application, that might involve a DCO being made and the SCNA subsequently authorising the use of the DV once it had established how that could be done safely.

3.3.196. Given that context, the ExA is content that by the Examination's close an adequate NRA had been submitted, with the MCA raising no concerns in that regard. The ExA therefore considers that the policy requirements of the NPSfP, NPSEN-1 and the EIMP have been met.

3.3.197. For the reasons given above, the ExA is concerned that the proximity of the proposed berths to the IoT's finger pier could adversely affect the passage of tankers to and from that pier. That in turn could increase the risk of tankers alliding with the finger pier, resulting in interference to the operation of the IoT. The IoT is a facility of importance to the UK's energy security, and it is now subject to the provisions of Part 12 of the Energy Act 2023 (Core Fuel Sector Resilience).

3.3.198. The ExA is, therefore, firmly of the view that there is a need for the dolphin IPM, proposed Work No. 3(b), to be installed at the finger pier's western end prior to the first use of proposed Berth 1. The ExA therefore recommends the timing for the dolphin's installation should be secured via a requirement included in any made DCO. The wording for that requirement appears as Requirement 19 in the ExA's rDCO.

3.3.199. As explained above, the ExA considers that the risk of a vessel alliding with the IoT's pipeline trunkway would be lower than an allision with the finger pier. Accordingly, the ExA considers the need to install IPM for the IoT's trunkway (proposed Work No. 3(a)) is less apparent when compared with the need to protect the finger pier. While the need to protect the trunkway cannot be ruled out, the ExA considers it appropriate for the decision making concerning its installation to be left to a review process following the making of any made DCO. The Applicant has proposed that be secured under the provisions of Requirement 18 of the dDCO. The Requirement 18's wording is something that has been addressed in Chapter 7 below.

3.3.200. For all the reasons given above, the ExA concludes that subject to mitigation secured in any made DCO and to the powers available to SCNA and PoI's SHA, the Proposed Development would be acceptable in shipping and navigation terms. That conditionality includes a requirement for the construction of IPM for the IOT's finger pier prior to proposed Berth 1's first use. In that regard the ExA considers the Proposed Development would accord with the provisions of section 4.4 of the NPSfP, most particularly paragraphs 4.4.1 and 4.4.3. With the mitigation discussed above and secured in the rDCO, the ExA also considers the Proposed Development would be of a functionally acceptable design and in that regard would accord with paragraph 3.3.3 of the NPSfP.

3.3.201. With the provision of the identified mitigation, the ExA considers there would be no conflict with NPS EN-1. The ExA also finds that the Proposed Development would comply with policy PS3 of the EIMP because it would not interfere to an unacceptable degree with the use of the Humber or the PoI by other users.

3.3.202. Subject to the mitigation discussed above, the ExA therefore attributes little negative weight against the making of a DCO to the Proposed Development's residual adverse navigation and shipping effects. The ExA further considers that after mitigation there would be limited potential interference for other users of the PoI and the Humber, which neither weighs for or against the making of a DCO.

3.4. MARINE ECOLOGY, BIODIVERSITY AND NATURAL ENVIRONMENT

INTRODUCTION

3.4.1. This section considers the effects of the Proposed Development on marine ecology, biodiversity and the natural environment. It includes effects on protected species and consideration of sites of national, regional and local interest. The effects on European sites in the context of the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) are considered in detail in Chapter 4 and Appendix C of this Recommendation; however, there are some linkages with the content of this section.

3.4.2. The Habitats Regulations process follows a three-stage approach:

- Stage 1: Screening for Likely Significant Effects (LSE)

- Stage 2: Appropriate Assessment (AA)
- Stage 3: Test 1 - Assessment of Alternatives
- Stage 3: Test 2 - Consideration of Imperative Reasons of Overriding Public Interest (IROPI)
- Stage 3: Test 3 - Compensation

POLICY BACKGROUND

3.4.3. The NPSfP sets out at paragraph 3.3.3 that new port infrastructure should, amongst other things, provide high standards of protection for the natural environment. Section 5.1 sets out the approach to biodiversity and geological conservation. Paragraphs 5.1.8 and 5.1.9 state that development should aim to avoid significant harm to biodiversity and geological conservation interests, including through mitigation and consideration of reasonable alternatives. Decision-makers should also ensure that appropriate weight is attached to designated sites of international, national and local importance.

3.4.4. As highlighted in paragraphs 5.1.4 and 5.1.5, where the development is subject to an EIA, the Applicant should ensure its ES clearly sets out any effects on internationally, nationally and locally designated sites of ecological or geological conservation importance, on protected species and on habitats and other species identified as being of principal importance for the conservation of biodiversity. The Applicant should show how the project has taken advantage of opportunities to conserve and enhance biodiversity and geological conservation interests.

3.4.5. The MPS commits to completing a coherent network of Marine Protected Areas (MPA) and at paragraph 3.1.7 states that:

"…decision makers should take account of how developments will impact on the aim to halt biodiversity loss and the legal obligations relating to all MPAs, their conservation objectives, and their management arrangements."

3.4.6. Paragraph 3.1.8 goes on to state:

"…decision-makers should take account of the regime for MPAs and comply with obligations imposed in respect of them. This includes the obligation to ensure that the exercise of certain functions contribute to, or at least do not hinder, the achievement of the objectives of a Marine Conservation Zone. This would also include the obligations in relevant legislation relating to SSSIs and sites designated under the Wild Birds and Habitats Directives."

3.4.7. Relevant policies contained in the EIMP relating to nature conservation and marine ecology include Policies ECO1, BIO1, BIO2 and MPA1.

3.4.8. Policy 41 of the North East Lincolnshire Local Plan (2018) sets out the Council's biodiversity and geodiversity objectives. Policy 41 states that any development which would, either individually or cumulatively, result in significant harm to biodiversity which cannot be avoided, adequately mitigated or compensated for, will be refused.

THE APPLICATION

3.4.9. Chapter 9 of the ES [APP-045] provides an assessment of any potentially significant effects of the Proposed Development on nature conservation and marine ecology and identifies proposed mitigation measures. The study area for the ES is the area over which the Proposed Development's potential direct and indirect effects are predicted to occur during construction and operation. The assessment therefore focuses on the PoI and the proposed disposal sites for dredged material, with consideration of the wider Humber Estuary for any indirect effects.

BASELINE

3.4.10. The assessment is informed by marine ecological data collected for the Humber Estuary for over 20 years. Baseline conditions were determined by a desk-based review of available information. A benthic ecology survey specific to the Application site [APP-087] was also undertaken to characterise the seabed habitats and species in the proposed dredging and disposal sites.

3.4.11. The assessment considered a total of 20 impact pathways during the Proposed Development's construction and operational phases, including the direct loss of habitat, direct and indirect changes to habitats and species, changes in water and sediment quality, the potential introduction and spread of non-native species, underwater noise and vibration, airborne noise and visual disturbance.

3.4.12. The Humber Estuary is designated as a SAC under the Habitats Directive (the SAC), a SPA under the Birds Directive (the SPA) and a Ramsar site due to the presence of internationally important wetlands. The Proposed Development's marine elements are therefore within the designated sites. The Habitats Regulations are therefore engaged and the Applicant submitted a Habitat Regulations Assessment (HRA) report with the Application [APP-115].

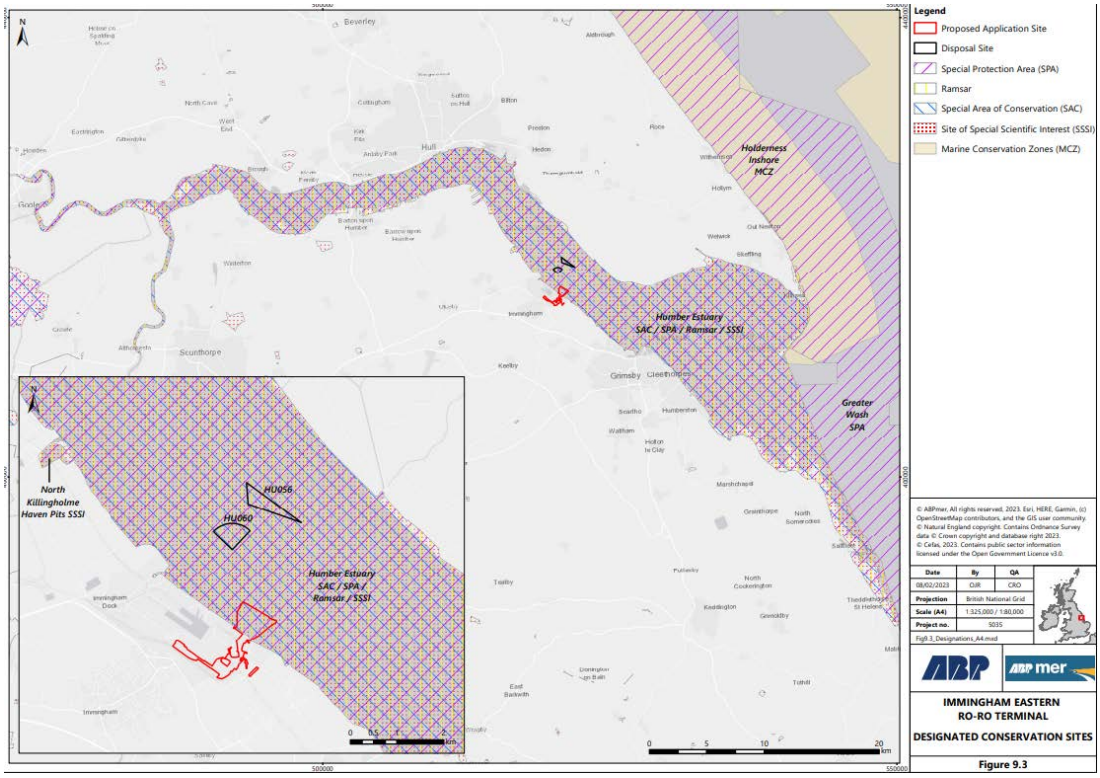

Figure 10: Nature conservation sites [Figure 9.3 in APP-065]

3.4.13. The primary reason for the SAC's designation is the presence of two broad scale habitats: *"1130 Estuaries"*; and *"1140 Mudflats and sandflats not covered by seawater at low tide"*. Those habitats support a range of more specific habitats, which are qualifying features but not a primary reason for the SAC's designation. In addition, there are three mobile species included in the SAC's designation: *"1095 Sea lamprey"*; *"1099 River lamprey"*; and *"1364 Grey seal"*.

3.4.14. Qualifying features of the SPA and Ramsar site are set out in Tables 9.8 and 9.9 respectively in Chapter 9 of the ES [APP-045].

3.4.15. The Greater Wash SPA is located some 20 kilometres (km) south east of the Application site. It has been designated for the presence of a range of seabird and diving bird species.

3.4.16. The North Killingholme Haven Pits Site of Special Scientific Interest (SSSI) is located some 5km north west of the application site. The ES concludes the Proposed Development would have no direct effects on that SSSI and any indirect effects are expected to be negligible. The Lagoons SSSI is some 20km east of the site, on the northern side of the Humber Estuary. The ES concludes there will be no direct or indirect effects on that SSSI.

3.4.17. The Holderness Inshore Marine Conservation Zone (MCZ) is located some 20km to the east of the Application site. The ES concludes the Proposed Development would have no direct or indirect effects on the MCZ and that an MCZ Assessment is therefore unnecessary.

3.4.18. A range of species protected under the Wildlife and Countryside Act 1981 are recorded in and around the Humber Estuary.

CONSTRUCTION PHASE

3.4.19. Chapter 9 of the ES [APP-045] assesses the Proposed Development's potential construction impacts on benthic ecology, namely capital dredging and associated disposal activity and piling for the proposed berths and jetty.

3.4.20. The Proposed Development is assessed as resulting in the direct loss of 0.012 hectares (ha) of intertidal habitat (0.006ha due to capital dredging and 0.006ha of intertidal mudflat habitat due to piling). That would represent approximately 0.000033% of the SAC's total area and approximately 0.000128% of the *"Mudflats and sandflats not covered by seawater at low tide"* habitat. That direct loss of intertidal habitat would also represent approximately 0.000032% of the SPA's/Ramsar site's area.

3.4.21. Piling in the subtidal area is assessed as resulting in the direct loss of 0.027ha of seabed habitat. That would represent approximately 0.000074% of the SAC.

3.4.22. The Applicant considers that the direct loss of both the intertidal and subtidal habitats due to construction activities would be insignificant.

3.4.23. The ES identifies potential impacts for fish and marine mammals from underwater noise and vibration during construction. To reduce those impacts the following mitigation measures are proposed during piling activities:

- Soft start – gradually increasing piling power, to give fish and mammals the opportunity to move away from the area before full power is achieved;
- Vibro piling to be used wherever possible, rather than percussive piling;
- Seasonal piling restrictions, to minimise the impacts on migratory fish;
- Night-time piling restrictions, to minimise the impacts on upstream migration of river lamprey and also glass eel migratory activity; and
- Establishment of a 500 metre *"mitigation zone"* from the piling locations and employment of a Marine Mammal Observer to search for the presence of marine mammals within the zone before and during piling activities.

3.4.24. The ES identifies potential impacts on coastal waterbirds from noise and visual disturbance during construction. To reduce those impacts the following mitigation measures are proposed:

- Restriction of certain activities to avoid construction on the approach jetty and inner finger pier between October and March;
- Placement of an acoustic barrier/screening on construction barges and the approach jetty to limit disturbance during construction;
- The use of a noise suppression system during piling for the outer finger pier;
- Applying soft start procedures during piling; and
- Restriction of construction activities in cold weather when birds are considered more vulnerable to disturbance.

3.4.25. The ES concludes that with the above mitigation during construction, the residual effects on both fish and mammals and coastal waterbirds would be reduced to minor. Table 9.26 in Chapter 9 of the ES [APP-045] summarises the impact pathways assessed, the mitigation measures proposed, residual impacts and level of confidence.

OPERATIONAL PHASE

3.4.26. Although assessed as minor, the ES identifies potential disturbance for coastal waterbirds during operation. Therefore, on a precautionary basis, screening would be installed as mitigation to reduce potential visual disturbance stimuli for waterbirds on the foreshore. There would be a phased removal of this screening after two years of operation. Coastal waterbird monitoring would also be undertaken during these first two years.

OTHER CONSIDERATIONS

3.4.27. All the other potential impacts on nature conservation and marine ecology receptors have been assessed in Chapter 9 of the ES [APP-045] as being insignificant to minor adverse and therefore not significant.

3.4.28. Although the Applicant is not offering any voluntary Biodiversity Net Gain, it is proposing an onshore environmental enhancement at the nearby *"Long Wood"* off Laporte Road, as set out in the Woodland Enhancement Management Plan (WEMP) [APP-112]. The WEMP's implementation would be secured by Requirement 11 in the dDCO.

ISSUES CONSIDERED DURING THE EXAMINATION

3.4.29. As no substantive issues were raised regarding onshore ecological matters, the Examination focused on the Proposed Development's marine effects on ecology.

3.4.30. Natural England (NE) in its RR [RR-015] and subsequent submissions to the Examination [REP1-022], [AS-011], [AS-014], [AS-015] and [AS-016] set out a significant number of issues that it wanted to see resolved by the Applicant in relation to ecological matters prior to the Examination's close.

3.4.31. The MMO also set out issues in its RR [RR-014] and in [REP1-020] which it considered needed to be resolved in relation to the marine environment. That included suggested amendments to the proposed deemed marine licence (DML) in Schedule 3 of the dDCO.

3.4.32. Neither NE nor MMO participated in any of the Examination's ISHs. However, submissions from NE and MMO at various Examination deadlines indicated progress was being made towards resolving their various objections.

3.4.33. The SoCG between the Applicant and NE [REP6-010] indicated that, whilst a number of matters had been agreed between the parties, agreement had yet to be reached on various matters, including:

- potential noise and visual disturbance during construction for qualifying coastal waterbirds;
- potential effects of underwater noise and vibration during piling activities for qualifying species;
- in-combination effects for intertidal and subtidal habitat loss;
- cumulative and in-combination effects for mammals; and
- air quality.

3.4.34. The ExA in its ExQ4 therefore asked a number of questions directly of NE seeking clarification about matters which appeared to remain outstanding [BNE.4.05, BNE.4.08, BNE.4.09 and BNE.4.12 of PD-022]. In [REP9-018] NE responded to those questions having partially responded to them in [REP8-038]. NE confirmed that there were two matters which it considered the Applicant had not addressed adequately:

- adverse effects on integrity (AEoI) of the SAC in-combination with other plans and projects; and
- Noise and visual disturbance for coastal waterbirds.

3.4.35. Given the matters of outstanding concern to NE, the ExA had also asked the Applicant in its ExQ4 [BNE.4.04 of PD-022] to provide on a without prejudice basis such information as may reasonably be required to assess potential derogations under the Habitats Regulations, in the event that the SoST, as Competent Authority, disagreed with the Applicant's conclusion that the Proposed Development would have no AEoI of the SAC, SPA and Ramsar site.

3.4.36. The Applicant submitted the requested HRA Derogation Report, on a without prejudice basis, as [REP8-033]. Although the Applicant reiterated that the need for any derogation did not arise because of its conclusion that there would be no AEoI, the derogation report follows the stages required under the Habitats Regulations and sets out potential compensatory measures should they be considered necessary. Section 3 of [REP8-033] sets out the assessment of alternative solutions, concluding that there is no alternative form of development that would have lesser environmental effects on the integrity of the European Sites. Section 4 of [REP8-033] goes on to assess the IROPI test, concluding that there are imperative public interest reasons for the Proposed Development to proceed and that these reasons clearly outweigh and thus override any potential harm to be caused by the project on the European sites.

3.4.37. Section 5 of [REP8-033] then sets out the Applicant's proposed compensatory measures. Compensatory habitat would be provided off site at the *"Outstrays to Skeffling Managed Realignment Scheme"* (OtSMRS) which has planning permission and is currently being implemented on land north of the Humber within the East Riding of Yorkshire Council's (ERYC) area. The Applicant has proposed that should compensatory habitat be required it would allocate 1ha of the OtSMRS's approximately 250ha of newly created intertidal habitat/wet grassland to the Proposed Development. The 1ha of compensatory habitat being calculated at a ratio of 3:1 for the amount of habitat affected by the Proposed Development. The Applicant has proposed that the provision of the 1ha of compensatory habitat could

be secured by a requirement to be included in any made DCO and the Applicant entering into a planning obligation with ERYC under Section 106 of the Town and Country Planning Act 1990 (s106 agreement).

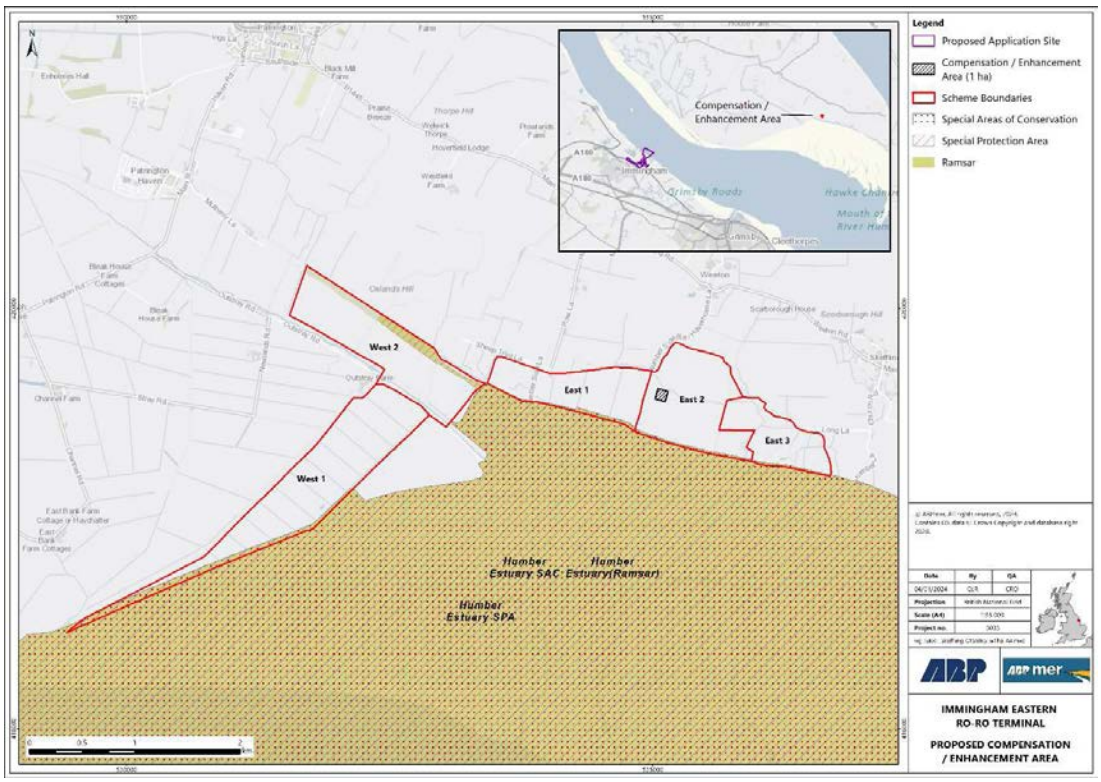

Figure 11: Location of compensation site at OtSMRS relative to the Proposed Development [Figure 5.1 in REP8-033]

AEoI of the Humber Estuary in combination with other plans and projects

3.4.38. NE in [Appendix 3 of REP9-018] has submitted that AEoI cannot be ruled out in-combination with other plans and projects for the following features and sub-features of the Humber Estuary SAC:

- H1140: Mudflats and sandflats not covered by seawater at low tide (hereafter intertidal habitat)
- H1130: Estuaries
    - A2.2: Intertidal sand and muddy sand
    - A3.3: Intertidal mud

3.4.39. NE considers the Applicant has provided insufficient evidence to demonstrate the habitat that would be lost is impoverished and/or ecologically inconsequential, thereby satisfying the Applicant's *"de minimis"* proposition to be accepted to enable AEoI to be ruled out.

3.4.40. NE has further contended that while the Proposed Development would only cause loss of, or disturbance to, a small percentage of intertidal habitat, there are many existing anthropogenic pressures or projects under construction across a considerable proportion of the SAC (for example the Able Marine Energy Park and the Stallingborough 3 flood risk management scheme), in addition to several

planned activities (for example the Immingham Green Energy Terminal (IGET) and the Humber Low Carbon Pipeline), which will further add to the pressures on the SAC's interest features.

3.4.41. NE therefore proposes that the compensatory measures set out in the Applicant's HRA Derogation Report [REP8-033] should be secured, concluding that it *"is likely appropriate in terms of its nature, scale and deliverability to address the adverse effects on the intertidal habitat feature of the Humber Estuary SAC"* [page 15 in REP9-018]. NE did not specifically comment in [REP9-018] on either the assessment of alternatives or the IROPI test set out in the derogation report.

3.4.42. NE has highlighted there have been challenges with previous attempts to create mudflat habitat and it has had limited opportunity to fully review the Applicant's proposals. NE state that SoST will need to be assured that the provision of the compensatory habitat would be beneficial.

3.4.43. The Applicant in [REP10-018] responded to NE's views in [REP9-018]. The Applicant disagreed with NE's view that AEoI cannot be ruled out in relation to in-combination effects with other plans and projects. At [Section 5 of REP10-018] the Applicant sets out why it considers NE's position shows a misunderstanding of the evidence presented. The Applicant reconfirmed its view that the area of intertidal habitat loss attributable to the Proposed Development, even in-combination with other projects, would be of negligible ecological value. The Applicant therefore considers the affected habitat does not significantly contribute to the SAC's conservation objectives and that there would be no AEoI.

3.4.44. At [paragraph 4.11 in REP10-018] the Applicant argues that, even if any in-combination effects of the type identified above could not be ruled out, the in-combination effect would only result if another scheme was also to proceed, the IGET. As IGET is a scheme also being promoted by this Applicant, it proposes to provide compensation at the OtSMRS through any made DCO for IGET which would also compensate any in-combination effects for the extension of the PoI.

3.4.45. Given that NE's position on this matter emerged late in the Examination, the ExA made a request for further information from the Applicant [PD-031] asking, amongst other issues, that it give further consideration to the mechanism for how 1ha of OtSMRS could be secured by way of compensation for the Proposed Development, if necessary. The Applicant was also requested to provide wording for a possible requirement that would secure the OtSMRS land.

3.4.46. The Applicant responded in [AS-085], whilst reiterating its view that compensatory measures were unnecessary, that the logical approach would be for it to enter into a legal agreement with ERYC as the consenting body for the OtSMRS. In [AS-085] the Applicant provided the following suggested wording for a requirement:

"Construction of Works Nos. 1 to 3 of the authorised development must not commence until the undertaker has entered into an Environmental Monitoring and Maintenance Plan for the Outstrays to Skeffling Managed Realignment Scheme (in a form approved by Natural England in writing) which includes compensatory habitat

reflecting the compensatory measures included in section 5.12 of the derogation report."

3.4.47. The ExA considers that the Applicant's HRA Derogation Report [REP8-033] provides the SoST with sufficient evidence to meet the Habitats Regulations' tests. For reasons set out in section 3.2 of this Recommendation, the ExA considers that IROPI have been demonstrated. That is because the Proposed Development by adding to the resilience of the UK's ports, which in turn has the potential to support economic growth in the UK, a matter gaining policy support in the NPSfP. Having regard to NE's concerns, the ExA considers that the compensatory measures set out in section 5 of the Applicant's HRA Derogation Report [REP8-033] would be necessary. The ExA is concerned by the Applicant's suggestion that a separate project, the IGET, should be responsible for providing the compensatory measures that might be necessary to address in-combination effects arising from the PoI's extension. Although ERYC is the planning authority for the OtSMRS it would have no jurisdiction over the Proposed Development and therefore would not, in the ExA's view, be the appropriate body for the Applicant to enter into a s106 agreement with.

3.4.48. The ExA considers that the most appropriate mechanism for securing the allocation of 1ha of the OtSMRS as compensatory habitat for the Proposed Development would be for the SoST and the Applicant to enter into a s106 agreement. That is because the SoST would be the competent authority for the purposes of fulfilling the Habitats Regulations rather than ERYC. The ExA considers that any such s106 agreement should: 1) ensure that 1ha of the OtSMRS compensatory habitat was allocated to the Proposed Development in perpetuity and was available prior to the Proposed Development's first use; and 2) make provision for NE to advise the SoST whether the allocated OtSMRS habitat was of an appropriate quality to act as compensatory habitat, with that advice to be made available to the SoST before the Proposed Development could be brought into use. Should the SoST share the ExA's views about this matter there would be no need for a requirement to be incorporated into any made DCO. Any s106 agreement would need to be concluded between the SoST and the Applicant during the decision period.

3.4.49. Further detail on these HRA matters is set out in Chapter 4 and Appendix C.

Noise and visual disturbance to coastal waterbirds

3.4.50. NE in [Appendix 2 of REP9-018] also concludes that AEoI cannot be ruled out for the effects of construction disturbance through noise and visual disturbance on the SPA's bird features. NE advise further certainty is needed in relation to potential impacts and mitigation measures before it is possible to determine its final position on AEoI. NE does not consider that the 200-metre disturbance buffer applied by the Applicant is sufficient to mitigate impacts of noise and visual disturbance from construction. NE proposes that a greater disturbance buffer of 300 metres would provide greater certainty that the mitigation measures would be effective.

3.4.51. The ExA through the asking of question 32 in the Report on the Implications for European Sites (RIES) [PD-018] and ExQ4 BNE.4.08 in [PD-022] requested NE to

provide further justification for why a 300 metre rather than 200 metre disturbance buffer would be necessary. NE provided a responses in [REP7-038] and [REP9-018], also signposting Appendix 1 in [REP6-048].

3.4.52. The Applicant in [REP10-018] signposted submissions it has made during the Examination justifying a 200 metre disturbance buffer, including in [REP7-027] and [REP9-013]. The Applicant goes on to note that NE in [REP6-048] acknowledged that a 200 metre disturbance distance is an *"acceptable disturbance distance for most construction activities within a port environment where birds will show some habituation to human activity"*.

3.4.53. In section 8 of [AS-083] the Applicant sets out why it is important that a distance of 200 metres rather than 300 metres is applied in the DML during construction. Restricting construction works within 300 metres rather than 200 metres of exposed mudflat would disproportionately extend the overall construction period for the project. Given the complex and comprehensive nature of the overall mitigation measures, the Applicant contends that applying a 300 metre distance would be likely to have a disproportionate effect on the overall construction programme resulting in a greater exposure for birds as well as other receptors.

3.4.54. The ExA considers that the Applicant has demonstrated why a 200-metre disturbance buffer would be appropriate in this existing port environment. However, given NE's position at the close of the Examination the SoST may wish to make further enquiries of the Applicant and NE.

3.4.55. This matter is considered in further detail in Chapter 4 and Appendix C.

Matters raised by other IPs

3.4.56. The MMO during the Examination raised a number of concerns, including the impacts and duration of the proposed piling works and matters relating to the DML's drafting. Those concerns were resolved in discussions between the Applicant and MMO and the submission of additional material by the Applicant, including amendments to the DML. The MMO confirmed in [REP10-022] that it considered all of its concerns had been resolved. Consequently, the signed SoCG between the Applicant and the MMO [REP10-011] confirms that all matters between them were agreed by the Examination's close.

3.4.57. Lincolnshire Wildlife Trust (LWT) in its RR [RR-012] raised points of concern with the Application. However, the signed SoCG between LWT and the Applicant [AS-081] confirmed that all matters other than in-combination effects were agreed by the Examination's close.

CONCLUSIONS

3.4.58. The ExA has considered the evidence presented by the Applicant and other IPs, including the views of NE, as the Statutory Nature Conservation Body. Although the majority of issues raised during the Examination were resolved, two matters of concern for NE remained unresolved at the Examination's close.

3.4.59. With respect to NE's position that the Applicant has provided insufficient evidence to demonstrate that an AEoI for certain features of the Humber Estuary SAC cannot be ruled out in-combination with other plans and projects, the ExA recommends that the SoST consults further with the Applicant and NE on this matter. The Applicant's HRA Derogation Report [REP8-033] addresses the Habitats Regulations tests and the ExA is content that for the purposes of the Habitats Regulations there are no alternative forms of development that would have lesser environmental effects on the integrity of the European Sites. The ExA is also content that imperative public interest reasons for the Proposed Development have been established. Based on the compensatory measures set out in [REP8-033] the ExA recommends that a s106 agreement between the SoST and the Applicant should require 1ha of compensatory habitat as part of the OtSMRS be in place prior to the first use of the Proposed Development.

3.4.60. For the reasons given above, the ExA considers that the Applicant has submitted appropriate evidence to support the use of a 200-metre disturbance buffer for coastal waterbirds in the DML, given that the Proposed Development would be situated within an existing port environment. The SoST may however wish to make further enquiries of the Applicant and NE on this matter.

3.4.61. The ExA concludes that biodiversity and ecology have been adequately assessed and that the policy requirements of the NPSfP, the MPS, and the EIMP have been met. The ExA considers the allocation of 1ha of the OtSMRS as compensatory habitat would address the in-combination effects for works in the Humber Estuary SAC. The environmental measures at Long Wood subject to the proposed WEMP would provide ecological enhancement. Providing that the compensatory habitat at the OtSMRS can be secured, the ExA considers the effects on marine ecology, biodiversity and the natural environment to attract little positive weight for the making of a DCO.

3.5. TERRESTRIAL TRAFFIC AND TRANSPORT

INTRODUCTION

3.5.1. This section considers the Proposed Development's onshore traffic and transport effects.

3.5.2. The PoI has two highway access points: East Gate, off Queens Road; and West Gate off Humber Road. Queens Road connects to the A1173 Manby Road via a three-arm roundabout. Humber Road runs between the port's West Gate and the A160/A1173 Manby Road/Humber Road Roundabout. The A1173 and A160 both connect with the A180, which becomes the M180 motorway around 20km south-west of the PoI.

3.5.3. Although the Proposed Development is within the North East Lincolnshire Council's (NELC) area, the PoI's West Gate is within the North Lincolnshire Council's (NLC) area.

3.5.4. The A160 and A180 form part of the Strategic Road Network (SRN). The former Highways Agency made improvements to the A160/A180 junction and upgraded the single carriageway section of the A160 to dual carriageway standard pursuant to a DCO made in 2015.

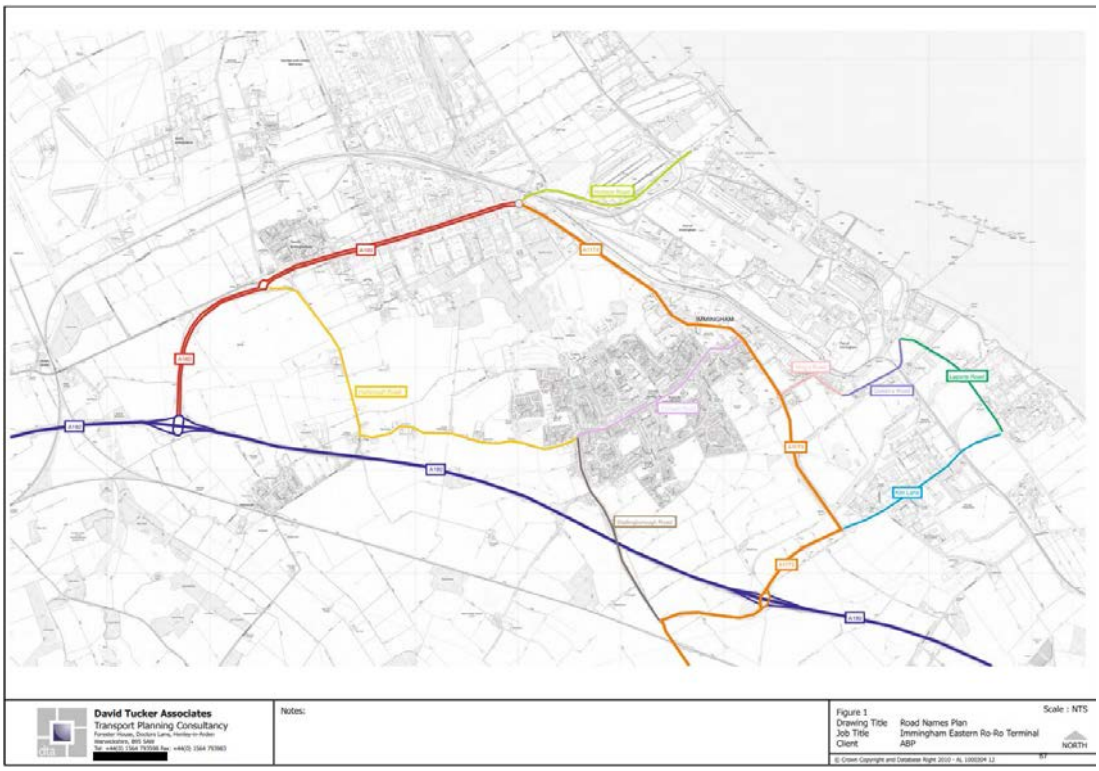

Figure 12: Local road network [Figure 1 AS-008]

3.5.5. There are two railway lines passing through PoI, both of which enter the port at the Humber Road Junction. At this point the main running line (KIL1) travels in a north-easterly direction, curving north-westerly at West Junction where it exits the Port estate to join the branch line to Killingholme (KIL2).

3.5.6. The nearest railway stations to the PoI are Stallingborough railway station, some 5.5km to the south and Habrough railway station, some 7.5km to the south-west.

3.5.7. The closest bus stop to the site is located on Queens Road, at the junction with Laporte Road, approximately 250 metres south of the PoI's East Gate.

3.5.8. There are a number of Public Rights of Way in the vicinity of the PoI. There is a public footpath off Queens Road and a public Bridleway off Laporte Road, which forms part of the coastal path, both of which are approximately 500 metres from the East Gate.

POLICY BACKGROUND

3.5.9. Section 5.4 of the NPSfP sets out guidance and policy for undertaking the assessment of terrestrial traffic and transport impacts.

3.5.10. Paragraph 5.4.4 states that if a project is likely to have significant transport implications, then an applicant's ES should include a transport assessment and the applicant should consult the Highways Agency (now National Highways (NH)) and highway authorities as appropriate on the assessment and any necessary mitigation.

3.5.11. Paragraph 5.4.5 states that, where appropriate, the applicant should prepare a travel plan, including demand management measures to mitigate transport impacts. The applicant should also provide details of proposed measures to improve access by public transport, walking and cycling to reduce the need for parking associated with the proposal and to mitigate transport impacts.

3.5.12. Paragraph 5.4.9 states that because a new nationally significant infrastructure project may give rise to substantial impacts on the surrounding transport infrastructure, the decision maker should ensure that the applicant has sought to mitigate those impacts, including during the development's construction phase.

3.5.13. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure to acceptable levels, the decision maker should consider requirements to mitigate the adverse impacts paragraphs 5.4.11 to 5.4.25). Applicants may also be willing to enter into planning obligations for funding infrastructure and otherwise mitigating adverse impacts.

3.5.14. Paragraph 5.4.10 advises that if applicants are willing to enter into planning or transport obligations or requirements can be imposed to mitigate transport impacts, then development consent should not be withheld, and appropriately limited weight should be applied to residual effects on the surrounding transport infrastructure.

3.5.15. The National Planning Policy Framework of December 2023 (NPPF) at paragraph 115 states that: "*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*."

THE APPLICATION

3.5.16. The Proposed Development would involve alterations to vehicular routes within the PoI, including the partial closure of a road and some junction reconfiguration. Some of the proposed landside storage areas would be connected to the new marine infrastructure by a new bridge spanning the port's spine road and railway.

3.5.17. The Applicant proposes to upgrade the East Gate by adding a second entry lane to improve its capacity to handle vehicles. The bus stop on the adjacent Queens Road would be repositioned and a new pedestrian route to and from the East Gate provided.

3.5.18. The Applicant's assessment of terrestrial traffic and transport matters is primarily contained within Chapter 17 (Traffic and Transport) of the ES [APP-053] and the accompanying Transport Assessment (TA) [AS-008].

3.5.19. The ES study area is that over which the Proposed Development's potential direct and indirect effects are predicted to occur during the construction and operational phases. The study area therefore encompasses the primary routes from the PoI to the A160 and A180. At the request of NH, the study area was broadened to also include the A15 (Humber Crossing) and M180.

BASELINE

3.5.20. Traffic levels and highway safety issues used to inform the ES assessment were compiled from:

- traffic count data collected at various locations on the local road network during 2021;
- traffic count data collected during 2022 at junctions within the PoI;
- DfT traffic flow data for the M180, A160, A180 and A15; and
- personal injury collisions data.

3.5.21. The ES and TA have assessed the effects on traffic flows, the operation of junctions, severance, driver and pedestrian delays, pedestrian amenity, fear and intimidation, accidents and safety and hazardous loads. Traffic from other planned developments was also included in the assessment. Growth factors were applied to base traffic levels to create the future baseline for a proposed year of opening in 2025 and 10 years after the Application's submission in 2032 (the submission year had originally been expected to be 2022).

CONSTRUCTION PHASE

3.5.22. The assessment of potential impacts for the construction phase was based on the worst-case scenario, involving construction in a single stage rather than being phased.

3.5.23. The likely impacts and effects during construction were assessed as insignificant for all receptors.

OPERATIONAL PHASE

3.5.24. The following factors were assessed:

- Light vehicle generation;
- Heavy goods vehicle (HGV) generation;
- Traffic distribution; and
- Overall traffic impact.

3.5.25. The likely impacts and effects during operation were assessed as either insignificant or insignificant/minor. The assessment concludes there are no specific off-site highway mitigation measures required to ensure the Proposed Development would be acceptable in highway terms.

3.5.26. A Travel Plan (TP) [APP-109] has been submitted as required by the NPSfP, which seeks to deliver sustainable transport objectives and reduce vehicle movements where possible during the operational phase. Responding to paragraph 5.4.14 of

the NPSfP the Applicant has confirmed [paragraph 17.9.10 in APP-053] that rail is not currently a feasible or viable mode for Ro-Ro traffic, but there is nothing with the Proposed Development's layout which would prevent the use of rail in future.

3.5.27. The ES and TA therefore conclude that there would be no residual adverse significant impacts in relation to traffic and transportation matters as a result of the Proposed Development.

ISSUES CONSIDERED DURING THE EXAMINATION

3.5.28. NELC's Local Impact Report (LIR) [REP1-023] identified no conflicts with its Local Plan's transport policies and raised no transportation concerns. The LIR records that additional transport assessment work was to be undertaken following ISH2 and that NELC may therefore wish to comment further.

3.5.29. DFDS objected to the Proposed Development on various transportation grounds in its relevant representation [RR-008]. That included questioning a number of the TA's assumptions, the baseline traffic flows use and impacts on junction capacity.

3.5.30. CLdN also objected to the Proposed Development on transportation grounds in its relevant representation [RR-007]. CLdN raised concerns about the assumptions underpinning the Applicant's assessment and whether a realistic worst case scenario had been assessed.

3.5.31. The ExA questioned the Applicant, DFDS and CLdN on traffic and transportation matters at ISH2, ISH3 and ISH5. Questions on transportation issues were included in the ExA's first [PD-010], second [PD-013], third [PD-020] and fourth [PD-022] rounds of written questions.

3.5.32. DFDS identified an error within the TA in respect of the conversion of HGVs to Passenger Car Units (PCU) [REP4-025]. HGVs had been counted as a single PCU in the TA, whereas the PCU conversion ratio typically applied for HGVs is 2.3. Accordingly, DFDS argued the of junction capacity assessments were underestimated the Proposed Development's impact.

3.5.33. Key assumptions in the TA challenged during the Examination included: that 85% of the vehicular traffic would use the East Gate and 15% the West Gate; the split of 28% accompanied and 72% unaccompanied Ro-Ro units; and a 10% ratio for HGV tractor only movements. DFDS and CLdN also questioned the baseline traffic surveys used to inform the TA, the capacity of the highway network's existing junctions and whether the Proposed Development's landside elements would provide sufficient space to handle the anticipated volumes of Ro-Ro units. At ISH2 the ExA requested the Applicant, DFDS and CLdN to work together to find common ground and explore sensitivity testing for the Applicant's assumptions.

3.5.34. At ISH3 the ExA requested that the Applicant, DFDS, CLdN and Stena Line produce a joint SoCG regarding dwell times (the time spent in port by embarking or disembarking unaccompanied Ro-Ro units). A joint SoCG was also requested from

the Applicant, DFDS and CLdN concerning traffic and transport matters. Those SoCGs were submitted as [REP6-020] and [REP6-011].

3.5.35. A key area of concern examined was whether the ES had assessed the worst-case scenario of 1,800 Ro-Ro units being handled per day. That being in the context of the Applicant's intention to limit the Proposed Development's annual capacity at 660,000 units. Although 660,000 units per year would equate to a daily average of 1,800 units, there was nothing in the originally submitted dDCO that would have ensured no more than 1,800 units could have been handled per day.

3.5.36. The Applicant contended that 1,800 units was the absolute maximum the Proposed Development could accommodate and that the typical daily flow would be 25% less than that maximum figure, i.e., 1,440 units. At ISH5, the Applicant agreed to amend the dDCO to include a daily cap rather than an annual figure. Article 21 of the dDCO secures a daily cap of 1,800 units [REP10-004].

3.5.37. The Applicant also agreed at ISH5 to produce an Operational Freight Management Plan (FMP) to minimise the impact of HGV movements and set out measures to ensure the maximum daily throughput would not be exceeded. The FMP was submitted by the Applicant as [REP7-036] and subsequently updated [REP8-018]. The FMP's operation is secured by Requirement 13 in the dDCO, with a final version to be submitted for approval by NELC and NH.

3.5.38. Given the identified PCU conversion error and the additional sensitivity testing work undertaken, the Applicant submitted a Transport Assessment Addendum (TAA) as [REP7-013]. The TAA presents corrected figures and the sensitivity testing of key assumptions. The TAA finds that the conclusions of the original TA remain unaltered and that the Proposed Development would not adversely impact on highway safety or capacity and would meet the relevant policy tests stated in the NPSfP and NPPF.

3.5.39. In light of the submission of the TAA, the ExA requested at ISH5 that updated SoCGs should be submitted between the Applicant and NH and NELC, confirming whether or not the highway authorities were satisfied with the final position reached in respect of traffic matters. NH [REP9-005] and NELC [REP10-014] in updated SoCGs confirmed they had reviewed the updated information presented by the Applicant and considered the conclusions to be appropriate, with no further mitigation being required. NLC also raised no concerns in its SoCG with the Applicant [REP8-008].

3.5.40. By the Examination's close, although the joint traffic and transport SoCG [REP6-011] indicated a narrowing of areas of disagreement, DFDS still had objections to the Proposed Development [REP9-026], including the need for off-site mitigation at junctions and the Proposed Development's capacity to handle the proposed volume of Ro-Ro units. CLdN also had outstanding concerns that the Applicant has failed to assess a realistic worst case scenario and offer sufficient mitigation [REP9-022].

3.5.41. DFDS and CLdN maintained their concerns at the close of the Examination [REP9-022 and REP9-026] that the Proposed Development's operation alongside other committed development for the assessed operational year of 2032 would result in

three road junctions be exceeding their capacities, creating unacceptable delays for other road users. Those IPs argue mitigation should therefore be provided by the Applicant at the affected junctions. The Applicant's TAA [REP7-013] sets out at Appendix A its updated assessment of junction capacity. This presents Ratio Flow to Capacity (RFCs) at certain junctions as *"approaching capacity"*. DFDS and CLdN contend the RFCs exceed the capacity of the affected junctions. Any such exceedances of junction capacity appear to be relatively marginal and not significant. Paragraph 114 of the NPPF states, amongst other things, that mitigation may be required where impacts would be significant. The ExA therefore considers the Proposed Development would be acceptable in policy terms because there would not be a significant impact for the road network and that mitigation is not required at the affected existing junctions.

3.5.42. DFDS also maintained its objection regarding the assessment undertaken by the Applicant in relation to expected traffic volumes using the PoI's East and West Gates [REP9-026]. The Applicant undertook sensitivity testing, including assessing the impact of 60% of traffic from the Proposed Development using the West Gate (rather than 15% as assessed in the TA) and confirmed that the conclusions of the TA remain unaltered [REP7-013]. Having viewed the internal vehicular routes within the PoI during the ASI, the ExA considers that the majority of drivers to and from the Proposed Development would opt to use the East Gate. The East Gate is in close proximity to the Proposed Development and drivers would be likely to want to use the public highway rather than utilise the less favourable port roads to travel to and from the West Gate. The route between the Proposed Development and the West Gate would include negotiating junctions and pedestrian crossings.

3.5.43. In relation to all the outstanding concerns of IPs, the ExA considers it important and relevant that none of the highway authorities have identified any concerns about the ability of either the SRN or the local road network to accommodate the volume of traffic generated by the Proposed Development safely and efficiently.

Matters raised by other IPs

3.5.44. Ulceby Road Safety Group (URSG) in [RR-023] raised concerns regarding the additional HGV traffic that would be generated by the Proposed Development and that traffic's impacts on the surrounding road network and local villages. The URSG did not participate in the Examination. Issues of highway safety and traffic impacts on the road network were considered during the Examination, as explained above.

3.5.45. Network Rail Infrastructure Limited (NR) in [RR-017] objected to the Proposed Development to safeguard its interests and the safety and integrity of the operational railway. NR sought the inclusion of protective provisions in the DCO for its benefit. The SoCG between NR and the Applicant [REP6-017] and NR's D9 submission [REP9-019] confirm that NR's concerns had been addressed.

3.5.46. Royal Mail Group Limited (RM) submitted a relevant representation [RR-020] and submission in [REP7-071]. Whilst supporting the Proposed Development, RM requested reasonable mitigations to protect its road-based operations during the construction phase given the proximity of its Immingham Delivery Office to the

Application site. In responding to the ExA's fourth round written question TT.4.05 [PD-022], the Applicant confirmed agreement to RM's request [REP8-020] and revised the Onshore CEMP to incorporate RM's requested text [REP8-010].

CONCLUSIONS

3.5.47. The Proposed Development would generate additional traffic which could impact upon the operation of the public highway as well as the roads within the PoI. To minimise that impact the Applicant has proposed various mitigation measures, secured by Requirements 5 (TP), 8 (Onshore CEMP), 12 (East Gate Improvements) and 13 (FMP) in the dDCO. The ExA concludes that the highway network within the vicinity of Immingham would be able to accommodate the additional traffic generated by the Proposed Development, a finding that is consistent with the views of the three highway authorities.

3.5.48. The ExA is therefore content that the Proposed Development would accord with the traffic and transport policies stated in the NPSfP and the NPPF. The landside traffic and transport effects are therefore considered neutral and neither weigh for nor against the making of the order.

3.6. CLIMATE CHANGE, FLOOD RISK AND WATER ENVIRONMENT

INTRODUCTION

3.6.1. This section addresses the following issues that were non-contentious during the Examination but require consideration because of the policy and/or legislation relating to them:

- climate change;
- flood risk; and
- water environment.

CLIMATE CHANGE

Policy

3.6.2. Paragraph 4.12.3 of the NPSfP states "*The decision-maker does not need to consider the impact of a new port development on greenhouse gas emissions from ships transiting to and from the port*". Paragraph 4.12.6 advises that the decision-maker should attach limited weight to the estimated likely net carbon emissions performance of port developments.

3.6.3. Paragraph 4.13.9 of the NPSfP advises that the decision-maker should be satisfied that applicants have taken account of potential climate change impacts. Paragraph 4.13.11 further advises that the decision-maker should be satisfied that new port infrastructure would not be "… *seriously affected by more radical changes to the climate beyond that projected in the latest set of UK Climate Projections* …".

3.6.4. The DfT Transport Decarbonisation Plan 2021 sets out UK Government commitments and actions needed to decarbonise the UK transport system until 2050.

3.6.5. Section 2.6 of the MPS directs that "*Marine plan authorities should be satisfied that activities and developments will themselves be resilient to risks of coastal change and flooding and will not have an unacceptable impact on coastal change*...".

3.6.6. The EIMP Policy CC1 requires that new development should be designed to avoid causing increased vulnerability to effects of climate change and where detrimental impacts are identified, evidence should be provided "*as to how the proposal would reduce such impacts*".

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3.6.7. The Applicant's assessment of greenhouse gas (GHG) emissions and climate change resilience is primarily contained in Chapter 19 of the ES (Climate Change) [APP-055], supplemented by ES Chapters 11 (Coastal Protection, Flood Defence and Drainage) [APP-047] and 20 (Cumulative and In-Combination effects) [APP-056].

3.6.8. The potential residual GHG impacts identified in Table 19.23 in Chapter 19 [APP-055] have all been assessed as minor adverse (not significant), for both the construction and operational phases.

3.6.9. Paragraphs 19.11.3 to 19.11.6 of Chapter 19 of the ES [APP-055] conclude that after mitigation measures, the construction and operation of the Proposed Development "*is not expected to affect the UK in meeting its Carbon Budgets"* and the worst case scenario assessed does not take into account the additional mitigation resulting from the implementation of UK's Transport and Maritime Decarbonisation Plans.

3.6.10. Paragraph 19.11.7 of Chapter 19 of the ES [APP-055] concludes that climate resilience measures are embedded in the design of the Proposed Development, with further mitigation measures being identified in Chapter 11 of the ES.

Examination and Conclusions

3.6.11. IPs raised no concerns about GHG emissions or climate resilience during the Examination. The ExA asked clarifying questions of the Applicant and other IPs in ExQ1 and it was content with the responses provided and considered it unnecessary to examine this topic further.

3.6.12. The EA submitted in [REP6-041] that all matters between it and the Applicant were now resolved.

3.6.13. The SoCG between the Applicant and NELC [REP10-014] confirmed compliance with the policies of the North East Lincolnshire Local Plan of 2018 (NELLP).

3.6.14. The ExA is content that there are unlikely to be any significant effects for climate change arising from the Proposed Development, while adequate climate resilience measures could be secured in the rDCO.

3.6.15. The ExA considers that climate change matters neither weigh for nor against the making of a DCO.

FLOOD RISK

Policy

3.6.16. Section 5.2 of the NPSfP advises all applications for port development in Flood Zone 3 should be accompanied by a flood risk assessment (FRA) of risks of all forms of flooding and demonstrates how flood risks will be managed, taking climate change into account.

3.6.17. The NPSfP states that the decision-maker should be satisfied that:

- the application is supported by an appropriate FRA;
- the proposal is in line with any relevant national and local flood risk management strategies;
- a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk;
- priority has been given to the use of sustainable drainage systems (SuDS) and the requirements of applicable national standards have been met; and
- in flood risk areas the project is appropriately flood resilient and resistant, including safe access and escape routes where required, with any residual risks capable of being safely managed over the lifetime of the development.

3.6.18. Paragraph 5.2.12 of the NPSfP advises that for development in flood Zone 3, consent should not be given unless the decision-maker is satisfied that sequential and exception test requirements have been met. Under the sequential test, if there are no reasonably available sites in flood Zones 1 and 2, then nationally significant infrastructure can be located in Zone 3 subject to the exception test (paragraph 5.2.13). If following the application of the sequential test it is not possible to locate a project in a zone of lower flood risk, then the exception test can be applied (paragraph 5.2.14). For the exception test to be passed, it must be demonstrated that the project would provide wider sustainability benefits to the community that outweigh the flood risk, the project can be developed on previously developed land and if that type of land is unavailable there are no reasonable alternative sites available. FRAs should demonstrates that the project would be safe without increasing flood risk elsewhere and where possible would reduce flood risk overall (paragraph 5.2.16). The sequential test should be applied to the layout and design of the project. More vulnerable uses should be located on the parts of the site at lower probability and residual risk of flooding (paragraph 5.2.26).

3.6.19. Section 2.6.8 of the MPS addresses coastal protection, flood risk and drainage assessment. Paragraph 2.6.8.4 states that "… *Marine plan authorities should be satisfied that activities and developments will themselves be resilient to risks of coastal change and flooding and will not have an unacceptable impact on coastal*

change...". Paragraph 2.6.8.6 notes that account should be taken of the impacts of climate change throughout the operational life of a development. Authorities should seek to minimise and mitigate any geomorphological changes that a development would have on coastal processes, including sediment movement.

3.6.20. EIMP Policy CC1 advises that new development should take account of how it may be affected by and would respond to climate change.

3.6.21. NELC, as a Lead Local Flood Authority, has adopted a Local Flood Risk Management Strategy (2015), which sets out a plan for future flood risk management in the area.

3.6.22. Policy 33 of the NELLP seeks to mitigate flood risk impacts and Policy 34 states that "*Development proposals that have the potential to impact on surface and ground water should consider the objectives and programme of measures set out in the Humber River Basin Management Plan*." That Plan seeks to protect and enhance the water environment within the Humber River Basin District.

The Application

3.6.23. Chapter 11 of the ES [APP-047] assesses coastal protection, flood defence and drainage and identifies the main effects during the construction and operational phases and identifies proposed mitigation measures.

3.6.24. The Proposed Development is located within Flood Area 24 of the Environment Agency's (EA) Humber Flood Risk Management Strategy 2008 (FRMS). The FRMS provides a strategy for managing the Humber's flood defences in response to the risk of flooding due to climate change and sea level rise.

3.6.25. The Applicant's ES also considers the EA's Grimsby and Ancholme Catchment Flood Management Plan 2009 which addresses the tidal risk from the Humber, the tidal locking of local watercourses and the pumping of drainage channels.

3.6.26. Mitigation measures to manage the Proposed Development's flood risk during its construction and operation are described in the Applicant's FRA [APP-093]. In section 11.9 of Chapter 11 of the ES [APP-047] the following mitigation measures have been proposed:

- Induction training for all workers, monitoring and management procedures to ensure adequate protection of people and property from flooding during the construction phase.

- Improvement to coastal flood defences may potentially be undertaken during the construction period and in any case flood resilience measures have been included to minimise the amount of damage and reduce recovery time should inundation occur, which would remain in place through construction and operational phases.
- Management of construction site run-off including temporary drainage facilities.

- Provision of safe refuge within the terminal building and the production of a flood response plan.
- Resilient/resistant building design.
- Siting of buildings in the areas of lowest flood hazard, where possible.

3.6.27. The FRA has considered all potential flooding sources including tidal, fluvial, groundwater, land drainage overland flow and sewer drainage, inclusive of allowances for climate change. The Proposed Development would be located in Flood Zone 3a where tidal flood defences are in place and the risk of tidal flooding has been assessed as low because of a low probability of breach or overtopping. The NPSfP considers port development as being appropriate in Flood Zone 3 if appropriate mitigation can be provided. The Proposed Development's marine elements are considered as having no significant impact for flood risk. The FRA considers there would be no residual off-site impacts and the Proposed Development's flood risk can be mitigated to "low and acceptable" [pages 53 to 54 in APP-093].

3.6.28. In Chapter 11 of the ES it is stated that if improvement to coastal flood defences is not undertaken during the construction period *"it is ABP's intention that the standard of protection afforded by the existing flood defences under their jurisdiction, along both the site frontage and the wider Port of Immingham, will be kept under consideration and reviewed, as appropriate to account for climate change in line with 'Hold the line' management policies in the FRMP and SMP 3"* [paragraph 11.9.13 of APP-047].

3.6.29. For coastal protection, flood defence and surface water drainage, a summary of the assessed impact pathways and identified residual impacts is presented in Table 11.10 in [APP-047].

3.6.30. The Applicant's assessment indicates no likely significant effects to coastal protection, flood risk and drainage during the Proposed Development's construction. For the Proposed Development's operational phase the residual effects have all been identified as being no greater than "*slight adverse"*, except for a *"slight beneficial"* effect for the Habrough Marsh Drain and *"moderate beneficial"* effect for drainage infrastructure [paragraphs 11.11.2 and11.11.3 of APP-047].

Examination and Conclusions

3.6.31. NELC's LIR advises that although the PoI is in Flood Zone 3 it is an allocated site in the NELLP and the Proposed Development is deemed to be acceptable under the sequential test of Policy 33 of the NELLP and would also accord with Policy 34 with regard to drainage [REP1-023].

3.6.32. The EA's submission [REP6-041] records that the matters of principal concern when the Application was originally submitted had subsequently been resolved, including the safeguarding of the flood defences and protecting water quality.

3.6.33. The North East Lindsey Drainage Board confirmed in [REP9-020] it has no objection to the Proposed Development "*as long as it is built in accordance with the Drainage*

Plan" and achieves stipulated allowable discharge rates for the Habrough Marsh Drain.

3.6.34. The SoCG between the Applicant and NELC [REP10-014] confirmed compliance with the NELLP's policies.

3.6.35. At the Examination's close there were no concerns or matters outstanding relating to flood risk or drainage.

3.6.36. The ExA is content that the Proposed Development would be unlikely to have any significant effects for flood risk and that appropriate mitigation could be secured in the rDCO. The ExA concludes that the Proposed Development would accord with the relevant policies in the NPSfP and NELLP relating to flood risk.

3.6.37. The ExA considers that flood risk considerations neither weigh for nor against the making of a DCO.

WATER ENVIRONMENT

Policy

3.6.38. Section 5.6 of the NPSfP advises that where the project is likely to have effects on the water environment, applicants should undertake assessments of the existing status of water quality, water resources and physical characteristics of the water environment and the impacts of a project on the water environment, including any cumulative effects. Activities that discharge to the water environment are subject to pollution control. The decision-maker will generally need to give impacts on the water environment more weight where projects would have adverse effects on the achievement of the environmental objectives established under the Water Framework Directive (WFD). Where such adverse impacts are likely to arise, they should be mitigated through attaching appropriate requirements to any development consent.

3.6.39. Section 2.6.4 of the MPS is relevant to the water and sediment quality assessment, and states: "*The marine plan authority should satisfy itself where relevant that any development will not cause a deterioration in status of any water to which the WFD applies… Decision makers should also take into account impacts on the quality of designated bathing waters and shellfish waters from any proposed development*".

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3.6.40. Chapter 12 of the ES [APP-048] assesses Ground Conditions including Land Quality. Chapter 8 [APP-044] of the ES assesses Water and Sediment Quality and identifies the main effects during the construction and operational phases, together with mitigation measures. The water and sediment quality assessment takes account of the location of any WFD water bodies within the study area.

3.6.41. The Humber River Basin District Management Plan identifies the Humber Lower water body, within which the Proposed Development (including dredge disposal sites) would be located, as a heavily modified water body (HMWB) due to coastal

protection, flood protection, and navigation effects. In 2019 this HMWB had an overall status of *"moderate"*, with an ecological potential of *"moderate"* and a chemical status of *"fail"* because of the presence of certain priority substances [paragraph 8.6.2 in APP-044].

3.6.42. There are no Shellfish Water Protected Areas within 65km of the Proposed Development [paragraph 8.6.4 in APP-044].

3.6.43. The Proposed Development is located in an area included in the North Beck Drain *"Nitrate Vulnerable Zone"*, designated under the Nitrates Pollution Prevention Regulations [paragraph 8.6.5 in APP-044]. The main watercourses adjacent to the Application site are the Humber Estuary, the South Killingholme Haven, draining to the north west of the PoI, the North Killingholme main drain and the Habrough Marsh drain and [paragraph 8.6.6 of APP-044]. Surface water bodies overlapping with the Application site are detailed in ES Chapter 12 Ground Conditions [APP-048].

3.6.44. The Applicant reports that in the absence of any quantified UK standards for marine sediment quality, common practice is to use as a benchmark the Centre for Environment, Fisheries and Aquaculture Science's (Cefas) Guideline Action Levels for the disposal of dredged material (MMO, 2014). The Applicant agreed a sampling plan with the MMO in consultation with Cefas and sediment samples were collected from ten locations across the Proposed Development's dredge area [paragraphs 8.6.9 to 8.6.16 of APP-044].

3.6.45. A summary of the assessed impact pathways, the identified residual impacts and level of confidence is presented by the Applicant in Table 8.18 in [APP-044]. The Applicant has assessed all potential impacts on water and sediment quality as being insignificant. No specific mitigation measures have therefore been identified as being required. However, *"tertiary"* mitigation measures would be undertaken to manage commonly occurring environmental effects during the construction phase. The mitigation measures proposed by the Applicant to manage water quality impacts are set out in section 8.9 of [APP-044] and have been incorporated in the Offshore [REP8-012] and Onshore [REP8-010] CEMPs.

3.6.46. The Applicant's WFD Compliance Assessment, informed by the outcomes of its water and sediment quality assessment, is in ES Appendix 8.1 [APP-086].

Examination and Conclusions

3.6.47. The SoCG between the Applicant and NELC [REP10-014] confirmed compliance with the NELLP's policies.

3.6.48. The EA submitted in [REP6-041] that all matters between it and the Applicant were now resolved.

3.6.49. At the Examination's close there were no concerns or matters outstanding concerning the water environment.

3.6.50. The ExA is content that the Proposed Development would be unlikely to have any significant effects for land or water quality and that appropriate mitigation would be secured in the rDCO. The ExA concludes that the Proposed Development would accord with the relevant policies in the NPSfP and MPS relating to water quality.

3.6.51. The ExA considers that effects on the water environment neither weigh for nor against the making of a DCO.

3.7. SOCIO-ECONOMIC, COMMERCIAL AND ECONOMIC EFFECTS

3.7.1. This section addresses the Proposed Development's potential socio-economic, commercial and economic effects. The need for the Proposed Development and its contribution to the UK's economy and the effects for shipping operations at the PoI and terrestrial transportation have been considered earlier in Chapter 3.

POLICY

3.7.2. Paragraph 4.2.3 of the NPSfP requires the decision-maker to take account of "… *any longer-term benefits that have been identified (such as job creation) … or any wider benefits to national, regional or local economies, environment or society*".

3.7.3. Paragraph 4.3.4 of NPSfP notes that the decision-maker may need to quantify the economic benefits of Nationally Significant Infrastructure Project (NSIP) port applications. Paragraph 4.3.5 of NPSfP states that substantial weight should be given to positive impacts associated with economic development.

3.7.4. Paragraphs 4.4.1 and 4.4.2 of the NPSfP state that the decision-maker may need to make judgements on whether possible adverse effects "… *would arise from the impact of the development on other commercial operators*". Where such adverse impacts, for example from increased traffic, would only arise in the event of the success of the proposed development, the decision-maker should consider the adequacy of mitigation proposed rather than likelihood of the impact arising.

3.7.5. Section 5.14 of the NPSfP addresses local and regional level socio-economic impacts and paragraph 5.14.6 advises that the decision-maker should have regard to the potential socio-economic impacts of new port infrastructure "… *identified by the applicant and from any other sources that the decision-maker considers to be both relevant and important to its decision*". Paragraphs 5.14.7 further advises *"It is reasonable for the decision-maker to conclude that limited weight should be given to assertions of socio-economic impacts that are not supported by evidence*".

3.7.6. EIMP Policy EC1 states that "*Proposals that provide economic productivity benefits which are additional to Gross Value Added currently generated by existing activities should be supported*". Policy EC2 states that proposals that provide additional employment benefits should be supported.

3.7.7. The NELLP Policies 1, 7 and 8 recognise the importance of the port and logistics sector in the local economy and promote sustainable growth. Policy 7 states that

proposals for port development will be supported if "… *the scheme accords with the development plan as a whole and is able to meet the needs of the Habitats Regulations*".

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3.7.8. Chapter 16 of the ES [APP-052] describes the Applicant's socio-economic assessment.

3.7.9. Potential impacts identified during the Proposed Development's construction include employment of between 460 and 700 workers, depending on whether construction is in a single stage or phased, with an estimated 25% of that construction force being recruited from beyond the Grimsby Travel To Work Area (TTWA) economic assessment area. The Applicant has estimated that the gross value added (GVA) to the Grimsby TTWA would be approximately £30.9 million per year during the construction period. The Applicant has assessed that GVA would be *"moderate (significant) beneficial"* [paragraph 16.8.18 in APP-052].

3.7.10. The construction of the landside elements of the Proposed Development would have direct effects for four businesses. For three of those businesses (Drury Engineering Services Limited, P.K. Construction (Lincs) Limited and Malcolm West Fork Lifts Limited) the sites they occupy would variously experience some demolition and reconstruction of buildings and/or reconfiguration. In the case of the fourth business, Volkswagen Group United Kingdom Limited (VWG), the Applicant expects that VWG would relocate its business from the proposed Western storage yard to a site within the PoG. While negotiations between VWG and the Applicant to facilitate that transfer had commenced when the Application was submitted, by the Examination's close they had not been concluded (see Chapter 6 for further details).

3.7.11. In terms of effects on existing businesses with the PoI the Applicant's overall conclusion is that during the construction period the effect will be "*negligible and non-significant"* because of:

"… the comparatively small number of employees in the businesses relative to the wider labour market area (low magnitude) and as most businesses do not require relocation and as a result are not required to absorb change (very low sensitivity). Where businesses are directly impacted by the construction of the IERRT project and are required to relocate or have access to their sites amended, suitable alternative premises and access arrangements have already been identified – and positive negotiations are currently ongoing in regard to this – these businesses have been assessed as low sensitivity as a result of this change and the effect in these instances as negligible and non-significant." [paragraph 16.8.87 in APP-052]

3.7.12. For the operational phase the Proposed Development has been assessed as generating a net increase of 196 jobs, of which 176 would be generated within the Grimsby TTWA. The Applicant has estimated that annually the GVA for the Grimsby TTWA would be approximately £2.7 million during the operational phase. The Applicant has assessed that GVA as being *"minor beneficial which is not considered significant"* [paragraph 16.8.94 in APP-052].

3.7.13. With respect to the requirement for VWG to cease its operations at PoI the Applicant has commented, based on an alternative site being found, that the effect of the Proposed Development for VWG would be:

"negligible and not significant … due to comparatively small number of employees in the business relative to the wider labour market area (low magnitude) and that they will be able to absorb change (low sensitivity)" [paragraph 16.8.105 in APP-052].

3.7.14. In terms of the operational effects on existing businesses within the PoI, the Applicant's overall conclusion is that:

"… there will be a low impact on businesses during operation, based on the lack of direct impacts and indirect impacts on businesses. Sensitivity is anticipated to be low, based on local businesses being able to respond to absorb the impacts of the scheme and employment in these businesses representing a comparatively small proportion of the total employment in the wider labour market area. This results in a negligible (not significant) effect on businesses during the operational stage." [paragraph 16.8.132 in APP-052].

3.7.15. The Applicant considers the Proposed Development would have an overall beneficial effect on the economy of Grimsby's TTWA "*through the provision of employment and through associated multiplier effects*" [paragraph 16.11.2 of APP-052].

EXAMINATION AND CONCLUSIONS

3.7.16. NELC's LIR [REP1-023] observes that the Proposed Development "*accords with the principles of the NELLP*" including Policies 5, 22, 39 and 42 of the NELLP.

3.7.17. ExQ1 SE.1.1 asked CLdN if it accepted that relevant indirect effects of the Proposed Development had been assessed by the Applicant. CLdN commented in, [REP2-034] amongst other things, that for the Proposed Development's operational phase jobs would be displaced from the PoK to the PoI and:

"…it is a stretch to say that this operational employment effect is significant. The more pressing issue for the Examining Authority to consider is whether there is an overall economic need for additional freight capacity in the Humber, which is a more important consideration than the relatively low level of any additional jobs created by the Proposed Development." [REP2-034]

3.7.18. The ExA accepts that the Proposed Development's construction phase would in socio-economic terms be beneficial for the Grimsby TTWA, most particularly in terms of employment opportunities and GVA. In that regard the ExA shares the Applicant's view that for the construction phase the employment and GVA effects would be moderately beneficial, with the effects for local services, temporary accommodation (i.e., housing for construction workers) and existing benefits being *"negligible"*.

3.7.19. For the operational phase the Applicant has assessed the contribution to employment as being moderately beneficial. However, as highlighted by CLdN, that

assessment does not seem to have taken into account the intention for Stena Line to transfer its two existing services from the PoI's inner dock and the PoK. The operation of those services will already be drawing labour from within the Grimsby TTWA. The ExA therefore considers that the Proposed Development's employment effect during its operational phase would be more likely to be negligible to minor beneficial. In the ExA's view the employment benefit would only be greater if the presence of the proposed berths resulted in a net increase of Ro-Ro services being operated on the Humber.

3.7.20. The ExA agrees with the Applicant that for the operational phase a yearly GVA addition of £2.7 million for the Grimsby TTWA would be a minor beneficial effect. The ExA also accepts that during the operational phase the impact for local services would be likely to be negligible.

3.7.21. With respect to the operational phase's effects for local businesses, setting aside considerations concerning shipping and navigation effects which the ExA has addressed in section 3.3 above, the ExA has some reservations about the Applicant's conclusion that there would be a *"negligible"* effect. That is because the Applicant has reached agreements with three of its affected tenants (Drury Engineering, PK Construction and Malcolm West Fork Lifts) whose premises would be affected by the works required to establish the proposed northern storage area. For those three tenants the ExA therefore accepts it is likely there would be a negligible effect because they have agreed alternative arrangements with the Applicant.

3.7.22. However, by the Examination's close an agreement between VWG and the Applicant about the former's relocation to the PoG had not been reached. The Applicant has assessed the effect for VWG as being *"negligible"* based on VWG relocating to the PoG and there being a relatively small number of affected employees relative to the wider labour market [paragraph 16.8.105 in APP-052].

3.7.23. VWG has explained it is seeking confirmation that it would not be required to vacate the PoI until an alternative vehicle storage facility was available at the PoG. That is because VWG needs to retain its east coast import base [REP9-031], with the land currently occupied at the PoI being *"… vital in terms of VWG being able to service its customer base in the UK"* [REP9-030]. The Applicant has advised that since September 2021 it has been seeking to agree the arrangements for VWG's relocation to PoG, with VWG's needs *"regularly shifting"* [Appendix 2 in REP10-001]. Given the length of time that has elapsed since the commencement of the negotiations between VWG and the Applicant there can be no certainty that agreement would be reached.

3.7.24. It is therefore possible that VWG would be required to cease its use of the PoI before an alternative facility was available, which could affect VWG's ability to service 600 dealerships throughout the UK [REP9-031]. The ExA considers that would go beyond the Applicant's local labour market assessment for the Grimsby TTWA, potentially causing adverse socio-economic effects involving employment across VWG's dealership network and the availability of vehicles in the UK. The

ExA therefore considers the effect for VWG has been understated as being negligible.

3.7.25. The ExA considers that for the most part the Applicant has adequately assessed the Proposed Development's socio-economic effects and has provided sufficient evidence to support its conclusions about those effects. However, the ExA has some reservations about the claimed employment benefits for the Proposed Development's operational phase and the effect upon VWG's operations on the Humber. So, while the Proposed Development would provide some support for economic development in the area and would accord with the relevant policies in the NPSfP, the ExA concludes that little positive weight should be attached to the socio-economic effects. The ExA, however, considers that if the matter of relocating VWG to the PoG were to be resolved the Proposed Development's socio-economic effects would attract greater positive weight.

3.8. UNCONTENTIOUS MATTERS

INTRODUCTION

3.8.1. This section addresses various issues that were 'uncontentious' during the Examination that were either identified in the ExA's IAPI or concern topics included in the Applicant's ES relating to policies included in the NPSfP.

AIR QUALITY, AIRBORNE NOISE AND VIBRATION AND LANDSCAPE AND VISUAL EFFECTS

3.8.2. This subsection covers matters affecting human receptors, while those affecting wildlife are addressed in Section 3.4 above.

Policy and legislation

3.8.3. Section 4.16 of the NPSfP requires applicants to assess the impact of port development on human health, including cumulative effects.

3.8.4. Section 5.7 of the NPSfP advises the decision-maker should consider the extent to which applicants intend to influence modal share for inland transportation in relation to local air pollution; and similarly, the provision for future use of shore-side power to vessels in port.

3.8.5. Section 5.8 of the NPSfP requires the decision-maker to consider if reasonable steps, including any proposed mitigation, would be taken by the developer to minimise detrimental impacts on amenity from emissions of odour, dust, steam, smoke and artificial light if a DCO is to be made. The SoST should also consider whether there is a justification for the proposed development to be covered by a defence to statutory nuisance claims.

3.8.6. Section 5.10 of the NPSfP requires the SoST to be satisfied that the project has demonstrated good design to minimise noise emissions and transmission and mitigate adverse effects on the environment, health, and quality of life potentially incorporating measurable requirements in a made DCO.

3.8.7. Section 5.11 of the NPSfP notes that visual impacts may be a consequence of the physical character of port developments. The SoST should consider whether the proposed project has been designed sufficiently carefully to minimise harm and will have to judge whether any harms outweigh any benefits.

3.8.8. MPS paragraphs 2.6.2 and 2.6.3 require the relevant authorities to be satisfied that impacts on air quality, noise and vibration have been taken into account, including cumulative impacts on sensitive receptors.

3.8.9. The UK Marine Strategy 2015 published by Defra notes that the control of nitrogen oxides (NOx) emissions from ships is given effect through the Merchant Shipping (Prevention of Air Pollution from Ships) Regulations 2008 (as amended) which require vessel engines to meet a specified NOx emission standard.

3.8.10. Paragraph 185 of the EIMP notes objectives in relation to an eco-systems approach to marine planning including consideration of air quality effects on coastal communities. Policy ECO1 states "*Cumulative impacts affecting the ecosystem of the East marine plans and adjacent areas (marine, terrestrial) should be addressed in decision-making and plan implementation*".

3.8.11. Policy 5 of the NELLP requires noise, air quality, disturbance and visual intrusion impacts for neighbouring land uses to be assessed. The NELLP Policies 5, 31 and 36 address how proposed developments must consider noise and air quality. NELLP Policies 22, 39 and 42 address visual impacts.

3.8.12. The North Lincolnshire Transport Plan 2011 includes local transport goals for reducing Carbon Dioxide (CO_2) and Nitrogen Dioxide (NO_2) emissions, highlighting the A160 at South Killingholme as an area of concern.

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3.8.13. Chapter 13 of the ES [APP-049] assesses the Proposed Development's effects on air quality. ES Chapters: 3 (Details of project construction and operation) [APP-039]; 17 (Traffic and Transport) [APP-053]; and 20 (Cumulative and In-combination Effects) [APP-056] have informed the assessment included in Chapter 13 of the ES.

3.8.14. In summary, Chapter 13 of the ES reports that construction phase vessel activity would be approximately 1.5 km away from the nearest human sensitive receptors, while the number of construction vehicle movements would be below the screening criteria referenced in the Institute of Air Quality Management (IAQM) and the Environmental Protection UK guidance. A project-specific air quality survey was carried out to establish baseline NO_2 concentrations [APP-049].

3.8.15. The ES reports that, without mitigation, the on-site air quality construction impacts for human receptors could potentially be significant [paragraph 13.8.34 of APP-049]. However, the Applicant has submitted that provided a sufficient level of dust mitigation is implemented on site throughout the works, as recommended by the IAQM, the residual dust effects for human receptors are considered insignificant [paragraph 13.11.6 of APP-049]. The Proposed Development's operational phase

on-site air quality impacts for human receptors have been assessed as being insignificant [paragraph 13.11.10 of APP-049].

3.8.16. The ES notes that the impact of on-site emissions from the Proposed Development during the operations phase are assessed as insignificant and are anticipated to decline over time due to increased use of emissions reduction technology, electric-powered land-tugs and shoreside electrical power to ships at berth [paragraph 13.9.8 of APP-049].

3.8.17. The residual impact on human health from off-site emissions during the construction phase has been assessed as being insignificant [paragraph 13.11.7 in APP-049]. Off-site emissions during the operational phase have been assessed as insignificant and are anticipated to decline over time due to increased use of vehicle emissions reduction technology [paragraph 13.11.12 in APP-049].

3.8.18. A sensitivity analysis on air quality impacts was undertaken on a precautionary basis, the conclusions of which align with the main assessment as noted above [paragraph 13.11.15 of APP-049].

3.8.19. Chapter 14 of the ES [APP-050] assesses Airborne Noise and Vibration. During the construction phase the nearest residents, the occupiers of the dwellings in Queens Road, are predicted to experience a "*minor adverse"* effect at worst due to construction traffic movements. The noise effect for the occupiers of the PoI during the construction phase has been assessed as being *"moderate adverse"* at worst. Vibration associated with the Proposed Development's construction has been predicted to have a *"negligible/minor adverse"* effect for occupiers of premises within the PoI [section 14.11 in APP-050].

3.8.20. The on-site operational phase noise effects, including from vessel arrivals, for the occupiers of the dwellings in Queens Road and Kings Road have been assessed as being *"minor adverse"* at worst. The off-site increase in road traffic noise experienced during the operational phase by the residents of Queens Road has been assessed as being up to "*moderate/major adverse*" and thus significant. To address that affect the Applicant proposes to offer a package of noise insulation for the owners of the affected dwellings. That mitigation, secured by Requirement 10 in the dDCO, would reduce the effect for the residents of Queens Road to *"minor adverse"* at worst. For occupiers of the PoI the operational noise effects have been assessed as ranging between *"major adverse"* to *"minor adverse"*. However, the Applicant has assessed that the PoI's occupiers the effect is expected to reduce to *"minor adverse or less with windows and doors facing the Proposed Development kept closed and the use of alternative means of ventilation"*. The Applicant also considers the anticipated electrification of port vehicles and equipment would reduce the level of noise associated with the Proposed Development's operation [section 14.11 in APP-050].

3.8.21. By agreement with the Planning Inspectorate, landscape/seascape and visual impact was scoped out of the application "*on the grounds that new structures within the Proposed Development would be within the existing port environment and would be similar to existing structures*" [Section 4.13 of APP-081]. Responding to advice in

the Scoping Opinion, the Application included a Lighting Plan [APP-012, amended by AS-051] and a lighting design concept report [APP-077].

Examination and Conclusions

3.8.22. There were no concerns or matters raised during the Examination concerning air quality, noise and vibration and landscape and visual effects for human receptors. The signed SoCG between the Applicant and NELC [REP10-014] confirmed agreement with the air quality and noise assessments subject to the implementation of the mitigation measures identified in Chapters 13 and 14 of the ES.

3.8.23. The ExA asked a clarifying question to the Applicant at ExQ1 in relation to provision of shoreside power and additional marine tug activity and was content with the Applicant's replies and did not consider it necessary to examine this matter further.

3.8.24. The ExA considers the Applicant has made an adequate assessment of the air quality and noise and vibration effects for humans. The ExA is also content that appropriate mitigation measures have been identified by the Applicant, which it has proposed would be secured through requirements included in the dDCO, for example Requirements 8 (onshore CEMP) and 10 (noise insulation). The ExA therefore considers that with respect to air quality and noise and vibration it is unlikely there would be any significant residual effects for humans. Having inspected the site and taking account of the PoI's industrial character, the ExA is content that the Proposed Development would not have any adverse landscape and visual effects.

3.8.25. The ExA concludes that with respect to air quality, noise and vibration, and landscape and visual effects for humans there would be no conflict with the relevant policies in the NPSfP, EIMP and NELLP and that the effects of these matters do not weigh for or against the making of a DCO.

HISTORIC ENVIRONMENT

Policy

3.8.26. Section 5.12 of the NPSfP advises the decision-maker to require developers to record and advance the understanding of heritage assets of significance where their loss may be justified and to put in place procedures for investigation where there is a high probability of heritage assets of archaeological interest being present that have not previously been investigated.

3.8.27. EIMP Policy SOC2 states:

"Proposals that may affect heritage assets should demonstrate, in order of preference:

a. *that they will not compromise or harm elements which contribute to the significance of the heritage asset*
b. *how, if there is compromise or harm to a heritage asset, this will be minimised*

c. *how, where compromise or harm to a heritage asset cannot be minimised, it will be mitigated against*
d. *the public benefits for proceeding with the proposal if it is not possible to minimise or mitigate or compromise the harm to the heritage asset."*

3.8.28. NELLP Policy 39 (Conserving and enhancing the historic environment) requires "*proportionate historic environment assessment and evaluations*".

The Application

Terrestrial historic environment

3.8.29. The Applicant's assessment of historic environment matters is primarily contained in Chapter 15 of the ES [APP-051] supported by figures in [APP-072] and ES Appendix 15.2 (Heritage Settings Assessment) [APP-106].

3.8.30. The Proposed Development does not directly affect any Conservation Areas or non-designated heritage assets. A total of 28 designated heritage assets were identified within the 5km study area for setting assessment. Two of those assets have been considered in detail: Stone Farm, a Grade II listed farmhouse building; and the Stone Creek anti-aircraft gun site, a Scheduled Monument. Both of those assets are located on the north bank of the river Humber, broadly opposite the Proposed Development [APP-106].

3.8.31. The Applicant has submitted that the Proposed Development would lie outside the setting of any heritage assets for which setting makes a contribution to the significance of those assets. The Applicant has therefore concluded that there would be no harm to the setting of any terrestrial heritage assets [section 7.1 of APP-106].

Marine historic environment

3.8.32. Chapter 15 of the ES assesses marine cultural heritage and archaeology [APP-051]. ES Appendix 15.1 [APP-105] is a Marine Archaeology technical report and Appendix 15.3 [APP-107] is a draft Written Scheme of Investigation (WSI).

3.8.33. In summary, the Applicant's marine historic environment assessment is:

- Any direct or indirect effects on potential marine heritage artefacts (maritime or aviation) would be negligible and insignificant.
- Without mitigation, effects on paleo-archaeological seabed features could be moderately adverse but with mitigation through further investigation could be significantly positive.
- Direct or indirect effects on marine archaeology from dredging works after mitigation would be negligible.
- In aggregate, residual effects on marine archaeology and cultural heritage would not be significant.

Examination and Conclusions

Terrestrial historic environment

3.8.34. No IPs raised concerns during the Examination about effects on the terrestrial historic environment.

3.8.35. NELC's LIR notes that there are limited heritage assets *"within the context of the site"* and there are no concerns regarding above or below ground heritage. NELC therefore considers the Proposed Development would accord with policy 39 of the NELLP (conserving and enhancing the historic environment) [paragraphs 5.10 and 5.11 of REP1-023].

3.8.36. The ExA asked the Applicant a clarifying question (ExQ LHE.1.3) regarding CLdN's representation about terrestrial heritage receptors [paragraph 4.3.3 in RR-007]. The ExA was content with the Applicant's answer in [REP2-009] and did not consider it necessary to examine this matter further.

3.8.37. In answer to ExQ LHE.1.2 Historic England (HE) confirmed its acceptance of the Applicant's assessment of effects to the setting of heritage assets as "*sufficient and appropriate*" [REP2-015].

3.8.38. The ExA notes the presence of listed buildings onshore to the north of the Humber and that the Proposed Development would theoretically be visible within their settings. The Proposed Development would not directly affect any listed buildings. The ExA undertook a 'Familiarisation Site Inspection' (FSI) during which the Application site was observed from the river [EV4-001]. Based on what the ExA observed during the FSI, it agrees with the Applicant's assessment that in the context of Immingham's existing industrial landscape the Proposed Development's presence would not harm the setting of any onshore heritage assets.

3.8.39. The SoCG between NELC and the Applicant confirms the former's acceptance of the latter's assessment of cultural heritage impacts, including the appropriateness of scoping out impacts on terrestrial archaeology "*given the ongoing re-development of the port's landward footprint over the last 111 years…*" [REP10-014].

3.8.40. The ExA is therefore content that there is no likelihood of harmful effects for the terrestrial historic environment.

Marine historic environment

3.8.41. There were no concerns raised during the Examination about marine historic environment effects. The ExA notes that the MMO defers to HE on heritage matters.

3.8.42. The ExA asked the Applicant clarifying written questions regarding the WSI and the ExA is content with the answers provided by the Applicant and did not consider it necessary to examine the matters further.

3.8.43. In answer to ExQ LHE.1.1, HE confirmed its acceptance of the scope and detail of the draft WSI [REP2-015].

3.8.44. In the SoCG between HE and the Applicant [REP6-006], HE confirmed no disagreement with the Applicant's assessment or the approach to cultural heritage and marine archaeology.

3.8.45. With respect to the intertidal zone where jurisdictional responsibilities overlap between HE and NELC, the ExA is content that the Applicant has adequately consulted NELC about the WSI's provisions [item DCO.4.01 in REP8-020].

3.8.46. In the SoCG between NELC and the Applicant [REP10-014], NELC confirms its satisfaction with the assessment of cultural heritage impacts and the requirement to consult NELC in connection with the MMO's final approval of an archaeological method statement as part of the DML.

3.8.47. The ExA therefore considers that the likely effects on the marine historic environment have been appropriately identified and adequate mitigation would be secured in any made DCO. The Applicant's assessment that additional investigation of pre-historic seabed archaeology secured by the DCO would be a positive effect contributing to the understanding of the historic environment is noted and offset against the slight residual risk of disturbance to presently unidentified underwater heritage assets.

3.8.48. The ExA concludes that after mitigation secured through any made DCO the Proposed Development would be unlikely to result in harm to designated or non-designated heritage assets. Accordingly, the effects on the historic environment neither weigh for nor against the making of a DCO.

COASTAL PHYSICAL PROCESSES, WASTE MANAGEMENT AND DREDGE DISPOSAL

Policy

3.8.49. Section 5.3 of the NPSfP advises that applicants should assess the impact of proposals on coastal processes and geomorphology, taking account of potential impacts from climate change. The NPSfP also advises the decision-maker to ensure that applicants have restoration and monitoring plans for any foreshore disturbed by direct works and should examine the "*broader context of coastal protection around the proposed site*". The decision-maker must have regard to the MPS and may also have regard to any relevant Shoreline Management Plans and Coastal Change Management Areas.

3.8.50. Section 5.5 of the NPSfP requires the decision-maker to be satisfied that waste would be properly managed, dealt with by available infrastructure and steps would be taken to minimise the volume of waste produced and sent for disposal. Where necessary requirements or obligations should be imposed in made DCOs.

3.8.51. Section 2.6 of the MPS advises that marine plan authorities should seek to minimise and mitigate any geomorphological changes that an activity or development would have on coastal processes, including sediment movement.

3.8.52. Dredged material is classed as a waste material and alternatives to disposal of the dredged material should be explored and any practical alternatives to disposal should be further considered before consent for disposal at sea (or land) is given, taking account of the UK Government Sustainable Development Strategy. Paragraph 3.6.8 of the MPS states that "*applications to dispose of wastes must demonstrate that appropriate consideration has been given to the internationally agreed hierarchy of waste management options for sea disposal*".

3.8.53. The EIMP paragraph 377 states that "*where possible, dredged material should be reused or recycled before choosing to dispose at sea*…".

The Application

3.8.54. The Applicant's physical processes assessment is in Chapter 7 of the [APP-043], which has been informed by the Applicant's HRA report [APP-115].

3.8.55. Physical processes impact pathways and potential exposure to change identified by the Applicant are shown in Table 7.11 in [APP-043]. The conclusion of the physical processes assessment was that changes resulting from the Proposed Development's construction and operation are considered "*small in both magnitude and extent and the resultant exposure to change is [sic] assessed as low*" [paragraph 7.11.2 in APP-043].

3.8.56. A Waste Hierarchy Assessment was undertaken to determine the Best Practical Environmental Option (BPEO) for the disposal of dredge arisings. That assessment concluded that landside disposal is not considered feasible due to practical, economic and environmental costs. Chemical analysis from sediment samples indicates that the material to be dredged "*does not contain levels of contamination that would restrict the material being disposed of in the marine environment*" [Section 5.3 in APP-076].

3.8.57. As the Waste Hierarchy Assessment did not identify a beneficial use for the dredge arisings and the dredged material is assessed as being suitable for disposal in the sea at an appropriate licensed disposal site, the option for disposal in the Humber Estuary was selected as the BPEO. The Applicant has submitted that two of the Humber's existing licenced disposal sites have sufficient capacity to accommodate the worst-case maintenance dredging arising from the Proposed Development [paragraph 6.1.2 of APP-076].

3.8.58. The impact of dredge disposal was assessed further as part of the coastal physical processes assessment. The DML, Schedule 3 in the dDCO [REP10-004], includes conditions relating to dredge disposal and on the management of construction waste in order to protect the marine and coastal environment.

3.8.59. The CEMP included with the Application [APP-111] includes a Site Waste Management Plan.

3.8.60. The Applicant's assessment of ground conditions and land quality concluded that there would be no likely significant residual effects after mitigation during the

construction phase. That mitigation is secured in the dDCO through adherence to the offshore and onshore CEMPs.

Examination and Conclusions

3.8.61. No IPs raised concerns about waste management during the Examination. The ExA asked clarifying questions in ExQ1 in relation to the disposal of dredged material and the wording of the CEMPs. The ExA was content with the responses given and did not consider it necessary to examine this matter further.

3.8.62. The SoCG between the Applicant and the MMO confirms that all comments and questions concerning physical process and sediment-related impacts had been resolved [REP10-011].

3.8.63. The ExA concludes that there would be no conflict with the policies concerning coastal physical processes, waste management and dredge disposal policies included in the NPSfP and the MPS. The ExA considers the effect of those matters neither weigh for nor against the making of a DCO.

LAND USE PLANNING

3.8.64. This subsection considers the assessment of security matters in relation to land use planning. Marine safety matters are considered in the Navigation and Shipping section of this Recommendation.

Policy

3.8.65. Paragraph 4.10.4 of the NPSfP advises the decision-maker should "*take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security requirements which the design has to satisfy*".

3.8.66. Paragraph 14.15.3 of the NPSfP advises applicants should:

"...*identify whether its proposed site is within the consultation distance of any site with hazardous substances consent and, if so, should consult HSE for its advice on locating the particular development there*."

3.8.67. Section 4.16 of the NPSfP requires applicants to assess the impact of port development on human health, including cumulative effects.

The Application

3.8.68. The Applicant confirmed that security measures would be applied to the Proposed Development [paragraph 3.35 of APP-019].

3.8.69. During statutory consultation, the Ministry of Defence confirmed that it has no safeguarding concerns with regard to the Proposed Development [e-pages 259 and 265 of APP-034].

3.8.70. Chapter 18 of the ES provides an assessment of risks in relation to land use planning and human health [APP-054] and advises that there would be no storage or processing of hazardous substances. The Proposed Development would

therefore not require Hazardous Substances Consent nor would it be subject to the COMAH Regulations. However, the Proposed Development lies within the consultation distances for a number of COMAH sites as shown in [APP-073] and the Applicant has consulted with the HSE. Vessels using the proposed berths would lie beyond the low water mark and would not be subject to the COMAH Regulations.

3.8.71. Although Section 18.9 in [APP-054] demonstrates that the Proposed Development would not be a COMAH site, Section 18.10 assesses risks to users of the Proposed Development from the nearby COMAH sites. Section 18.13 in [APP-054] concludes that the Proposed Development would not of itself contribute to any risks to the safety and health of people and that there is no reason why the HSE would advise against the Proposed Development. The Applicant has further commented that this an agreement in principle with HSE to an exception for a small number of workers within the Development Proximity Zone "*only present for a short time and spread over a large area*" and "*provided that there are no more than 100 members of the public present at any one time in the waiting area of the Terminal*" [paragraphs 18.13.2 to 18.3.6 in APP-054].

Examination and conclusions

3.8.72. With regard to the Proposed Development's proximity to the adjoining COMAH sites, DFDS has contended that HGV drivers should be included in the 100-passenger limit that the HSE has accepted. However, in the SoCG between the HSE and the Applicant [REP10-013] the HSE has confirmed its agreement with the Applicant's assessment and a daily limit of 100 departing passengers in cars prescribed in the dDCO plus drivers accompanying HGVs using the Proposed Development. The HSE has accepted HGV drivers need not be counted in the 100-passenger limit and the ExA sees no reason to disagree with that position. DFDS also submitted its concern that the safety of passengers had not been properly assessed. However, the ExA is content with the Applicant's case that safety management for passengers on site is a normal matter for the port operator that does not need to be secured in a made DCO.

3.8.73. The UK Health Security Agency submitted [RR-022] confirming that it is satisfied that the Proposed Development should not result in any significant adverse impact on human health.

3.8.74. Subject to matters concerning energy security and safety covered in section 3.3 above, the ExA considers that land use planning considerations have been adequately assessed by the Applicant. For the reasons given above the ExA concludes that the Proposed Development would accord with the relevant policies of the NPSfP, MPS and NELLP and that land use planning effects neither weigh for nor against the making of a DCO.

3.9. CUMULATIVE AND IN-COMBINATION EFFECTS

APPLICATION

3.9.1. The EIA Regulations require an ES to include a project-level assessment of potentially significant effects of a proposed development. The Applicant's assessment of cumulative and/or in-combination effects is primarily contained in the revised version of Chapter 20 of the ES [REP7-008], which replaced [APP-056]. That assessment has considered:

- Inter-project effects, which include effects that would potentially overlap or interact with the effects arising from other plans, projects and activities for the receptors/topics considered in the ES and reviewed in Table 20.5 in [REP7-008]. The Applicant has assessed the inter-project cumulative/in-combination effects as being insignificant to minor adverse and concluded there would be no significant such effects.

- Intra-project effects, ie, possible residual adverse impacts from the Proposed Development that might cumulatively and/or in-combination have the potential to act on the same receptor. Intra-project effects could potentially affect the following receptors: water and sediment quality; benthic habitats and species; fish; marine mammals; coastal water birds; humans; flood defences; soils/groundwater; and existing properties. All of the potential intra-project cumulative/in-combination effects have been assessed by the Applicant as being "*insignificant to minor adverse*" and there would therefore be no significant intra-project effects.

3.9.2. When the Application was submitted the Applicant's view was that the Proposed Development would not give rise to any unacceptable cumulative/in-combination effects.

EXAMINATION AND CONCLUSIONS

3.9.3. During the Examination, Nationally Significant Infrastructure Project (NSIP) applications for the Viking Carbon Capture and Storage pipeline (Viking CCS) and the Immingham Green Energy Terminal (IGET) were also accepted for Examination. The ExA therefore requested the Applicant to update its assessment for the cumulative/in-combination effects of the Viking CCS and IGET NSIPs. The Viking CCS and IGET NSIPs currently being Examined (see Chapter 1 above for further details).

3.9.4. The MMO in its Relevant Representation [paragraphs 4.3.2 to 4.3.6 of RR-014] raised some questions regarding coastal processes cumulative effects which were answered by the Applicant in Table 4.8 in [REP1-013]. The subsequently SoCG between the Applicant and the MMO [REP10-011] confirms that were no matters of disagreement between the parties. The ExA is therefore content that the MMO's initial cumulative effects concerns have been adequately addressed.

3.9.5. NE advised in [REP8-038], as elaborated in [REP9-018], that it had a continuing unresolved concern relating to an AEoI on the Humber Estuary SAC arising from

habitat loss associated with the Proposed Development in-combination with other projects. In response to that concern, the Applicant submitted a “without prejudice” HRA Derogation Report [REP8-033] and indicated that, should it be considered necessary, 1ha of compensatory habitat forming part of the OtSMRS could be allocated to the Proposed Development. The Applicant, however, remained of the view that any adverse in-combination effect would arise from the IGET’s development and other projects rather than from the Proposed Development of itself. For reasons given in section 3.4 above and Chapter 4 below the ExA is not persuaded by the Applicant’s sequencing argument and considers that the allocation of the OtSMRS land as compensatory habitat for the SAC should be secured as part of any consent issued for the Proposed Development. With 1ha of the OtSMRS allocated to the Proposed Development the ExA considers NE’s concern would be adequately addressed and an in-combination AEoI of the SAC would be avoided.

3.9.6. For the reasons given above, the ExA is content that the Proposed Development, including the implementation of mitigation measures identified by the Applicant, would be unlikely to give rise to significant cumulative and in-combination effects. The necessary mitigation measures could be secured through requirements or DML conditions included in the dDCO. With respect to securing the allocation of the necessary OtSMRS land as compensation for the AEoI of the Humber Estuary SAC the ExA considers that should be achieved via the SoST and the Applicant entering into a s106 agreement, as explained in section 3.4 above and Chapter 7 below.

3.9.7. The ExA is content that the assessment of cumulative and combined effects accords with the EIA Regulations and the NPSfP. The ExA therefore considers that cumulative and in-combination effects neither weigh for nor against the making of a DCO.

4. SUMMARY OF CONCLUSIONS IN RELATION TO HABITAT REGULATIONS ASSESSMENT

4.1. INTRODUCTION

4.1.1. This chapter provides a summary of the Examining Authority's (ExA) conclusions relevant to the Habitats Regulations Assessment (HRA). The full analysis can be found in Appendix C.

4.1.2. In accordance with the precautionary principle embedded in the Conservation of Habitats and Species Regulations 2017 (as amended) (Habitats Regulations), consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of European sites and no reasonable scientific doubt remains.

4.1.3. The ExA has been mindful throughout the Examination of the need to ensure that the Secretary of State for Transport (SoST) has such information as may reasonably be required to carry out their duties as the competent authority. The ExA has sought evidence from the Applicant and the relevant Interested Parties (IP), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions and Issue Specific Hearings (ISH).

4.2. HABITATS REGULATIONS ASSESSMENT IMPLICATIONS

4.2.1. The Proposed Development is not directly connected with or necessary to the management of a European site. The SoST must therefore make an 'appropriate assessment' (AA) of the Proposed Development's implications for potentially affected European sites in the light of their Conservation Objectives.

4.2.2. The Applicant provided four iterations of the Habitats Regulations Assessment Report ('the HRA Report') prior to and during the Examination:

- The first HRA Report [APP-115] was submitted as part of the suite of application documents.
- An updated HRA Report was submitted at Examination deadline (D) 5 [REP5-020], addressing questions from the ExA [PD-010] and issues raised by IPs.
- A further update of the HRA Report was submitted at D7 [REP7-014] responding to the ExAs Report on Implications for European Sites (REIS) [PD-018], questions raised by the ExA [PD-020] and issues raised by IPs.
- At D8, the final iteration of the HRA Report [REP8-014] was submitted in response to questions raised by the ExA [PD-022] and issues raised by IPs.

4.2.3. All references in this Recommendation to the Applicant's HRA Report are to the final iteration [REP8-014] unless indicated otherwise.

4.2.4. In addition to the HRA Report the Applicant also submitted a (without prejudice) Habitats Regulations Assessment Derogations Report [REP8-033] in response to Examination written question (ExQ) BNE4.04 [PD-022].

4.3. SUMMARY OF HABITATS REGULATIONS ASSESSMENT MATTERS CONSIDERED DURING THE EXAMINATION

4.3.1. The main HRA matters raised by the ExA, NE and other IPs and discussed during the Examination include:

- inclusion of an additional European site in the assessment;
- assessment of in-combination effects;
- inclusion of additional pathways to the screening assessment;
- robustness of the assessment methodologies;
- conclusions of the screening assessment;
- effectiveness of mitigation measures;
- conclusions of the consideration of adverse effects on integrity (AEoI);
- consideration of alternatives;
- the Applicant's case for the imperative reasons of overriding public interest (IROPI); and
- the Applicant's proposed package of (without prejudice) compensatory measures as set out in its Derogations Report.

4.3.2. Matters which were undisputed by IPs, including NE as the ANCB, were that:

- In relation to the Humber Estuary Special Area of Conservation (SAC), Humber Estuary Special Protection Area (SPA) and Humber Estuary Ramsar site:
    - The potential effects of changes to qualifying intertidal habitats as a result of the movement of roll on/roll off vessels during operation.
    - The potential effects of changes to qualifying habitats as a result of sediment deposition during capital dredge disposal for the construction phase.
    - Indirect changes to qualifying habitats as a result of changes to the hydrodynamic and sedimentary processes during capital dredge disposal for the construction phase.
    - The potential effects of the introduction and spread of non-native species during construction on qualifying habitats.
    - Mitigation measures, risk of injury to marine mammals during piling for the construction phase.
    - The potential effects of underwater noise and vibration during piling on qualifying species during the construction phase – agreement that no mitigation would be required.
- Greater Wash SPA:
    - Screening out the potential impacts on this designation.

4.3.3. These areas of agreement are set out in NE's Relevant Representation [RR-015].

4.4. SUMMARY OF FINDINGS IN RELATION TO THE ASSESSMENT OF LIKELY SIGNIFICANT EFFECTS

4.4.1. The Greater Wash SPA is the only site for which the Applicant concluded no likely significant effect (LSE) would occur from either the project alone or in-combination with other projects and plans, as presented in paragraph 2.4.2 of the RIES [PD-018]. NE confirmed it agreed with the Applicant's conclusion of no LSEs in respect of the Greater Wash SPA in paragraph 2.1.7 and ID35 of its additional submission supporting its RR [AS-015].

4.4.2. The Applicant concluded that the Proposed Development would be likely to give rise to significant effects, either alone or in-combination with other projects or plans, for one or more of the qualifying features of:

- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar;
- The Wash and North Norfolk Coast SAC.

4.4.3. The qualifying features and LSE pathways screened in by the Applicant are detailed in Table 2 and Table D1 of the HRA Report [REP8-014].

4.4.4. The Applicant's decision to exclude certain LSE impact pathways was disputed by IPs and was questioned by the ExA during the Examination.

4.4.5. In relation to accidental spillages and the reliance on the reactive control measures in the Port Marine Safety Code (PMSC), the ExA disagrees with the Applicant and believes that in the absence of mitigation there is a potential for LSE and this pathway should be taken forward to appropriate assessment. This accords with the People Over Wind and Peter Sweetman v Coillte Teoranta judgement.

4.4.6. In regard to air quality impacts arising during construction, the ExA is content that there is no potential for LSE based on the Applicant's justification provided in [REP1-013] and that NE agrees with that [REP7-038].

4.4.7. The ExA agrees with the Applicant's recognition in the HRA Report [REP5-020] of the potential, yet precautionary, LSE arising from underwater noise from vessel operations including maintenance dredging and dredge disposal for fish and migratory mammals during the operational phase.

4.4.8. The ExA agrees with NE [REP7-038] and believes that changes to seabed habitats and features as a result of sediment deposition during maintenance dredging should be screened in by the Applicant, on the grounds that even though the risk is low for an LSE to arise, a risk would still present.

4.4.9. With respect to the in-combination assessment, the ExA recognises that the Applicant's approach does not adhere to the requirements of the Habitats Regulations. The issue of the scope of the in-combination assessment and resulting

potential for LSE was a matter of disagreement between the Applicant and NE throughout the Examination.

4.4.10. The ExA has therefore concluded that LSE could occur for the qualifying features of four European sites, from both the Proposed Development alone or in-combination with other projects and plans. These sites, qualifying features and the potential effects are presented in Appendix C of this Recommendation.

4.5. SUMMARY OF FINDINGS IN RELATION TO ADVERSE EFFECTS ON INTEGRITY

4.5.1. Some of the conclusions in the Applicant's HRA Report were subject to ExQs, questioning at Issue Specific Hearings and IP representations.

4.5.2. NE in [REP7-038] concluded that AEoI of the Humber Estuary designated sites from accidental spillages during construction can be ruled out based on the preventative measures set out in Table 3.2 of the Outline Offshore CEMP [REP8-012]. The Applicant also relied on the PMSC's requirements to justify why accidental spillages did not need to be taken forward to appropriate assessment. That was agreed in the SoCG between the Applicant and NE [REP6-010].

4.5.3. Based on the cases made by the Applicant and other IPs the ExA is content that AEoI on all qualifying features of European sites can be excluded from the Proposed Development alone.

4.5.4. Based on the evidence before the ExA it is also content that there would be no AEoI of the following European sites from the Proposed Development in-combination with other plans or projects:

- Humber Estuary SPA
- The Wash and North Norfolk Coast SAC

4.5.5. In relation to the Humber Estuary SPA, NE maintained an objection to the potential for AEoI from airborne noise and visual disturbance to waterbirds arising from construction activities. NE in [REP9-018] set out the case that a precautionary 300 metre disturbance distance should be applied rather than the 200 metres as proposed by the Applicant.

4.5.6. Given the specific context of the Port of Immingham and the evidence provided by the Applicant demonstrating habituation to existing port related activity and noise, the ExA considers a 200-metre disturbance distance would be appropriate in this instance. The ExA is therefore content, subject to the implementation of the proposed mitigation measures, that there would be no AEoI from airborne noise and disturbance for the Humber Estuary SPA qualifying features, both alone and in-combination. However, given the position of NE on this matter, the SoST may wish to make further enquiries of the Applicant and NE.

4.5.7. The ExA has found, based upon advice from NE [REP9-018] that an AEoI from physical loss of habitat in-combination with other plans and projects cannot be excluded beyond reasonable scientific doubt for:

- Humber Estuary SAC
- Humber Estuary Ramsar site

4.5.8. Regulation 64 of the Habitats Regulations makes provision for a project to proceed where AEOI of European sites cannot be ruled out. To proceed, a project must be assessed against three tests, each test must be passed sequentially before proceeding to the next:

- Test 1 – Assessment of alternatives
- Test 2 – Imperative reasons of overriding public interest (IROPI)
- Test 3 – Compensatory measures

4.5.9. The ExA therefore considered the Applicant's case set out in its *"without prejudice"* HRA Derogation Report [REP8-033] in relation to the consideration of alternatives, IROPI, and compensatory measures.

4.5.10. In section 1.6 of Appendix C the ExA has concluded that no alternative design parameters are known to be implementable that would present a feasible alternative solution. The ExA has concluded in section 1.7 of Appendix C that taking into account the information presented during Examination on the need for and benefits from the Proposed Development set against the predicted degree of harm, that IROPI for the Proposed Development has been demonstrated.

4.5.11. The Applicant's proposed package of compensatory measures is set out in section 5 of [REP8-033]. The proposed compensatory habitat creation would be provided off site at the Outstrays to Skeffling Managed Realignment Scheme (OtSMRS). The Applicant would allocate 1.0 hectare of the OtSMRS as compensation for the Proposed Development. Having regard to NE's concerns, the ExA considers that the compensatory measures would be necessary to address the in-combination effects identified. The ExA considers that delivery of the OtSMRS compensatory habitat should be secured by the SoST and the Applicant entering into a section 106 agreement under the provisions of the Town and Country Planning Act 1990 (see section 3.4 of this Recommendation).

4.5.12. The ExA considers that there is sufficient information for the SoST to establish that appropriate compensatory measures can be implemented, in order to fulfil their duty under the requirements of the Habitats Regulations. The ExA concludes that the overall package of proposed compensation measures is feasible, appropriate and would ultimately ensure the overall coherence of the National Site Network.

4.6. CONCLUSIONS

4.6.1. The ExA considers the correct European sites and qualifying features have been identified for the purposes of assessment and that all potential impacts which could give rise to significant effects have been identified in the Applicant's HRA Report [REP8-020].

4.6.2. The ExA's findings are that, subject to the mitigation measures to be secured in the recommended Development Consent Order, AEoI for the Humber Estuary SPA and the Wash and North Norfolk Coast SAC from the Proposed Development, when considered alone or in-combination with other plans or projects, can be excluded from the impact effect pathways assessed.

4.6.3. The ExA's findings, based on advice received from NE, are that AEoI cannot be excluded beyond reasonable scientific doubt for the Humber Estuary SAC and the Humber Estuary Ramsar from the physical loss of habitat from the Proposed Development in-combination with other projects.

4.6.4. The Applicant has submitted an assessment of alternative solutions, a case for IROPI and proposed compensation measures [REP8-033]. The ExA is content that no feasible alternative solution exists that would represent a lesser adverse effect to the Proposed Development. The ExA is content, given the contract renewal disagreement between Stena Line and CLdN concerning the PoK, that for the purposes of the Habitats Regulations no financially feasible alternative location or site has been shown to exist that would represent a lesser adverse effect to the Proposed Development.

4.6.5. The NPSfP explains that the importation and exportation of goods via ports is important to the UK's economy. Given that context as the Proposed Development would enhance port resilience by assisting with the importation and exportation of goods and thus be beneficial to the national economy, the ExA considers that is a matter of overriding importance for the consideration of IROPI in this instance. The ExA therefore considers that IROPI for the Proposed Development has been established.

4.6.6. The ExA considers the compensation package as proposed in section 5 of [REP8-033] is feasible and appropriate and could be adequately secured by way of the SoST and the Applicant entering into a s106 agreement. Any s106 agreement would need to be concluded between the SoST and the Applicant during the decision period.

4.6.7. The ExA considers that there is sufficient information before the SoST to enable them to undertake an appropriate assessment in order to fulfil their duty under the requirements of the Habitats Regulations.

5. CONCLUSION ON THE CASE FOR DEVELOPMENT CONSENT

5.1. INTRODUCTION

5.1.1. This chapter provides an evaluation of the planning merits of the Proposed Development with regard to the legal and policy context set out in Chapter 2 and individual applicable legal and policy requirements identified in Chapters 3 and 4 of this report. Although the Habitats Regulations Assessment (HRA) has been documented separately in Appendix C (with a summary in Chapter 4), relevant facts and issues set out in that chapter are taken fully into account.

5.1.2. The Examining Authority (ExA) has taken account of Interested Parties' (IPs) Relevant Representations and the written and oral evidence of the Applicant, other IPs and the Harbour Master Humber (HMH) submitted during the course of the Examination. The ExA has also had regard to the Local Impact Report (LIR) submitted by North East Lincolnshire Council (NELC).

5.2. SUMMARY OF THE MAIN PLANNING ISSUES

THE PRINCIPLE OF DEVELOPMENT

5.2.1. The National Policy Statement for Ports (NPSfP) sets out the need for the provision of new port infrastructure. The NPSfP seeks to encourage sustainable port development to cater for forecasted long term growth for imports and exports by sea, so as to contribute to capacity, resilience, economic growth and prosperity, competitively and efficiently. The NPSfP highlights the role the UK has in ensuring the security of energy supplies during the transition away from reliance on fossil fuels, a matter that is consistent with the approach taken in the Overarching National Policy Statement for Energy (EN-1) designated in January 2024.

5.2.2. The ExA is content that the general approach to site selection and the overall project design, accord with the requirements of NPSfP and the Infrastructure (Environmental Impact Assessment) Regulations 2017 (EIA Regulations).

5.2.3. The NPSfP's presumption in favour of port development does not in itself require detailed consideration to be given to alternatives, however, adverse planning effects may justify such consideration. There may, however in any case, be legislative requirements, for example under the Habitats Regulations, requiring applicants and the decision-maker to consider alternatives. Based on the evidence presented to the ExA, it considers inaccurate assumptions were made by the Applicant about the short to mid-term capacity of the Port of Killingholme (PoK). That in turn has resulted in the Applicant's overstating of the need for additional unaccompanied Ro-Ro capacity amongst the Humber ports. The ExA therefore considers that the Applicant's general need case attracts little positive weight in favour of the making of a Development Consent Order (DCO).

5.2.4. The Applicant intends that the Proposed Development would be occupied by Stena Line. Stena Line currently operates from the Port of Immingham's (PoI) inner dock one roll on/roll off (Ro-Ro) service previously based at the PoK, and a second Ro-Ro service currently operating at the PoK, which for contractual reasons, must cease operating from the PoK on 1 May 2025. While the Proposed Development would be capable of handling three services per day, neither the Applicant nor Stena Line have confirmed definitively that a third service would be operated. As explained in section 3.2 of Chapter 3 above, the ExA considers that it has not been demonstrated that the Proposed Development would add to Ro-Ro service competition on the Humber. The ExA therefore considers little positive weight can be attached to the increased competition case made by the Applicant.

5.2.5. The Applicant has submitted that there is an urgent need for the Proposed Development, in part because Stena Line requires a consolidated operating base on the Humber. However, that urgency arises because Stena Line is currently operating from two ports on the Humber but needs to vacate the PoK by the beginning of May 2025. Although recognising there is a contractual disagreement between Stena Line and the PoK's owner, the ExA considers that it has not been demonstrated that Stena Line could not physically be accommodated at the PoK. Given those circumstances the ExA considers little positive weight should be attached to the Applicant's urgency case.

5.2.6. The ExA accepts that the provision of additional Ro-Ro unit handling capacity at the PoI would add to port resilience on the Humber. The ExA considers that is a matter that attracts moderate positive weight in favour of the making of a DCO.

5.2.7. Under the NPSfP the starting point for the determination of this Application is a presumption in favour of granting consent for a port development. However, in this instance the ExA concludes that the Proposed Development's contribution to meeting the need for port development lies in the range of little to moderate positive weight in the planning balance.

THE ENVIRONMENTAL STATEMENT

5.2.8. The ExA considers that the Environmental Statement (ES), as supplemented with additional information during the Examination, is sufficient to enable the Secretary of State for Transport (SoST) to make a decision in compliance with the EIA Regulations. The ExA has taken full account of the environmental information in its consideration of this Application.

HABITAT REGULATIONS ASSESMENT (HRA) CONSIDERATIONS

5.2.9. The Proposed Development is development for which an HRA Report has been submitted by the Applicant. The ExA in reaching its overall conclusion and recommendations has considered all documentation relevant to HRA.

5.2.10. The SoST is the competent authority under the Habitats and Species Regulations 2017 (as amended) (Habitats Regulations) and will make the definitive assessment. The ExA considers that there is sufficient information before the SoST to enable the

undertaking of an appropriate assessment in order to fulfil the duties under the Habitats Regulations. In that regard the SoST's attention is drawn to Chapter 4 above and Appendix C to this Recommendation.

NAVIGATION AND SHIPPING

5.2.11. The siting of the proposed Ro-Ro berths relative to jetties handling fuel oils and other bulk liquids which form parts of Control of Major Accident Hazard (COMAH) sites would be without precedent in the UK, as explained above. Proposed Berth 1, for example, would be sited in a fast-flowing part of the Humber around 95 metres from the Immingham Oil Terminal's (IOT) finger pier. The Applicant, other IPs and the HMH agree that berthing and unberthing manoeuvres for the proposed berths would be challenging when current speed is high and wind speed is high or gusting from certain directions.

5.2.12. The Applicant has undertaken numerous navigational simulations (pre-Application and during the Examination) in order to establish the expected safe operational limits for the proposed berths that would be acceptable to the HMH.

5.2.13. The ExA is content that the Statutory Conservancy and Navigation Authority (SCNA) (the Statutory Harbour Authority (SHA) and Competent Harbour Authority for the Humber) and the PoI's SHA, under the auspices of the HMH and the PoI's Dock Master (DM) respectively, would exercise their statutory powers and duties in the interests of navigational safety and that would not be influenced by the Applicant's commercial interests as a port operator.

5.2.14. Given that context and the evidence submitted by objecting IPs during the Examination, the ExA is content that by the Examination's close an adequate Navigational Risk Assessment (NRA) had been submitted and that the policy requirements of the NPSfP, the Marine Policy Statement (MPS) and the East Inshore Marine Plan (EIMP) have been met.

5.2.15. The ExA is content that the Applicant has demonstrated that the Stena T class vessel, as currently operated by Stena Line at the PoI, could safely use the proposed berths and that the simulations for the Jinling class vessel have also demonstrated that vessels of its size and handling characteristics would be capable of being operated safely at the proposed berths, both subject to pilotage controls being developed and tested through a process of 'soft-start' training and adaptation for Humber pilots and Pilotage Exemption Certificate (PEC) holders.

5.2.16. The ExA agrees with the objecting IPs that the Applicant has not yet demonstrated that a vessel of the DV's dimensions could safely use the proposed berths. However, for the reasons explained in Chapter 3 above, the ExA does not accept that this would preclude a DCO being made, because case law has established that it would be permissible for a statutory regulator, such as the SCNA, having raised no objections at the planning stage to issue an authorisation following the making of a DCO.

5.2.17. The HMH has confirmed that use of the proposed berths by vessels of the full 'design vessel' (DV) dimensions, as assessed in the Applicant's ES for 'Rochdale envelope' purposes as described in (paragraph 3.2.1 of [APP-035]), would be prohibited by the SHAs until it had been demonstrated that those vessels could manoeuvre safely in and out of the proposed berths.

5.2.18. The ExA is concerned, however, that the proximity of the proposed berths to the IoT's finger pier could adversely affect the navigation of tankers to and from that pier. That in turn could increase the risk of tankers alliding with the finger pier, resulting in interference to the operation of the IoT, a facility of importance to the UK's energy security.

5.2.19. The ExA has therefore concluded that there is a need for the piled 'dolphin' impact protection measures (IPM), proposed Work No. 3(b), to be installed at the finger pier's western end prior to the first use of proposed Berth 1. The ExA therefore recommends the timing for the Work No. 3(b) installation should be secured by means of a requirement included in any made DCO. The wording for that requirement appears as Requirement 19 in the ExA's recommended DCO (rDCO).

5.2.20. The ExA considers that the risk of a vessel alliding with the IoT's pipeline trunkway would be lower than the risk of allision with the finger pier. Accordingly, while the need to install IPM (proposed Work No. 3(a)) for the IoT's trunkway cannot be ruled out, the ExA considers that need is less apparent than the need to protect the finger pier, and the ExA considers it appropriate for the decision-making concerning its installation to be left to a review process following the making of any made DCO. The Applicant has proposed this to be secured under the provisions of Requirement 18 of the dDCO, the wording of which has been addressed in Chapter 7 below.

5.2.21. For all of the reasons given above, the ExA concludes that subject to mitigation secured in any made DCO and the powers available to SCNA and PoI's SHA the Proposed Development would be acceptable in shipping and navigation terms. The ExA therefore considers the Proposed Development would accord with the provisions of section 4.4 of the NPSfP. With the mitigation discussed above and secured in the rDCO, the ExA also considers the Proposed Development would be of a functionally acceptable design and in that regard would accord with paragraph 3.3.3 of the NPSfP.

5.2.22. Subject to the provision of the identified mitigation to risk of damage or interruption to the IOT, the ExA considers the UK's energy security interests in this regard would be safeguarded and that there would be no conflict with NPS EN-1. The ExA also finds that the Proposed Development would comply with policy PS3 of the EIMP because it would not interfere to an unacceptable degree with the use of the Humber or the PoI by other users.

5.2.23. The ExA concludes that with the mitigation referred to above and discussed in detail in section 3.3 above, little negative weight should be attached to the Proposed Development's residual adverse navigation and shipping effects. The ExA further considers that with the mitigation referred to above there would be little interference

for other PoI and Humber users, a matter neither weighing for or against the making of a DCO.

MARINE ECOLOGY, BIODIVERSITY AND NATURAL ENVIRONMENT

5.2.24. The ExA has considered the evidence presented by the Applicant and other IPs, including the views of Natural England (NE), as the Statutory Nature Conservation Body. Although the majority of issues raised during the Examination were resolved, two matters of concern for NE remained unresolved at the Examination's close.

5.2.25. NE is concerned that the Applicant has not provided sufficient evidence to demonstrate that an adverse effect on integrity (AEoI) for certain features of the Humber Estuary Special Area of Conservation (SAC) cannot be ruled out in-combination with other plans and projects. Accordingly, the ExA recommends that the SoST consults further with the Applicant and NE on this matter. The ExA recommends that a s106 agreement between the SoST and the Applicant should require 1ha compensatory habitat as part of the Outstrays to Skeffling Managed Realignment Scheme (OtSMRS) be in place prior to the first use of the Proposed Development.

5.2.26. NE's other remaining concerns were about noise disturbance for birds. For the reasons set out in Section 3.4 above, the ExA considers that the Applicant has submitted appropriate evidence to support the use of a 200 metre disturbance buffer for coastal waterbirds, given the Proposed Development would be situated within an existing port. The SoST may however wish to make further enquiries of the Applicant and NE on this matter.

5.2.27. The ExA concludes that biodiversity and ecology have been adequately assessed and that the policy requirements of the NPSfP, the MPS, and the EIMP have been met. The ExA considers the allocation of 1ha of the OtSMRS as compensatory habitat would address the in-combination effects for works in the SAC. Subject to the OtSMRS land being secured as compensatory habitat, the ExA considers the effects on marine ecology, biodiversity and the natural environment to attract little positive weight for the making of a DCO.

TERRESTRIAL TRAFFIC AND TRANSPORT

5.2.28. The Proposed Development would generate additional traffic which could impact upon the operation of the public highway as well as the roads within the PoI. To minimise that impact the Applicant has proposed various mitigation measures, secured by Requirements 5 (travel plan), 8 (Onshore construction environmental management plan), 12 (East Gate Improvements) and 13 (freight management plan) in the dDCO. The ExA concludes that the highway network within the vicinity of Immingham would be able to accommodate the additional traffic generated by the Proposed Development, a finding that is consistent with the views of the three highway authorities.

5.2.29. The ExA is therefore content that the Proposed Development would accord with the traffic and transport policies stated in the NPSfP and the National Planning Policy

Framework 2023. The landside traffic and transport effects are considered neither to weigh for nor against the making of a DCO.

CLIMATE CHANGE, FLOOD RISK AND WATER ENVIRONMENT

5.2.30. At the Examination's close there were no concerns or outstanding matters relating to greenhouse gas emissions (GHG), climate resilience, flood risk and the quality of the water environment. The ExA is content that with respect to those matters the Applicant has identified suitable mitigation that would be secured by provisions of the dDCO. The ExA therefore concludes there are unlikely to be any significant effects for GHG emissions, climate resilience, flood risk and the quality of the water environment. With respect to those matters the Proposed Development is considered to accord with the relevant policies of the NPSfP, the Marine Policy Statement and the North East Lincolnshire Local Plan (NELLP).

5.2.31. The ExA therefore considers that GHG emissions, climate resilience, flood risk and the quality of the water environment matters neither weigh for nor against the making of a DCO.

SOCIO-ECONOMIC, COMMERCIAL AND ECONOMIC EFFECTS

5.2.32. The ExA accepts that the Proposed Development's construction phase would in socio-economic terms be beneficial for the Grimsby travel to work area (TTWA).

5.2.33. For the operational phase the Applicant has assessed the contribution to employment as being moderately beneficial. However, considers that assessment does not seem to have taken into account the intention for Stena Line to transfer its two existing Ro-Ro services from the PoI's inner dock and the PoK. The operation of those services will already be drawing labour from within the Grimsby TTWA. The ExA therefore considers that the Proposed Development's employment effect during its operational phase would be more likely to be negligible to minor beneficial. In the ExA's view the employment benefit would only be greater if the presence of the proposed berths resulted in a net increase in the number of Ro-Ro services being operated on the Humber.

5.2.34. The operational phase's projected gross value added (GVA) of £2.7 million in the Grimsby TTWA would be quite minor.

5.2.35. With respect to the operational phase's effects for local businesses, setting aside considerations concerning shipping and navigation effects which the ExA has addressed elsewhere, the ExA has reservations about the Applicant's conclusion that there would be a *"negligible"* effect. That is because by the Examination's close there remained disagreement between Volkswagen Group United Kingdom Limited (VWG) and the Applicant about the timing for the former's relocation from Plot 9 to the Port of Grimsby (PoG). The Applicant has assessed the effect for VWG as being *"negligible"* based on VWG relocating to the PoG and there being a relatively small number of affected employees relative to the wider labour market.

5.2.36. VWG has submitted that Plot 9 is important to the importation and distribution of its vehicles across 600 dealerships in the UK. Negotiations between VWG and the

Applicant have already been protracted and there is potential for VWG's business to be adversely affected should it be required to vacate Plot 9 prior to replacement facilities being available at the PoG. The ExA considers the effects for VWG would go beyond the Applicant's narrow assessment of labour market effects within the Grimsby TTWA, potentially causing adverse socio-economic effects involving employment across VWG's dealership network and the availability of vehicles in the UK. The ExA therefore considers the effect for VWG has been understated as being negligible.

5.2.37. The ExA considers that for the most part the Applicant has adequately assessed the Proposed Development's socio-economic effects and has provided sufficient evidence to support its conclusions about those effects. However, the ExA has some reservations about the claimed employment benefits for the Proposed Development's operational phase and the effect upon VWG's operations on the Humber. So, while the Proposed Development would provide some support for economic development in the area and would accord with the relevant policies in the NPSfP, the ExA concludes that little positive weight should be attached to the socio-economic effects. However, the ExA considers that should the matter of VWG's relocation to PoG be resolved then the Proposed Development's socio-economic effects would gain greater positive weight.

UNCONTENTIOUS MATTERS

5.2.38. The following matters were 'uncontentious' during the Examination and were either identified by the ExA in its initial assessment of principle issues or covered in the Applicant's ES:

- Air quality;
- Airborne noise and vibration;
- Landscape and visual effects;
- Historic environment;
- Coastal physical processes, waste management and dredge disposal; and
- Land use planning.

5.2.39. The ExA has considered those uncontentious matters in section 3.9 in Chapter 3 above. For each of those matters the ExA has concluded that the Proposed Development, subject to mitigation that would be secured in a made DCO, would not give rise to adverse effects. Accordingly, with respect to these uncontentious matters the Proposed Development is considered to accord with the relevant policies included in the NPSfP, MPS, East Inshore and Offshore Marine Plans 2014 (EIMP) and the NELLP. The ExA considers the effects of these matters neither weigh for nor against the making of a DCO.

CUMULATIVE AND IN-COMBINATION EFFECTS

5.2.40. The ExA is content that for the most part the Applicant has demonstrated that the Proposed Development, with mitigation included in the rDCO, would be unlikely to give rise to significant cumulative and in-combination effects. However, NE has identified a concern about a potential AEoI for the Humber Estuary SAC arising from

a loss of habitat caused by the Proposed Development in-combination with other projects and plans affecting the SAC. NE accepts that potential in-combination AEoI for the SAC could be overcome through the allocation of 1ha of the OtSMRS to the Proposed Development as compensatory land and the ExA agrees with NE on this matter.

5.2.41. The ExA considers that the appropriate way to secure the allocation of 1ha of the OtSMRS to the Proposed Development would be for the SoST and the Applicant to enter into a s106 agreement. Once that s106 agreement was in place the ExA is content that the Proposed Development would be unlikely to give rise to significant cumulative and in-combination effects. Those effects would then neither weigh for nor against the making of a DCO.

5.3. THE PLANNING BALANCE

5.3.1. The Proposed Development would contribute to meeting the need for additional port capacity identified in the NPSfP, albeit the ExA has found that the need for the Proposed Development has been overstated by the Applicant. The ExA therefore attaches little to moderate positive weight to the benefit of providing additional port capacity.

5.3.2. With respect to marine ecology, biodiversity and the natural environment there would be some enhancements, while compensatory habitat would be allocated to the Proposed Development to address the loss of marine habitat within the Humber Estuary SAC. The ExA considers this should attract little positive weight.

5.3.3. Additionally, the Proposed Development would generate some employment and GVA benefits for the local economy. The ExA considers those benefits because of their relative scale attract little positive weight.

5.3.4. In terms of the PoI's operation the ExA has found that there would be some adverse navigation and shipping effects. The ExA considers that little negative weight should be attached to those effects.

5.3.5. The ExA has identified other issues and matters including terrestrial traffic and transport, climate change, flood risk, water environment, air quality, noise, landscape and visual and land use planning for which the effects neither weigh for nor against the Proposed Development.

5.3.6. Subject to securing the allocation of 1ha of the OtSMRS as compensatory habitat, taking the above factors into account and having had regard to the important and relevant matters, the ExA concludes that there are no adverse impacts of sufficient weight, either on their own or collectively, that indicate the DCO should not be made. In reaching that finding the ExA concludes that there would be no conflict with the policies of the NPSfP, the MPS and the EIMP. Regard has also been paid to North East Lincolnshire Council's Local Impact Report and other important and relevant policy. The ExA therefore considers there are no other matters that are both important and relevant to the decision that would lead to a different conclusion being reached.

5.3.7. For the reasons set out in the preceding chapters and summarised above, the ExA finds that the Proposed Development is acceptable in principle in planning terms and that the case for Development Consent has been made.

6. COMPULSORY ACQUISITION AND RELATED MATTERS

6.1. INTRODUCTION

6.1.1. The Application includes proposals for the Compulsory Acquisition (CA) of new permanent rights over land and the extinguishment and/or suspension of rights over land. The Proposed Development is sited largely within the operational confines of the Port of Immingham (PoI) for which the Applicant owns the freehold for the port's landside elements. The Humber's riverbed within the PoI forms part of the Crown Estate and is subject to a 999-year long lease (commencing on 1 January 1869) between the Crown and the Applicant [paragraph 3.3.2 in APP-017]. Under the terms of the Application there are no proposals for the outright acquisition of land within the Order limits. This chapter records the examination of those proposals and related issues. No temporary possession powers have been sought by the Applicant.

6.2. THE REQUEST FOR COMPULSORY ACQUISITION POWERS

6.2.1. Articles 10 to 20 in Part 3 of the draft Development Consent Order (dDCO) [REP10-004] set out the rights acquisition powers sought by the Applicant to construct, operate and maintain the Proposed Development.

6.2.2. The Application as originally submitted was accompanied by:

- Land Plans [APP-006];
- Book of Reference (BoR) [APP-016];
- a Statement of Reasons (SoR) [APP-017]; and
- a Funding Statement [APP-018].

6.2.3. The BoR identifies all of the affected land plots and those plots are shown on the Land Plans.

6.2.4. Taken together, the above listed documents set out the CA rights sought by the Applicant when the Application was submitted, the reasons for seeking those CA rights and the basis for how compensation would be funded. The submission of the Applicant's change request necessitated the submission of amended versions of the Land Plans [REP8-030] and the BoR [REP8-007], together with a SoR Addendum [REP9-004]. Although the making of the change request required alterations being made to the previously mentioned documentation, the making of those changes to the Application did not engage the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

6.2.5. During the course of the Examination the Applicant provided updates with respect to its negotiations with Affected Persons (AP) either in a CA Negotiations Tracker [REP2-011], in some of the covering letters that accompanied its deadline submissions and in response to questions raised by the Examining Authority (ExA). Section 3.14 of the SoR addendum records the following:

- Plots 7 and 11 – negotiations with Exolum Immingham Limited have been concluded with respect to access to Exolum's apparatus. CA powers to interfere with Plots 7 and 11 are no longer required in the dDCO and in addition, Protective Provisions (PP) for Exolum have been agreed.

- Plots 8a and 8b – negotiations with Origin UK Operations Limited have been concluded. CA powers relating to Plots 8a and 8b are no longer sought in the dDCO.

- Plot 10 – negotiations with Network Rail Infrastructure Limited, DB Cargo (UK) Limited and the Applicant have been concluded including in relation to Network Rail's right of access. Powers to interfere with Plot 10 are therefore no longer required in the dDCO.

- Plot 12 – negotiations with Humber Oil Terminals Trustees Limited (IOT Operators) have been concluded in respect of a mooring buoy. CA powers in respect of Plot 12 are no longer being sought in the dDCO.

6.2.6. Given the conclusion of negotiations concerning the above listed land plots in the amended versions of the Land Plans [REP8-030] and the BoR [REP8-007] respectively show or refer to Plots 7, 8a, 8b, 10, 11 and 12 having been removed or no longer being used.

6.3. THE PURPOSES FOR WHICH LAND IS REQUIRED

6.3.1. The Application, in summary, is for a new roll on/roll off (Ro-Ro) terminal and amongst other things would involve the construction of three new berths and the repurposing of landside parts of the PoI to form four storage areas with ancillary facilities. The purposes for which CA powers are required are detailed in the BoR, SoR and the addendum to the SoR and should be read in conjunction with the Works Plans [AS-048].

6.3.2. The Applicant states in section 5 of its SoR that it requires powers of CA to ensure that the Proposed Development can be built, operated and maintained. The Applicant has submitted that without powers to acquire rights compulsorily, there would be no certainty that the Proposed Development could be delivered in its totality and within the necessary timescale. Although CA powers are sought in the dDCO, the Applicant has been continuing to negotiate with APs about the acquisition of the relevant interests in land and any interference with rights by agreement [paragraph 5.1.2 in [APP-017].

6.3.3. The Applicant's justification for the use of CA powers is based on its view that:

- there is an imperative need for additional Ro-Ro capacity on the Humber which would contribute to meeting the United Kingdom's (UK) need for additional port capacity;
- in meeting the need for additional port capacity, the Proposed Development would be located where it would be needed;

- there would be benefits to the economy through the handling of freight and providing employment during the Proposed Development's construction and operation; and
- providing additional Ro-Ro capacity would contribute to an effective, efficient, competitive and resilient UK Ro-Ro freight sector and would accord with the policy stated in the National Policy Statement for Ports.

6.4. THE COMPULSORY ACQUISITION POWERS SOUGHT

6.4.1. The powers sought in the dDCO relate to the creation of and acquisition of rights (Article 10) for the carrying out and use of the Proposed Development. Under Articles 12, 13 and 16 powers are sought variously to extinguish, override or interfere with private rights, easements and other rights.

NEW RIGHTS

6.4.2. The Applicant seeks to acquire new rights on land identified with pink shading on the Land Plans [REP8-030]. The relevant plots are shown in a new schedule, Schedule 6, in the ExA's recommended DCO (rDCO). That schedule is numbered Schedule 6 and the ExA considers it should be included in any made DCO to provided clarity about which CA powers would be authorised. The new schedule replaces Schedule 6 in the Applicant's dDCO and the latter is numbered Schedule 7 in the rDCO.

6.4.3. The acquisition of new rights in respect of Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 would assist with the construction and laying out of the proposed North storage yard (Work No. 4) and the construction of the bridge linking the proposed North and Central storage areas (Work No. 7). The acquisition of rights relating to Plot 9 would assist with the construction and laying out of the proposed West storage area (Work No. 6).

6.4.4. The acquisition of new rights in respect of Plot 14 (which is Crown land) would assist with the construction of the marine works (proposed Works Nos. 1, 2 and 3).

6.5. LEGISLATIVE REQUIREMENTS AND CA GUIDANCE

PLANNING ACT 2008 (PA2008)

6.5.1. Section 122(2) of the PA2008 provides that a DCO may authorise CA only if the Secretary of State for Transport (SoST) is satisfied that certain conditions are met. These include that the land subject to CA is required for the development to which the development consent relates or is required to facilitate it or is incidental to it.

6.5.2. In addition, s122(3) requires that there must be a compelling case in the public interest for the land to be acquired compulsorily. For that to be met, the former Department for Community and Local Government's *"Guidance related to procedures for the compulsory acquisition of land"* (CA Guidance) indicates the SoST will need to be persuaded that there is compelling evidence that the public benefits that would be derived from CA would outweigh the private loss suffered by those whose land would be acquired.

6.5.3. As the Application included a request for the CA of the land to be authorised the condition stated in s123(2) of the PA2008 has been met.

6.5.4. Section 138 of the PA2008 relates to the extinguishment of rights on Statutory Undertakers land. It states that an order may include a provision for the extinguishment of the relevant rights, or the removal of the relevant apparatus only if the SoST is satisfied that the extinguishment or removal is necessary for the purposes of carrying out the development to which it relates. For the Proposed Development, this section of the PA2008 is relevant to Statutory Undertakers with land and equipment interests within the Order Limits.

THE CA GUIDANCE

6.5.5. In addition to the legislative requirements set out above, the CA Guidance sets out a number of general considerations which also need to be addressed, namely that:

- all reasonable alternatives to CA must have been explored;
- the Applicant must have a clear idea of how it intends to use the land subject to CA powers;
- the Applicant must be able to demonstrate that funds are available to meet the compensation liabilities that might flow from the exercise of CA powers; and
- the decision-maker must be satisfied that the purposes stated for the CA are legitimate and sufficiently justify the inevitable interference with the human rights of those affected.

6.5.6. The ExA has taken all relevant legislation and guidance into account when considering this matter and relevant conclusions are drawn at the end of this chapter.

6.6. EXAMINATION OF THE COMPULSORY ACQUISITION CASE

THE EXAMINATION PROCESS

6.6.1. The ExA's approach to the question of whether CA powers should be granted and if so, what it should recommend to the SoST to grant has been to seek to apply the relevant sections of the PA2008; notably s122 and s123, the CA Guidance and the Human Rights Act 1998. In addition, in light of the representations received and the evidence submitted, to consider whether a compelling case has been made in the public interest, balancing the public interest against private loss.

6.6.2. In examining the Application, the ExA has considered all written material in respect of CA and asked written questions regarding the justification of the need for the CA in the ExA's first written questions (ExQ1) [PD-010], the ExA's second written questions (ExQ2) [PD-013], the ExA's third written questions (ExQ3) [PD-020] and the ExA's fourth written questions (ExQ4) [PD-022]. The ExA's Rule 17 requests [PD-024] and [PD-025] respectively sought CA information from The Crown Estate and Volkswagen Group United Kingdom Limited (VWG). No requests to hold a Compulsory Acquisition Hearing (CAH) were made. Notwithstanding, one CAH was held, in order to enable the ExA to enquire about CA matters, CAH1 [EV8-002].

6.6.3. VWG made an objection to the CA powers the Applicant has sought in respect of Plot 9 [RR-024]. That objection remained unresolved at the Examination's close and is considered further below. Additionally, a number of undertakers and utility providers made objections/representations concerning PP and they have been considered as DCO matters in Chapter 7 below.

THE APPLICANT'S CASE

6.6.4. The Applicant's general case for CA is set out in the following sections of the SoR:

- Section 4 – CA powers sought
- Section 5 – Justification for powers sought
- Section 6 – Policy support

6.6.5. The Applicant concludes in section 10 of the SoR [APP-017] that:

- the powers sought meet the conditions of s122 and s123 of the PA2008 and the CA Guidance;
- the powers sought are no more than reasonably required to facilitate or would be incidental to the Proposed Development and would be proportionate;
- the Proposed Development accords with national and local planning policy for port development;
- a compelling case in the public interest for rights to be compulsorily acquired has been demonstrated;
- the purposes for which the proposed DCO would authorise the powers sought would be legitimate and justify interfering with the human rights of the APs; and
- *"… the very substantial public benefits that would arise from the proposed compulsory acquisition of the interests within the Order Land would clearly outweigh the private loss that would be suffered by those whose land is to be acquired"*.

6.6.6. The ExA, with one exception, agrees with the Applicant's conclusions on the generality of the case and considers that the conditions set out in s122(2) and s122(3) of the PA2008 have been met. The exception concerns the acquisition of rights concerning Plot 9 (the proposed West storage area).

ALTERNATIVES

6.6.7. The CA Guidance indicates that the Applicant should be able to demonstrate to the satisfaction of the SoST that all reasonable alternatives to CA (including modifications to the scheme) have been explored.

6.6.8. With respect to the assessment of alternatives, throughout the SoR reliance is placed on Chapter 4 (Need and Alternatives) of its Environmental Statement [APP-040]. In summary, the Applicant has selected the Application site because it considers it to be the only site capable of providing berthing and storage space of a scale capable of meeting the *"urgent need"* for additional Ro-Ro unit handling capacity on the Humber.

6.6.9. As explained in section 3.2 of Chapter 3 above, physically there is both berthing and landside potential capacity at the Port of Killingholme (PoK). In that regard it should be noted that the Applicant expects Stena Line would be the occupier of the Proposed Development, switching its current Humber operations from the PoI's inner harbour and from the PoK to a proposed new terminal within the PoI. Historically, Stena Line has operated two Ro-Ro services from the PoK and as explained in section 3.2 of Chapter 3 above, the PoK's storage capacity is currently being expanded. Given that background, the ExA has concluded that the PoK could physically meet Stena Line's needs. However, for reasons explained by the ExA in section 3.2 of Chapter 3 above, the contract renewal negotiations between Stena Line and CLdN have broken down and the former's extant contract to operate its one remaining service at the PoK will expire on 1 May 2025.

6.6.10. The Applicant has sought to acquire the necessary rights by voluntary agreement but had not been able to achieve that by the Examination's close. The Applicant has therefore submitted there is a compelling case in the public interest for CA powers to be included in the dDCO in order to ensure the Proposed Development's delivery [paragraphs 9.5 and 9.6 in AS-085].

6.6.11. For all intents and purposes, it is only commercial reasons that have led to the PoK being excluded by the Applicant as an alternative location for the Proposed Development. The ExA is of the view that the PoK could physically be an alternative location for the Proposed Development. As has further been explained in section 3.2 of Chapter 3 above the ExA has concluded that the need case for the Proposed Development has been overstated because, amongst other things, the existing unaccompanied Ro-Ro unit handling capacity on the Humber is not as constrained as has been portrayed by the Applicant. The ExA therefore has reservations as to whether the Applicant has demonstrated for the purposes of the condition under s122(2)(a) of the PA2008 that all of the land within the Order Limits *"… is required for the development to which the development consent relates"*.

6.6.12. For the reasons given above the ExA is not content that the Applicant has demonstrated that all reasonable alternatives to CA have been explored.

FUNDING

6.6.13. The Applicant's Funding Statement [APP-018], as supplemented by the copy of its 2021 accounts [Appendix 1 in REP4-011], indicates that it has the financial resources required to acquire any rights and pay any necessary compensation in connection with the Proposed Development. The ExA is therefore content that the necessary funds would be available to the Applicant to cover the likely CA costs.

6.7. CONSIDERATION OF THE CASES CONCERNING INDVIDUAL CA PLOTS

6.7.1. In this section consideration is given to the single CA objection that remained at the Examination's close, concerning Plot 9, as well as the other land plots that would be affected by the Proposed Development. Even though a specific objection/representation may not have been raised in relation to a particular plot of

land, the ExA has nevertheless applied the relevant tests to all of the land subject to the CA powers the Applicant is seeking in reaching its overall conclusions.

OBJECTION TO PLOT 9 - VOLKSWAGEN GROUP UNITED KINGDOM LIMITED (VWG)

6.7.2. Plot 9 is around 9.78 hectares in area and it would become the Proposed Development's West storage yard. Plot 9 is leased to VWG as a vehicle storage area.

6.7.3. VWG stated in its Relevant Representation [RR-024]:

"Volkswagen Group United Kingdom Ltd ('VWG') has port facilities at both Immingham and Grimsby for the import of manufactured vehicles to be distributed within the United Kingdom ('UK'). These port facilities on the east coast of England being the most cost-effective means of importing vehicles into the UK, VWG opposes this Application on the grounds that the loss of its Immingham port facility will have both a severe impact on the VWG business viability in competition with other brands in the UK and a subsequent loss of choice to vehicle purchasers within the UK."

6.7.4. In response to the ExA's request for further information [PD-025] VWG elaborated on the significance of its east coast port facilities to its vehicle distribution in the UK in [REP9-030] and [REP9-031]. In [REP9-031] VWG submitted that central to its disagreement with the Applicant was the absence of an assurance that VWG would not be required to vacate Plot 9 until a replacement site at the Port of Grimsby (PoG) was available.

6.7.5. The Applicant submitted in [Appendix 2 in REP10-001] that it has been seeking agreement about the consolidation of VWG's operations at the PoG since September 2021, including an increase VWG's *"operational footprint"*. The Applicant commented that the negotiations have been protracted, with VWG having failed to respond to the most recently proposed set of commercial terms. The Applicant advised that the negotiations have been complicated by the need for matters to be considered by VWG's parent company's finance and commercial boards. The Applicant has therefore submitted that it was *"… not in a position to provide VWG with a letter of comfort in respect of [sic] the agreement for lease of the Grimsby site in light of the fact that the terms to consolidate VWG's interest are not yet agreed"* [paragraph 3.2 in Appendix 2 of REP10-001]. In [REP10-001] the Applicant indicated it remained hopeful that a satisfactory agreement could be reached with VWG but needed to retain powers for the CA of VWG's leasehold interest in Plot 9 in the dDCO.

6.7.6. Given the significance of Plot 9's use to the operation of VWG's business, the ExA considers it reasonable that an alternative site should be available to VWG prior to it being required to vacate the PoI.

6.7.7. In the absence of an agreement between VWG and the Applicant at the Examination's close and the continuing negotiations between these parties, the

SoST may wish to obtain updates from VWG and the Applicant as to whether any progress has been made between the parties.

6.7.8. If there continues to be disagreement between VWG and the Applicant at the point of the SoST's determination of this Application, consideration will need to be given to whether Plot 9 should be included in the CA powers sought by the Applicant. The ExA considers that decision would need to take account of the following factors:

- The Applicant has submitted that the implementation of the works concerning Plot 9, i.e., the formation of the proposed West storage area, might be deferred to a second phase following the construction and commissioning of proposed berths 1 and 2 and the North, Central and South storage areas. The possible phasing of the Proposed Development suggests that the availability of the West storage area would not be essential to the Proposed Development's operation. However, the absence of West storage area would reduce port resilience on the Humber and could affect the Proposed Development's efficient handling of unaccompanied Ro-Ro units, The latter in turn might result in congestion on the public highway should insufficient unit storage be available within the PoI to serve the Proposed Development.

- The ExA has concluded, for the reasons given in section 3.2 of Chapter 3 above, the Applicant's need case for the Proposed Development has been overstated. That is because there has been an underestimation of the Humber's existing unaccompanied Ro-Ro unit handling capacity, with the PoK having more capacity than the Applicant allowed for in its initial assessment. The ExA also has reservations about whether the Proposed Development would add to competition for handling of unaccompanied Ro-Ro units on the Humber. That is because the Application has been promoted on the basis of the Proposed Development primarily being for Stena Line's use, enabling that company to consolidate its existing Humber operations.

- The urgency for the Proposed Development claimed by the Applicant is based on Stena Line's need to cease operating its last remaining service at the PoK by 1 May 2025. While the contract renewal negotiations between Stena Line and the owners of the PoK have broken down, the ExA considers the PoK nevertheless has the physical capacity to accommodate the Proposed Development and cannot entirely be discounted as an alternative to the Proposed Development.

- The implementation of the Proposed Development would meet the needs of one of the Applicant's customers. However, VWG, as another customer, could potentially be disadvantaged were it to be required to cease operating at the PoI prior to a replacement facility becoming available at the PoG. The Applicant appears to have prioritised satisfying the needs of one of its customers without recognising interference with the rights of another customer could adversely affect its business continuity.

6.7.9. Taking those factors into account if there continues to be disagreement between VWG and the Applicant about the availability of replacement facilities at the PoG, then the ExA recommends Plot 9 should be excluded from the CA powers included in any made DCO. That is because the ExA finds the conditions stated in s122 of the PA2008 have not been met, namely it has not been demonstrated that:

- Plot 9 would be required for the Proposed Development (s122(2)(a)); and
- there is a compelling case in the public interest for Plot 9 to be subject to CA (s122(3)).

6.7.10. In the absence of a clear demonstration that the tests stated in s122 of the PA2008 have been met, the ExA considers the interference with VWG's human rights would be unjustified, resulting in conflict with paragraph 10 of the CA Guidance. The ExA further considers that with respect to the CA of Plot 9 there is an absence of *"… clear evidence that the public benefit will outweigh the private loss"*, resulting in conflict with paragraph 13 of the CA Guidance. The ExA considers the potential exclusion of Plot 9 from the CA powers sought by the Applicant would be consistent with the guidance for balancing the public interest against private loss stated in paragraph 16 of the CA Guidance.

CA POWERS NOT SUBJECT TO OBJECTIONS

6.7.11. No objections have been raised to the CA powers sought in respect of Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6, albeit some APs have raised concerns about certain aspects of the Applicant's proposed PP. Matters relating to PP are considered in Chapter 7 below.

6.7.12. Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 would be required to construct and operate the North, Central and South storage areas and the Applicant expects those storage areas would be brought into use concurrently with proposed berths 1 and 2. The ExA is content that Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 would be the minimum necessary to construct and operate the North, Central and South storage areas and that any private harm would be outweighed by the public benefit from the Proposed Development. The ExA therefore recommends that the CA powers sought in respect of Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 are included in any made DCO.

6.8. OTHER CA CONSIDERATIONS

CROWN LAND

6.8.1. Section 135(1) of the PA2008 precludes the CA of interests in Crown Land unless the land is held "otherwise than by or on behalf of the Crown" and the appropriate Crown authority consents to the acquisition. Section 135(2) precludes a made DCO from including any provision applying to the Crown land or Crown rights without the consent from the appropriate Crown authority.

6.8.2. The Applicant has only sought powers in respect of some of the Crown land within the Order Limits. That affected land has been identified as Plot 14 in the BoR [REP8-007] and is shaded green on the Land Plans [REP8-030]. In responding to

ExQ CA.3.03 the Applicant confirmed in [REP7-022] that it was no longer seeking powers that would require the Crown's consent under s135(1).

6.8.3. The Crown Estate Commissioners on 25 January 2024 issued a letter (dated 10 January) [AS-090], consenting to the inclusion of Articles 5, 6, 7, 24, 25, 26, 30 and 40 in a made DCO, subject to some minor drafting amendments being made to the dDCO. The drafting amendments to the dDCO sought by the Crown Estate Commissioners relate to Article 40 (Crown Rights) and were included in the Applicant's final version of the dDCO [REP10-004]. Accordingly, there is no impediment under s135(2) of the PA2008 to rights concerning Crown land within Plot 14 being included in a made DCO for the Proposed Development.

SPECIAL CATEGORY LAND

6.8.4. There is no Special Category Land, ie land subject to s131 and 132 of the PA2008, within the Order Limits.

HUMAN RIGHTS ACT 1988 AND EQUALITY ACT 2010 CONSIDERATIONS

6.8.5. The Human Rights Act 1988 places the European Convention on Human Rights (ECHR) into UK statute. The ECHR is subscribed to by member states of the Council of Europe. ECHR rights are enforceable in the domestic courts but with final recourse to the European Court of Human Rights. The ECHR, the Council of Europe and the European Court of Human Rights are not European Union (EU) institutions and are unaffected by the UK's decision to leave the EU.

6.8.6. Schedule 1 of the Human Rights Act 1998 sets out the articles. Article 6 (right to a fair trial) and Article 1 of the First Protocol (protection of property) are engaged. There are no residential properties to be acquired for the Proposed Development and, as such, the ExA has no reason to believe that Article 8 (Right to respect for private and family life) would be engaged.

6.8.7. Section 8 of the SoR [APP-017] addresses the compliance with the relevant provisions of the ECHR and fair compensation. The Applicant concludes that any infringement of the ECHR arising from the inclusion of CA powers in a made DCO would be proportionate and legitimate and would also be in the public interest.

6.8.8. The ExA considers that appropriate consultation took place before and during the Examination and that there has been an opportunity to make representations. All APs were provided with an opportunity to be heard at a CAH if they wished, albeit no APs requested to be heard. Furthermore, should the Order be made, there are further opportunities for APs to challenge the Order in the High Court. The ExA considers the obligations set out in Article 6 have been met.

6.8.9. The Applicant acknowledges in the SoR that the Order has the potential to infringe the rights of APs. The ExA notes that the Applicant has sought to minimise the amount of land affected and has included suitable provisions for the payment of compensation in the dDCO. The ExA has found above that with respect to Plots 1,

2a, 2b, 3, 4, 5a, 5b and 6 there is a compelling case in the public interest for all of the land identified to be acquired compulsorily. Furthermore, in respect of those plots the ExA considers that the proposed interference with individuals' rights would be lawful, necessary, proportionate and justified in the public interest. The ExA therefore concludes that the CA sought in respect of 1, 2a, 2b, 3, 4, 5a, 5b and 6 is compatible with the Human Rights Act 1998 and the ECHR.

6.8.10. For the reasons given above, if VWG and the Applicant have not reached agreement about the former's operations at the PoI being transferred to PoG, then the ExA considers it has not been demonstrated that there is a compelling case in the public interest for Plot 9 to be acquired compulsorily. The ExA further considers the proposed interference with VWG's interests would not be lawful, proportionate and justified in the public interest and that there would be incompatibility with the Human Rights Act 1998 and the ECHR.

6.8.11. The Equality Act 2010 establishes a duty to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The ExA has had regard to this duty throughout the Examination and in its consideration of the issues raised in this report. Overall, the ExA finds that the Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic. On that basis, the ExA has found no breach of the Public Sector Equality Duty.

6.9. CONCLUSIONS

6.9.1. With respect to the CA powers sought by the Applicant, the ExA has reached the following conclusions:

- The CA powers sought in respect of Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 would be: necessary to construct and operate the Proposed Development; proportionate; and that any private harm would be outweighed by the public benefit. The conditions in s122 of the PA2008 have therefore been met.

- With respect to Plot 9, if there continues to be disagreement between VWG and the Applicant about this plot being vacated prior to alternative facilities being made available at the PoG, then the ExA considers it has not been demonstrated that: this plot would be necessary to construct and operate the Proposed Development; and that any private harm would be outweighed by the public benefit. The ExA has found that the PoK could physically accommodate the Proposed Development and cannot be entirely discounted as an alternative location. Accordingly, if no agreement between VWG and the Applicant has been reached, then the ExA considers the conditions in s122 of the PA2008 would not have been met.

- The CA powers sought would satisfy one of the conditions included in s123 of the PA2008.

- In respect of Plot 14 the Applicant has obtained consent from the Crown Estate and therefore the powers sought meet the conditions in s135 of the PA2008.

6.9.2. Considering all of the above, the ExA finds there is a compelling case in the public interest for the CA powers sought in respect of Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 and the ExA recommends acceptance of the proposed CA powers relating to those plots. With respect to Plot 9 the ExA recommends that the SoST should make further enquiries of the Applicant and VWG and that Plot 9 should be excluded from the CA powers sought in the dDCO unless agreement has been reached about the timing for vacating Plot 9 and the availability of replacement facilities at the PoK.

7. DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

7.1. INTRODUCTION

7.1.1. The Application was accompanied by a draft Development Consent Order (dDCO) [APP-013] and Explanatory Memorandum (EM) [APP-014]. The dDCO was regularly updated throughout the Examination and revisions were also made to the EM, with the Applicant's final version of the dDCO being [REP10-004] and the EM being [REP10-007]. The EM explains the purpose of the articles and schedules and why they are required and, amongst other things, refers to drafting that has been taken from the wording of previously made DCOs.

7.1.2. The latest version of the dDCO and the versions that preceded it are in the form of a statutory instrument as required by section (s) 117(4) of the Planning Act 2008.

7.1.3. During the Examination, several further drafts of the DCO were submitted by the Applicant incorporating progressive changes arising from: the Examining Authority's (ExA) written questions and requests for further information [PD-010], [PD-013], [PD-020], [PD-022], [PD-029], [PD-030] and [PD-031]; matters raised by Interested Parties (IPs); and the proceedings at the DCO hearings held on 25 July 2023 (Issue Specific Hearing (ISH) 1 [EV2-002], 28 September 2023 (ISH4) [EV7-002 and EV7-004] and 23 November 2023 (ISH6) [EV11-002, EV11-004, EV11-006 and EV11-008].

7.1.4. This chapter provides an overview of the Examination of the Development Consent Order including notable changes made to the dDCO during the Examination and considers changes made to the final dDCO in order to arrive at the Recommended DCO (rDCO) in Appendix D of this Recommendation. Changes made arising from: the finding of typographical or grammatical errors; or minor changes made in the interests of clarity or consistency following discussion between the Applicant and relevant IPs or as a result of written questions or comments made by the ExA are not covered in this Chapter.

7.2. THE ORDER AS APPLIED FOR

7.2.1. This section records the structure of the dDCO. It is based on the Applicant's final dDCO [REP10-004] and is as follows:

- Part 1 (Preliminary): Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning (interpretation) of various terms used in the Order. Article 3 sets out the disapplication and modification of legislative provisions. Article 4 addresses the incorporation of the Harbours, Docks and Piers Clauses Act 1847 (the 1847 Act).

- Part 2 (Principal Powers): Articles 5 to 9 provide development consent for the Proposed Development, the authorised development's maintenance, limits of

deviation, the beneficiary of the order and provisions for transferring the benefit of the order.

- Part 3 (Powers of Acquisition): Articles 10 to 20 provide for the undertaker to compulsorily acquire rights over land within the Order limits, to extinguish rights already owned by the Applicant and the overriding of easements and other rights. The provisions provide for compensation to be payable to Affected Persons (AP) in respect of the powers sought. These articles also provide for powers in relation to equipment of statutory undertakers.

- Part 4 (Operational Provisions): Article 21 specifies how the authorised development would be operated, setting daily maxima of 1,800 roll on/roll off (Ro-Ro) units that could be handled and 100 passengers departing the Proposed Development by vessel. Article 22 (powers to appropriate) would enable the undertaker to set aside and appropriate any part of the authorised development for the exclusive or preferential use and accommodation of any trade, person or goods and in effect would enable the undertaker to disapply the open port duty that operates under s33 of the 1847 Act to be disapplied. Article 23 would address the relationship between the development authorised by a made DCO and the provisions of the Town and Country Planning Act 1990 (as amended).

- Part 5 (Supplemental Powers): Articles 24 to 28 would variously grant powers relating to the discharge of water, undertaking dredging, surveying and investigating land, undertaking protective works to buildings and entering agreements with the highway authorities to undertake works to the public highway within the Order limits.

- Part 6 (Miscellaneous and General): Articles 29 to 42 include provisions concerning: defence to proceedings in respect of statutory nuisance; the granting of a deemed marine license under Part 4 of the Marine and Coastal Act 2009; trees subject to a Tree Preservation Order; the application of landlord and tenant legislation; certifying of plans and documents by the Secretary of State for Transport (SoST); the service of notices; arbitration; saving for Trinity House; avoidance of danger to navigation; the provision of lights on tidal works during the construction period; the provision of permanent lights for the tidal works; Crown rights; the bringing into effect of any Protective Provisions (PP) included in Schedule 4 of a made DCO; and the authorised development's regulation by The Immingham Dock Byelaws of 1929.

7.2.2. There are six Schedules in the final version of the dDCO:

- Schedule 1 lists the 13 numbered works and the ancillary works that would comprise the authorised development.

- Schedule 2 sets out the requirements (R) that would apply to the authorised development.

- Schedule 3 comprises the Deemed Marine Licence and it defines the licensable activities and conditions that would apply to the authorised development.

- Schedule 4 contains PP for 13 parties encompassing: the Statutory Conservancy and Navigation Authority for the River Humber (SCNA): the Environment Agency: statutory undertakers, various occupiers of the Port of Immingham (PoI), including the operators of the Immingham Oil Terminal (IOT) and DFDS Seaways PLC (DFDS); and CLdN Ports Killingholme Limited (CLdN) the owner and operator of the Port of Killingholme (PoK).

- Schedule 5 sets out modifications to the compensation and compulsory purchase enactments.

- Schedule 6 lists the plans and documents to be certified by the SoST.

7.2.3. The structure of the dDCO is set out in the Contents and is listed on its face. The ExA is generally content that the dDCO's structure is fit for purpose. However, for reasons explained in Chapter 6 above in relation to the compulsory acquisition (CA) powers sought by the Applicant the ExA considers that there is a need for an additional schedule to be added to the dDCO. That schedule has been numbered 6 by the ExA rDCO and identifies the land in which rights may be acquired. With the addition of that schedule, there is a need for the originally numbered Schedule 6 to be renumbered Schedule 7, a change which the ExA has made in its rDCO.

7.3. EXAMINATION OF THE DEVELOPMENT CONSENT ORDER

7.3.1. The Applicant updated the dDCO at Examination deadlines (D) D1, D3, D5, D6, D8 and D10 and as part of its Change Request. Those revisions to the dDCO were made in response to issues raised in writing by IPs, the ExA's written questions (ExQ), the ExA's making requests for further information under Rule 17 (R17) of The Infrastructure Planning (Examination Procedure) Rules 2010 and as a consequence of the holding of hearings. The Applicant submitted both clean and tracked change versions of the dDCO, with only the Examination Library reference for clean versions being cited in this chapter.

7.3.2. A summary of the notable changes made to the dDCO during the course of the Examination are shown in the table below.

Table 1 Notable changes made to the dDCO during the Examination

Deadline	Notable changes made
D1 [REP1-005]	Article 2 and other affected parts of dDCO: wording clarified to: • Substitute *"Council"* for *"local planning authority"*, with the Council being defined as North East Lincolnshire Council (NELC). • Define the SCNA, with the removal of wording relating to a predecessor body.

Deadline	Notable changes made
	Article 4 – corrections made to the sections within the 1847 Act to be incorporated into any made DCO. Article 34 (Modification of enactments) deleted. Article 37 (Appeals under the Control of Pollution Act 1974) deleted. Any appeals concerning the Control of Pollution Act would continue to be heard by magistrates rather than being referred to the SoST for determination. Schedule 2 (Requirements) • R5 (Marine construction hours) deleted to avoid unnecessary duplication with the Deemed Marine Licence (DML) in Schedule 3 of the dDCO. • R18 (Impact Protection Measures), wording revised in an endeavour to provide greater clarity about the decision making procedure for undertaking the vessel impact protection measures (IPM)subject to Work No. 3. • R19 (Transportation of dredged arisings) deleted. Schedule 3 DML – wording variously revised to take account of ongoing discussions between the Marine Management Organisation (MMO) and the Applicant. Schedule 4, Part 8 (PP for Network Rail) wording revised to reflect discussions between the parties. Schedule 4, Part 10 (PP for Cadent Gas Limited) - wording revised to reflect discussions between the parties.
D3 [REP3-002]	Schedule 3 (DML) – wording variously revised to take account of ongoing discussions held between the MMO and the Applicant.
D5 [REP5-004]	Article 2 and consequential changes largely made throughout the rest of the dDCO - *"undertaker"* substituted for *"Company"* to reflect the terminology usually used to refer to the party constructing and/or operating developments authorised by DCOs. In the Applicant's final dDCO some residual references to company remained and they have replaced with undertaker in the ExA's rDCO. Article 4 – further refinements made to the sections in the 1847 Act to be incorporated into any made DCO. Schedule 2, Part 1 (Requirements) – in paragraph 1 (Interpretation) wording concerning the construction and environmental management plan (CEMP) changed to reflect the status of the submitted CEMP as being an outline document. R4 (Construction hours) – wording revised to aid precision.

Deadline	Notable changes made
	R8 (CEMP) – wording revised to incorporate a mechanism for a final version being approved by NELC in consultation with various consultees including the MMO, Natural England, the Environment Agency and National Highways. R10 (Noise insulation) – wording revised to: enable the owners and occupiers of affected properties to seek an alternative package of insulation works to that initially offered by the undertaker; and incorporate a dispute resolution mechanism. R13 (Flood risk assessment) – deleted. R15 (Construction and operational plans and documents) – deletion of the Navigational Risk Assessment from the list of documents that the authorised development would need to be constructed and operated in accordance with. Schedule 3 (DML) – wording variously revised to take account of ongoing discussions between the MMO and the Applicant. Schedule 4, Part 3 (PP for Exolum) - wording revised to reflect discussions between the parties. Schedule 4, Part 7 (PP for DB Cargo (UK) Limited – deleted further to discussions between the parties. Schedule 4, Part 8 (PP for Network Rail) - wording revised to reflect discussions between the parties.
D6 [REP6-003]	Article 10 (Powers of Acquisition) – revisions made to wording relating to the powers sought in respect to Crown land. R5 (Travel Plan) – a new R replacing a marine construction hours R deleted in the D1 version of the dDCO. Schedule 3 (DML) – wording variously revised to take account of ongoing discussions between the MMO and the Applicant.
Change Request [AS-053]	Schedule 1 (Authorised Development) – wording of Work No.3 revised to reflect the powers being sought in respect of an additional IPM adjoining the western extremity of the IOT finger pier. A revision relating to Proposed Change 4 submitted on 29 November 2023. Schedule 2, R18 (IPM)– wording revised to allow for the Dock Master (DM) for the Port of Immingham (PoI), as well as the SCNA, to make a recommendation to the undertaker about installing the IPM.
D8	Article 21 (Operation and use of development) – wording revised: to introduce a maximum handling limit of 1,800 wheeled

Deadline	Notable changes made
[REP8-005]	cargo units per day, replacing an annual handling limit of 660,000 units; and the removal of a 'tail piece' that would have enabled the undertaker to request from NELC a variation to the limit of 100 passengers being permitted per day to depart by vessel from the authorised development. Article 24 (Discharge of water) – wording revised to take account of discussions between the North East Lindsey Internal Drainage Board and the Applicant. Paragraph 1 (Interpretation) of Part 1 of Schedule 2 (Requirements) –revisions made to various definitions. R4 (Construction hours for onshore works) – wording revised to clarify that this R would only apply to landside works. R7 (External appearance and height of the authorised development) – revised wording requiring the submission of details for NELC's approval of the authorised development's heights relative to the proposed finished ground levels and the implementation of the authorised development in accordance with the approved details. R8 (CEMP) – wording revised to make this R only applicable to onshore/landside works to be submitted for NELC's approval, with an offshore/marine CEMP to be submitted for approval via the DML. R9 (Surface water drainage) – wording simplified to reflect some of the provisions of this requirement being incorporated into PP for the North East Lindsey Internal Drainage Board. R10 (Noise insulation) – wording revised to incorporate a noise reduction level to be attained by the noise insulation measures. R11 (Woodland management) – revisions to the wording made to aid precision and enforceability. R12 (East Gate Improvements) – wording revised to aid precision and enforceability. R13 (Operational freight management plan) – a new R replacing a flood risk assessment R deleted in the D5 version of the dDCO. R15 (Flood risk assessment) – the originally proposed R15 encompassed a range of construction and operational plans and documents that the authorised development would have to accord with. Most of those plans and documents have been incorporated into standalone Rs. Accordingly, the wording for R15 has been revised making it a standalone flood risk R.

Deadline	Notable changes made
	R16 (Contaminated land) – wording revised in the interests of precision and enforceability to limit the scope of this R to landside works. R18 (IPM) – further revisions made to this R, substituting references to *"Work No.3"* with *"impact protection measures"* and making additional references to the DM. R19 (Amending the PoI's Marine Operations Manual) – a new R precluding the commercial use of the authorised development until the DM has made amendments to the PoI's operations manual incorporating *"enhanced operational controls"* for the arrival and departure of vessels using the authorised development. Paragraph 20 (Interpretation) in Part 2 of Schedule 2 – with respect to the definition for a "discharging authority" revisions made by deleting references to the Control of Pollution Act 1974 and adding the SCNA and the DM. Paragraph 23 (Appeals) in Part 2 of Schedule 2 – references to the Control of Pollution Act 1974 deleted. Schedule 3 (DML) – wording variously revised to take account of ongoing discussions between the MMO and the Applicant, including the incorporation of a *"Percussive piling reporting protocol"* and addressing dividing the CEMP into standalone offshore/marine and landside CEMPs. Part 4 of Schedule 4 (PP for the IOT Operators) – substantial redrafting to these PP, albeit the wording was not agreeable to the IOT Operators. Part 11 of Schedule 4 (PP for DFDS) – this set of PP added to the dDCO for the first time to apply to the construction phase for the authorised development. DFDS were not in agreement with this set of PP. Part 12 of Schedule 4 (PP in favour of CLdN) – this set of PP added to the dDCO for the first time to apply to the construction phase for the authorised development. CLdN were not in agreement with this set of PP. Part 13 of Schedule 4 (PP for the North East Lindsey Internal Drainage Board) – this set of PP added to the dDCO for the first time.
D10 [REP10-004]	Throughout the dDCO minor drafting revisions made by the Applicant.

Deadline	Notable changes made
	Paragraph 20 (Interpretation) in Part 2 of Schedule 2 – redrafted to remove the SCNA and DM from the definition of *"discharging authority"*. Part 7 of Schedule 4 (PP for Network Rail) – wording variously revised to incorporate discussions held between Network Rail and the Applicant.

7.3.3. The main issues arising during Examination or outstanding at the Examination's conclusion were:

- The meaning of "maintain" for the purposes of Articles 2 (Interpretation) and 6 (Maintenance of authorised development).
- The mechanism for installing the proposed IPM for the IOT under R18 of Schedule 2.
- PP for IOT Operators (Part 4 of Schedule 4).
- PP for Anglian Water Services Limited (Anglian Water) (Part 6 of Schedule 4).
- PP for Cadent Gas Limited (Cadent) (Part 9 of Schedule 4)
- PP for DFDS (Part 11 of Schedule 4).
- PP for CLdN (Part 12 of Schedule 4).
- Whether the Applicant's Navigation Risk Assessment (NRA) should be made the subject of a Requirement.

ARTICLES 2 AND 6 – MAINTAIN/MAINTENANCE

7.3.4. Article 2 of the dDCO [REP1-004] provides a definition for *"maintain"* which includes *"… inspect, repair, adjust, alter, remove or reconstruct …"*. Article 6 (Maintenance of the authorised development) states:

"(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

(2) This article does not authorise any works which are likely to give rise to any materially new or materially different effects that have been assessed in the environmental statement."

7.3.5. Paragraph 6.4 of the EM (REP10-007) in justifying Article 6 in the dDCO cites the Port of Tilbury (Expansion) Order 2019 ((Tilbury) and the Lake Lothing (Lowestoft) Third Crossing Order 2020 (Lake Lothing) made DCOs as precedents.

7.3.6. The ExA considered that the meaning of 'reconstruct' in Articles 2 and 6 was unclear. Accordingly, during ISH4 the ExA sought clarification about what reconstruction works the Applicant intended would be authorised under Article 6. The Applicant responded at that hearing and in [REP4-010] that all works of maintenance would be those addressed in the Environmental Statement. In responding to submissions made by CLdN at D4 the Applicant commented:

"… the maintenance powers are not intended to give rise to the reconstruction of the works as a whole, but rather refer to 'maintenance' within its ordinary meaning. Ongoing maintenance for the IERRT is addressed at paragraphs 3.22.22. – 3.2.25 of Chapter 3 (Details of Project Construction and Operation) of the Environmental Statement [APP-039] where it is clear that the IEERT infrastructure will be maintained pursuant to the Applicant's statutory powers. Article 6(2) of the dDCO limits the maintenance powers to what has been assessed in the Environmental Statement." [paragraph 8.5 of REP5-032]

7.3.7. The ExA considers that Chapter 3 of the Environmental Statement (ES) does not assist with the understanding of what reconstruct would mean for the purposes of the meaning of maintain in Articles 2 and 6. In that regard reconstruct is not mentioned in Chapter 3 of the ES and there is ambiguity as to what works of reconstruction would or would not be within the scope of Article 6(2) of the dDCO. For example, the ES has assessed the Proposed Development as being constructed in its entirety or in two phases, i.e., a first phase of constructing proposed berths 1 and 2 and three of the landside storage areas, followed by the operation of those elements alongside the construction of berth 3 and the fourth storage yard. However, there is no assessment, for example, of one berth being operated alongside the rebuilding/reconstructing of the two other berths nor does the ES assess works such as the removal of piles and their replacement as a possible reconstruction activity.

7.3.8. This is a matter that the ExA further explored with the Applicant and other IPs at ISH6. At that hearing and in [REP7-021] the Applicant expressed the view that reconstruct would encompass *"… both minor works (such as replacing damaged infrastructure) but also goes further to include total renewal of large elements of the proposed infrastructure. The position of the Applicant is that the ES assesses construction, and the environmental effect of any reconstruction is the same. …"*. The ExA is not persuaded that explanation provided any further clarity.

7.3.9. The ExA recommended the deletion of 'reconstruct' from Article 2's definition of maintain in its schedule of proposed changes to the dDCO [PD-019]. The Applicant resisted that change, drawing on its ISH6 submissions and again citing the Tilbury and Lake Lothing made DCOs as precedents for the inclusion of reconstruct in its dDCO. The ExA considers the deletion of 'reconstruct' from Article 2 would enable the authorised development to be maintained in the generally accepted away and would not preclude the renewal of elements of the proposed infrastructure should that become necessary. The ExA therefore recommends that 'reconstruct' be deleted from Article and it has made that change in its rDCO, which forms Appendix D to this Recommendation.

REQUIREMENT 18, SCHEDULE 2 – INSTALLATION OF THE IMPACT PROTECTION MEASURES

Background

7.3.10. Issues concerning the Applicant's proposals for the type of IPM to protect the IOT and the timing of their installation are discussed in further detail in section 3.3 of

Chapter 3. At the Examination's close there remained disagreement, most particularly between the Applicant and the IOT Operators, about the need for, the type of and the timing for the installation of any IPM for the IOT. The IOT Operators, notwithstanding their concerns about the adequacy of the proposed IPM, remained of the view that the IPM should be installed no later than the bringing into use of the proposed berths for the first time.

7.3.11. The Applicant continued to contend that the undertaker's decision as to whether or not to install the IPM for the IOT's trunkway (Work No. 3(a)) and/or the IOT's finger pier (Work No. 3(b)) should be informed by recommendations received from either the Statutory Conservancy and Navigation Authority (SCNA) or the PoI's DM. That position was supported by the Harbour Master for the Humber (the HMH), with the HMH having responsibility for the day to day running the SCNA's operations, as well as the pilotage functions of the Competent Harbour Authority for the Humber, as explained in [REP1-014] and [REP7-066].

Impact Protection Measures for the Immingham Oil Terminal trunkway - Work No. 3(a)

7.3.12. The wording for R18 was subject to scrutiny throughout the Examination because from the outset of the Examination it was unclear how R18 would operate in practice. Work No. 3 having been included in the Application on a precautionary basis with the installation of this work only to proceed if the HMH determined that would be necessary. The ExA was concerned that the originally drafted version of R18 in [APP-013] lacked precision. It also transpired during the Examination R18 should have referred to the SCNA and the PoI's DM rather than the HMH.

7.3.13. The Applicant and the HMH remained of the view there would be no need to implement the trunkway IPM, that became Work No. 3(a) following the submission of the Applicant's change request. Notwithstanding that, throughout the Examination the ExA was at pains to ensure that R18 would be suitably worded should it be decided that IPM for the IOT's trunkway should be installed. In that regard, amongst various avenues the ExA explored with the Applicant, other IPs and the HMH, it aired the possibility of the Secretary of State for Transport (SoST) being the decision maker for the purposes of determining whether Work No. 3(a) should or should not be implemented. That was an option that the Applicant and the HMH resisted on the grounds that it would potentially usurp the statutory duties of the SCNA and the PoI in their capacity as statutory harbour authorities (SHA). The ExA accepts that making the SoST responsible for deciding whether or not Work No. 3(a) should be implemented could be prejudicial to the exercising of the SCNA's and the SHA's statutory powers and unnecessarily confuse what is already a complicated statutory authority regime in this location.

7.3.14. The Applicant in submitting its first set of revisions to the dDCO [REP1-005] presented wording for R18 that the ExA considered to be less precise than had been included in the originally submitted dDCO. The D1 version of R18 stated the company (i.e., the undertaker) *"… must give due consideration to any recommendation received from the SCNA …"*. The ExA in its schedule of proposed changes to the dDCO [PD-019] suggested wording that would require the

implementation of the IPM if the SCNA was to direct that, with a right of appeal being available to the undertaker should it disagree with the issuing of a direction. The Applicant and the HMH were both resistant to the ExA's suggested changes to R18.

7.3.15. In response to the ExA's ExQ (DCO.4.05 in [PD-022]), the HMH presented an alternate form of wording for R18 in [REP8-052] on the basis that wording was not a *"preferred option"*. In presenting that alternate wording the HMH confirmed that were it to be included in a made DCO its consent for that inclusion would not be withheld under the provisions of section 145 of the Planning Act 2008, i.e., powers affecting harbour authorities.

7.3.16. The ExA considered the HMH's alternate wording for R18, with some deletion of superfluous wording, was an improvement on what had preceded it. The ExA in [PD-029] and [PD-030] sought the Applicant's and the HMH's views about the revisions it considered were required to the alternate version of R18 proffered by the HMH. The Applicant advised that (like the HMH) it considered the alternate wording should be treated as being non-preferred and was of the view that the phrase *"in the interests of navigational safety in the River Humber"* should not be deleted as those words would define the limits of the HMH's statutory functions. The Applicant was content for the ExA's other suggested deletions be made [paragraph 1.70 in REP10-020]. The HMH similarly advised that it wished *"in the interests of navigational safety in the River Humber"* to be retained and did not object to the other deletions being made [REP10-024].

7.3.17. The ExA continues to be of the view that the inclusion of the phrase *"in the interests of navigational safety in the River Humber"* in R18 would be unnecessary. That is because the SCNA's powers are discrete from those concerning the commercial operation of the PoI and the ExA therefore considers the absence of that phrase would not permit the SCNA to exercise powers beyond its normal remit. As by way of further explanation, were this a requirement concerning the undertaking of some form of highway works, the need for which to be determined post consent by a highway authority, the ExA would not expect such a requirement to state that the highway authority's determination should be made in the interests of highway safety, given the reasons for a highway authority's existence and the powers available to it.

7.3.18. Sub-paragraph (1) of the Applicant's final version of R18 states "*The undertaker must give due consideration to any recommendation received from the Statutory Conservancy and Navigation Authority or the dock master that impact protection measures are required in the interests of navigational safety in the River Humber."* [REP10-004]. The ExA considers wording requiring the undertaker to give consideration to any recommendation made by either the SCNA or the DM lacks precision and should not be included in the wording for R18 included in any made DCO. Accordingly, for the reasons given above, the ExA recommends that the wording for sub-paragraph (1) of R18 should be based on the alternate wording put forward by the HMH with the deletions the ExA put to the Applicant and the HMH, together with the addition of references to the DM. The latter reflects the Applicant's

addition of the DM to sub-paragraph (1) in earlier iterations of the dDCO as well as the Applicant's final version. The recommended text for sub-paragraph (1) is set out below.

7.3.19. R18 as drafted by the Applicant includes three further sub-paragraphs. The ExA considers that as drafted the chronology for sub-paragraphs (2) and (3) would be out of sequence. The ExA therefore considers the running order for those sub-paragraphs should be reversed so that following the undertaker's receipt of a determination under sub-paragraph (1) the IOT Operators and the MMO should then be informed of that, followed by a consultation about the detailed design for Work No. 3(a). The ExA sought the Applicant's views about reversing the running order for sub-paragraphs (2) and (3) in [PD-019] and [PD-029]. The Applicant did not expressly comment on that matter and the ExA takes from that the Applicant does not object to there being a reordering of sub-paragraphs in R18. The HMH's alternate wording for R18 included 5 sub-paragraphs and for similar reasons to those relating to the Applicant's drafting for R18 the ExA considers reordering is needed so that the running order would be: (1) issuing of a determination; (2) notification of a determination having been issued; (3) consultation on the detailed design for the works; (4) consent being given for Work No. 3(a); and (5) the parameters for the detailed design to follow.

7.3.20. R18 as drafted by the Applicant and the HMH identifies *"the operator of the Humber Oil Terminal"* as being a consultee. However, that term is not defined in either Article 2 or Schedule 2 of the Applicant's dDCO. That term is also inconsistent with the references made to the *"IOT Operators"* in R19 and the PP for the *"IOT Operators"* (Part 4 in Schedule 4) of the Applicant's dDCO. Throughout the Examination the two companies involved with the operation of the IOT, *"Associated Petroleum Terminals (Immingham) Limited"* and *"Humber Oil Terminal Trustees Limited"* referred to themselves as the IOT Operators. The ExA therefore considers it would be appropriate for the term 'IOT Operators' to be used in R18. That term has been included in the text recommended by the ExA in the rDCO, together with definitions for it and 'IOT' in paragraph 1 of Part of Schedule 2 of the rDCO.

7.3.21. The SoST may, however, wish to enquire of the Applicant whether the term 'IOT Operators' should be included in the wording of R18 in any made DCO. Should the Applicant disagree with the use of that term, the ExA considers it would be necessary to include a definition for *"the operator of the Humber Oil Terminal"* to be added to paragraph 1 of Part of Schedule 2 in any made DCO.

7.3.22. The ExA's recommended wording for R18 is set out in full below.

"Impact Protection Measures for the IOT trunkway

18. – (1) In the event that the Statutory Conservancy and Navigation Authority or the dock master determine that the impact protection measures comprising Work No. 3(a) are required, upon receiving notification of that decision from the Statutory Conservancy and Navigation Authority or the dock master, the undertaker must construct the impact protection measures.

(2) Upon receiving notification of the Statutory Conservancy and Navigation Authority's or dock master's determination referred to in sub-paragraph (1):

(a) the undertaker must — within 10 business days, notify the IOT Operators and the MMO of that determination; and

(b) within 30 business days, notify the IOT Operators and the MMO as to the steps it intends to take as a result of the Statutory Conservancy and Navigation Authority's or dock master's notification.

(3) The construction of Work No. 3(a) must not be commenced until the undertaker has consulted with the Statutory Conservancy and Navigation Authority, the dock master, the IOT Operators and the MMO as to the detailed design of Work No. 3(a) and has had regard to any consultative representations received by the undertaker.

(4) No works for the construction of Work No. 3(a) may be commenced until the undertaker has obtained the written consent of the Statutory Conservancy and Navigation Authority to construct Work No. 3(a).

(5) The detailed design referred to in sub-paragraph (3) must be:

(a) within the limits of deviation shown on the relevant plans of the works plans;

(b) in general accordance with the detail shown on the relevant engineering, sections, drawings and plans; and

(c) in general accordance with the detail shown on the relevant general arrangement plans."

Impact Protection Measures for the Immingham Oil Terminal finger pier – Work No. 3(b)

7.3.23. As explained in section 3.3 of Chapter 3 the ExA has concluded that the IPM for the IOT's finger pier, i.e., the piled dolphin at the western end of that pier (Work No. 3(b)), should be installed prior to the first use of the proposed berth 1. The ExA considers that would be in the interests of navigational safety and the United Kingdom's energy security, given the role the IOT plays in the latter.

7.3.24. R18, as drafted in the Applicant's final version of the dDCO [REP10-004], jointly addresses the implementation of Work Nos. 3(a) and 3(b) following recommendations being made by the HMH or the PoI's DM to the undertaker that either one or both be installed. As the ExA has concluded that Work No. 3(b) should be installed prior to the first use of proposed berth 1 it considers that there is a need for the securing of Works Nos. 3(a) and 3(b) in any made DCO to be made the subject of separate Rs in the interests of aiding precision and enforceability. The ability to install Work No. 3(a) would come within the ambit of R18 as referred to above. Implementing Work No. 3(b) would come within what the ExA considers would need to be a new Requirement, R19, with R19 in the Applicant's final version of the dDCO needing to be renumbered R20.

7.3.25. The ExA requested the Applicant to submit, on a without prejudice basis, wording for a new Requirement (i.e. R19) to address the standalone installation of the IPM

for the finger pier [matter 1(b) in PD-029]. The Applicant in [REP10-020] submitted the following text on a without prejudice basis:

"[Prior to the commencement of construction of the authorised development] or [Prior to the commencement of commercial operations at the authorised development] the undertaker must:

a. *notify the Statutory Conservancy and Navigation Authority, the dock master, the MMO and the operator of the Humber Oil Terminal of its intention to install the impact protection measures;*

b. *agree a programme of works with the parties identified in sub-paragraph (1) above; and*

c. *install the impact protection measures detailed as Work No. 3"*

7.3.26. Having regard to the wording provided by Applicant and the reasoning the ExA has provided above and in section 3.3 of Chapter 3, the ExA recommends that in respect of the implementation Work No. 3(b) the following wording for an additional Requirement to be numbered R19 be included in any made DCO for the Proposed Development. The wording that the ExA is recommending includes some changes to that provided by the Applicant so as to make it specific to: the first commercial use of proposed berth 1 (the berth closest to the IOT's finger pier) necessitating the incorporation of a reference to a plan; and Work No. 3(b), to aid precision and enforceability.

7.3.27. For the reasons given above concerning recommended R18, the ExA considers the term 'IOT Operators' should be used in R19 rather than *"the operator of the Humber Oil Terminal"*. That change of terminology may be a matter the SoST wishes to seek the Applicant's views about. The wording that follows has been incorporated in the ExA's rDCO:

"Impact Protection Measures for the IOT finger pier

19. *– Prior to the commencement of the commercial operation of berth 1, using the berth numbering adopted on General Arrangements Plan B2429400-JAC-00-ZZ-DR-ZZ-0202 Revision P04, the undertaker must:*

a. *notify the Statutory Conservancy and Navigation Authority, the dock master, the MMO and the IOT Operators of its intention to install the impact protection measures comprising Work No. 3(b);*

b. *agree a programme of works with the parties identified in sub-paragraph (a) above; and*

c. *install the impact protection measures detailed as Work No. 3(b)."*

PROTECTIVE PROVISIONS FOR THE IMMINGHAM OIL TERMINAL OPERATORS

7.3.28. The PP for the IOT Operators are included in Part 4 of Schedule 4 of the dDCO and as proposed by the Applicant would only apply to the construction period for the authorised development.

7.3.29. The IOT Operators considered that the PP included in the originally submitted dDCO [APP-013] were inadequate and submitted a substantially rewritten alternative set at Examination D1 (15 August 2023) [REP1-039]. During the period between the submission of [REP1-039] and the holding of ISH6 on 23 November 2023 there were no active negotiations between the Applicant and the IOT Operators to advance this set of PP. Accordingly, when the ExA issued its scheduled of proposed changes to the dDCO [PD-019] it found it necessary to set out in full the contents of [REP1-039] and asked the Applicant to advise on which of the PP promoted by IOT Operators it did or did not accept and explain why in the case of the latter that was the case and provide any revised wording it favoured. The Applicant's response to that request is included in [REP7-029] and in section 7 of [REP9-029] it has made further comments on the changes to the PP sought by IOT Operators.

7.3.30. There is significant disagreement between the Applicant and the IOT Operators about what should and should not be included in this set of PP. It was at D7 (1 December 2023) when the Applicant provided its first substantive response to the changes to the PP that the IOT Operators were seeking. Much of the disagreement concerns matters of detailed contractual type drafting and that disagreement could potentially have been appreciably narrowed had the Applicant been more proactive following the submission of [REP1-039]. Given the nature of the disagreement about matters of detailed drafting that remained at the Examination's close the ExA considers unable to offer much in the way of constructive recommendations to the SoST. The exception to that concerning whether the PP for the IOTs Operators should or should not be apply to the Proposed Development's operational phase.

7.3.31. In short, the ExA is of the view that this set of PP should apply to the Proposed Development's operational phase. That is because the Proposed Development would involve operating three new berths for use by Ro-Ro vessels in close proximity to the IOT's finger pier. That siting relationship for so long as it existed, as the ExA has explained in section 3.3 of Chapter 3 above, would have the potential to impede the passage of vessels manoeuvring to or from the finger pier and therefore interfere with the operation of the IOT. At paragraph 7.4 of [REP9-011] the Applicant commented:

"The existing commercial and legal relationship was entered agreed so as to provide the necessary rights and protections for the IOT Operators to run their Immingham operation. As contemplated by the IOT Operators when entering into those agreements, the Port and its bellmouth have been in constant use (with higher marine traffic levels than today) with the inherent risks to the IOT appropriately and safely managed."

7.3.32. While Examination evidence shows that there are currently fewer vessel movements within the PoI than has previously the case, the ExA considers the issue is more about using part of the outer port by large Ro-Ro vessels, close to the IOT's finger pier, where there is no history of that type of vessel having previously been present. In that regard the operation of the Proposed Development would be reliant on the presence of substantial marine structures close to the finger pier. That would be an entirely new set of circumstances, which the ExA considers the IoT Operators (or their predecessors) would not have countenanced when the commercial and legal relationship with the Applicant was entered into.

7.3.33. The ExA therefore recommends that whatever PP are incorporated into any made DCO authorising the Proposed Development they should apply to its operational phase. The Applicant considers that the operation of the Proposed Development would not adversely affect the operation of the IOT's finger pier, should that be the case then the IOT Operators would have no need to make use of the PP.

7.3.34. The ExA has included text in paragraph 34 of Part 4 of Schedule 4 of its rDCO applying the PP for the IOT Operators to the Proposed Development operational phase. The SoST may wish to enquire of the Applicant and the IOT Operators as to whether following the Examination's close there has been any further progress in negotiating a set of PP for the IOT Operators. In that regard the SoST may wish to enquire as to whether any further consideration has been given to any need for a level of insurance cover to be incorporated into this set of PP. The Applicant is known to have financial strength and might not need to be so reliant on insurance to indemnify the IOT Operators. However, that might not necessarily be the case if the benefit of any made DCO was to be transferred to a party other than the Applicant pursuant to Article 9 of the dDCO.

PROTECTIVE PROVISIONS FOR ANGLIAN WATER

7.3.35. The PP for Anglian Water are included in Part 6 of Schedule 4 of the dDCO [REP10-004] and as proposed by the Applicant would only apply to the construction period for the authorised development. Anglian Water advised in [REP8-042] that there was only one matter within the PP proposed by the Applicant which was not agreed. That matter of disagreement concerns the wording of paragraph 55 of the PP, which would see the PP for Anglian Water ceasing to have effect once the Proposed Development was operational. That disagreement is recorded in the Statement of Common Ground (SoCG) which the Applicant entered into with Anglian Water on 11 January 2024 [REP9-006].

7.3.36. In the SoCG the Applicant has stated it considers there would be no need for this set of PP to be effective once the Proposed Development had become operational because the affected Order Limits (Plot 13 in the Land Plans [APP-006]) contains no live Anglian Water assets and only one decommissioned asset. Plot 13 would be subject to proposed Work No. 12 (improvements to the PoI's East Gate).

7.3.37. While Anglian Water considers that there would be uncertainty about when the PP were operative should they only apply to the construction phase, the ExA considers this is an instance when there would appear to be no need for the PP to endure into

the Proposed Development's operational phase. That is because currently the only Anglian Water asset that could be affected by the Proposed Development is a decommissioned pipe. Limiting the PP to the construction phase would ensure that Anglian Water's asset would be protected while there were on going construction works that could potentially affect it, but it is difficult to envisage a situation under which the Proposed Development's operation could affect the condition of a decommissioned asset. The ExA therefore considers there would be no need for the PP for Anglian Water to apply to the authorised development's operational phase.

PROTECTIVE PROVISIONS FOR CADENT

7.3.38. The PP for Cadent relate to an easement concerning *"an intermediate pressure gas main"* [Appendix 1 in REP10-001] within Plot 9 of the Order Limits and relates to Work No. 6 (western storage area). The PP for Cadent as proposed by the Applicant are intended to only apply to the construction period for the authorised development (paragraph 99 in Schedule 4). However, as highlighted by Cadent in [REP9-021], there would appear to be an inconsistency in the drafting for paragraph 107 (indemnity) of the PP, because the indemnity, in part, would relate to the authorised development's operational phase. Cadent has submitted that the indemnity should be supported by insurance cover of £50 million.

7.3.39. In [REP10-001] the Applicant has submitted that the proposed western storage yard is already used as a port vehicle storage area that is already subject to an easement protecting Cadent's gas main. The Applicant therefore considers there would be no need to apply the PP to the authorised operational phase and in any event, it considers supporting the proposed indemnity with £50 million insurance cover would be unnecessary given the Applicant's financial standing.

7.3.40. The western storage area has been identified in Chapter 3 of the ES as *"most likely"* being used as a storage area for unaccompanied trailers [paragraph 3.2.9 in AS-065]. That use would be comparable with the vehicle storage currently associated with this part of the PoI. However, there would be potential for the western storage yard to be used for the storage of containers associated with the proposed Ro-Ro terminal. That storage activity might have different ground loading characteristics, with implications for the integrity of the below ground gas main.

7.3.41. The ExA, on the basis of the evidence available to it, considers it would be reasonable for the PP for Cadent to apply to both the construction and operational phases for any development authorised by a made DCO. In reaching that conclusion the ExA considers, given the Applicant's financial standing, that there would be no need for the indemnity included in the PP to be supported by the scale of insurance sought by Cadent.

7.3.42. The ExA therefore recommends that paragraph 99 of Schedule 4 should be worded *'For the protection of Cadent the following provisions will, unless otherwise agreed in writing between the undertaker and Cadent, have effect'*. The ExA has included that recommended wording in the rDCO. With that wording there would be no inconsistency with the wording used by the Applicant in paragraph 107 of the dDCO.

PROTECTIVE PROVISIONS FOR DFDS

7.3.43. Originally the Applicant did not intend to include PP for DFDS. DFDS in submitting its Written Representations sought a set of PP in its favour [REP2-042], running to two pages submitted as an Examination document on 5 September 2023. DFDS considers the PP it has proposed should apply to both the construction and operational phases for the Proposed Development because it could interfere with DFDS's operations at the PoI.

7.3.44. The Applicant was generally of the view that PP in favour of DFDS would be unnecessary because neither the construction nor the operational phases of the Proposed Development would impinge on DFDS' operations. Notwithstanding that during the course of ISH6 (23 November 2023) the Applicant indicated it would be prepared to include PP for DFDS in the dDCO.

7.3.45. The ExA, through the issuing of its schedule of proposed changes to the dDCO [PD-019], requested the Applicant to advise what it did or did not accept in the set of PP submitted by DFDS [REP2-042]. The Applicant responded it considered the PP for DFDS should only apply to the construction period because once the authorised development was operating it would be under a regime of risk controls put in place by the HMH. Additionally, existing legal agreements between the Applicant and DFDS should prevail and *"To provide protections for DFDS in perpetuity would fundamentally alter the existing commercial relationship between the Applicant and DFDS"* [REP7-029].

7.3.46. The Applicant incorporated PP for DFDS in the D8 version of the dDCO as Part 11 of Schedule 2 (paragraphs 120 to 125) [REP8-005]. Paragraph 120 states that these PP would have effect until the commencement of the authorised development's use, i.e., as drafted they would apply only during the Proposed Development's construction phase. DFDS maintained that PP for it should apply to the operational phase.

7.3.47. The ExA's ExQ DCO.4.09 [PD-022], in effect, requested the Applicant and DFDS to explain why it was considered any existing legal agreements would or would not be sufficient to protect DFDS' interests during the operational phase. The Applicant's reply to that question was that the development of new berths at the PoI would not affect the existing commercial, licence and lease arrangements between DFDS and the Applicant and DFDS would continue to have access to berths and the exclusive use of landside areas within the PoI. The Applicant *"… typically would not offer prioritised access to one customer over another as part of a legally binding commercial commitment."* [REP8-020]. The rest of the Applicant's reply to ExQ DCO.4.09 explained how the PoI operates under the open port duty with vessel movements being managed by the HMH and the DM but did not really assist in explaining why it considered the existing legal arrangements with DFDS would address DFDS' concern.

7.3.48. DFDS' response to ExQ DCO.4.09 was vessel manoeuvring associated with the Proposed Development's operation could interfere with the passage of DFDS' vessels in and out of the PoI and the existing agreements between the parties were

more than 15 years old and did not envisage the presence of the Proposed Development *"… or contemplate the need for protection against such a development which could materially impact existing port operations."*. DFDS was therefore of the view that the existing legal arrangements would not provide any protection [REP8-046].

7.3.49. Throughout the Examination the Applicant has vehemently argued that it as a commercial port operator together with the DM and the HMH, in fulfilling their statutory harbour authority duties, would be able to manage the movement of the vessels to and from the proposed berths without prejudicing the operation of the rest of the PoI. If the Applicant is correct that there would be no interference to DFDS' operations once the Proposed Development was operational, then any PP for DFDS would never need to be relied on by DFDS. Were there to be interference with DFDS' operations during the Proposed Development's operational phase then the ExA considers it reasonable that PP should be available to safeguard DFDS' interests.

7.3.50. The ExA therefore recommends that any made DCO should include PP for DFDS applicable to both the construction and the operational phases. Accordingly, the ExA's rDCO in Appendix D includes revisions to the Applicant's dDCO that would make this set of PP applicable to both the construction and operational phases.

PROTECTIVE PROVISIONS FOR CLdN

7.3.51. Originally the Applicant did not intend to include PP for CLdN. CLdN in submitting its Written Representations sought PP in its favour [section 4 in REP2-031]. CLdN considers the PP it has proposed should apply to both the construction and operational phases for the Proposed Development, with CLdN being concerned the Proposed Development could interfere with operations at the Port of Killingholme (PoK). CLdN being concerned that the proposed Ro-Ro's terminal operation could affect the continuity of services offered by the PoK. The PP proposed by CLdN covered: notice of and consultation on works and vessel movements; railways; highway access movement; indemnity; statutory powers; and arbitration.

7.3.52. The Applicant was generally of the view that PP in favour of CLdN would be unnecessary because neither the construction nor the operational phases would adversely affect operations at the PoK. Notwithstanding that during the course of ISH6 the Applicant indicated it was prepared to include some PP for CLdN in the dDCO. In [AS-078] the Applicant provided an indication of the PP promoted by CLdN were and were not acceptable to it and commented further on those PP in [REP9-010].

7.3.53. The Applicant is firmly of the view that any PP for CLdN should apply to the Proposed Development's construction phase because if they were to apply to the operational phase that would give CLdN preferential treatment over other users of the Humber and could limit the SCNA's statutory powers. The Applicant is therefore not prepared to enter into PP with CLdN that could give the latter a commercial advantage over the operation of the Proposed Development, by when the Humber would be operating *"as normal"* [Paragraph 8.5 in REP9-010]. Managing any vessel

congestion on the Humber or within the PoI would respectively be for the HMH and the PoI's DM to manage rather than any other party.

7.3.54. While the Humber is a busy river, the volume of cargo vessels has been declining as vessel sizes having been increasing. The HMH's Examination evidence was that the volume of vessel movements associated with the Proposed Development's operation would be manageable and would not be expected to affect the operation of the Humber's other ports. The Proposed Development would generate up to an additional six vessel movements per day and the ExA considers that volume of extra river traffic would be unlikely to interfere with the operation of the PoK. The ExA therefore considers it would be unnecessary for the PP's the Applicant has included in the dDCO to be applied to the operational phase of any development authorised by any made DCO for the Proposed Development.

7.3.55. CLdN has also sought a PP that should not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use by CLdN of the railway network to which the PoK is connected. In so doing CLdN has confirmed that freight handled by the PoK does not currently make use of its link to the rail network. The Applicant has responded that the Proposed Development would have no effect on the railway network beyond the PoI's confines, with there being no intention for Ro-Ro units handled by the Proposed Development to make use of the rail network.

7.3.56. Constructing the Proposed Development would require some alterations to be made to the rail system that is internal to the PoI. However, those works would have not affect the operation of the rail network beyond the PoI. The ExA therefore agrees with the Applicant that the construction and operation of the Proposed Development would not affect the PoK's access to the rail network, if at some future date the PoK was to make use of the rail network.

7.3.57. CLdN through a PP has sought to be consulted on the highway access provisions of the onshore/landside construction and environmental management plan (CEMP) and the operational freight management plan, to be secured through the provisions of R8 and R13 of the dDCO. The ExA agrees with the Applicant that as any approval of the landside CEMP and the operational freight management plan by North East Lincolnshire Council and National Highways would engage consideration by the relevant highway authorities it would not be appropriate for a PP for CLdN to require consultation on those plans.

7.3.58. Additionally, CLdN has sought the inclusion of a PP intended to ensure that the operation of the Proposed Development could not prejudice the statutory functions of the PoK as a SHA. Like the Applicant the ExA considers that that no evidence has been submitted demonstrating anything contained in the dDCO would contradict, limit or amend the statutory rights and powers vested with the PoK's SHA.

7.3.59. The ExA considers no changes need to be made to the PP for CLdN included in the dDCO.

WETHER THE APPLICANT'S NRA SHOULD BE MADE THE SUBJECT OF A REQUIREMENT

7.3.60. The original version of the Applicant's dDCO [APP-013] included the NRA [APP-089] as a document that the construction and operational phases of the Proposed Development would need to comply with under what was then R15. However, at Issue Specific Hearing 4 and in written submissions following that hearing the Applicant submitted that there was no need for the NRA to be made the subject of a requirement. Accordingly, in the subsequently submitted versions of the dDCO the only reference to the NRA has been as a certified document listed in Schedule 6 of the dDCO [REP10-004].

7.3.61. CLdN has submitted that the NRA should be made the subject of a requirement in any made DCO. That is because without the NRA being tied to a requirement there would be no means of securing compliance with the mitigation included in the NRA [paragraphs 17 and 18 in REP6-036].

7.3.62. During the Examination the Applicant advised that the PoI's Marine Safety Management System (MSMS) is adapted to changing port operations from time to time, with the formal assessment of risk being used to *"… inform appropriate amendments and changes to the MSMS (as necessary)"* [item 27 in REP1-009]. The NRA for the port would therefore need to be amended to accommodate the presence and use of the Proposed Development if it is consented and implemented. As explained in earlier in this Recommendation, the SCNA and the SHA for the PoI, (via the HMH and the PoI's DM respectively) would be involved in the process of determining how the proposed berths could be used safely. Given that background, the ExA is content that the exclusion of the submitted NRA from the requirements included in the dDCO would not result in the Proposed Development being operated unsafely. The ExA therefore considers there is no need for the NRA's implementation to be secured by means of a requirement included in a made DCO.

7.4. DEEMED MARINE LICENCE

7.4.1. Schedule 3 of the dDCO [REP10-004] incorporates the text for a deemed marine licence (DML) pursuant to the provisions of the Marine and Coastal Act 2009 (the 2009 Act) . The DML includes conditions that would apply to licensable activities under the 2009 Act and it was subject to discussions between the Marine Management Organisation (MMO) and the Applicant throughout the Examination.

7.4.2. The final and signed SoCG (17 January 2024) between the MMO and the Applicant [REP10-011] records that there were no matters that were not agreed. The first item in Table 3 of that SoCG confirms that all matters relating to the DML were agreed between the MMO and the Applicant. Given what is recorded in the SoCG between the MMO and the Applicant, the ExA is content that the DML included in the Applicant's dDCO would adequately address the requirements of the 2009 Act.

7.5. PROTECTIVE PROVISIONS NOT REFERRED TO IN SECTION 7.3 ABOVE

7.5.1. Schedule 4 of the dDCO sets out PP for statutory undertakers and other parties. In addition to the PP for IOT Operators, Anglian Water, Cadent, DFDS and CLdN referred to in the preceding subsection, the dDCO includes PP for eight other parties. The status of those other PP is listed in Table 1 of the Applicant's tracker [REP9-009]. PP as set out below have been agreed for the most part:

- Part 1 (for the SCNA) contains a bespoke set of PP for the river Humber's statutory harbour authority which would apply until such time as the operation of the authorised development commenced. These PP, amongst other things, address the detailed approval for tidal works, the discharge of materials into the river, the removal of moorings and buoys, the removal of temporary works, the non-interference with navigational aids and arrangements for approving works. The wording for this set of PP was amended at various stages during the Examination further to discussions held between the HMH and the Applicant.

- Part 2 (for the Environment Agency) sets out PP that would safeguard the structural integrity of flood defences and enable those defences to be maintained.

- Part 3 (for Exolum) provides PP for a tenant of the Applicant with pipeline and storage infrastructure within the vicinity of the Proposed Development. This set of PP would apply to the construction phase for the Proposed Development.

- Part 5 (for Northern Powergrid) contains PP applying to the Proposed Development's construction phase which would safeguard electricity transmission infrastructure.

- Part 7 (for Network Rail) provides PP in relation to lighting for the Proposed Development and other works adjoining Network Rail's infrastructure.

- Part 8 (for NELC, in its capacity as local lead flood authority) provides PP safeguarding NELC's infrastructure within the vicinity of the Proposed Development. By the Examination's close NELC had not advised whether the PP for it were or were not agreed [REP9-009], albeit the Statement of Common Ground between the Council and the Applicant records no disagreements relating to the issue of flooding [REP10-014].

- Part 10 (for the operators of electronic communication code networks) sets out a generic set of PP for telecommunications infrastructure which would apply to the Proposed Development's construction phase. No representations concerning this set of PP were received from affected telecommunications undertakers during the course of the Examination. However, the Applicant's PP tracker [REP9-009] records that on 10 January 2024 Openreach sought clarification from the Applicant as to why this set of PP were intended to apply only to the construction phase. The Applicant's response to that enquiry was

that Openreach's infrastructure within the Order limits would be subject to protection afforded by existing legal agreements once the authorised development became operational.

- Part 13 (for the North East Lindsey Internal Drainage Board) includes bespoke PP that would protect the Board's by giving it approval rights over specified works affecting a watercourse and the Harborough drain. By the Examination's close the North East Lindsey Internal Drainage Board had not advised whether the PP for it in the dDCO had or had not agreed, albeit in [REP9-020] the Board advised it was *"… satisfied with content of the protective provisions however the document is being reviewed by solicitors to ensure maximum protection."*.

7.5.2. The ExA is content that based on the evidence available to it the PP included in Parts 1, 2, 3, 5, 7, 8, 10 and 13 would provide adequate protection for the parties for which they are intended.

7.6. EXAMINING AUTHORITY'S PROPOSED CHANGES

7.6.1. In light of the ExA's conclusions above, it considers some changes to the Applicant's dDCO are necessary to address issues that have come to light during the Examination. Those can be found in Table 2 below.

Table 2 dDCO provisions recommended for change

Provision	Examination Issue	Recommendations
Article 2	Inclusion of reconstruct within meaning of maintain	Reconstruct be deleted from the definition of *"maintain"* in Article 2.
R18 and new R19	Mechanism for determining whether or not the IPM subject to Work Nos. 3(a) and 3(b) should be implemented.	1) This R be split with R18 to relate to Work No. 3(a) and new R19 to relate to Work No. 3(b). 2) Re R18 the wording be changed to reflect the alternate wording provided by the HMH so that if either the HMH or the PoI's DM determine that the IPM for the IOT trunkway should be installed then the undertaker must implement Work No. 3(a). Full wording for revised R18 set out above and included in the ExA's rDCO. 'IOT Operators'

Provision	Examination Issue	Recommendations
		substituted for *"operator of the Humber Oil Terminal"*, with definitions for IOT and IOT Operators added to paragraph 1 of Part of Schedule 2. 3) R19 be included in any made DCO requiring Work. No 3(b) to be implemented prior to the first commercial use of the authorised development's berth 1. 'IOT Operators' substituted for *"operator of the Humber Oil Terminal"*. Full wording for recommended R19 set out above and included in the ExA's rDCO.
R19 in Part 2 of Schedule 2	Need for renumbering arising from changes to preceding Rs.	Renumber as R20 and make consequent changes to the paragraph numbers in Part 2 of Schedule 2 of the rDCO
IOT Operators PP Part 4 of Schedule 4	Whether PP should apply to the operational phase for the authorised development.	That paragraph 34 in Part 4 of Schedule 4 should be rephrased so that the PP would apply to both the construction and operational phases for the authorised development.
Cadent PP Part 9 of Schedule 4	Whether PP should apply to the operational phase for the authorised development.	That paragraph 99 in Part 9 of Schedule 4 should be rephrased so that the PP would apply to both the construction and operational phases for the authorised development.
DFDS PP	Whether PP should apply to the operational phase	That paragraph 120 in Part 11 of Schedule 4

Provision	Examination Issue	Recommendations
Part 11 of Schedule 4	for the authorised development.	should be rephrased so that the PP would apply to both the construction and operational phases for the authorised development.
New Schedule 6 Identification of CA rights		Addition of a schedule listing the CA rights that a made DCO would authorise.
Renumbering of Schedule 6 (Plans and Documents to be certified) in the dDCO		With the insertion of a new Schedule 6, the originally numbered Schedule 6 should be renumbered 7. Additionally, where references are made to the certified plans and documents schedule in other parts of any made DCO the schedule referred to should be changed from 6 to 7.

7.7. OTHER MATTER – SECURING THE AVALABILITY OF COMPENSATORY HABITAT

7.7.1. For the reasons explained in section 3.4 of Chapter 3 and Chapter 4 above the ExA considers there would be a need for compensatory habitat to be provided to address the loss of intertidal habitat within the Humber Estuary Special Area of Conservation associated with the Proposed Development and in-combination with other projects and plans. In that regard the Applicant has proposed, on a without prejudice basis, that if it is determined compensatory habitat should be provided then 1.0 hectare (ha) of the Outstrays to Skeffling Managed Realignment Scheme (OtSMRS) could be allocated to the Proposed Development.

7.7.2. The Applicant has proposed that securing the allocation of 1.0ha of the OtSMRS to the Proposed Development could be done by it entering into an agreement with East Riding of Yorkshire Council (ERYC) under section 106 of the Town and Country Planning Act 1990 (s106 agreement). As explained earlier in this Recommendation the ExA considers it would be inappropriate for the allocation of OtSMRS land to be secured by means of a s106 agreement between ERYC and the Applicant and that any such agreement should be entered into between the SoST and the Applicant. That is because the SoST, rather than ERYC, is the competent

authority under the provisions of The Conservation of Habitats and Species Regulations 2017 for the purposes of this Application's determination.

7.7.3. Should the SoST determine that compensatory habitat should be provided, then the ExA recommends that the SoST concludes a s106 agreement with the Applicant prior to any DCO being made. The ExA considers the planning obligations in a s106 agreement should include:

- The in-perpetuity allocation of 1.0 ha of the OtSMRS to the Proposed Development, with the allocated land to be confirmed as being suitable compensatory habitat prior to the first use of the Proposed Development.

- English Nature being nominated as the SoST's advisor with respect to establishing whether the allocated OtSMRS land had attained the appropriate compensatory standard prior to the Proposed Development being brought into use.

7.8. CONCLUSIONS

7.8.1. The ExA has considered all of the versions of the dDCO submitted by the Applicant and the extent to which the Applicant's final version has addressed matters that arose during the Examination.

7.8.2. The ExA is content that the provisions of the final version of the dDCO [REP10-004] for the most part would provide adequate mitigation for potential adverse effects identified in the ES and sufficiently address the issues raised during the course of the Examination. However, the ExA considers some amendments need to be made to the dDCO. Those amendments are referred to in Table 2 above and are included in the ExA's rDCO, which can be found in Appendix D. Some minor drafting errors have also been addressed by the ExA in its rDCO.

7.8.3. With respect to the PP for the IOT Operators and the scale of disagreement about their drafting at the Examination's close, the SoST may wish to enquire of the Applicant and the IOT Operators whether any further progress in drafting these PP has been made.

7.8.4. Having regard to the matters raised in this chapter and taking the matters relevant to the DCO raised in preceding chapters into account, if the SoST is minded to make a DCO, it is recommended that the DCO should be made in the form set out in the rDCO, which is in Appendix D, subject to the SoST and the Applicant entering into a s106 agreement to secure the allocation of 1.0ha of the OtSMRS to the Proposed Development.

8. SUMMARY OF FINDINGS AND CONCLUSIONS

8.1. CONSIDERATION OF FINDINGS AND CONCLUSIONS

8.1.1. As the Examining Authority (ExA) has noted in Chapter 3 above, the need for port development is established in the National Policy Statement for Ports (NPSfP), which has effect for the purposes of section (s) of 104(1) of the Planning Act 2008 (PA2008). Under the provisions of s104(2)(aa) regard must also be paid to the Marine Policy Statement of 2011 (MPS) and East Inshore and Offshore Marine Plans of 2014 (EIMP).

8.1.2. The ExA also considers that the Overarching National Policy Statement for Energy (EN-1) (NPSEN1) (designated in January 2024) is an important and relevant matter because of the Proposed Development's potential effects for adjoining critical national energy infrastructure and operations handling oil fuel products. Part 12 of the Energy Act 2023 addresses core fuel sector resilience and this legislation, amongst other things, applies to oil storage, handling and carriage activities.

8.1.3. In relation to s104 of the PA2008, the ExA concludes that making the recommended Development Consent Order (rDCO) would be in accordance with the NPSfP, MPS, EIMP and NPSEN1.

8.1.4. The ExA has also had regard to the Local Impact Report submitted by North East Lincolnshire Council (NELC) and concludes that on balance, the Proposed Development would be acceptable on planning grounds subject to the mitigation measures secured in the rDCO.

8.1.5. The Secretary of State for Transport (SoST) is the competent authority under the Conservation of Habitats and Species Regulations 2017 and will make the definitive assessment under those regulations. In that regard the ExA has concluded that, subject to mitigation secured in the rDCO and by means of a section 106 agreement under the Town and Country Planning Act 1990 (s106 agreement) being entered into between the SoST and the Applicant to secure the allocation of some off site compensatory habitat for the Proposed Development, adverse effects on the integrity of the European sites and their features from the Proposed Development when considered alone or in combination with other plans or projects would be avoided.

8.1.6. With regard to designated heritage assets for the purposes of Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010 (the Decision Regulations), the ExA has found the Proposed Development would not be likely to result in harm to any designated assets.

8.1.7. In terms of biodiversity and having regard to Regulation 7 of the Decisions Regulations, the ExA is content that biodiversity, ecological and nature conservation issues have been adequately assessed and that the requirements of NPSfP, MPS and EIMP would be met. Furthermore, the ExA considers that the environmental enhancements arising from the Proposed Development and the off-site

compensatory measures, to be secured by way of the SoST and the Applicant entering into a s106 agreement, would assist in enhancing biodiversity.

8.1.8. In relation to the Compulsory Acquisition (CA) powers sought, the ExA concludes as follows:

- The Application site has been appropriately selected, albeit that the Port of Killingholme as an alternative cannot be entirely discounted.
- The Applicant would have access to the necessary funds and the rDCO provides a clear mechanism whereby the necessary funding can be guaranteed.
- With the exception of Plot 9 there is a clear need for Plots 1, 2a, 2b, 3, 4, 5a, 5b, 6 and 14 to be made the subject of the CA powers sought.
- With the exception of Plot 9 there is a need to secure the rights in the required land to construct, operate and maintain the Proposed Development within a reasonable timeframe, and the Proposed Development would be a significant public benefit to weigh in the balance.
- With exception of Plot 9 the CA powers sought satisfy the conditions set out in s122 and s123 of the PA2008 as well as the CA Guidance.
- With respect to Plot 9 there is disagreement between Volkswagen Group United Kingdom Limited (VWG) and the Applicant about Plot 9 needing to be vacated prior to alternative facilities being made available at the Port of Grimsby (PoG). Further to the SoST making further enquiries of the parties, should the disagreement remain then the ExA considers it would not have been demonstrated that: Plot 9 would be necessary to construct and operate the Proposed Development; and that any private harm would be outweighed by the public benefit. Accordingly, if the SoST is informed that the disagreement between VWG and the Applicant is persisting then the ExA recommends that Plot 9 should be excluded from the CA powers sought by the Applicant.
- The powers sought in relation to Statutory Undertakers meet the conditions set out in s127 and s138 of the PA2008 and the CA Guidance.
- The Applicant has obtained consent from the Crown Estate and therefore the powers sought in relation to Plot 14 meet the conditions in s135 of the PA2008.

8.1.9. With regard to the other representations made, subject to the securing of the recommended mitigation and compensatory habitat, the ExA has found no important and relevant matters that would individually or collectively lead to a different recommendation to that below.

8.1.10. The ExA has had regard to the Public Sector Equality Duty (PSED) throughout the Examination and in producing this recommendation. The Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons

who do not share a protected characteristic. On that basis, there would be no breach of the PSED.

8.1.11. In relation to s104(7) of the PA2008, subject to the proposed mitigation to be secured through the rDCO in Appendix D to this recommendation, the securing of compensatory habitat and the exclusion of Plot 9 (should that be necessary following the SoST making further enquires of the Applicant and VWG), the ExA considers that there would be no adverse effects arising from impacts of the Proposed Development that would outweigh its benefits. The ExA therefore considers, with the previously mentioned caveats, that the Proposed Development would be a sustainable form of port development and that there is nothing to indicate that the Application should be decided other than in accordance with the NPSfP.

8.2. MATTERS WHICH THE SoST MAY WISH TO CONSIDER FURTHER

8.2.1. In connection with the intertidal habitat that would be lost by implementing the Proposed Development, the ExA has concluded that an adverse effect on the integrity (AEoI) of the Humber Estuary Special Area of Conservation (the SAC) in-combination with other projects cannot be ruled out. The Applicant has submitted on a without prejudice basis that 1.0 hectare of land forming part of the Outstrays to Skeffling Managed Realignment Scheme (OtSMRS) could be allocated to the Proposed Development as compensatory habitat. The Applicant having submitted that the allocation of the OtSMRS land could be secured through it entering into a s106 agreement with East Riding of Yorkshire Council (ERYC).

8.2.2. For the reasons given in earlier Chapters above, the ExA considers that a s106 agreement between ERYC and the Applicant would be an inappropriate means for securing the allocation of 1.0 hectare of the OtSMRS as compensatory habitat for the Proposed Development. The ExA therefore considers that any such s106 agreement should be entered into between the SoST and the Applicant. The ExA therefore recommends that the SoST pursues this matter further with the Applicant to ensure that there would be no AEoI of the SAC. The ExA further recommends that the SoST consults with Natural England and the Applicant about the former's concerns about the Applicant's evidence relating to the avoidance of AEoI for the SAC.

8.2.3. In relation to the Applicant's proposed CA of rights in Plot 9 the ExA is concerned that the conditions under s122 of the PA2008 have not been met. However, following the Examination's close, negotiations between VWG and the Applicant may have progressed, especially in relation to the timing of the availability of alternative facilities at the PoG. The ExA recommends that the SoST may wish to make enquiries of the Applicant and VWG to establish whether or not any agreement between these parties has been reached.

8.2.4. With respect to the wording of R18 and R19 the ExA has recommended in its rDCO that the term 'IOT Operators' (an abbreviation for the Immingham Oil Terminal

Operators) replaces "*the operator of the Humber Oil Terminal*", with the terms 'IOT' and 'IOT Operators' being added to the interpretation provided in paragraph 1 of Part 1 of Schedule 2. The ExA recommends that the SoST may wish to make enquiries of the Applicant about the use of term 'IOT Operators' in R18 and new R19 and the consequent changes to paragraph 1 of Part 1 of Schedule 2.

8.2.5. At the Examination's close, there remained considerable disagreement between the Applicant and the IOT Operators about the protective provisions the Applicant had included in the dDCO. Following the Examination's close, negotiations relating to those protective provisions may have progressed. The ExA therefore recommends that the SoST may wish to make enquiries of the Applicant and the IOT Operators to establish whether or not any progress has been made in relation to agreeing the wording for the protective provisions in favour of the IOT Operators.

8.3. RECOMMENDATION

For all of the above reasons, the ExA considers that the Proposed Development meets the tests in s104 of the PA2008. On that basis, the ExA concludes, subject to the securing (by means of a s106 agreement) of the allocation of 1.0 hectare of the OtSMRS as compensatory habitat, that the case for the development has been made and recommends that the SoST makes the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order in the form attached at Appendix D to this recommendation.

APPENDIX A: REFERENCE TABLES

Table A1 – The Environmental Statement (ES)

ES Chapter/Figures/Appendix	Examination Library (EL) reference
ES Non-Technical Summary	APP-035
Chapter 1 Introduction	APP-037
Figures	APP-059
Chapter 2 Proposed Development	APP-038
Figures	APP-060
Appendices	APP-076, APP-077, APP-078
Chapter 3 Details of Project Construction and Operation	APP-039
Figure	APP-061
Chapter 4 Need and Alternatives	APP-040
Figures	APP-062
Appendices	APP-079, APP-080
Chapter 5 Legislative and Consenting Framework	APP-041
Chapter 6 Impact Assessment Approach	APP-042 superseded by AS-005
Appendices	APP-081, APP-082, APP-083
Chapter 7 Physical Processes	APP-043
Figures	APP-063
Appendices	APP-084, APP-085
Chapter 8 Water and Sediment Quality	APP-044
Figures	APP-064
Appendix	APP-086
Chapter 9 Nature Conservation and Marine Ecology	APP-045
Figures	APP-065

ES Chapter/Figures/Appendix	Examination Library (EL) reference
Appendices	APP-087, APP-088
Chapter 10 Commercial and Recreational Navigation	APP-046
Figures	APP-066
Appendices	APP-089 superseded by REP7-011 APP-090 superseded by AS-022 APP-091 superseded by AS-023 APP-092 superseded by AS-024
Chapter 11 Coastal Protection	APP-047
Figure	APP-067
Appendix	APP-093
Chapter 12 Ground Conditions including Land Quality	APP-048
Figures	APP-068
Appendices	APP-094, APP-095, APP-096, APP-097, APP-098, APP-099, APP-100
Chapter 13 Air Quality	APP-049
Figures	APP-069
Appendix	APP-101
Chapter 14 Airbourne Noise and Vibration	APP-050
Figure	APP-070
Appendices	APP-102, APP-103, APP-104
Chapter 15 Cultural Heritage and Marine Archaeology	APP-051
Figure	APP-071
Appendices	APP-105, APP-106, APP-107
Chapter 16 Socio-Economic	APP-052
Figure	APP-072

ES Chapter/Figures/Appendix	Examination Library (EL) reference
Chapter 17 Traffic and Transport	APP-053
Appendices	APP-108 superseded by AS-008, APP-109
Chapter 18 Land Use Planning	APP-054
Figures	APP-073
Chapter 19 Climate Change	APP-055
Chapter 20 Cumulative and In-combination Effects	APP-056
Figure	APP-074
Chapter 21 Impact Assessment Summary	APP-057

Table A2 – Change Request Documents

Document	EL References
Applicant's change request dated 29 November 2023	
Change Request Cover Letter	AS-045
Proposed Changes Application Report	AS-072
Change Request Figures	AS-048, AS-049, AS-050, AS-051
Updated Application Documents Following Acceptance of Change Request	AS-053, AS-055, AS-056, AS-057, AS-058, AS-059, AS-060, AS-061, AS-063, AS-065, AS-067, AS-069, AS-070, AS-071

Table A3 – Summary of National Planning Policy Statements and other National Policy

NPSs
National Policy Statement for Ports (NPSfP) ▪ NPSfP (January 2012) sets out general principles and generic impacts to be taken into account in considering applications for port Nationally Significant Infrastructure Projects (NSIP). For port developments the NPSfP provides the primary basis for determining if development consent should be granted.

NPSs

- Paragraph 1.2.4 states *"The NPS sets out the Government's conclusions on the need for new port infrastructure, considering the current place of ports in the national economy, the available evidence on future demand and the options for meeting future needs. It explains to planning decision-makers the approach they should take to proposals, including the main issues which, in the Government's view, will need to be addressed to ensure that future development is fully sustainable, as well as the weight to be given to the need for new port infrastructure and to the positive and negative impacts it may bring."*

  Part 3 of the NPSfP sets out the Government policy and the need for new infrastructure

- Paragraph 3.1.4 explains that for an island economy there are limited alternatives available to the use of sea transport for the movement of freight and bulk commodities, with shipping being the only effective means of moving the vast majority of freight in and out of the United Kingdom UK).
  "… Providing sufficient sea port capacity will remain and essential element in ensuring sustainable growth in the UK economy".

- Paragraph 3.1.5 states that *"Ports have a vital role in the import and export of energy supplies, including oil, liquefied natural gas and biomass, in the construction and servicing of offshore energy installations and in supporting terminals for oil and gas pipelines. … Ensuring security of energy supplies through our ports will be an important consideration, and ports will need to be responsive both to changes in different types of energy supplies needed …*".

- Paragraph 3.1.7 explains *"Ports continue to play an important part in local and regional economies, further supporting our national prosperity …"*.

- The Government's policy for ports is explained in section 3.3 of the NPSfP and in paragraph 3.3.1 it is stated:

  In summary, the Government seeks to:

  - *encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity;*
  - *allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment; and*
  - *ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations."*

- Paragraph 3.3.3 further explains:

  "… in order to help meet the requirements of the Government's policies on sustainable development, new port infrastructure should also:

NPSs

- *contribute to local employment, regeneration and development;*
- *ensure competition and security of supply;*
- *preserve, protect and where possible improve marine and terrestrial biodiversity;*
- *minimise emissions of greenhouse gases from port related development;*
- *be well designed, functionally and environmentally;*
- *be adapted to the impacts of climate change;*
- *minimise use of greenfield land;*
- *provide high standards of protection for the natural environment;*
- *ensure that access to and condition of heritage assets are maintained and improved where necessary; and*
- *enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged."*
  (Footnote 16 explains that the matters listed above are in no priority order)

- In paragraph 3.3.5 it is stated *"… the Government wishes to see port development wherever possible:*

  - *being an engine for economic growth;*
  - *supporting sustainable transport by offering more efficient transport links with lower external costs; and*
  - *supporting sustainable development by providing additional capacity for the development of renewable energy."*

- Paragraph 3.3.6 advises that the underlining policies for ports are:

  "… intended to support the fundamental aim of improving economic, social and environmental welfare through sustainable development. They recognise the essential contribution to the national economy that international and domestic trade makes. Economic growth is supported by trade but must be aligned with environmental protection, social enhancement and improvement wherever possible. The policies set out below aim to ensure that future port development supports all these objectives."

- In relation to climate change considerations, it is explained in paragraph 3.3.7 that:

  "In addition to the Government's priority of supporting economic growth, this statement takes full account of the Government's wider policy relating to climate change, both through mitigation and adaptation. It does so by recognising the contribution that port developments can make through good environmental design and by their position in the overall logistics chain. International and domestic shipping and inland transport will be subject to other policies and measures, addressing the issues more directly than planning decisions for new development. Section 4.12 discusses mitigation of impacts from port development, while 4.13 addresses adaptation."

- With respect to design considerations paragraph 3.3.8 states:

  "The importance of achieving good design in port development is underlined at various points in the statement, with reference to various types of impacts

NPSs
discussed in section 5. Good design is fundamental to mitigating the adverse effects of development, as well as a means to deliver positive aesthetic qualities in an industrial setting." ▪ Section 3.4 sets out the Government's assessment of the need for new infrastructure with it being explained the total need for port infrastructure depends not only on overall demand for port capacity but also the need to retain flexibility ensuring port capacity is located where it is required, including the need to ensure "*effective competition and resilience"* in port operations. The demand forecasts underpinning the NPSfP for the period to 2030 were originally prepared in 2006 and updated in 2007 and amongst other things predicted a 101% increase in Ro-Ro traffic. Capacity will be required at a "*wide range of facilities and locations"* accordingly *"the Government does not wish to dictate where port developments should occur … Port development must be responsive to changing commercial demands, and the Government considers that the market is the best mechanism for getting this right, with developers bringing forward applications for port developments where they consider them to be commercially viable."* (paragraphs 3.4.11 and 3.4.12). ▪ With regards to competition paragraph 3.4.13 states: *"UK ports compete with each other, as well as with neighbours in continental Europe, as primary destinations for long haul shipping, as stops for ships making shorter journeys to and from Europe, along UK coasts and as bases for terminals and associated infrastructure. The Government welcomes and encourages such competition. Competition drives efficiency and lowers costs for industry and consumers, so contributing to the competitiveness of the UK economy. Effective competition requires sufficient spare capacity to ensure real choices for port users. It also requires ports to operate at efficient levels, which is not the same as operating at full physical capacity. Demand fluctuates seasonally, weekly and by time of day, and some latitude in physical capacity is needed to accommodate such fluctuations. The most efficient form of operation also depends on location – the configuration, availability and cost of land – and the availability and cost of labour. These factors may mean that total port capacity in any sector will need to exceed forecast overall demand if the ports sector is to remain competitive. The Government believes the port industry and port developers are best placed to assess their ability to obtain new business and the level of any new capacity that will be commercially viable, subject to developers satisfying decision-makers that the likely impacts of any proposed development have been assessed and addressed."* ▪ In paragraph 3.4.14 the significance of coastal shipping is acknowledged, with it being stated that *"Ports can make a valuable contribution to decongestion and to the environment, as well as commercial gain, by facilitating coastal shipping as a substitute for inland freight transport (especially by road haulage) of various commodities. …"* ▪ ▪ Resilience is addressed in paragraph 3.4.15 with it being stated that: *"Spare capacity also helps to assure the resilience of the national infrastructure. Port capacity is needed at a variety of locations and covering a*

range of cargo and handling facilities, to enable the sector to meet short-term peaks in demand, the impact of adverse weather conditions, accidents, deliberate disruptive acts and other operational difficulties, without causing economic disruption through impediments to the flow of imports and exports. Given the large number of factors involved, the Government believes that resilience is provided most effectively as a by-product of a competitive ports sector."

- In paragraph 3.4.16 the Government's assessment of need concludes:

"Against this background, and despite the recent recession, the Government believes that there is a compelling need for substantial additional port capacity over the next 20–30 years, to be met by a combination of development already consented and development for which applications have yet to be received. Excluding the possibility of providing additional capacity for the movement of goods and commodities through new port development would be to accept limits on economic growth and on the price, choice and availability of goods imported into the UK and available to consumers. It would also limit the local and regional economic benefits that new developments might bring. Such an outcome would be strongly against the public interest."

- Section 3.5 of the NPSfP provides needs assessment guidance for the decision-maker and paragraph 3.5.1 states:

"For the reasons set out above, when determining an application for an order granting development consent in relation to ports, the decision-maker should accept the need for future capacity to:

- *cater for long-term forecast growth in volumes of imports and exports by sea for all commodities indicated by the demand forecast figures set out in the MDST forecasting report accepted by Government, taking into account capacity already consented. The Government expects that ultimately all of the demand forecast in the 2006 ports policy review is likely to arise, though, in the light of the recession that began in 2008, not necessarily by 2030;*
- *support the development of offshore sources of renewable energy;*
- *offer a sufficiently wide range of facilities at a variety of locations to match existing and expected trade, ship call and inland distribution patterns and to facilitate and encourage coastal shipping;*
- *ensure effective competition among ports and provide resilience in the national infrastructure; and*
- *take full account of both the potential contribution port developments might make to regional and local economies."*

- In paragraph 3.5.2 it is stated:

"Given the level and urgency of need for infrastructure of the types covered as set out above, the IPC should start with a presumption in favour of granting consent to applications for ports development. That presumption applies unless any more specific and relevant policies set out in this or

another NPS clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008."

- Part 4 of the NPSfP sets out the assessment principles for new port development and amongst other things assessments made by applicants should take account of other relevant UK policies and plans, including the Marine Policy Statement and any marine plans adopted pursuant to Marine and Coastal Access Act 2009.

- Paragraph 4.2.2 states:

  "Where the decision-maker reaches the view that a proposal for port infrastructure is in accordance with this NPS, it will then have to weigh the suggested benefits, including the contribution that the scheme would make to the national, regional or more local need for the infrastructure, against anticipated adverse impacts, including cumulative impacts."

- Part 4 goes onto provide decision-maker guidance for the following topics:

  - Economic impacts (sub-section 4.3), including considering when there would be an effect on protected habitat if there would be any imperative reasons of overriding public interest in allowing a development and giving substantial weight to positive impacts associated with economic development.
  - Commercial impacts (sub-section 4.4), including considering mitigation that would mitigate impacts for port users.
  - Competition(sub-section 4.5)
  - Tourism (sub-section 4.6)
  - Environmental Impact Assessment (sub-section 4.7)
  - Habitats and Species Regulations Assessment (sub-section 4.8), under the Habitats Regulations consideration must be given whether a project either alone or in-combination with other projects would have a significant effect on a European site.
  - Alternatives (sub-section 4.9). In any planning case, the relevance or otherwise to the decision-making process of the existence (or alleged existence) of alternatives to the proposed development is in the first instance a matter of law, detailed guidance on which falls outside the scope of the NPSfP. From a policy perspective the NPSfP does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option. Under the Habitats Regulations there may be circumstances when alternatives must be considered. Paragraph 4.9.3 advises that applications should not be rejected because fewer adverse effects would result from developing similar infrastructure on another suitable site and regard should be paid to the possibility that other suitable sites for port infrastructure of the type proposed may be needed for future proposals. Alternatives not among the main alternatives studied by an applicant should only be considered to the extent that the decision-maker thinks they are both important and relevant to its decision. Suggested alternatives that mean the primary objectives of an application could not be achieved, for example because they would not be commercially viable or physically suitable can be excluded on the grounds that they are not important and relevant. Where an alternative is put forward and it was not identified prior to an application's submission

NPSs
then the onus will be on the party putting it forward to provide evidence for its suitability. • Good design for port infrastructure (sub-section 4.10). Good design goes beyond aesthetic considerations and includes its functionality (fitness for purpose). Good design should produce sustainable infrastructure. • Pollution control and other regulatory regimes (sub-section 4.11) • Climate change mitigation (sub-section 4.12) • Climate change adaptation (sub-section 4.13) • Common law nuisance and statutory nuisance (sub-section 4.14) • Hazardous substances (sub-section 4.15) • Health (sub-section 4.16) • Security considerations (sub-section 4.17) • ▪ Part 5 of the NPS lists the following generic impacts relating to port development to be taken account of: • Biodiversity and geological conservation – section 5.1. • Flood risk – section 5.2 • Coastal change – section 5.3 • Traffic and transport impacts – section 5.4 • Waste management – section 5.5 • Water quality and resources – section 5.6 • Air quality and emissions – section 5.7 • Dust, odour, artificial light, smoke, steam and insect infestation – section 5.8 • Biomass/waste impacts – odour, insect and vermin infestation – section 5.9 • Noise and vibration – section 5.10 • Landscape and visual impacts – section 5.11 • Historic environment – section 5.12 • Land use including opens space, green infrastructure and Green Belt – section 5.13 • Socio-economic impacts – section 5.14
National Policy Statement for Energy (January 2024) (NPS EN-1) ▪ Paragraph 2.3.10 states: *"This transformational approach tackles long-term problems to deliver growth that creates high-quality jobs across the UK and makes the most of the strengths of the Union. However, this transformation cannot be instantaneous. The use of unabated natural gas and crude oil fuels for heating, cooking, electricity and transport, and the production of many everyday essentials like medicines, plastics, cosmetics and household appliances, will still be needed during the transition to a net zero economy. This will enable secure, reliable, and affordable supplies of energy as we develop the means to address the carbon dioxide and other greenhouse gases associated with their use, including the development and deployment of low carbon alternatives.*

Table A4 – Summary of other Relevant National Policies for the Proposed Development

Relevant National Policies
UK Marine Policy Statement 2011 (MPS) Part 3 of the MPS identifies a range of policy matters for consideration and of those matters the following are of particular relevance to the Proposed Development: ▪ Impacts on Marine Protected Areas, including Special Areas of Conservation, Special Protection Areas and Ramsar sites – section 3.1. ▪ Ports and shipping – section 3.4. Paragraph 3.4.11 states: *"When decision makers are advising on or determining an application for an order granting development consent in relation to ports, or when marine plan authorities are developing Marine Plans, they should take into account the contribution that the development would make to the national, regional or more local need for the infrastructure, against expected adverse effects including cumulative impacts. In considering the need for port developments in England and Wales, reference should be made to interpretations of need as set out in the Ports National Policy Statement. …."* ▪ Marine dredging and disposal – section 3.6. Consideration should be given any adverse effects of dredging activity and applications must demonstrate that with respect to the disposal of dredgings consideration has been given to the waste hierarchy (re-use, recycle or treat waste) without undue risk to human health or the environment. Consideration should be given to the potential marine habitats from dredging activity. ▪ Surface water management and waste water treatment and disposal – section 3.10.
East Inshore and East Offshore Marine Plans 2014 (EIMP) ▪ Policy EC1 states: *"Proposals that provide economic productivity benefits which are additional to Gross Value Added currently generated by existing activities should be supported."* ▪ Policy SOC2 states: *"Proposals that may affect heritage assets should demonstrate, in order of preference:* *a. that they will not compromise or harm elements which contribute to the significance of the heritage asset* *b. how, if there is compromise or harm to a heritage asset, this will be minimised* *c. how, where compromise or harm to a heritage asset cannot be minimised, it will be mitigated against*

Relevant National Policies

d. the public benefits for proceeding with the proposal if it is not possible to minimise or mitigate or compromise the harm to the heritage asset."

- Policy ECO2 states:

  "The risk of release of hazardous substances as a secondary effect due to any increased collision risk should be taken account of in proposals that require an authorisation."

- Policy BIO1 states:

  "Appropriate weight should be attached to biodiversity, reflecting the need to protect biodiversity as a whole, taking account of the best available evidence including on habitats and species that are protected or of conservation concern in the East marine plans and adjacent areas (marine, terrestrial)."

- Policy BIO2 states:

  "Where appropriate, proposals for development should incorporate features that enhance biodiversity and geological interests."

- Policy MPA1 states:

  "Any impacts on the overall Marine Protected Area network must be taken account of in strategic level measures and assessments, with due regard given to any current agreed advice on an ecologically coherent network."

- Policy CC1 states:

  "Proposals should take account of:

  - *how they may be impacted upon by, and respond to, climate change over their lifetime and*
  - *how they may impact upon any climate change adaptation measures elsewhere during their lifetime*

  Where detrimental impacts on climate change adaptation measures are identified, evidence should be provided as to how the proposal will reduce such impacts."

- Policy PS3 states:

  "Proposals should demonstrate, in order of preference:

  a) that they will not interfere with current activity and future opportunity for expansion of ports and harbours
  b) how, if the proposal may interfere with current activity and future opportunities for expansion, they will minimise this
  c) how, if the interference cannot be minimised, it will be mitigated
  d) the case for proceeding if it is not possible to minimise or mitigate the interference"

Relevant National Policies

The National Planning Policy Framework December 2023 (NPPF)

- The National Planning Policy Framework (NPPF) was published in December 2023. The NPPF and the accompanying Planning Practice Guidance (PPG), set out the Government's planning policies for England and how these are expected to be applied.
- Paragraph 5 of the NPPF states that it does not contain specific policies for NSIPs as these are determined in accordance with the decision-making framework set out in the PA2008 and the relevant NPSs, but the NPPF is a relevant consideration on decision-making for the Application. Paragraphs 7 and 8 state that the Government's approach to achieving sustainable development means that the planning system has three overarching objectives, these being economic, social and environmental, which are interdependent and need to be pursued in mutually supportive ways.
- Both the NPPF and the PPG are capable of being important and relevant considerations in decisions on NSIPs, but only to the extent where it is relevant to that project.

Table A5 – Summary of Relevant Legislation for the Proposed Development

Relevant Legislation

[N.B. Relevant national and local harbour and port legislation has been summarised in section 2.2 of Chapter of the ExA's Recommendation.]

- **The Air Quality (England) Regulations 2000**
- **The Air Quality Standards Regulations 2010 (as amended)**
- **The Air Quality (Amendment of Domestic Regulations) (EU Exit) Regulations 2019**
- **The Ancient Monuments and Archaeological Areas Act 1979**
- **The Building Act 1984 and the Building Regulations 2010 (as amended)**
- **The Conservation of Habitats and Species Regulations 2017 (as amended)**
- **The Conservation of Habitats and Species (Amendment) (EU Exit) Regulations 2019**
- **The Climate Change Act 2008 (as amended)**
  The Climate Change Act 2008 (as amended by the Climate Change Act 2008 (2050 Target Amendment) Order 2019) (CCA2008) established the world's first long-term, legally binding framework to tackle the dangers of climate change. It sets statutory climate change projections and carbon budgets. A key provision is the setting of legally binding targets GHG emission reductions in the UK of at least 100% by 2050 ("Net Zero", increased from 80% by the June 2019 amendment order).
- **The Climate Change Act 2008 (2050 Target Amendment) Order**
- **The Contaminated Land (England) (Amendment) Regulations 2012** ('Contaminated Land Regulations')
- **The Control of Pollution Act 1974 (as amended)**
- **The Energy Act 2023**
- **The Environment Act 1995**

Relevant Legislation

- **The Environment Act 2021**
- **The Environment (Amendment etc.) (EU Exit) Regulations 2019**
- **The Environment (Miscellaneous Amendments) (EU Exit) Regulations 2020**
- **The Environmental Noise (England) Regulations 2006 (as amended)**
- **The Environmental Permitting (England and Wales) Regulations 2016**
- **The Environmental Permitting (England and Wales) (Amendment) Regulations 2016/1154**
- **The Environmental Permitting (England and Wales) (Amendment) (EU Exit) Regulations 2019**
- **The Environmental Protection Act 1990 (as amended by the Environmental Act 1995 Part 2A)**
- **The Equality Act 2010:**
  Section 149 of the Equality Act 2010 established a duty (the Public Sector Equality Duty (PSED)) to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The PSED is applicable to the ExA in the conduct of this Examination and reporting and to the SoS in decision-making. The ExA had particular regard to the PSED in terms of holding blended in-person/virtual meetings, producing guidance on holding those meetings and in our conduct of site inspections to ensure full appreciation of the potential impacts of the Proposed Development on persons with protected characteristics.
- **The European Commission Circular Economy Package Environmental Protection Act 1990**
- **The European Union (Withdrawal) Act 2018**
- **The Flood and Water Management Act 2010 Environmental Damage (Prevention and Remediation) (England) Regulations 2015**
- **The Flood Risk Regulations 2009**
- **The Floods and Water (Amendment etc.) (EU Exit) Regulations 2019**
- **The Groundwater (Water Framework Directive) (England) Direction 2016**
- **The Highways Act 1980 Section 105A**
- **The Human Rights Act 1998**
  The Compulsory Acquisition of land can engage various relevant articles under the Human Rights Act 1998. The implications of this are considered in Chapter 6 of this recommendation.
- **The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the APFP Regulations);**
- **The Infrastructure Planning (Compulsory Acquisition) Regulations 2010**
- **The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017**
- **The Land Drainage Act 1991**
- **The Localism Act 2011**
- **The Marine and Coastal Access Act 2009**
- **The Merchant Shipping (Safety of Navigation) Regulations 2020 (S.I. 2020/0673)**
  These implement into UK law chapter V of the United Nations' International Convention for the Safety of Life at Sea,1974 (SOLAS).
- **The Natural Environment and Rural Communities (NERC) Act 2006**
- **The Noise Insulation Regulations 1975**
- **The Pilotage Act 1987**
- **The Planning Act 2008**
- **The Planning (Listed Buildings and Conservation Areas) Act 1990**

Relevant Legislation
▪ **The Pollution Prevention and Control Act 1999** ▪ **The Protection of Wrecks Act 1973** ▪ **The Protection of Military Remains Act 1986** ▪ **The Town and Country Planning Act 1990 (as amended)** ▪ **The Waste (England and Wales) Regulations 2011 (as amended)** ▪ **The Waste Electrical and Electronic Equipment ('WEEE') Regulations 2013** ▪ **The Hazardous Waste (England and Wales) Regulations 2005 (as amended)** ▪ **The Water Abstraction and Impounding (Exemptions) Regulations 2017** ▪ **The Water Act 2003 (as amended)** ▪ **The Water Act 2014** ▪ **The Water Framework Directive (2000/60/EC) (as amended)** ▪ **The Water Framework Directive (Standards and Classification) Directions (England and Wales) 2015** ▪ **The Water Environment (Water Framework Directive) (England and Wales) Regulations 2017** ▪ **The Water Industry Act 1991** ▪ **The Water Resources Act 1991 (WRA 1991) (as amended)** ▪ **The Water Resources (Abstraction and Impounding) Regulations 2006** ▪ **The Water Supply (Water Quality) Regulations 2018** ▪ **The Wildlife and Countryside Act 1981 (as amended)**

Table A6 – Relevant North East Lincolnshire Local Plan 2013-2032 (adopted March 2018)

Relevant North East Local Plan policies
▪ Policy 1 – Employment land supply ▪ Policy 5 – Development boundaries ▪ Policy 6 – Infrastructure ▪ Policy 7 – Proposed employment areas ▪ Policy 8 – Existing employment areas ▪ Policy 22 – Good design in new developments ▪ Policy 31 – Renewable and low carbon infrastructure ▪ Policy 32 – Energy and low carbon living ▪ Policy 33 – Flood risk ▪ Policy 34 – Water management ▪ Policy 36 – Promoting sustainable transport ▪ Policy 38 – Parking ▪ Policy 39 – Conserving and enhancing the historic environment ▪ Policy 41 – Biodiversity and geodiversity ▪ Policy 42 – Landscape

Table A7 – Made DCOs

Other Made DCOs Identified by the Applicant
▪ The Able Marine Energy Park Development Consent Order 2014 ▪ The A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016 ▪ The York Potash Harbour Facilities Order 2016 ▪ The North London Heat and Power Generating Station Order 2017 ▪ The Port of Tilbury (Expansion) Order 2019 ▪ The Lake Lothing (Lowestoft) Third Crossing Order 2020 ▪ The A585 Windy Harbour to Skippool Highway Development Consent Order 2020 ▪ The Southampton to London Pipeline Development Consent Order 2020 ▪ The A1 Birtley to Coal House Development Consent Order 2021 ▪ The Sizewell C (Nuclear Generating Station) Order 2022

APPENDIX B: LIST OF ABBREVIATIONS

AA	Appropriate Assessment for the purposes of the Habitats Regulations
ABP	Associated British Ports
AEoI	Adverse Effect on Integrity
AIS	Automatic Identification System (for marine vessel tracking)
ALARP	As Low As Reasonably Practicable
ANCB	Appropriate Nature Conservation Body
AP	Affected Persons
BoR	Book of Reference
CA	Compulsory Acquisition
CAGR	Compound Annual Growth Rate
CEMP	Construction Environmental Management Plan
CHA	Competent Harbour Authority
CLdN	CLdN Ports Killingholme Limited
COMAH	Control of Major Accident Hazard
CO_2	Carbon Dioxide
CTMP	Construction Traffic Management Plan
D	Examination deadline
dBA	Decibel A-weighted
DCO	Development Consent Order
dDCO	Draft Development Consent Order
Defra	Department for Environment, Food and Rural Affairs
DFDS	DFDS Seaways Plc
DfT	Department for Transport
DLUHC	Department for Levelling Up, Housing and Communities
DM	Dock Master for the Port of Immingham
DML	Deemed Marine Licence
DP	Designated Person
DV	(maximum) design vessel
EA	Environment Agency
EA2023	Energy Act 2023
EEA	European Economic Area
EIA	Environmental Impact Assessment

EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017
EIMP	East Inshore Marine Plan 2014
EM	Explanatory Memorandum
ERYC	East Riding of Yorkshire Council
ES	Environmental Statement
EU	European Union
ExA	Examining Authority
ExQ	Examination written question
FMP	Applicant's Operational Freight Management Plan
FRA	Flood Risk Assessment
FSA	Formal Safety Assessment
GDP	Gross Domestic Product
GHG	Green House Gas(es)
GtGP	Guide to Good Practice on Port Marine Operations (MCA)
GVA	Gross Value Added
ha	Hectare
HASB	Harbour Authority and Safety Board (Associated British Ports)
HE	Historic England
HES	Humber Estuary Services
HGV	Heavy goods vehicle
HMH	Harbour Master for the Humber
HRA	Habitats Regulations Assessment
HSE	Health and Safety Executive
IAPI	Initial Assessment of Principal Issues
IAQM	Institute of Air Quality Management
IERRT	Immingham Eastern Ro-Ro Terminal (the Proposed Development)
ID	Natural issue identifier number
IMO	International Maritime Organisation
IOH	Immingham Outer Harbour
IOT	Immingham Oil Terminal

IOT Operators	Associated Petroleum Terminals (Immingham) Limited and Humber Oil Terminals Trustee Limited
IP	Interested Party
IPM	Impact Protection Measures
IROPI	Imperative Reasons of Overriding Public Interest
ISH	Issue Specific Hearing
km	Kilometre
LIR	Local Impact Report
Lo-Lo	Lift-on Lift-off
LPA	Local Planning Authority
LSE	Likely significant effect
LWT	Lincolnshire Wildlife Trust
m^2	Square metre
m^3	Cubic metre
MACAA2009	Marine and Coastal Access Act 2009
MCZ	The Holderness Inshore Marine Conservation Zone
MFSR	Applicant's Market Forecast Study Report
MCA	Maritime and Coastguard Agency
MGN	Marine Guidance Note
MMO	Marine Management Organisation
MPS	Marine Policy Statement
MPA	Marine Protected Areas
MSMS	Marine Safety Management System
N	Nitrogen
NCR	CLdN's Needs Case Review
NE	Natural England
NELC	North East Lincolnshire Council
NELLP	North East Lincolnshire Local Plan
NH	National Highways
NLC	North Lincolnshire Council
NO_2	Nitrogen Dioxide
NO_x	Nitrogen oxides
NPPF	The National Planning Policy Framework
NPS	National Policy Statement

NPSEN1	Overarching National Policy Statement for Energy (EN-1)
NPSfP	National Policy Statement for Ports
NR	Network Rail Infrastructure Limited
NRA	Navigation Risk Assessment
NSIP	Nationally Significant Infrastructure Project
NSN	UK National Site Network
OBR	Office for Budget Responsibility
OtSMRS	Outstrays to Skeffling Managed Realignment Scheme
PA2008	The Planning Act 2008
PCU	Passenger Car Units
PEC	Pilotage Exemption Certificate
PIANC	World Association for Waterborne Transport Infrastructure
PINS	Planning Inspectorate
PM	Preliminary Meeting
PMSC	Port Marine Safety Code (MCA)
PoG	Port of Grimsby
PoH	Port of Hull
PoI	Port of Immingham
PoK	Port of Killingholme
PP	Protective Provisions
PSED	Public Sector Equality Duty
rDCO	The Examining Authority's recommended Development Consent Order
R	Requirement (in DCO)
RFC	Ratio Flow to Capacity
RM	Royal Mail Group Limited
Ro-Pax	Roll-on-Roll-off (freight/passenger-carrying vessel)
Ro-Ro	Roll on-Roll off (freight-carrying vessel)
RR	Relevant Representation
s	Section
SAC	Humber Estuary Special Area of Conservation
SCNA	Statutory Conservancy and Navigation Authority
SHA	Statutory Harbour Authority

SMP	Shoreline Management Plan
SMS	Safety Management System
SNIR	Supplementary Navigation Information Report
sNRA	Shadow Navigational Risk Assessment
SoCG	Statement of Common Ground
SoR	Statement of Reasons
SoS	Secretary of State
SoSESNZ	Secretary of State referred to being that for Energy Security and Net Zero
SoST	Secretary of State for Transport
SPA	Humber Estuary Special Protection Area
SRN	Strategic Road Network
SSSI	Site of Special Scientific Interest
TA	Applicant's Transport Assessment
TAA	Applicant's Transport Assessment Addendum
TCPA	Town and Country Planning Act 1990
TP	Applicant's Travel Plan
TTWA	Travel To Work Area
UK	United Kingdom
URSG	Ulceby Road Safety Group
VTS	Vessel Traffic Services
VWG	Volkswagen Group United Kingdom Limited
WEMP	Woodland Enhancement Management Plan
WFD	Water Framework Directive
WR	Written Representation
WSI	Written Scheme of Investigation

APPENDIX C: HABITATS REGULATIONS ASSESSMENT

FINDINGS AND CONCLUSIONS IN RELATION TO HABITATS REGULATIONS ASSESSMENT

1.1. INTRODUCTION

1.1.1. This Appendix sets out the Examining Authority's (ExA's) analysis and conclusions relevant to the Habitats Regulations Assessment (HRA). This will assist the Secretary of State for Transport (SoST), as the Competent Authority, in performing their duties under the Conservation of Habitats and Species Regulations 2017 ('the Habitats Regulations').

1.1.2. This Appendix is structured as follows:

- Section 1.2: Findings in relation to Likely Significant Effects on the UK National Site Network and other European sites;
- Section 1.3: Conservation Objectives for sites and features;
- Section 1.4: Findings in relation to Adverse Effects on Integrity (AEoI);
- Section 1.5: Engaging with the HRA derogations;
- Section 1.6: Alternative solutions considered;
- Section 1.7: Imperative Reasons of Overriding Public Interest (IROPI);
- Section 1.8: Compensation measures; and
- Section 1.9: HRA conclusions.

1.1.3. In accordance with the precautionary principle embedded in the Habitats Regulations, consent for the Proposed Development may be granted only after having ascertained that it will not adversely affect the integrity of 'European sites' such that no reasonable scientific doubt remains (CJEU Case C-127/02, September 2004).

1.1.4. The term 'European sites' includes Special Areas of Conservation (SACs) and Special Protection Areas (SPAs), proposed SACs, potential SPAs, Ramsar, proposed Ramsar and any sites identified as compensatory measures for adverse effects on any of the above.

1.1.5. Policy considerations and the legal obligations under the Habitats Regulations are described in Section 2.7 of the Recommendation.

1.1.6. The ExA has been mindful throughout the Examination of the need to ensure that the SoST has such information as may reasonably be required to carry out their duties as the Competent Authority. The ExA has sought evidence from the Applicant and the relevant Interested Parties (IPs), including Natural England (NE) as the Appropriate Nature Conservation Body (ANCB), through written questions (ExQs) and at Issue Specific Hearings (ISHs).

RIES and Consultation

1.1.7. The ExA produced a Report on the Implications for European Sites (RIES) [PD-018] which compiled, documented, and signposted HRA relevant information provided in the Application and the Examination submissions up to deadline (D) 5 (23 October 2023). The RIES was issued to set out the ExA's understanding on HRA relevant information and the position of the IPs in relation to the Proposed Development's effects on European sites at that point in time. Consultation on the

RIES took place between 15 November 2023 and 11 December 2023 (D7). Comments on the RIES were received from the Applicant [REP7-028] and NE [REP7-038]. The Applicant in [REP8-024] then responded further to NE's RIES comments. Those comments have been taken into account in drafting this Appendix.

1.1.8. The ExA's recommendation is that the RIES, and consultation on it, may be relied upon as an appropriate body of information to enable the SoST to fulfil their duties of consultation under Regulation 63(3) of the Habitats Regulations.

Proposed Development Description and HRA Implications

1.1.9. The Proposed Development is described in Section 1.3 of the Recommendation.

1.1.10. The spatial relationship between the Order Limits of the Proposed Development and European sites is shown in Figure 2 of the Applicant's HRA Report [APP-115].

1.1.11. The Proposed Development is not directly connected with, or necessary to, the management of a European site (Table 1 in [APP-115]). Therefore, where likely significant effects (LSE) on European sites cannot be excluded, the SoST must make an 'appropriate assessment' of the Proposed Development's implications.

1.1.12. The Applicant provided four iterations of the Habitats Regulations Assessment Report ('the HRA Report'):

- The first HRA Report [APP-115] was submitted with the Application – this is referred to as the 'initial HRA Report' within this Appendix.
- At D5, an update to the initial HRA Report (referred to as the 'second HRA Report' in this Appendix) was submitted [REP5-020], addressing questions from the ExA [PD-010] and issues raised by IPs.
- The third HRA Report (referred to as the 'third HRA Report' in this Appendix) was submitted at D7 [REP7-014] in response to questions raised by the ExA [PD-020] and issues raised by IPs.
- At D8, the final iteration of the HRA Report [REP8-014] (referred to as the 'fourth HRA Report' in this Appendix) was submitted in response to questions raised by the ExA [PD-022] and issues raised by IPs.

1.1.13. In addition to the HRA Reports the Applicant also submitted a (without prejudice) Habitats Regulations Assessment Derogations Report as [REP8-033] at the request of the ExA (BNE4.04 in [PD-022]).

1.1.14. During the Examination, the Applicant submitted four change requests as described in Section 1.5 and Appendix A of the Recommendation. The ExA issued a procedural decision accepting all four of the Applicant's proposed changes for Examination on 6 December 2023 [PD-021].

1.1.15. Section 1.5 of the Recommendation explains that decision was made because the ExA considered the proposed changes either individually or collectively would not be so substantial as to constitute a materially new project.

1.1.16. In its response to change requests 1 (Realignment of the approach jetty and related works) and 2 (Realignment of the internal link bridge and consequential works), NE [REP7A-004] confirmed that those proposed changes would not alter the assessment of impact significance made for the originally submitted Application. NE

had no comments to make with respect to change requests 3 (realignment of the UK Border Force facilities) and 4 (enhanced management controls and options for the potential provision of additional impact protection measures).

Transboundary effects

1.1.17. The Applicant did not identify any potential impacts on European sites in European Economic Area (EEA) States. No impacts for EEA sites were raised by any IPs during the Examination. Accordingly, only UK European sites are addressed in this Appendix.

Summary of HRA Matters Considered During the Examination

1.1.18. The main HRA matters raised by the ExA, NE and other IPs and considered during the Examination include:

- inclusion of an additional European site in the assessment;
- assessment of in-combination effects;
- inclusion of additional pathways to the screening assessment;
- robustness of assessment methodologies;
- conclusions of the screening assessment;
- effectiveness of mitigation measures;
- conclusions of the consideration of AEoI;
- consideration of alternatives;
- the Applicant's case for the IROPI; and
- the Applicant's proposed package of (without prejudice) compensatory measures included in the Derogations Report.

1.1.19. These matters are discussed in the Sections below, as appropriate.

1.1.20. Matters which were undisputed by IPs, including NE as the ANCB, were:

- Humber Estuary SAC, SPA and Ramsar site:
    - The potential effects of changes to qualifying intertidal habitats as a result of the movement of roll on/roll off (Ro-Ro) vessels during the Proposed Development's operation.
    - The potential effects of changes to qualifying habitats as a result of sediment deposition during capital dredge disposal during the construction phase.
    - Indirect changes to qualifying habitats as a result of changes to the hydrodynamic and sedimentary processes during capital dredge disposal for the construction phase.
    - The potential effects for the introduction and spread of non-native species during construction on qualifying habitats.
    - Mitigation measures, risk of injury to marine mammals during piling at the construction phase.
    - The potential effects of underwater noise and vibration during piling on qualifying species during the construction phase – agreement that no mitigation is required.
- Greater Wash SPA:
    - Screening out the potential impacts on this designation.

1.1.21. Those areas of agreement are set out in NE's Relevant Representation (RR) [RR-015].

1.2. FINDINGS IN RELATION TO LIKELY SIGNIFICANT EFFECTS (LSE)

1.2.1. Under Regulation 63 of the Habitats Regulations, the Competent Authority must consider whether a development will have LSE on a European site, either alone or in-combination with other plans or projects. The purpose of the LSE test is to identify the need for an 'appropriate assessment' and the activities, sites or plans and projects to be included for further consideration in the appropriate assessment.

1.2.2. The Applicant's initial HRA Report [APP-115] identified four European site(s) within the UK National Site Network for inclusion within the assessment. These are listed in Table 2 of the initial HRA Report and set out in Table A below. Section 3.1 of the initial HRA Report describes how the Applicant identified sites and features for consideration, with the justification for scoping out features based on the relationship between the Proposed Development's zone of influence and distribution of qualifying species/habitats (rather than applying any set criteria).

Table A: UK National Site Network European sites identified in the Applicant's original HRA Report [APP-115]

Name of European Site	Distance from Proposed Development (km)
Humber Estuary SAC	Within the Order Limits
Humber Estuary SPA	Within the Order Limits
Humber Estuary Ramsar	Within the Order Limits
Greater Wash SPA	20

1.2.3. Table 2 of the initial HRA Report [APP-115] listed the qualifying features of the European sites and identified which are relevant to the screening for LSE.

1.2.4. NE 'Issue Identifier' (ID) 34 in its additional submission to supplement its RR [AS-015], advised that the harbour seal feature of the Wash and North Norfolk Coast SAC should be screened for LSE and taken forward to Stage 2. In ID34 of its Risk and Issues Log [REP6-049], NE confirmed that it was satisfied that this issue was being addressed through the inclusion of a high-level assessment, but requested that the Applicant included information in the HRA Report. The HRA Report was revised [REP5-020] to include an assessment for the Wash and North Norfolk Coast SAC (Table 2, Table 3). Following this, no IPs raised any further concerns about the scope of the European sites considered or their qualifying features.

LSE from the Proposed Development Alone

1.2.5. The Applicant identified potential impacts of the Proposed Development considered to have the potential to result in LSE alone in Tables 3 to 5 of the fourth HRA Report [REP8-014]. Table B below lists the Proposed Development's potential impacts identified by the Applicant for each of the relevant designated sites.

Table B: The potential impacts of the Proposed Development identified by the Applicant for each of the relevant designated sites.

Impact pathway	Humber Estuary SAC	Humber Estuary Ramsar	Humber Estuary SPA	Wash and North Norfolk Coast SAC
Direct loss of intertidal habitat (as a result of capital dredging and the piles)	✓	✓		
Direct loss of subtidal habitat (as a result of the piles)	✓	✓		
Direct changes to benthic habitats and species (as result of seabed removal during dredging)	✓	✓		
Direct changes to benthic habitats and species as a result of sediment deposition (as a result of capital dredging and dredge disposal)	✓	✓		
Indirect loss or change to seabed habitats and species as a result of changes to hydrodynamic and sedimentary processes (as a result of capital dredging, piling and dredge disposal)	✓	✓		
Changes in water and sediment quality on benthic habitats and species (as a result of capital dredging and dredge disposal)	✓	✓		
The potential introduction and spread of non-native species (as a result of capital dredging and dredge disposal)	✓	✓		

Physical change to habitats resulting from the deposition of airborne pollutants (as a result of construction dust emissions)	✓	✓		
Changes in water and sediment quality on migratory fish species (as a result of capital dredging and dredge disposal)	✓	✓		
Underwater noise effects on migratory fish species (as a result of capital dredging, piling and dredge disposal)	✓	✓		
Underwater noise effects on marine mammals (as a result of capital dredging, piling and dredge disposal)	✓	✓		✓
Direct changes to benthic habitats and species beneath marine infrastructure due to shading (operation)	✓	✓		
Changes to intertidal habitats and species as a result of the movement of Ro-Ro vessels during operation	✓	✓		
Changes to benthic habitats and species as result of seabed removal during maintenance dredging	✓	✓		
Non-native species transfer during vessel operations	✓	✓		
Physical change to habitats resulting from the deposition of airborne pollutants during operation (nitrogen oxides [NOx] and nitrogen [N] deposition)	✓	✓		
Underwater noise effects on migratory fish (resulting from vessel operations)	✓	✓		
Underwater noise effects on marine mammals (resulting from	✓	✓		✓

maintenance dredge and maintenance dredge disposal)				
Direct loss or change to supporting intertidal habitat (as a result of piling and capital dredging)		✓	✓	
Indirect loss of supporting intertidal habitat as a result of changes to hydrodynamic and sedimentary processes (as a result of piling and capital dredging)		✓	✓	
Noise and visual disturbance to coastal waterbirds (as a result of Construction activity (including capital dredging)		✓	✓	
Direct changes to coastal waterbird foraging and roosting habitat as a result of marine infrastructure (berth operations)		✓	✓	
Noise and visual disturbance to coastal waterbirds (berth operations)		✓	✓	

1.2.6. ID20 of NE's RR additional submission [AS-015] stated that the water quality impacts arising from dredging and dredging disposal activities and operational vessel movements on marine mammals had not been accounted for in the initial HRA Report [APP-115] or the Applicant's Environmental Statement (ES). The Applicant clarified [REP1-013] that this pathway had been considered in Table 3 of the initial HRA Report (concluding no LSE) and NE confirmed its satisfaction with this matter in [REP2-019].

Additional pathways for inclusion

1.2.7. During the Examination, IPs raised concerns about additional pathways as discussed below.

1.2.8. NE requested (ID4 in [AS-015]) that further habitat features (H1130 'Estuaries', H1110 'Sandbanks which are slightly covered by seawater all the time' and H1140 'Mudflats and sandflats not covered by seawater at low tide') should be considered in the screening assessment for air quality impacts. The Applicant revised Table 3 in the second HRA Report [REP5-020] to include consideration of the additional features for Humber Estuary SAC.

1.2.9. In the Statement of Common Ground (SoCG) between the Applicant and NE [REP6-010], NE agreed with the approach of using the most sensitive estuary feature in proximity of the development (H1330 Atlantic salt meadows) to determine the critical level for NOx. However due to an exceedance of 1% of the critical level

for NOx for the H1330 feature and therefore an identified impact pathway, the H1110 and H1130 features, NE remained of the view that those features needed to be included in the appropriate assessment.

1.2.10. NE advised [AS-011] that a number of pathways were either omitted or further clarity was needed from Tables 3, 4 and 5 in the initial HRA Report [APP-115].

1.2.11. Following the submission of the second HRA Report [REP5-020], NE confirmed [REP7-038] it was content with the Applicant's assessment of the following pathways listed and LSE conclusions in Tables 3, 4 and 5:

- the impact from capital dredge disposal on SPA features;
- indirect loss or change to seabed habitats and species as a result of changes to hydrodynamic and sedimentary processes;
- water and sediment quality on designated features of the Humber Estuary SAC, SPA and Ramsar sites; and
- lighting on designated features of the Humber Estuary SAC, SPA and Ramsar sites.

Issues raised in relation to LSE during Examination

Accidental spillages

1.2.12. With regards to construction and the changes in water quality arising from accidental spillages, the ExA requested (Question BNE.1.6 in [PD-010]) that the Applicant explain why the application of the industry guidance to control accidental spillages had not been considered to constitute mitigation (further to the People Over Wind and Peter Sweetman v Coillte Teoranta) judgement (Case C-323/17)). The Applicant maintained that the actions constituted standard practice and that these measures are not designed specifically to avoid harmful effects on European features and consequently do not comprise mitigation in the HRA context [REP2-009]. NE [REP7-038] advised that this impact pathway should be screened into the appropriate assessment, with the best practice pollution/spillage prevention measures detailed in the submitted Construction Environmental Management Plan (CEMP) [APP-111] (Table 3.2: Water and sediment quality). The fourth HRA Report [REP8-014] stated that the potential for accidental spillages would be negligible and the pathway was not taken forward to appropriate assessment.

1.2.13. Additionally, the initial HRA Report [APP-115] did not appear to address the potential for accidental spillages to occur during operation. The Applicant however referred to oil spillage contingency plans in response to the ExA's written question (ExQ) 1 NS1.8 [REP2-009]. Here, the Applicant explained that the requirements of its Marine Safety Marine System, which identifies the environment as a receptor, is a reactive control measure and would alleviate the environmental consequences of a collision. In the SoCG between the Applicant and NE [REP6-010], the Applicant assigned 'agreed' status to this matter and stated that accidental spillages will be negligible through the application of standard operational practices relating to vessel movements and water quality. The fourth HRA Report [REP8-014] stated that the potential for accidental spillages during operation would be negligible and this pathway was not taken forward to appropriate assessment.

Air quality impacts

1.2.14. Table 3 of the initial HRA Report [APP-115] concluded that there is no potential for LSE in relation to the physical change to habitats resulting from the deposition of

airborne pollutants arising from traffic on designated features during the construction phase. NE initially advised that further assessment of emissions from construction traffic should be undertaken (ID2 in [AS-015]). In response Table 3.1 of [REP1-013] provided the Applicant's justification for why it considered its assessment was robust; the second HRA Report [REP5-020] maintained that there would be no potential for LSE. In response to a question from the ExA (RIES Q6 [PD-018]), NE confirmed [REP7-038] that it agreed with the conclusions of the screening assessment set out in Table 3 of the second HRA Report in relation to this pathway.

1.2.15. The initial HRA Report [APP-115] ruled out the potential of LSE in relation to air quality impacts from construction dust on the grounds that the majority of habitats closest to the Application site are marine and not sensitive to smothering from dust deposition. ID4 of NE's RR additional submission [AS-015] questioned these conclusions. The Applicant responded in Table 3.1 of [REP1-013] and the second HRA Report [REP5-020] was revised to include additional habitat features. The second HRA Report [REP5-020] concluded on a precautionary basis that there would be the potential for LSE on the 'H1140 mudflats and sandflats not covered by sea water in low tide' feature and the Criterion 1 qualifying feature of the Ramsar site.

Underwater noise from vessel operations including maintenance dredging and dredge disposal

1.2.16. For the pathway underwater noise from vessel operations including maintenance dredging and dredge disposal during the operational phase, NE in ID10 of its RR additional submission [AS-015] considered the Applicant had provided insufficient justification to screen out this impact pathway for lamprey and grey seal. NE stated that this pathway should be screened in and ambient noise levels should be provided to be assessed further for AEoI. The Applicant revised the second HRA Report [REP5-020] to identify LSE from this pathway on a precautionary basis, for both migratory fish and marine mammals. LSE from underwater noise effects of vessels during maintenance dredge and dredge disposal was also identified for the common seal feature of the Wash and North Norfolk Coast SAC. In the SoCG between the Applicant and NE [REP6-010], NE assigned this issue to 'matters not agreed - no material impact' because it was satisfied that this pathway was screened into the assessment but recognised that no information on ambient underwater noise levels at the Port of Immingham was provided. However, NE did not consider that this would materially affect the outcomes of the assessment.

Changes to seabed habitats and features as a result of sediment deposition

1.2.17. The initial HRA Report [APP-115] excluded LSE arising from changes to benthic habitats/species as a result of sediment deposition during maintenance dredging. NE disagreed that LSE could be excluded (ID46 in [AS-011]) because the amount of smothering was only estimated and the extent of deposition had not been defined. The Applicant provided further evidence in the second HRA Report [REP5-020] to support the conclusion of no LSE (Table 3).

1.2.18. NE [REP7-038] disagreed with the Applicant's justification for not screening in this impact pathway because it considered it was inappropriate to conclude that there was no potential for LSE for sedimentation from maintenance dredging/dredge disposal on seabed habitats and species. NE considered that while the impact may be low risk the sedimentation effects arising from capital dredging/dredge disposal

still represent a potential. NE maintained the view that the pathway still exists for there to be a potential impact from sedimentation arising from maintenance dredging/dredge disposal. However, the Applicant maintained its position throughout Examination that this impact pathway would not lead to LSE.

Non-toxic contamination through elevated suspended sediment concentrations (SSC)

1.2.19. The Applicant has assessed potential effects of elevated SSC during capital dredging on qualifying habitats (estuaries, mudflats and sandflats not covered by seawater at low tide) and species (sea and river lamprey). The Applicant has further assessed effects of elevated SSC from capital dredge disposal on qualifying habitats (sandbanks which are slightly covered by sea water all the time and estuaries) and species (sea and river lamprey), concluding LSE. NE (ID20 in [AS-015]) considered that (in addition to the habitat and migratory fish features) marine mammals should also be assessed for these effects. The Applicant clarified in [REP1-013] that this pathway had been considered in Table 3 of the initial HRA Report (concluding no LSE) and NE confirmed its contentment with this matter in [REP2-019].

LSE from the Proposed Development In-combination

1.2.20. Information relating to the in-combination assessment was provided for the 'appropriate assessment stage', in section 4.14 of the initial HRA Report [APP-115].

1.2.21. Table 36 of the second HRA Report [REP5-020] identified the projects and impact pathways relevant to the in-combination assessment and their locations are shown on Figure 5.

1.2.22. Paragraph 4.14.3 explains that these projects are based on the cumulative assessment provided in ES Chapter 20: Cumulative and In-combination Effects [APP-056]. The plans or projects identified within the ES which also overlap with the zone of influence for potential effects on marine ecology receptors were set out in Table 35 of the initial HRA Report [APP-115]. No additional plans or projects were highlighted by IPs during the Examination.

1.2.23. Consideration of in-combination effects at the screening stage was not explicit in the initial HRA Report [APP-115]. This was raised by NE (ID11 in [AS-015]) who requested that consideration of in-combination effects should be presented at the screening stage and the list of projects considered should also be included. The ExA requested (ExQ1 BNE.1.2 [PD-010]) that text be added to HRA Report to clarify whether the Proposed Development in-combination with other plans and projects would or would not have a significant effect.

1.2.24. The Applicant argued [REP1-013] that the screening tables (Table 3, 4 and 5) do consider the impact pathways both alone and in-combination with other plans and projects. No revisions were made to the second HRA Report [REP5-020] clarifying the in-combination assessment at the screening stage. This omission was addressed in Q2 of the RIES which requested the Applicant to revise Tables 3, 4 and 5 to identify which pathways and qualifying features were considered in relation to LSE screening for in-combination effects.

1.2.25. The Applicant made minimal revisions to Tables 3, 4 and 5 within the third HRA Report [REP7-014]. For the majority of cases, the Applicant added the following

text: "*in-combination effects are assumed to be negligible and not of a magnitude to cause a LSE*".

1.2.26. The issue of the scope of the in-combination assessment remained a matter of dispute throughout the Examination. In response to a request from the ExA [PD-022], NE advised that the Applicant's conclusions appeared to be based on the assumption of negligibility instead of undertaking an evidence-based assessment. NE explained that the in-combination LSE assessment is only required where a small effect, which is not significant alone, has the potential to interact with other minor effects and lead to LSE. However, NE concluded that the Applicant's approach would not ultimately affect the assessment of effects on site integrity [REP7-038]. The Applicant continued to maintain its position that the information presented in the HRA reports was sufficient to inform the HRA conclusions [REP9-013].

LSE Assessment Outcomes

1.2.27. The Greater Wash SPA is the only site for which the Applicant concluded no LSE would occur from either the project alone or in-combination with other projects and plans. That conclusion was presented in paragraph 2.4.2 of the RIES [PD-018]. NE confirmed it agreed with the Applicant's conclusion of no LSEs in respect of the Greater Wash SPA in paragraph 2.1.7 and ID35 of its RR additional submission [AS-015].

1.2.28. The Applicant concluded that the Proposed Development would be likely to give rise to significant effects, either alone or in-combination with other projects or plans, on one or more of the qualifying features of:

- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar;
- The Wash and North Norfolk Coast SAC.

1.2.29. The qualifying features and LSE pathways screened in by the Applicant are detailed in Table 2 and Table D1 of the HRA Report [REP8-014].

1.2.30. The Applicant's decision to exclude certain LSE impact pathways was disputed by IPs and has been questioned by the ExA during the Examination.

1.2.31. In relation to accidental spillages and the reliance on the reactive control measures in the Port Marine Safety Code (PMSC), the ExA disagrees with the Applicant and believes that in the absence of mitigation there is a potential for LSE and this pathway should be taken forward to appropriate assessment. This accords with the People Over Wind and Peter Sweetman v Coillte Teoranta judgement.

1.2.32. With respect to air quality impacts arising during construction, the ExA is content that there is no potential for LSE based on the Applicant's justification provided in [REP1-013] and NE's agreement with this.

1.2.33. The ExA agrees with the Applicant's recognition in the second HRA Report [REP5-020] of the potential, yet precautionary, LSE arising from underwater noise from vessel operations including maintenance dredging and dredge disposal for fish and migratory mammals during the operational phase.

1.2.34. The ExA agrees with NE [REP7-038] and considers changes to seabed habitats and features as a result of sediment deposition during maintenance dredging should be screened in. That is because even though the risk for an LSE would be low, a risk would still be present.

1.2.35. In relation to the in-combination assessment, the ExA considers the Applicant's approach does not adhere to the requirements of the Habitats Regulations. The issue of the scope of the in-combination assessment and resulting potential for LSE remained a matter of dispute between the Applicant and NE throughout the Examination.

1.2.36. The ExA has therefore concluded that LSE could occur for the qualifying features of four European sites in the National Sites Network (NSN), from both the project alone or in-combination with other projects and plans. These sites, qualifying features and the potential effects are presented in Table C below.

Table C: European sites and qualifying features for which the ExA considers LSE could not be excluded.

European site(s)	Qualifying Feature(s)	LSE Alone/In-combination from:
Humber Estuary SAC	H1110: Sandbanks which are slightly covered by sea water all the time	• Direct changes to benthic habitats and species as a result of sediment deposition from dredge disposal • Indirect loss or change to seabed habitats and species as a result of changes to hydrodynamic and sedimentary processes from dredge disposal • Changes in water and sediment quality on benthic habitats and species resulting from dredge disposal • The potential introduction and spread of non-native species resulting from construction activities, dredging and dredge disposal • Non-native species transfer during vessel operations
	H1130: Estuaries	• Direct loss of intertidal habitat resulting from capital dredge and piling • Direct loss of subtidal habitat resulting from piling • Direct changes to benthic habitats and species as result of seabed removal during capital dredging • Direct changes to benthic habitats and species as a result of sediment deposition from capital dredge and dredge disposal • Indirect loss or change to seabed habitats and species as a result of changes to hydrodynamic and sedimentary processes from capital dredge, piling and dredge disposal.

		• Changes in water and sediment quality on benthic habitats and species resulting from capital dredge and dredge disposal. • The potential introduction and spread of non-native species resulting from construction activities, dredging and dredge disposal. • Direct changes to benthic habitats and species beneath marine infrastructure due to shading during operation. • Changes to intertidal habitats and species as a result of the movement of Ro-Ro vessels during berth operation • Changes to benthic habitats and species as result of seabed removal during maintenance dredging • Non-native species transfer during vessel operations
	H1140: Mudflats and sandflats not covered by seawater at low tide	• Direct loss of intertidal habitat resulting from capital dredge and piling • Direct loss of subtidal habitat resulting from piling • Direct changes to benthic habitats and species as result of seabed removal from capital dredge • Direct changes to benthic habitats and species as a result of sediment deposition from capital dredge • Indirect loss or change to seabed habitats and species as a result of changes to hydrodynamic and sedimentary processes from capital dredge and piling • Changes in water and sediment quality on benthic habitats and species resulting from capital dredge

		• The potential introduction and spread of non-native species resulting from construction activities, dredging and dredge disposal • Physical change to habitats resulting from the deposition of airborne pollutants from construction dust emissions • Direct changes to benthic habitats and species beneath marine infrastructure due to shading during operation • Changes to intertidal habitats and species as a result of the movement of Ro-Ro vessels during berth operation • Changes to benthic habitats and species as result of seabed removal during maintenance dredging • Non-native species transfer during vessel operations • Physical change to habitats resulting from the deposition of airborne pollutants from operational marine and road vehicle emissions
	H1330: Atlantic salt meadows (*Glauco-Pucci nellietalia maritimae*)	• Physical change to habitats resulting from the deposition of airborne pollutants from operational marine and road vehicle emissions
	S1095: Sea lamprey *Petromyzon marinus* S1099: River lamprey *Lampetra fluviatilis*	• Changes in water and sediment quality on migratory fish species resulting from capital dredge and dredge disposal • Underwater noise effects on migratory fish species resulting from capital dredge, piling, dredge disposal and vessel operations including maintenance dredge and dredge disposal
	S1364: Grey seal *Halichoerus grypus*	• Underwater noise effects on marine mammals resulting from capital dredge, piling, dredge disposal and vessel operations including maintenance dredge and dredge disposal

		• Changes in water and sediment quality on marine mammals due to piling, capital dredge and dredge disposal
Humber Estuary SPA	A048: Common Shelduck (Non-breeding) *Tadorna tadorna* A143: Red Knot (Non-breeding) *Calidris canutus* A157: Bar-tailed Godwit (Non-breeding) *Limosa lapponica* A156: Black-tailed Godwit *Limosa limosa islandica* (Non-breeding) A149: Dunlin *Calidris alpina alpina* (Non-breeding) A162: Common Redshank *Tringa totanus* (Non-breeding) Waterbird assemblage	• Direct loss or change to supporting intertidal habitat resulting from piling and capital dredging • Indirect loss of supporting intertidal habitat as a result of changes to hydrodynamic and sedimentary processes from piling and capital dredging • Noise and visual disturbance to coastal waterbirds resulting from construction activity (including capital dredging) and berth operations • Direct changes to coastal waterbird foraging and roosting habitat as a result of marine infrastructure from berth operations

Humber Estuary Ramsar	Criterion 1 – natural wetland habitats that are of international importance: The site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks, estuarine waters, intertidal mud and sand flats, saltmarshes, and coastal brackish/saline lagoons	• Direct loss of intertidal habitat resulting from capital dredge and piling • Direct loss of subtidal habitat resulting from piling • Direct changes to benthic habitats and species as result of seabed removal from capital dredge • Direct changes to benthic habitats and species as a result of sediment deposition from capital dredge and dredge disposal • Indirect loss or change to seabed habitats and species as a result of changes to hydrodynamic and sedimentary processes from capital dredge, piling and dredge disposal • Changes in water and sediment quality on benthic habitats and species resulting from capital dredge and dredge disposal • The potential introduction and spread of non-native species resulting from construction activities, capital dredge and dredge disposal • Physical change to habitats resulting from the deposition of airborne pollutants from construction activities • Direct changes to benthic habitats and species beneath marine infrastructure due to shading during operation • Changes to intertidal habitats and species as a result of the movement of Ro-Ro vessels during berth operation • Changes to benthic habitats and species as result of seabed removal during maintenance dredging • Non-native species transfer during vessel operations

		• Physical change to habitats resulting from the deposition of airborne pollutants (NOx and N deposition) during operation
	Criterion 3 – supports populations of plants and/or animal species of international importance: The Humber Estuary Ramsar site supports a breeding colony of grey seals *Halichoerus grypus* at Donna Nook. It is the second largest grey seal colony in England and the furthest south regular breeding site on the east coast	• Underwater noise effects on marine mammals resulting from capital dredge, pilling, maintenance dredge and dredge disposal
	Criterion 5 – Bird Assemblages of International Importance: Wintering waterfowl - 153,934 waterfowl (5-year peak mean 1998/99-2002/3) Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance: Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Redshank (passage)	• Direct loss or change to supporting intertidal habitat resulting from capital dredge and piling • Indirect loss of supporting intertidal habitat as a result of changes to hydrodynamic and sedimentary processes from capital dredge and piling • Noise and visual disturbance to coastal waterbirds resulting from construction activities (including capital dredging) • Direct changes to coastal waterbird foraging and roosting habitat as a result of marine infrastructure from berth operations • Noise and visual disturbance to coastal waterbirds resulting from berth operations

	Shelduck, Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit (overwintering)	
	Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/or migration path: The Humber Estuary acts as an important migration route for both river lamprey *Lampetra fluviatilis* and sea lamprey *Petromyzon marinus* between coastal waters and their spawning areas	• Changes in water and sediment quality on migratory fish species resulting from piling, capital dredge and dredge disposal • Underwater noise effects on migratory fish species resulting from capital dredge, pilling, dredge disposal and vessel operations including maintenance dredge and dredge disposal
	S1095: Sea lamprey *Petromyzon marinus* S1099: River lamprey *Lampetra fluviatilis*	• Changes in water and sediment quality on migratory fish species resulting from dredge disposal
	S1364: Grey seal *Halichoerus grypus*	• Underwater noise effects on marine mammals resulting from dredge disposal
The Wash and North Norfolk Coast	S1365: Harbour seal *Phoca vitulina*	• Underwater noise effects on marine mammals resulting from capital dredging, piling, dredge disposal and vessel operations including maintenance dredge and maintenance dredge disposal

1.3. CONSERVATION OBJECTIVES

1.3.1. The conservation objectives for all of the European sites for which a LSE was identified by the Applicant at the point of the Application were included in Table 6 of the second HRA Report [REP5-020].

1.3.2. Paragraph 3.1.5 of the second HRA Report [REP5-020] explains that the condition of the features of the Humber Estuary SAC, SPA and Ramsar site are *"not assessed"*. However, the condition statement assessment of the respective Site of Special Scientific Interest (SSSI) units predominantly class the estuary as in favourable condition (6.09% of the area) and unfavourable but recovering condition (88.21% of the area).

1.3.3. NE (ID13 in [AS-011]) referred the Applicant to Supplementary Advice on the Humber Estuary SAC, noting that the conservation objective for the feature 'mudflats and sandflats not covered by seawater at low tide' is set to *"restore"* and that this should be considered in the assessment of direct loss of qualifying habitat. This matter is discussed below.

1.4. FINDINGS IN RELATION TO ADVERSE EFFECTS ON THE INTEGRITY (AEoI)

1.4.1. The European sites and qualifying features identified in Table C above were further assessed by the Applicant to determine if they could be subject to AEoI from the Proposed Development, either alone or in-combination. The Applicant's assessment of effects from the development alone was presented in sections 4.2 to 4.13 of the Applicant's fourth HRA Report [REP8-014]. Its approach to in-combination assessment was presented in section 4.14 of [REP8-014]. The assessment of AEoI was made in light of the conservation objectives for the European sites [REP8-014].

1.4.2. The ExA is content, based on the information provided that the correct impacts have been assessed. This section discusses the conclusions with respect to AEoI for each site.

1.4.3. The Applicant's approach to the in-combination assessment is set out in section 4.14 in [REP8-014]. The ExA it is content that an assessment of AEoI from the Proposed Development in-combination with other plans or projects can be based on the information in the Applicant's fourth HRA report and that no other plans or projects are required to be taken into account.

Mitigation

1.4.4. For the pathways for which mitigation is proposed, a description of the measures is provided (see 4.10.38, 4.10.53, 4.11.40, 4.12.8 and 4.12.14 in [REP8-014]). Table 40 in the fourth HRA Report [REP8-014] (provided in response to BNE.1.2 [PD-010] and RIES Q13 [PD-018]) summarises the mitigation measures, the discussion points during examination and how mitigation would be secured.

Accidental spillages

1.4.5. NE [REP7-038] concluded that AEoI of the Humber Estuary designated sites during the construction phase from accidental spillages can be ruled out based on the best practice pollution/spillage prevention measures set out in the submitted CEMP [APP-111] (Table 3.2: Water and sediment quality). Table 3.2 has been incorporated into what became a standalone Outline Offshore CEMP [REP8-012]. Condition 11 of the Deemed Marine Licence (DML) (Schedule 3 in the recommended Development Consent Order (rDCO)) would secure compliance with an Offshore CEMP to be approved by the MMO.

1.4.6. The Applicant also relied on the PMSC's requirements to justify why accidental spillages did not need to be taken forward to the appropriate assessment. That was agreed in the SoCG between the Applicant and NE [REP6-010].

Construction phase noise and vibration impacts

1.4.7. NE (ID28 in [AS-011]) raised concerns that the Applicant had assessed construction phase underwater noise and vibration effects on marine mammals as a single impact, while NE considered that injury and disturbance from underwater noise should be assessed as separate pathways. The second HRA Report (section 4.11 in [REP5-020]), provides a clearer distinction between the assessment of injury and disturbance. NE confirmed [REP7-038] by way of response to RIES Q17, that the additional information provided addressed its concerns.

1.4.8. The mitigation identified in the fourth HRA Report [REP8-014] includes the Outline Offshore CEMP [REP8-012] and compliance with the latter would be secured in the rDCO.

Vibro-piling and underwater noise: Marine mammals and Fish– sea lamprey

1.4.9. Paragraph 4.11.39 of the initial HRA Report [APP-115] sets out the mitigation measures that would be implemented during piling to reduce the level of impact associated with underwater noise and vibration on fish and grey seal during construction. In [REP7-038] NE stated that it broadly agreed with the mitigation measures proposed in relation to impacts from underwater noise and vibration for marine mammals during construction.

1.4.10. With respect to lamprey, NE [REP7-038] advised it was not satisfied with the Applicant's clarifications regarding the impacts from vibro-piling during the night-time as set out in [REP1-013]. NE explained that the Applicant's second HRA Report [REP5-020] did not provide a specific assessment in Tables 3 and 5 or section 4.11 of the potential impact of vibro-piling during the nighttime when lamprey are migrating. NE observed that the conclusion drawn in section 4.11.25 of the second HRA Report [REP5-020] did not clearly evidence that vibro-piling would not adversely affect the nocturnal migration period for lamprey. As such NE requested the night-time restriction to be applied to percussive piling be extended to include vibro-piling and the Applicant agreed this in [REP8-024].

1.4.11. NE requested clarification [AS-015] about the dates for the restriction of percussive piling (between 1 March to 31 March, 1 June to 30 June and 1 August to 31 October inclusive). In addition, the MMO raised concerns regarding the timing of the proposed piling restrictions (paragraph 5.1.30 in [REP1-020]). The MMO maintained its position that the timing of the proposed piling restrictions within the waterbody

should be between 1 April and 31 May inclusive, which covers part of the smolt downstream migration and from 1 June to 30 June and 1 August to 31 October inclusive, as that would minimise the impacts on silver eels, river lamprey and adult Atlantic salmon. The Applicant clarified [REP1-013] that the time periods reflected the sensitive periods for both glass eel and river lamprey. The MMO [REP1-020] and [REP2-016] also set out an alternative approach to restrictive timings during June (for Salmonid Smolts) and August to October (for adult Salmonids) which would take account of tidal states for piling. In [REP5-044] the MMO noted the Applicant's submissions that piling during specific tidal states and hours of daylight would lead to a prolonged construction period. The MMO acknowledges that its requests set out in [REP1-020] and [REP2-016] would not be viable options and would result in prolonging the time features were exposed to piling activity.

Vibro-piling

1.4.12. In (ID33 of [AS-015]) NE requested further detail on how much of the piling could be achieved using vibro-piling to enable a greater understanding of how much this mitigation measure could be applied across the piling campaign. The MMO in [REP1-020] concluded that there would be a risk of impact (particularly behavioural effects) from both percussive and vibro-piling operations (paragraph 5.1.12).

1.4.13. In its response [REP1-013], the Applicant referred to ES Appendix 9.2 [APP-088] which states "*the maximum impact pile driving scenario will involve approximately 20 minutes of vibro-piling and 180 minutes of impact piling per day in a 12-hour shift. In reality, less than four piles are likely to be driven per day and, therefore, the assessment is considered to represent a worst case*" (paragraph 6.2.3).

1.4.14. Both NE and the MMO (ID32 of [AS-015] and [REP1-020] respectively) refer to the Centre for Environment, Fisheries and Aquaculture Science's response regarding the use of up to four piling rigs which may lead to increased sound exposure levels over a 24 hour period compared to that presented in the Application.

1.4.15. The MMO [REP1-020] suggested that given the worse case position outlined above by the Applicant in response to NE's ID32 [REP1-013], a daily restriction to the number of hours of piling should be applied. The MMO [REP9-017] referred to Condition 13 in the DML, the Applicant's revised percussive piling protocol that would be operative if the 180 minute percussive piling duration is exceeded. The MMO observed that the daily limit of percussive piling has been omitted from this condition, but weekly reporting would allow for reactive measures to be implemented. NE is content with the Applicant using as much vibro-piling during the piling periods [REP7-038]. NE however identified a limitation of vibro-piling in that it cannot penetrate the harder layers of bedrock that lie deeper in the ground, as such, NE noted that vibro-piling could not replace the louder percussive piling method entirely.

1.4.16. The MMO [REP9-017] also confirmed that it is satisfied that where percussive piling would be carried out concurrently across the Proposed Development and the proposed Immingham Green Energy Terminal (IGET), the respective time periods will not be double counted as the temporal exposure to this effect is not increased. However, the MMO go on to note that there will be a greater risk of disturbance if simultaneous/concurrent piling is undertaken.

Piling: Grey seal qualifying feature

1.4.17. Table 31 of the initial HRA Report [APP-115] stated that with the proposed mitigation, the potential for injury effects for grey seal arising from potential underwater noise and vibration during piling causing avoidance responses and intermittent barrier effects is considered to be limited. Chapter 20 of the ES [APP-056] assessed underwater noise effects in-combination with other plans and projects and noted that other projects that are likely to result in underwater effects would require similar mitigation to the Proposed Development. On that basis, the initial HRA Report [APP-115] concluded that underwater noise effects for grey seals during piling was considered unlikely. NE noted (ID25 of [AS-015]) that the mitigation proposed is aimed at reducing injury rather than addressing barrier effects. However, NE's response to Q15 of the RIES [REP7-038] confirmed it broadly agreed with the mitigation measures proposed in relation to impacts from underwater noise and vibration on marine mammals during construction. However, NE in [REP9-018] confirmed it agreed that AEoI can be excluded both and alone in-combination for grey seals.

Introduction and spread of non-native species

1.4.18. Paragraph 4.12.8 of the initial HRA Report [APP-115] stated the mitigation relating to the potential effects for introducing and spreading non-native species during operation and potential biosecurity risks would be managed through the Applicant's existing biosecurity management procedures. Paragraph 4.12.9 of [APP-115] indicated biosecurity control measures during construction would be included within the CEMP.

1.4.19. NE requested (ID21 of [AS-015]) that a biosecurity plan (akin to that being produced and implemented by the Applicant to limit the spread/introduction of non-native species during construction) also be produced for the operational phase. Q24 of the RIES asked the Applicant to provide details of the existing biosecurity measures that were agreed with NE for the operational phase and indicate how those measures could be secured within any made DCO.

1.4.20. The Applicant in [REP7-028] explained that the focus of the biosecurity plan is to identify the highest risk pathways for the introduction of non-native species which would enable the implementation of measures to manage the risks as far as reasonably practicable. As this approach is not species or project specific, the Applicant stated that it did not consider it necessary to secure these measures within the DCO. NE confirmed ([REP5-016] and [REP7-038]) its satisfaction with the Applicant implementing its existing biosecurity measures during the operational phase of the Proposed Development.

Airborne noise and visual disturbance (operation)

1.4.21. The Applicant also identified LSE from airborne noise and visual disturbance arising from port operations for the following:

- Humber Estuary SPA qualifying features:
    - Common Shelduck (Non-breeding) *Tadorna tadorna*
    - Red Knot (Non-breeding) *Calidris canutus*
    - Dunlin (Non-breeding) *Calidris alpina alpina*
    - Black-tailed Godwit (Non-breeding) *Limosa limosa islandica*
    - Common Redshank (Non-breeding) *Tringa totanus*

- Waterbird assemblage

- Humber Estuary Ramsar site:
  - Criterion 5 – Bird Assemblages of International Importance: Wintering waterfowl.
  - Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance: Golden Plover, Red Knot, Dunlin, Black tailed Godwit, Redshank (passage) Shelduck, Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit (overwintering).

1.4.22. Paragraph 4.10.53 of the second HRA Report [REP5-020] detailed mitigation measures proposed during the operational phase for disturbance impacts for waterbirds, comprising screening of the Proposed Development from the foreshore, with phased removal of screens after two years. NE questioned (ID8 in [AS-015]) whether the screening could be made permanent. The Applicant argued ([REP1-013] and [REP5-020]) that the temporary screening mitigation measure had been proposed simply to assist in habituation to the new infrastructure, but in the context of the location of the new berths within the port, it is not actually considered necessary.

1.4.23. NE disagreed that the monitoring and annual report proposed as mitigation in 4.10.52 of the initial HRA Report [APP-115] could be considered as a mitigation measure in itself. That was because the Applicant had not provided any interventions in the event of the monitoring recording a significant decrease in bird numbers (ID8 in [AS-015]). Following the revisions made in the second HRA Report, NE confirmed in [REP7-038] that it did not consider adaptive monitoring to be necessary.

Effects for which the Applicant concluded no AEoI and for which no IPs raised concerns

1.4.24. The Applicant concluded in [REP8-014] that the Proposed Development would not adversely affect the integrity of all of the European sites and features assessed, either alone or in-combination with other projects or plans:

- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar site; and
- The Wash and North Norfolk Coast SAC.

1.4.25. At the close of the Examination, the Applicant's conclusions had not been disputed by any IP in relation to the sites and features and pathways listed in Table D below. In addition, NE confirmed that subject to the appropriate mitigation, as outlined in the Application documents being secured adequately, it was satisfied that a number of potential effects would be unlikely to result in AEoI on the Humber Estuary sites (see paragraph 2.1.4 of [AS-011]).

Table D: Effects for which the Applicant concluded no AEoI and which were not disputed during the Examination

European site	Qualifying feature(s)	AEoI alone or in-combination	Mitigation required to avoid AEoI
Humber Estuary SAC	Estuaries Sandbanks which are slightly covered by sea water all the time	The potential effects of changes to qualifying habitats as a result of sediment deposition during capital dredge disposal. No AEoI [Table 14 in APP-115]. NE agree with conclusions paragraph in 2.1.4.2 [AS-015].	None required
	Estuaries Mudflats and sandflats not covered by seawater at low tide	The potential effects of changes to qualifying intertidal habitats as a result of the movement of Ro-Ro vessels during operation. No AEoI [Table 16 in APP-115]. NE agree with conclusion of no AEoI (ID16 [AS-015]).	None required
	Estuaries Mudflats and sandflats not covered by seawater at low tide	Indirect loss or change to qualifying habitats and species resulting from changes to hydrodynamic and sedimentary processes during the marine works. No AEoI [Table 17 in APP-115]. NE agree with conclusions (paragraph 2.1.4.3 in [AS-015]).	None required

	Estuaries Sandbanks which are slightly covered by sea water all the time	The potential effects due to indirect changes to qualifying habitats resulting from changes to hydrodynamic and sedimentary processes during capital dredge disposal. No AEoI [Table 18 in APP-115]. NE agree with conclusion of no AEoI (ID18 in [AS-015]).	None required
	Estuaries Mudflats and sandflats not covered by seawater at low tide	Direct changes to qualifying habitats beneath marine infrastructure due to shading. No AEoI [Table 19 in APP-115]. NE agree with conclusion of no AEoI (ID47 in [AS-015]).	None required
	Estuaries Mudflats and sandflats not covered by seawater at low tide Sea lamprey River lamprey	The potential effects of elevated SSC during capital dredging on qualifying habitats and species during the construction and operational phases. No AEoI [Table 22 in APP-115]. No issues raised by IPs.	None required
	Estuaries Sandbanks which are slightly covered by sea water all the time Sea lamprey	The potential for an AEoI on qualifying habitats and species from the release of contaminants during capital dredging. No AEoI [Table 24 in APP-115].	None required

	River lamprey	No issues raised by IPs.	
	Estuaries Mudflats and sandflats not covered by seawater at low tide Sea lamprey River lamprey	The potential for an AEoI on qualifying habitats and species from the release of contaminants during capital dredging. No AEoI [Table 25 in APP-115]. No issues raised by IPs.	None required
	Estuaries Sandbanks which are slightly covered by sea water all the time Sea lamprey River lamprey	The potential for an AEoI on qualifying habitats and species from the release of contaminants during capital dredging disposal. No AEoI [Table 25 in APP-115]. No issues raised by IPs.	None required
	Sea lamprey *Petromyzon marinus* River lamprey *Lampetra fluviatilis* Grey seal *Halichoerus grypus*	The potential for effects on qualifying species due to potential underwater noise and vibration during dredging. No AEoI [Table 32 in APP-115]. In relation to lamprey, no issues were raised by IPs. For grey seal, NE agree with conclusions (ID24 in [AS-015]).	None required
	Estuaries Sandbanks which are slightly covered by sea water all the time	The potential effects of introducing and spreading non-native species during construction on qualifying habitats.	Biosecurity control measures included within the CEMP

	Mudflats and sandflats not covered by seawater at low tide	No AEoI [Table 33 in APP-115]. NE agree with conclusions (ID21 in [AS-015]).	
	Estuaries Sandbanks which are slightly covered by sea water all the time Mudflats and sandflats not covered by seawater at low tide	The potential effects of introducing and spreading non-native species during operation on qualifying habitats. No AEoI [Table 34 in APP-115]. No issues raised by IPs.	Biosecurity control measures (existing – note discussion within the mitigation section of this HRA Appendix)
Humber Estuary SPA	Common shelduck (Non-breeding) *Tadorna tadorna* Red knot (Non-breeding) *Calidris canutus* Bar-tailed godwit (Non-breeding) *Limosa lapponica* Black-tailed godwit *Limosa limosa islandica* (Non-breeding) Dunlin *Calidris alpina alpina* (Non-breeding) Common redshank *Tringa totanus* (Non-breeding) Waterbird assemblage	The potential for an AEoI due to changes to qualifying species as result of the removal of seabed material during capital dredging. No AEoI [Table 12 in APP-115]. No issues raised by IPs.	None required
	Common shelduck (Non-breeding) *Tadorna tadorna*	The potential for an AEoI due to indirect changes to qualifying habitats and species as a result of changes to	None required

	Red knot (Non-breeding) *Calidris canutus* Bar-tailed godwit (Non-breeding) *Limosa lapponica* Black-tailed godwit *Limosa limosa islandica* (Non-breeding) Dunlin *Calidris alpina alpina* (Non-breeding) Common redshank *Tringa totanus* (Non-breeding) Waterbird assemblage	hydrodynamic and sedimentary processes as a result of the marine works. No AEoI [Table 17 in APP-115]. No issues raised by IPs.	
Humber Estuary Ramsar	Criterion 1 – natural wetland habitats that are of international importance	The potential effects of changes to qualifying habitats resulting from sediment deposition during capital dredge disposal. No AEoI [Table 14 in APP-115]. NE agree with conclusions (paragraph 2.1.4.2 in [AS-015]).	None required
	Criterion 1 – natural wetland habitats that are of international importance	The potential effects of changes to qualifying intertidal habitats resulting from the movement of Ro-Ro vessels during operation. No AEoI [Table 16 in APP-115]. NE agree with conclusion of no AEoI (ID16 in [AS-015]).	None required

	Criterion 1 – natural wetland habitats that are of international importance Criterion 5 – Bird Assemblages of International Importance Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance	Indirect loss or change to qualifying habitats and species resulting from changes to hydrodynamic and sedimentary processes during the marine works. No AEoI [Table 17 in APP-115]. NE agree with conclusions (paragraph 2.1.4.3 in [AS-015]).	None required
	Criterion 1 – natural wetland habitats that are of international importance	The potential effects due to indirect changes to qualifying habitats resulting from changes to hydrodynamic and sedimentary processes during capital dredge disposal. No AEoI [Table 18 in APP-115]. NE agree with conclusion of no AEoI (ID18 in [AS-015]).	None required
	Criterion 1 – natural wetland habitats that are of international importance	Direct changes to qualifying habitats beneath marine infrastructure due to shading. No AEoI [Table 19 in APP-115]. NE agree with conclusion of no AEoI (ID47 in [AS-015]).	None required
	Criterion 1 – natural wetland habitats that are of international importance	The potential for an AEoI on qualifying habitats and species via releasing contaminants during capital dredging.	None required

	Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/or migration path	No AEoI [Table 24 in APP-115]. No issues raised by IPs.	
	Criterion 1 – natural wetland habitats that are of international importance Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/or migration path	The potential for an AEoI on qualifying habitats and species via releasing contaminants during capital dredging disposal. No AEoI [Table 25 in APP-115]. No issues raised by IPs.	None required
	Criterion 5 – Bird Assemblages of International Importance Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance	The potential for an AEoI due to changes to qualifying species resulting from the removal of seabed material during capital dredging. No AEoI [Table 12 in APP-115]. No issues raised by IPs.	None required
	Criterion 5 – Bird Assemblages of International Importance: Wintering waterfowl Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance: Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Redshank (passage) Shelduck, Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Bar-	The potential for effects on qualifying habitats due to potential underwater noise and vibration during piling. No AEoI [Table 31 in APP-115]. No issues raised by IPs.	None required

	tailed Godwit (overwintering).		
	Criterion 3 – supports populations of plants and/or animal species of international importance Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/or migration path	The potential for an AEoI on qualifying species due to potential underwater noise and vibration during dredging. No AEoI [Table 32 in APP-115]. NE agree with conclusion of no AEoI for grey seal (criterion 3) for the project alone (ID24 in [AS-015]). No issues raised by IPs (criterion 8).	None required
	Criterion 1 – natural wetland habitats that are of international importance	The potential for an AEoI on qualifying habitats due to the potential introduction and spread of non-native species during construction. No AEoI [Table 33 in APP-115]. NE agree with conclusion of no AEoI (ID21 in [AS-015]).	The implementation of a Biosecurity Plan included within the Offshore CEMP
	Criterion 1 – natural wetland habitats that are of international importance	The potential for an AEoI on qualifying habitats due to the potential introduction and spread of non-native species during operation. No AEoI [Table 34 in APP-115]. No issues raised by IPs.	The Applicant's existing biosecurity management procedures

1.4.26. The ExA agrees with the conclusions above of no AEoI listed in Table D.

Effects for which the Applicant concluded no AEoI but for which IPs raised concerns

1.4.27. Several of the Applicant's conclusions of no AEoI in relation to the European sites and their qualifying features were considered throughout the Examination with IPs. Those that were agreed before the close of the Examination are set out in Table E below.

Table E: Effects for which the Applicant concluded no AEoI and were disputed then resolved during the Examination

European site	Qualifying feature(s)	AEoI alone or in-combination	Mitigation required to avoid AEoI
Humber Estuary SAC	Estuaries Mudflats and sandflats not covered by seawater at low tide	The potential for an AEoI due to changes to qualifying habitats as a result of sediment deposition during capital dredging. No AEoI [Table 13 in APP-115]. NE stated that this impact pathway would not result in an AEoI [response to RIES Q12 in REP7-038].	None required
	Estuaries	The potential for an AEoI due to changes to qualifying habitats as result of the removal of seabed material during maintenance dredging. No AEoI [Table 15 in APP-115]. NE stated that this impact pathway would not result in an AEoI [response to RIES Q12 in REP7-038].	None required
	Mudflats and sandflats not covered by seawater at low tide	The potential for an AEoI due to physical change to qualifying habitats resulting from dust deposition during construction. No AEoI [Table 20 and paragraph 4.7.4 in REP5-020]. NE agree with conclusion of no AEoI [response to RIES Q7 in REP7-038].	None required

	Atlantic salt meadows *Glauco-Puccinellietalia maritimae* Mudflats and sandflats not covered by seawater at low tide	The potential for an AEoI due to physical change to qualifying habitats resulting from the deposition of N and NOx from marine vessel and road vehicle emissions during operation. No AEoI [Table 22 in REP5-020]. NE (ID1 in [AS-015]) raised methodological concerns with the Applicant's air quality assessment, relating to the types of habitats and impacts assessed and the thresholds applied. The Applicant clarified in [REP1-013] and [REP6-010] that the habitat within the zone of influence of any air quality impacts is saltmarsh which is in exceedance of 1% of the critical level for NOx but below the relevant threshold overall. In its response to ExQ BNE4.11 the Applicant [REP8-020] set out a response to why it did not undertake in-combination modelling. NE agreed that the appropriate assessment could determine no AEoI from impacts to the Atlantic salt meadows feature alone and in-combination with other plans and projects [response to ExQ BNE4.12 in REP9-018], despite some remaining methodological concerns.	None required
	Atlantic salt meadows *Glauco-Puccinellietalia maritimae* Mudflats and sandflats not covered by seawater at low tide	The potential for an AEoI due to physical change to qualifying habitats resulting from the deposition of N and NOx from marine vessel and road vehicle emissions during construction. No AEoI [Table 22 and paragraph 4.7.16 in REP5-020]. NE recommended the adoption of the precautionary approach and that further assessment is undertaken [AS-015]. NE confirmed in [REP6-010] and [REP7-038] that it agreed with conclusion of no AEoI.	None required

	Estuaries Mudflats and sandflats not covered by seawater at low tide Sea lamprey *Petromyzon marinus* River lamprey *Lampetra fluviatilis*	The potential for an AEoI on qualifying habitats and species due to elevated SSC during capital dredge disposal. No AEoI [Table 23 in APP-115]. NE requested more information (ID20 in [AS-015]), however this request was resolved in paragraph 2.5.2 and ID20 [REP2-019] and NE agreed with conclusion of no AEoI.	None required
	Sea lamprey *Petromyzon marinus* River lamprey *Lampetra fluviatilis* Grey seal *Halichoerus grypus*	The potential for an AEoI on qualifying species due to potential underwater noise and vibration during piling. No AEoI [Table 31 in APP-115]. Lamprey - see discussion above within the 'mitigation' section that sets out the dispute between the Applicant, NE and MMO regarding the mitigation measures. In [REP9-018] NE confirmed that AEoI can be ruled out for the lamprey features. Grey seal – see the 'mitigation' section of this Recommendation that sets out the disagreement between the Applicant and NE regarding the mitigation measures. In [REP9-018] NE confirmed that it agreed that AEoI can be excluded both alone and in-combination for this feature.	The following are to be secured in the Offshore CEMP: • Soft start • Vibro-piling • Seasonal piling restrictions • Nighttime piling restrictions (including vibro-piling) • Marine Mammal Observer

	Sea lamprey *Petromyzon marinus* River lamprey *Lampetra fluviatilis* Grey seal *Halichoerus grypus*	The potential for an AEoI on qualifying species due to potential underwater noise and vibration during dredging (capital and maintenance) and operational vessel movements. No AEoI [Table 33 in REP5-020]. Paragraph 4.10.23 of the initial HRA Report [APP-115] set out that "*the near shore environment in the Port of Immingham area is already subject to large numbers of vessel movements…*". In ID7 of its RR [AS-015] NE requested that the term '*large numbers*' be quantified and how the Proposed Development would change that figure. The Applicant confirmed [REP1-013] that the Port of Immingham currently has over 118,000 transiting movements of vessels per year – the majority moving in close proximity to the Application site. Following the submission of the second HRA Report [REP5-020], including the inclusion of Table 33, NE confirmed it was content with the conclusion of no AEoI for the Humber Estuary SPA in relation to increased vessel movements during the operational phase [section 3.27 in REP7-038].	
Humber Estuary SPA	Common Shelduck (Non-breeding) *Tadorna tadorna* Red Knot (Non-breeding) *Calidris canutus*	The potential for an AEoI due to the direct loss of supporting intertidal habitat on qualifying species from capital dredging and piling during the construction phase. No AEoI [Table 8 in APP-115]. Table 8 in [APP-115] assessed the effects of the 0.012 hectare (ha) of intertidal habitat loss in terms of its functional value to foraging bird features of the SPA. The Applicant calculated the habitat losses for	None required

	Dunlin (Non-breeding) *Calidris alpina alpina* Black-tailed Godwit (Non-breeding) *Limosa limosa islandica* Common Redshank (Non-breeding) *Tringa totanus* Waterbird assemblage	the SPA in totality would be 0.000032%, with mudflat loss being 0.000188%) (paragraph 4.3.15). The Applicant submitted that the predicted losses from dredging are considered to be of a similar scale to that occurring due to natural background changes in mudflat extent and the predicted losses from piling would be highly localised (paragraph 4.3.16). In addition, the Applicant observed that the predicted direct areas of intertidal habitat loss are only exposed during low water spring tidal phases and are completely submerged for over 99 % of the time and as a result provide almost no feeding opportunities for coastal waterbirds (4.3.17 – 4.3.18). On this basis the Applicant concluded no AEoI on qualifying interest features as a result of this pathway (Table 8). RIES Q21 requested that the Applicant update the HRA Report to quantify the extent of in-combination effects wherever possible and a revised Tables 38 was included in the third HRA report [REP7-014]. The anticipated total loss of intertidal habitat resulting from the Proposed Development and IGET is anticipated to be 0.044 ha, representing approximately 0.000117% of the Humber Estuary SPA, 0.000495% of intertidal foreshore habitats and approximately 0.000690% of mudflat within the SPA. Again, the Applicant concluded no AEoI, based on the same rationale as per the conclusion for the effect of the development 'alone'. NE confirmed [REP9-018] that it does not consider that there would be an AEoI on SPA features resulting from direct or indirect loss of supporting habitat.	

	Common Shelduck (Non-breeding) *Tadorna tadorna* Red Knot (Non-breeding) *Calidris canutus* Dunlin (Non-breeding) *Calidris alpina alpina* Black-tailed Godwit (Non-breeding) *Limosa limosa islandica* Common Redshank (Non-breeding) *Tringa totanus* Waterbird assemblage	The potential for an AEoI on qualifying species due to changes to waterbird foraging and roosting habitat as a result of the presence of marine infrastructure during operation. No AEoI [Table 10 in APP-115]. NE requested (ID6 of [AS-015]) a more detailed assessment of impacts on key species, particularly regarding observed approach distances. NE considered that there was a risk of loss of ecological function for SPA waterbirds and this required further assessment within the HRA Report. The Applicant responded in [REP1-013] and the second HRA Report included further information [paragraph 4.3.29 onwards in REP5-020], including Figures 3 and 4 showing the numbers and locations of foraging and roosting birds in the existing enclosed spaces within bird count *"sector B"* [REP5-020]. Following the changes the HRA report, NE [REP6-048] was reassured that birds would continue to use the area around the new jetty and confirmed in [REP7-038] and [REP9-018] that it agreed with the Applicant's conclusions of no AEoI on the qualifying interest features of the Humber Estuary SPA in relation to the presence of marine infrastructure. Table 38 in [REP7-014] presents an updated in-combination assessment submitted in response to RIES Q21. This was not contested by IPs.	None required
	Common Shelduck (Non-breeding) *Tadorna tadorna*	The potential for an AEoI on qualifying species due to potential airborne noise and visual disturbance during operation. No AEoI [Table 30 in APP-115].	Screening of the development from the foreshore, with phased

	Red Knot (Non-breeding) *Calidris canutus* Dunlin (Non-breeding) *Calidris alpina alpina* Black-tailed Godwit (Non-breeding) *Limosa limosa islandica* Common Redshank (Non-breeding) *Tringa totanus* Waterbird assemblage	See the 'mitigation' section that sets out the disagreement between the Applicant and NE regarding the mitigation measures. In addition, NE requested further information on vessel routing and how this would compare with the current and forecasted numbers of vessels utilising the area. The Applicant confirmed [REP1-013] that vessels using the Eastern Jetty and approaching and leaving the Inner Dock regularly come within 300 metres of areas used by qualifying SPA/ Ramsar bird species, including Shelduck, and that the Proposed Development would represent an approximate 3% annual increase in vessel traffic. Additional information is provided in Table 33 and Appendix A of the second HRA Report [REP5-020]. NE confirmed [REP7-038] that it was content with the conclusion of no AEoI on the Humber Estuary SPA in relation to increased vessel movements during the operational phase.	removal of screens after two years.
Humber Estuary Ramsar	Criterion 5 – Bird Assemblages of International Importance: Wintering waterfowl; and Criterion 6 – Bird Species/Populations Occurring at Levels of International	The potential for an AEoI on qualifying species due to changes to waterbird foraging and roosting habitat as a result of the presence of marine infrastructure during operation. No AEoI [Table 10 in APP-115]. See explanation for Humber Estuary SPA, above, for this pathway.	

	Importance: Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Redshank (passage) Shelduck, Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit (overwintering).		
Humber Estuary Ramsar	Criterion 1 – natural wetland habitats that are of international importance	The potential for an AEoI due to changes to qualifying habitats as a result of sediment deposition during capital dredging. No AEoI [Table 13 in APP-115]. NE confirmed that it was inappropriate to conclude that there is no potential for LSE, but stated that this impact pathway would not result in an adverse effect on site integrity, therefore this would have no material impact on the assessment conclusions (provided in response to RIES Q12 [REP7-038]).	None required
	Criterion 1 – natural wetland habitats that are of international importance	The potential for an AEoI due on habitats as result of the removal of seabed material during maintenance dredging. No AEoI [Table 15 in APP-115]. NE confirmed that it was inappropriate to conclude that there is no potential for LSE, but stated that this impact pathway would not result in an adverse effect on site integrity, therefore this would have no	None required

		material impact on the assessment conclusions (provided in response to RIES Q12 [REP7-038]).	
	Criterion 1 – natural wetland habitats that are of international importance	The potential for an AEoI due to physical change to qualifying habitats resulting from the deposition of N and NOx from marine vessel and road vehicle emissions during operation. No AEoI [Table 21 in APP-115]. NE agree with conclusion of no AEoI (provided in response to RIES Q18 [REP7-038]).	None required
	Criterion 1 – natural wetland habitats that are of international importance Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/or migration path	The potential for an AEoI on qualifying habitats and species due to elevated SSC during capital dredging during the construction and operational phases. No AEoI [Table 22 in APP-115]. NE requested more information (ID20 in [AS-015]), but this request was resolved at paragraph 2.5.2 in [REP2-019] and NE agreed with conclusion of no AEoI.	None required
	Criterion 1 – natural wetland habitats that are of international importance	The potential for an AEoI on qualifying habitats and species due to elevated SSC during dredge disposal for the construction and operational phases.	None required

	Criterion 8 – Internationally important source of food for fishes, spawning grounds, nursery and/or migration path	No AEoI [Table 23 in APP-115]. NE requested more information (ID20 in [AS-015]), but this request was resolved at paragraph 2.5.2 and ID20 in [REP2-019] and NE agreed with conclusion of no AEoI.	
	Criterion 5 – Bird Assemblages of International Importance: Wintering waterfowl Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance: Golden Plover, Red Knot, Dunlin, Black tailed Godwit, Redshank (passage) Shelduck, Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit (overwintering)	The potential for an AEoI on qualifying species due to potential airborne noise and visual disturbance during operation. No AEoI [Table 30 in APP-115]. See the response to this pathway above in this table for the Humber Estuary SPA.	Screening of the development from the foreshore, with phased removal of screens after two years.

	Criterion 5 – Bird Assemblages of International Importance: Wintering waterfowl Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance: Golden Plover, Red Knot, Dunlin, Black tailed Godwit, Redshank (passage) Shelduck, Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit (overwintering)	The potential for an AEoI on the direct loss of qualifying intertidal habitat. No AEoI [Table 8 in APP-115]. Please see the response to this pathway for the Humber Estuary SPA.	
The Wash and North Norfolk Coast SAC	Harbour seal *Phoca vitulina*	The potential for an AEoI on all relevant pathways on the qualifying feature of The Wash and North Norfolk Coast SAC. No AEoI [Table 37 in REP8-014]. Following a request from the ExQ BNE4.07, the Applicant provided an in-combination assessment for all relevant pathways on the qualifying feature of The Wash and North Norfolk Coast SAC within the fourth HRA Report [REP8-014]. NE in [REP9-018] agreed that AEoI can be excluded both alone and in-combination for underwater noise effects	

		from piling, capital and maintenance dredging and disposal during construction and operation.	

1.4.28. The ExA agrees with the conclusions listed in Table E above of no AEoI.

1.4.29. The following section sets out the matters of disagreement between the Applicant and other IPs in respect of the former's conclusion of no AEoI in relation to the European sites and their qualifying features that were unresolved at the Examination's close.

The Humber Estuary SAC

1.4.30. The Proposed Development would be sited within the Humber Estuary SAC. The qualifying features for which the SAC is designated and which have been carried forward for consideration of AEoI by the ExA are:

- Sandbanks which are slightly covered by sea water all the time;
- Estuaries;
- Mudflats and sandflats not covered by seawater at low tide;
- Atlantic salt meadows *Glauco-Pucci nellietalia maritimae*;
- Sea lamprey *Petromyzon marinus;*
- River lamprey *Lampetra fluviatilis*; and
- Grey seal *Halichoerus grypus*.

1.4.31. The following sections describe the principal HRA matters considered during the Examination and are structured around the potential effect pathways.

Physical loss of habitat

1.4.32. The Applicant's information to inform appropriate assessment for the physical loss of habitat and associated species is presented in section 4.3 of the fourth HRA Report for the Proposed Development alone and in section 4.13 for in-combination effects [REP8-014].

1.4.33. The Applicant assessed the potential for AEoI from the direct loss of intertidal habitat as a result of capital dredging and piling on the 'mudflats and sandflats not covered by seawater at low tide' feature.

1.4.34. The Proposed Development alone is estimated to result in the direct loss of 0.012 ha of intertidal habitat, due to:

- capital dredging causing a direct loss of 0.006 ha of intertidal habitat (which would become subtidal habitat due to deepening); and
- piling, which would cause a direct loss of 0.006 ha of intertidal mudflat habitat [REP8-014].

1.4.35. The Applicant's assessment puts the habitat loss at 0.000033% of the SAC's total footprint. For the 'mudflats and sandflats not covered by seawater at low tide' feature the loss of habitat is estimated to be 0.000128% of the SAC [paragraph 4.3.7 in REP8-014]. The Applicant considers the habitat loss would be comparable with the annual natural background changes in mudflat extent (estimated at 0.3 ha) [paragraph 4.3.9 in REP8-014]. No mitigation is proposed.

1.4.36. The Applicant concludes that the Proposed Development alone would have no AEoI on the SAC's intertidal mudflat and sandflat habitats on the basis that the loss in intertidal habitat would be *de minimis* (i.e. negligible and ecologically inconsequential) in extent and considered negligible in the context of the amount of similar habitat in the region [Table 7 in REP8-014].

1.4.37. The Applicant also assessed the potential for AEoI from the direct loss of qualifying subtidal habitat due to piling on the 'estuaries' qualifying feature. The Applicant estimates that alone the project would result in the direct loss of 0.0032ha of subtidal seabed habitat, representing 0.000087 % of the Humber Estuary SAC [paragraph 4.3.24 in REP8-014]. As per the intertidal habitat loss, the Applicant concludes that the Proposed Development alone would have no AEoI, stating that the loss is inconsequential and insignificant in terms of the conservation objectives [Table 9 in REP8-014]. Again, no mitigation is proposed.

1.4.38. NE [AS-015] considered that the conclusion of no AEoI may be drawn for the direct losses of intertidal and subtidal SAC habitats arising from the project alone (see ID13 and ID14 respectively) but sought additional information to support the conclusions of no AEoI in-combination with other plans and projects. In response to ExQ1 BNE.1.17 [PD-010] NE explained [REP2-019] that it sought further information on the scope of the in-combination assessment. NE considered the in-combination assessment should include relevant projects/plans within East Riding of Yorkshire, North Lincolnshire and North East Lincolnshire Council area, including the IGET.

1.4.39. Further information was sought by the ExA (BNE1.2(e) in [PD-010]) and there was extensive consideration of these matters during the Examination by the Applicant and NE [REP1-013], [REP2-019], [REP3-014], [REP5-025], [REP6-049] and [REP7-038]. RIES Q21 requested that the Applicant update the HRA Report to quantify the extent of in-combination effects wherever possible and that update was included in [Tables 37, 38 and 39 in REP7-014]. Table 37 [REP7-014] indicates that the anticipated total loss of intertidal habitat as a result of the Proposed Development and IGET is anticipated to be 0.044ha, representing approximately 0.000120% of the Humber Estuary SAC's area and approximately 0.000469% of the 'mudflats and sandflats not covered by seawater at low tide' feature of the SAC. Table 37 in [REP7-014] also indicates that marine piling would result in a combined loss of subtidal habitat of 0.083ha, representing approximately 0.000226% of the Humber Estuary SAC.

1.4.40. ExQ BNE4.05 [PD-022] asked NE if it was content with the Applicant's conclusion of no AEoI, following the updates to the in-combination assessment. At the close of Examination, NE's position [Appendix 3 in REP9-018] was that AEoI cannot be ruled out in-combination with other plans and projects for both the 'mudflats and sandflats not covered by seawater at low tide' feature and the 'Estuaries' feature of the Humber Estuary SAC (sub features A2.2 Intertidal Sand and muddy sand; and A2.3 Intertidal mud). NE in [REP9-018]:

- Acknowledges that the area of intertidal loss from the Proposed Development and IGET combined would be a small percentage of the Humber Estuary SAC's area.
- Stresses that the intertidal mudflats and sandflats features and estuaries sub-features all have a *"restore"* conservation objective for habitat extent and distribution, due to existing pressures. NE stated that mitigation for habitat loss is not possible at appropriate assessment meaning that any loss within this National Site Network habitat is therefore likely to have an AEoI unless it can be demonstrated that the loss would be ecologically inconsequential. NE considers the Applicant has provided insufficient evidence to demonstrate that the in-combination loss of habitat would be ecologically inconsequential because the area due to be lost is not *"impoverished"*, with the number of birds present indicating the area is not of low ecological value.

- Refers to other anthropogenic pressures already operating or under construction across a considerable proportion of the Humber Estuary SAC, namely Able Marine Energy Park and Stallingborough 3 flood risk management scheme and other planned activities (IGET and the proposed Humber Low Carbon Pipelines).

1.4.41. The Applicant's final representation on this matter [REP10-018] disputes NE's position on the value of the habitat (see bullet two above). The Applicant agrees that the wider mudflat is not of negligible ecological value for its foraging resource, however, it argues that the predicted intertidal losses relating to the capital dredging (direct) and changes in hydrodynamics (indirect) comprise narrow strips on the lower shore around the sublittoral fringe that currently provide almost no feeding opportunities for coastal waterbirds owing to the fact that they are completely submerged for over 99% of the time. In addition, the Applicant contends that the potential loss is considered to be of a similar scale to that which can occur due to natural background changes in mudflat extent in the local region [paragraph 5.5 in REP10-018]. The Applicant also stresses that the other pressures referred to by NE have been considered in the in-combination assessment of the HRA report, which concludes that in-combination effects are either considered insignificant or have already been (or will be) compensated for (in the case of Able Marine Energy Park and the Stallingborough 3 flood risk management scheme).

1.4.42. The Applicant in [REP10-018] and [AS-085] argued that if any in-combination effects of the type identified above could not be ruled out, the proposed IGET would address any such in-combination effects if they were to arise. Accordingly, the Applicant submitted there would be no need to consider derogation for the Proposed Development [paragraph 5.9 in REP10-018].

1.4.43. The ExA is considers that there would be no AEoI on the Humber Estuary SAC qualifying intertidal habitat (mudflats and sandflats not covered by seawater at low tide) and subtidal habitat (estuaries) qualifying features from the Development alone. However, based on the advice received from NE [REP9-018] the ExA is of the view that there is insufficient evidence to recommend that an AEoI can be excluded beyond reasonable scientific doubt arising from the Proposed Development in-combination with other plans and projects, most notably the proposed IGET.

Physical damage through disturbance and/or smothering of habitat

1.4.44. The Applicant's information to inform appropriate assessment for physical damage through disturbance and/or smothering of habitat is presented in section 4.4 of the HRA Report for the Proposed Development alone and section 4.13 for in-combination effects [REP8-014].

1.4.45. The Applicant has assessed the potential for AEoI arising from changes to qualifying habitats as a result of the removal of seabed material during capital dredging. This relates to the 'estuaries' and 'mudflats and sandflats not covered by seawater at low tide' features.

1.4.46. The Applicant estimates that a maximum of 190,000 cubic metres (m^3) of material would be removed as a result of the capital dredge and this would lead to changes for 6.8ha of subtidal habitat as a direct result of the physical removal of subtidal sediment, as well as a change to 0.003ha of intertidal which would become lower in elevation (but remain intertidal) due to the dredging of the slope of the dredge pocket [paragraphs 4.4.5 to 4.4.6 in REP8-014].

1.4.47. The assessment concludes that the subtidal habitat would be expected to be recolonised relatively rapidly by a broadly similar invertebrate assemblage to baseline conditions [Table 11 in REP8-014]. The Applicant also asserts that the predicted intertidal habitat change is considered to be in the range of local natural variability and considers this to be immeasurable in real terms when taking account of the variation in water levels, wave, climate and accuracy of the modelled bathymetry [Table 11 in REP8-014]. The Applicant also considers that the benthic communities would be expected to recolonise the area of intertidal change relatively rapidly [paragraph 4.4.15 in REP8-014]. On that basis the Applicant concluded there is no potential for AEoI on qualifying interest features as a result of this pathway [Table 11 in REP8-014].

1.4.48. Similarly to the direct loss of habitat pathway discussed above, NE [AS-015] considered that the conclusion of no AEoI may be drawn for the changes in SAC habitats arising from the project alone (see ID15), but sought additional information to support the conclusions of no AEoI in-combination with other plans and projects.

1.4.49. As explained above, the issue of the in-combination assessment was explored during the Examination, with revisions to the HRA Report's Tables 37, 38, 39 being submitted in [REP7-014]. Table 37 explains that capital dredging for the IGET would remove 4,000m³ of material over a maximum area of approximately 10,000 square metres (m^2). The capital dredge for the Proposed Development would remove approximately 190,000m³ of material within a maximum area of approximately 70,000m². The Applicant concludes that for both projects following dredging, it is considered likely that the dredge pocket would provide similar substrate for infaunal colonisation to that under pre-dredge conditions which would then be expected to be recolonised by a similar assemblage to baseline conditions. In addition, the Applicant predicts that sedimentation as a result of capital dredging for both projects would be highly localised and similar to background variability. The species recorded in both dredge footprint areas are considered tolerant to the predicted millimetric changes in deposition and therefore smothering effects are considered unlikely. The species recorded in the benthic invertebrate surveys are fast growing and/or have rapid reproductive rates and the Applicant therefore considers the populations would fully re-establish in less than two years and for some species, a few months [Table 37 in REP7-014].

1.4.50. ExQ BNE4.05 [PD-022] asked NE if it was content with the Applicant's conclusion of no AEoI, following the updates to the in-combination assessment. In its response set out in Appendix 3 in [REP9-018], NE reiterated that AEoI cannot be ruled out in-combination with other plans and projects for both the 'mudflats and sandflats not covered by seawater at low tide' feature and the 'Estuaries' feature of the Humber Estuary SAC.

1.4.51. With respect to the direct loss of habitat pathway discussed above, the ExA considers there is insufficient evidence to advise that an AEoI could be excluded beyond reasonable scientific doubt for the Proposed Development in-combination with other plans and projects, most notably the IGET. That view being based on NE's advice in [REP9-018].

Humber Estuary SPA

1.4.52. The Proposed Development is sited within the Humber Estuary SPA. The qualifying features for which the SPA is designated and the ExA has considered AEoI for are:

- Common Shelduck (Non-breeding) *Tadorna tadorna*

- Red Knot (Non-breeding) *Calidris canutus*
- Bar-tailed Godwit (Non-breeding) *Limosa lapponica*
- Black-tailed Godwit *Limosa limosa islandica* (Non-breeding)
- Dunlin Calidris *alpina alpina* (Non-breeding)
- Common Redshank *Tringa totanus* (Non-breeding)
- Waterbird assemblage

Airborne noise and visual disturbance (construction)

1.4.53. The Applicant assessed the potential for AEoI from airborne noise and visual disturbance arising from construction activities for the SPA's qualifying features listed above. The Applicant's assessment is presented in section 4.10, summarised in Table 30 (construction) for the Proposed Development alone, and in section 4.13 for in-combination effects in [REP8-014].

1.4.54. The assessment of noise disturbance was based on consideration of a 200 metre potential disturbance zone and noise levels below 55 decibel A-weighted (dBA) regarded as not being significant, while peak noise levels approaching 70dBA and greater were considered likely to cause an adverse effect. Figures 9.11, 9.12 and 9.13 in [APP-065] present the 200 metre buffer zones for the various construction activities.

1.4.55. The Applicant has proposed a series of mitigation measures secured through the draft DCO and included in the Offshore CEMP [REP8-012], including:

- winter marine construction restriction from 1 October to 31 March for construction activities associated with the approach jetty, linkspan, innermost pontoon and the inner finger pier;
- noise suppression system for piling on the outer finger pier;
- acoustic barrier/screening on marine construction barges;
- soft starts for all percussive piling activity; and
- cold weather construction restriction.

1.4.56. The qualifying features vary in terms of their abundances in the affected area and sensitivity to anthropogenic disturbance. Nevertheless, the Applicant concludes for all qualifying features that the mitigation measures should prevent waterbirds using the intertidal mudflat from being exposed to close range visual stimuli and limit exposure to loud noise above typical port background levels, thereby limiting the potential for disturbance or displacement. On this basis the Applicant concluded that there would be no potential AEoI for the qualifying interest features.

1.4.57. NE raised various concerns about the Applicant's assessment [AS-015]. NE objected to the Applicant's use of the Institute of Estuarine and Coastal Studies' Waterbird Disturbance Mitigation Toolkit (IECS, 2013) because the results have not been peer reviewed. In NE's view any assessment that relies on the toolkit may be inaccurate (see ID7 in [AS-015], ID7 in [REP2-019]) and response to ExQ1 BNE.1.15 in [REP2-019].

1.4.58. NE raised a number of concerns relating to the baseline data presented and the methodology applied, requesting:

- further information for bird usage data by month to indicate the expected number of passage and wintering seasons for SPA birds that would be affected during the construction phase [ID5 in [AS-015];

- further information providing context for the Sector B bird usage in the form of bird usage data for Immingham Sectors A and C, as well as across the frontage between Goxhill and Pyewipe [ID5 in [AS-015];
- further information on the importance of Sector B for the Humber Estuary SPA features and the factors contributing to that [ID7 of [AS-015];
- provision of expected noise levels during piling and other construction activities at 200 metres and 300 metres from the source (only noise levels at 600 metres and 1.8km were provided in the initial HRA Report) and further evidence to demonstrate that a 200 metre disturbance buffer would be sufficient to mitigate impacts of noise and visual disturbance from construction, particularly for the approach jetty, linkspan, innermost pontoon and inner finger pier [ID7 in [AS-015]; Appendix 1 in [REP6-048]; response to RIES Q32 in [REP7-038]; and response to ExQ4 BNE4.08 in [REP9-018];
- further detail on the expected period of each of the main construction activities (for example capital dredge, construction of jetties etc) and when in the construction phase were the worst impacts likely to occur; and
- further assessment around the potential energetic costs to birds as a result of disturbance.

1.4.59. NE argued that the percentage of intertidal mudflat affected by the development (within 200 metres) as a proportion of the estuary resource is not particularly relevant. As the area supports important numbers of any SPA bird species, the Application site should be considered as being of high importance [ID7 in [AS-015].

1.4.60. NE also requested that the impacts on feeding and roosting birds be assessed separately including consideration of whether there are other suitable structures available for roosting and whether additional mitigation measures would be required.

1.4.61. In addition, NE [ID7 in [AS-015] raised various concerns about the effectiveness of the mitigation measures proposed in relation to potential noise and visual disturbance on qualifying species. These concerns were elaborated on in response to ExQ BNE.1.16 in [REP2-019]. In [REP6-048] NE sought clarity about:

- Which mitigation measures would be applied for the three main marine construction activities.
- The effectiveness of each mitigation measure.
- The level of certainty that the mitigation measures would be effective.
- An assessment of the effectiveness of all mitigation measures identified for SPA birds.

1.4.62. In response to NE's concerns, the Applicant:

- Clarified in [REP1-013] and [REP7-027] that the IECS toolkit had only been used to provide contextual information for the assessment of disturbance and the ES and HRA Report do not apply the toolkit thresholds.
- Revised the HRA Report at D5 [REP5-020] to include *"Appendix A: Baseline Information to Inform the HRA"* providing further baseline data and information on the importance of Sector B (compared to Sectors A and C).
- Provided further justification for the use of a 200 metre buffer (paragraphs 4.10.18 -19) and to justify the no AEoI presented in Table 30.
- Confirmed in [REP1-013] that the assessment has assumed that the construction activities could occur at any time of year (as a worst case). Information on the construction programme was also included in the second HRA Report [paragraphs 1.2.5 to 1.2.7 in REP5-020].

- Provided further justification (summarised in paragraphs 4.10.11 and 4.10.12 of the HRA Report) to suggest that wading birds need to be disturbed relatively frequently before adverse effects (in terms of energetic costs or reduction in fitness) would be likely to occur.

1.4.63. NE confirmed in response to RIES Q29 [REP7-038] that its preference would be for references to the IECS toolkit to be removed from section 4.10, but it agrees the methodology is appropriate in this instance. In response to RIES Q30, NE confirmed [REP7-038] it was content with the bird data relating to Sector B provided by the Applicant.

1.4.64. With respect to roosting birds, the Applicant noted [REP1-013] that the only qualifying SPA/Ramsar species screened into the consideration for AEoI and recorded to be using port structures is turnstone. The Applicant considers [REP1-013] that turnstone would be expected to continue to use the port's structures during construction because: they are highly tolerant to disturbance; the marine infrastructure would not prevent any direct access to established roosting habitat; and there are a wide variety of alternative structures available in the nearby area for turnstone to utilise. In response to RIES Q34 [PD-018] the Applicant confirmed [REP7-028] that: the evidence on the sensitivity of turnstone to disturbance stimuli presented in Table 28 of the HRA Report applies to roosting as well as foraging; there are a wide variety of alternative structures available in the nearby area for this species to utilise; and no additional mitigation measures are required. NE confirmed in [REP2-020] and [REP8-038] that it was satisfied with the information provided in relation to potential disturbance for roosting SPA birds.

1.4.65. Regarding NE's concerns over the proposed mitigation measures, the Applicant's revised HRA Report [REP5-020] provided further detail on the effectiveness of these measured in Appendix E, specifically with respect to minimising the potential for AEoI on qualifying features in Table 30. The Applicant maintained that mitigation is not required for the works on the outer pier, and that the construction programme is designed appropriately as it is based upon and led by the mitigation measures (i.e. any activities likely to cause disturbance, including piling as well as all other construction activity on or near the foreshore (within 200 m of exposed intertidal) will not take place during the winter months) [REP8-020]. However, the Applicant did agree to the use of markers on the mudflat to improve certainty about distances and use of an Ecological Clerk of Works during the overwintering period (October to March inclusive) to ensure the agreed mitigation measures for the SPA birds are adhered to and that the appropriate guidance can be provided throughout the construction works [REP7-027] and [REP8-020].

1.4.66. Despite the additional information provided by the Applicant, at the Examination's close NE continued to dispute the conclusion of no AEoI as a result of this impact pathway [REP9-018]. NE acknowledged in [REP6-048] and [REP8-038] that 200 metres is an acceptable disturbance distance for most construction activities within a port environment where birds will show some habituation to human activity, but noted that Table 28 in the HRA Report identifies a number of species with moderate to high and moderate levels of sensitivity to disturbance (shelduck, curlew and bar-tailed godwit) that have been recorded with flight initiation distances (FID) over 200 metres. NE argued [REP8-038] that birds can experience increased stress/alertness resulting in less effective foraging and therefore a precautionary approach is recommended to noise disturbance distances, such as 300 metres from noise sources.

1.4.67. The Applicant in [REP7-027] and [REP9-013] noted that the more sensitive response rates typically occur in more remote areas where individual birds are less habituated to human activities. The Applicant stated that in the context of the Port of Immingham, bird responses at 200 metres would be expected to be mild and very infrequent given the evidence on the known habituation to existing port related activity and noise. The Applicant therefore considers a disturbance distance of 200 metres during the construction phase would be appropriate [REP9-013 and REP10-018]. The Applicant also appended the Ground Investigation Works: Ornithology Monitoring requested by NE to [REP10-018].

1.4.68. Given the specific context of the Port of Immingham and the evidence provided by the Applicant demonstrating habituation to existing port related activity and noise, the ExA considers that the application of a 200 metre disturbance distance would be appropriate in this instance. On this basis, the ExA is content that subject to the implementation of the mitigation measures secured in the dDCO, there would be no AEoI from airborne noise and disturbance for the Humber Estuary SPA qualifying features, both alone and in-combination. However, given NE's concerns about this matter, in Section 3.4 of this Recommendation the ExA has concluded that the SoST may wish to make further enquiries of the Applicant and NE.

Humber Estuary Ramsar site

1.4.69. The Proposed Development is sited within the Humber Estuary Ramsar site. The qualifying features for which the Ramsar site is designated and the ExA has considered AEoI for are:

- Criterion 1 – natural wetland habitats that are of international importance;
- Criterion 3 – supporting populations of plants and/or animal species of international importance;
- Criterion 5 – Bird Assemblages of International Importance;
- Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance; and
- Criterion 8 – Internationally important source of food for fish, spawning grounds, nursery and/or migration path.

1.4.70. The following sections, describe the principal HRA matters considered during the Examination and are structured around the potential effect pathways.

Direct loss of qualifying intertidal habitat

1.4.71. The Applicant's information to inform appropriate assessment for the physical loss of habitat and associated species is presented in section 4.3 for the Proposed Development alone (summarised in Table 7) and section 4.13 for in-combination effects in the fourth HRA Report [REP8-014].

1.4.72. The Applicant assessed the potential for AEoI from the direct loss of intertidal habitat on the Criterion 1 feature: "*natural wetland habitats that are of international importance: The site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks, estuarine waters, intertidal mud and sand flats, saltmarshes, and coastal brackish/saline lagoons*".

1.4.73. Discussion on this feature is provided within the 'physical loss of habitat' section within the Humber Estuary SAC above.

Changes to qualifying habitats as result of the removal of seabed material during capital dredging

1.4.74. The Applicant's information to inform appropriate assessment on qualifying species due to changes to waterbird foraging and roosting habitat as a result of the presence of marine infrastructure is presented in section 4.3 (summarised in Table 12 in [REP8-014]) in relation to the following two features:

- Criterion 5 – Bird Assemblages of International Importance: Wintering waterfowl; and
- Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance: Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Redshank (passage) Shelduck, Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit (overwintering).

1.4.75. Discussion on these features is provided within the 'physical damage through disturbance and/or smothering of habitat' section within the Humber Estuary SPA above.

Changes to qualifying habitats as result airborne noise and visual disturbance during construction

1.4.76. The Applicant's information to inform appropriate assessment on qualifying species due to changes to waterbird foraging and roosting habitat as a result of the presence of marine infrastructure is presented in section 4.10 (summarised in Table 30 in [REP8-014]) in relation to the following two features:

- Criterion 5 – Bird Assemblages of International Importance: Wintering waterfowl; and
- Criterion 6 – Bird Species/Populations Occurring at Levels of International Importance: Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Redshank (passage) Shelduck, Golden Plover, Red Knot, Dunlin, Black-tailed Godwit, Bar-tailed Godwit (overwintering).

1.4.77. Discussion on these features is provided within the 'airborne noise and visual disturbance (construction)' section within the Humber Estuary SPA above.

Direct loss of qualifying subtidal habitat

1.4.78. The Applicant's information to inform appropriate assessment on qualifying species due to the direct loss of qualifying subtidal habitat is presented in section 4.3 (summarised in Table 9 in [REP8-014]) in relation to the following feature:

- Criterion 1 – natural wetland habitats that are of international importance. The site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks; estuarine waters; intertidal mud and sand flats; saltmarshes; and coastal brackish/saline lagoons.

1.4.79. Discussion on these features is provided within the 'physical loss of habitat' section of the Humber Estuary SAC above.

The Wash and North Norfolk Coast SAC

1.4.80. The Proposed Development is sited approximately 20km from the Wash and North Norfolk Coast SAC. The only qualifying feature for which the SAC is designated that has been carried forward for consideration of AEoI by the ExA is S1365 harbour seal (*Phoca vitulina*). Please see Table E above for this feature.

AEoI Assessment Outcomes - Summary

Proposed Development alone

1.4.81. Some of the conclusions in the Applicant's HRA Report were examined through the ExA's asking of written questions and at ISHs. Based on the evidence before the ExA, it is content that AEoI on all qualifying features of European sites can be excluded from the Proposed Development alone.

In-combination effects

1.4.82. Based on the evidence before the ExA, it is content that there would be no AEoI for the following European sites from the Proposed Development, either alone or in-combination with other plans or projects:

- Humber Estuary SPA
- The Wash and North Norfolk Coast SAC

1.4.83. The ExA has found that an AEoI in-combination effect with other plans and projects cannot be excluded beyond reasonable scientific doubt for:

- Humber Estuary SAC
- Humber Estuary Ramsar site

1.5. ENGAGING WITH THE HRA DEROGATIONS

1.5.1. If the competent authority cannot conclude the absence of an AEoI, such that no reasonable scientific doubt remains, then under the Habitats Regulations a project can proceed only if there are no alternative solutions and there are IROPI why the project must be carried out. Suitable compensatory measures must also be secured to ensure the overall coherence of the UK National Site Network.

1.5.2. In response to ExQ BNE4.04 [PD-022] the Applicant submitted (on a without prejudice basis): an assessment of alternative solutions; a case for IROPI; and proposed compensatory measures in [REP8-033]. The proposed compensatory measures would compensate for:

- The intertidal habitat loss predicted to affect the qualifying interest features of the following European sites:
    - Humber Estuary SAC: Estuaries (H1130) and Mudflats and sandflats not covered by seawater at low tide (H1140); and
    - Humber Estuary Ramsar: Criterion 1 – natural wetland habitats that are of international importance. The site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks; estuarine waters; intertidal mud and sand flats; saltmarshes; and coastal brackish/saline lagoons.
- The subtidal habitat loss predicted to affect the qualifying interest of the following European sites:
    - Humber Estuary SAC: Estuaries (H1130); and
    - Humber Estuary Ramsar: Criterion 1 – natural wetland habitats that are of international importance. The site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks; estuarine waters; intertidal mud and sand flats; saltmarshes; and coastal brackish/saline lagoons.

1.5.3. The consideration of these matters within the Examination is discussed in the following sections.

1.6. CONSIDERATION OF ALTERNATIVES

1.6.1. The wider consideration of alternatives to the Proposed Development is included in section 3.2 of Chapter 3 of this Recommendation. Below consideration is given to alternatives having regard to the requirements of the Habitats Regulations.

1.6.2. Guidance from Defra *("Habitats regulations assessments: protecting a European site*", 2021) (the Guidance) advises alternative solutions must be financially, legally, and technically feasible. Alternatives must be capable of achieving the objectives of the Proposed Development and demonstrate a lesser adverse effect or avoid AEoI on the European site in question. The Guidance is referred to in the Applicant's HRA Derogations Case [REP8-033]. The ExA has considered the alternative solutions test in line with the requirements of the Habitats Regulations with reference to the guidance, the Application and the Examination submissions.

1.6.3. The Applicant's assessment of alternative solutions to deliver the objectives of the Proposed Development is presented in section 3 of the Derogations Report [REP8-033], with frequent reference to Chapter 4 of the ES *"Need and Alternatives"* [APP-040]. The assessment applied a sequential process to the consideration of alternatives, first identifying the objectives of the Proposed Development, then the potential harm to European sites, followed by consideration of alternative solutions and their feasibility. The Applicant concludes in [REP8-033] that:

- The only realistic broad option for meeting the need for the project and related objectives is to provide further Ro-Ro freight capacity within the Humber Estuary.
- The only potential solution to meeting the identified need and objectives of the project is the provision of new Ro-Ro freight capacity within the eastern extent of the Port of Immingham.
- The Proposed Development is the most appropriate form of development and there is no alternative to it with lesser environmental effects on the integrity of the European Sites.

1.6.4. No IPs raised any matters relating to the Applicant's assessment of alternative solutions presented in the HRA Derogations Report. However, the conclusions of the Stage 2 alternatives analysis contained within Chapter 4 of the ES [APP-040] was questioned by CLdN in [REP2-031] and [REP9-022]. The ExA has considered the cases made by the Applicant and CLdN about alternatives and the need for the Proposed Development in Chapter 3 of its Recommendation. The arguments surrounding the need case and alternatives are therefore not repeated here. In section 3.2 of the Recommendation the ExA has concluded that the Port of Killingholme (PoK) would comprise a technically feasible alternative to the proposed development. Subject to obtaining any required planning permissions or consents, development at the PoK could therefore be viewed as an alternative solution to the Proposed Development.

1.6.5. However, Stena Line's written and oral Examination submissions indicate it does not envisage any circumstances under which it would be able to reach commercial terms agreeable to it and CLdN. It appears therefore that the opportunities for achieving the broad objectives of the Proposed Development elsewhere are likely to be limited. That is because while the PoK could technically accommodate the

Proposed Development financially there is doubt as to whether Stena Line and CLdN could agree a new contract.

1.6.6. For the purposes of the Habitats Regulations when regard is paid to the Guidance the ExA is content that no financially feasible alternative location or site exists for the Proposed Development. The ExA has concluded in section 3.2 of the Recommendation that a need for the Proposed Development has been established, albeit not an urgent or compelling need, and that the 'do nothing' (i.e. bringing no additional port capacity forward option) is not a feasible alternative because it would not contribute to adding to market resilience. In HRA terms the do nothing option would fail to meet the objectives of the Proposed Development and is not considered to be an alternative solution.

1.6.7. As to alternative forms of development that could take place in the location of the Proposed Development, the Applicant has submitted [paragraph 3.59 in REP8-033] that the iterative design process (informed by consultation and environmental assessment work) has resulted in a form of development which meets the need and objectives and for which there is no alternative form of development that would have lesser environmental effects on the integrity of the European Sites.

1.6.8. The Applicant also notes [paragraph 3.60 in REP8-033] that the changes to the development brought forward through the change request do not change the conclusions on the assessment of effects on marine ecological receptors. That was not disputed by any IPs.

1.6.9. Taking into account this information, the ExA is content that no alternative design parameters are known to be implementable that would present a feasible alternative solution.

1.7. IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST (IROPI)

1.7.1. The need for the Proposed Development is considered in Section 3.2 of the Recommendation. This section considers the IROPI test under the requirements of the Habitats Regulations.

1.7.2. The Applicant's case for IROPI under the HRA process is presented in section 4 of its without prejudice Derogations Report [REP8-033]. Paragraphs 4.7 to 4.50 of that report set out the Applicant's reasoning for there being an imperative need for the Proposed Development, with reference to Chapter 4 of the ES [APP-040]. Paragraphs 4.54 to 4.58 set out the case that the reasons are overriding and in the public interest.

1.7.3. The Proposed Development would not affect any priority habitats or species (as identified in the Habitats Regulations) and therefore the IROPI can include consideration of social and economic reasons [paragraph 4.4 in REP8-033].

1.7.4. The case for Development Consent is addressed in Chapter 5 of the Recommendation. There the ExA has concluded that by providing additional Ro-Ro unit handling capacity the Proposed Development would contribute to meeting the need for additional port capacity identified in the National Policy Statement for Ports (NPSfP), most particularly by adding to the resilience of the Humber's ports.

1.7.5. The Applicant presents public interest benefits for the Proposed Development [paragraph 4.57 in REP8-033], comprising "*the provision of additional port infrastructure which:*

(i) provides an important contribution to capacity to cater for forecast future national demand in Ro-Ro freight;
*(ii) provides an appropriate important contribution to capacity to cater for forecast future demand in Ro-Ro freight on th*e Humber Estuary;
(iii) provides appropriate Ro-Ro port capacity in the right location – namely a location, the Humber Estuary, where the market wishes Ro-Ro freight capacity to be provided;
(iv) provides appropriate Ro-Ro port capacity that will improve competition and resilience in respect of such capacity and operations on the Humber Estuary, with corresponding benefits for these matters from a national perspective;
*(v) provides appropriate Ro-Ro capacity that will generate significant positive contrib*utions to the local and regional economy, and
(vi) provides appropriate Ro-Ro capacity that meets the needs of an existing key Ro-Ro operator on the Humber – Stena Line."

1.7.6. The ExA has explained in section 3.2 of the Recommendation that it has reservations about the Applicant's needs case. The ExA has concluded that whilst the Proposed Development benefits from the presumption in favour of granting consent for additional port capacity, the Applicant's need case has been somewhat overstated. That is because the Humber's existing Ro-Ro unit handling capacity has been underestimated by the Applicant and it is unclear how much freight the Proposed Development would handle. The ExA has also not been persuaded that the Proposed Development would add to competition amongst the Humber's ports. For reasons explained above the Proposed Development would not necessarily be the only way of meeting Stena Line's needs.

1.7.7. The ExA, however, agrees with the Applicant that the Proposed Development would add to resilience of the Humber's ports because it would provide additional freight handling capacity, for which there is support in the NPSfP. Accordingly, because the Proposed Development would contribute to improving port resilience the ExA is content that for the purposes of the Habitats Regulations an imperative need for the Proposed Development in the public interest has been demonstrated.

1.7.8. In addition to the imperative and public interest aspects, the ExA must consider the 'overriding' element of the IROPI derogation test. Interwoven into this consideration are the difficulties presented by the conflicting opinion on the significance of predicted adverse effects. The Applicant's case returns to the arguments set out in section 1.4 above, that the habitat losses are considered ecologically inconsequential and would not result in a change in ecological function or the overall integrity of the habitat or species they support [paragraph 4.56 in REP8-033]. That is contrasted against the benefits of the scheme outlined above. The Applicant's case is that the benefits "*clearly outweigh and thus override any potential harm to be caused by the project on the European sites*" [paragraph 4.58 in REP8-033].

1.7.9. The NPSfP explains that the importation and exportation of goods via ports is important to the UK's economy. Given that context because the Proposed Development would enhance port resilience by assisting with the importation and exportation of goods and thus be beneficial to the national economy, the ExA considers that is a matter of overriding importance for the consideration of IROPI in this instance. The ExA therefore considers that IROPI for the Proposed Development has been demonstrated.

1.8. COMPENSATORY MEASURES

1.8.1. The Applicant's proposed package of (without prejudice) compensatory measures is set out in the HRA Derogation Report [section 5 in REP8-033]. Having regard to NE's concerns, the ExA considers that the compensatory measures set out in the Applicant's HRA Derogation Report would be necessary to address the in-combination effects identified in paragraphs 2.1.15 to 2.1.35 above.

1.8.2. The Applicant has submitted [paragraph 5.9 in REP10-018] that even if any in-combination effects for the Humber Estuary SAC could not be ruled out, the proposed IGET would address any such in-combination effects if they were to arise and therefore does not consider that there is any need to consider derogation in respect of the Proposed Development. The ExA is concerned by the Applicant's suggestion that a separate project, the IGET, should be responsible for providing the compensatory measures that might be necessary to address in-combination effects arising from the Port of Immingham's extension.

1.8.3. The proposed compensatory habitat would be provided off site at the Outstrays to Skeffling Managed Realignment Scheme (OtSMRS). The OtSMRS has planning permission and is currently being implemented on land north of the Humber within the East Riding of Yorkshire Council's (ERYC) area. The OtSMRS will deliver approximately 175ha of intertidal habitat (mudflats and saltmarsh) and 75ha of wet grassland. The Applicant would allocate 1ha of the OtSMRS as compensation for the Proposed Development. Mudflat habitat would be provided at a ratio of 3:1, requiring an area of 0.381 ha to be created. Due to the difficulties with creating small habitat parcels 1ha of the OtSMRS would be allocated to the Proposed Development and of that land around 0.61ha should be considered as an enhancement rather than compensation.

1.8.4. In paragraph 5.28 of the Derogation Report [REP8-033] it is explained that the 1ha of OtSMRS land would be secured by means of the Applicant entering into a legal agreement with the ERYC, the local planning authority where the OtSMRS is located. At paragraph 5.36 of the Derogation Report [REP8-033] it is further explained that the delivery of the compensatory measures would be included as a requirement of a made DCO. In response to ExQ1 in the ExA's Rule 17 letter dated 22 January 2024 [PD-031], the Applicant provided suggested wording for such a requirement [paragraphs 1.59 and 1.60 in AS-085].

1.8.5. NE advised in [Appendix 3 of REP9-018] it agreed that the proposed compensatory ratio was appropriate and that "*the proposed compensation is likely appropriate in terms of its nature, scale and deliverability to address the adverse effects on the intertidal habitat feature of the Humber Estuary SAC*".

1.8.6. However, NE also noted that there have been challenges with previous attempts to create mudflat habitat and caveat its position based on it having had limited opportunity to fully review the proposed measures (given the timing of the submission at the end of the Examination) [REP9-018]. NE expressed a view that it would be appropriate for the Applicant to be required to submit confirmation demonstrating compensation delivery once the habitat has been established [REP9-018].

1.8.7. The ExA acknowledges NEs concerns and therefore recommends that NE should advise the SoST when the 1ha of the OtSMRS allocated to the Proposed

Development had been delivered successfully. The ExA recommends that delivery of the compensatory habitat at the OtSMRS should be secured through the SoST and the Applicant entering into a section 106 agreement under the Town and Country Planning Act 1990 (the s106 agreement). The ExA has further recommended that the s106 agreement should be concluded during the decision period for this Application. Those recommendations have been made because the SoST, rather than ERYC, would be the competent authority for the purposes of fulfilling the Habitats Regulations' requirements when the Application is determined. Section 3.4 in Chapter 3 of this Recommendation sets out in greater detail the ExA's recommended approach to securing delivery of the compensatory habitat.

ExA Conclusions on Compensatory Measures

1.8.8. Taking all of the above considerations into account, the ExA considers that there is sufficient information for the SoST to establish that appropriate compensatory measures can be implemented, in order to fulfil their duty under the requirements of the Habitats Regulations. The ExA concludes that the overall package of proposed compensation measures is feasible, appropriate and would ultimately ensure the overall coherence of the UK National Site Network.

1.9. HRA CONCLUSIONS

1.9.1. The Proposed Development is not directly connected with, or necessary to, the management of a European site. The Proposed Development's implications with respect to adverse effects on potentially affected sites must therefore be assessed by the SoST.

1.9.2. Four European Sites and their qualifying features were considered in the Applicant's assessment of LSE:

- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar; and
- Greater Wash SPA.

1.9.3. LSE were identified for all of these sites both from the Proposed Development alone and in-combination with other plans or projects.

1.9.4. The methodology and outcomes of the Applicant's screening for LSE on European sites was subject to consideration and scrutiny during the Examination. Table C of this Appendix sets out the European sites and qualifying features for which the ExA considers LSE could not be excluded. As such, the ExA is content that the correct European sites and qualifying features have been identified for the purposes of assessment and that all potential impacts which could give rise to significant effects have been identified within the fourth HRA Report [REP8-014].

1.9.5. The ExA's findings are that, subject to the mitigation measures to be secured in the rDCO, AEoI for the Humber Estuary SPA and the Wash and North Norfolk Coast SAC from the Proposed Development when considered alone or in-combination with other plans or projects can be excluded from the impact-effect pathways assessed.

1.9.6. However, the ExA's findings, based on advice received from NE, are that AEoI cannot be excluded beyond reasonable scientific doubt for the Humber Estuary SAC and the Humber Estuary Ramsar from physical loss of habitat and physical

damage through disturbance and/or smothering of habitat from the Proposed Development in-combination with other projects.

1.9.7. The Applicant has submitted an assessment of alternative solutions, a case for IROPI and proposed compensation measures. They are included in the *"without prejudice"* HRA Derogation Report [REP8-033] submitted by the Applicant at the request of the ExA. The matters of alternative solutions, IROPI and compensation were considered during the Examination. The ExA is content, given the contract renewal disagreement between Stena Line and CLdN concerning the PoK, that for the purposes of the Habitats Regulations no financially feasible alternative location or site has been shown to exist that would represent a lesser adverse effect to the Proposed Development.

1.9.8. The NPSfP explains that the importation and exportation of goods via ports is important to the UK's economy. Given that context as the Proposed Development would enhance port resilience by assisting with the importation and exportation of goods and thus be beneficial to the national economy, the ExA considers that is a matter of overriding importance for the consideration of IROPI in this instance. The ExA therefore considers that IROPI for the Proposed Development has been established.

1.9.9. The findings of the ExA are that the compensation package as proposed is feasible and appropriate and can be adequately secured by way of the SoST and the Applicant entering into a s106 agreement. Any s106 agreement would need to be concluded between the SoST and the Applicant during the decision period.

APPENDIX D: THE RECOMMENDED DCO

202[] No.

INFRASTRUCTURE AND PLANNING

Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 202[X]

Made - - - -	***
Laid before Parliament	***
Coming into force	***

CONTENTS

SCHEDULES

An application has been made to the Secretary of State under section 37 of the Planning Act 2008(**a**) ("the 2008 Act") in accordance with the Infrastructure Planning (Applications and Prescribed Forms and Procedure) Regulations 2009(**b**), for an order granting development consent.

The application was examined by a Panel of three members ("the Panel") pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The Panel, having examined the application with the documents that accompanied the application and the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn and the report and recommendations made by the Panel, has decided to make an Order granting development consent for the development described in the application [with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application].

The Secretary of State, in exercise of the powers conferred by sections 114, 115, 120 and 122 of, and paragraphs 1 to 3, 10 to 16, 24, 26, 30A to 30B, 36, and 37 of Part 1 of Schedule 5 to, the 2008 Act, makes the following Order—

(**a**) 2008 c. 29. Parts 1 to 7 were amended by Chapter 6 of Part 6 of the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/752 and S.I. 2018/378.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.

PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order[] and comes into force on [XXX] 202[X].

Interpretation

2.—(1) In this Order—

"the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847(**a**);

"the 1961 Act" means the Land Compensation Act 1961(**b**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**c**);

"the 1980 Act" means the Highways Act 1980(**d**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**e**);

"the 1990 Act" means the Town and Country Planning Act 1990(**f**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**g**);

"the 2008 Act" means the Planning Act 2008(**h**);

"the 2009 Act" means the Marine and Coastal Access Act 2009(**i**);

"the 2009 Regulations" means the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**j**);

"ABP Statutory Harbour Authority" means the undertaker in its capacity as the local lighthouse authority and as the statutory harbour authority for the Port of Immingham including that part of the estuary of the River Humber immediately adjacent to the port;

"area of jurisdiction" means the area within the harbour limits;

"area of seaward construction activity" means the area of the sea within the Order limits;

"authorised development" means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

"the berthing pocket" means the area bounded by the co-ordinates provided in the deemed marine licence at paragraph 5(2) of Part 1 to Schedule 3 and shown on sheets 1 and 2 of the works plans;

"the Board" means the North East Lindsey Internal Drainage Board;

"the book of reference" means the entire document with that name included in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

(**a**) 1847 c.27.
(**b**) 1961 c.33.
(**c**) 1965 c56.
(**d**) 1980 c.66.
(**e**) 1981 c.66.
(**f**) 1990 c.8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). There are other amendments to the 1990 Act which are not relevant to this Order.
(**g**) 1991 c.22.
(**h**) 2008 c.29.
(**i**) 2009 c.23.
(**j**) S.I.2009/2264.

"business day" means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the banking and Financial Dealings Act 1971(**a**);

"Chart Datum" in relation to any dredging is 3.9 metres below ordnance datum (Newlyn);

"commence" means the commencement of any material operation as defined in section 56 (4)(**b**) of the 1990 Act forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purposes of assessing ground conditions, the receipt and erection of construction plant and equipment, the erection of any temporary means of enclosure, the temporary display of site notices or advertisement and "commencement" is to be construed accordingly;

"construct" includes execution, placing, altering, replacing, relaying and removal and "construction" is to be construed accordingly;

"Council" means North East Lincolnshire Council, or any successor authority, acting in its capacity as the local planning authority;

"the deemed marine licence" means the marine licence granted by article 30 (deemed marine licence);

"the dock master" means the dock master for the Port of Immingham statutory harbour authority area;

"the drainage plan" means the entire document with that name included in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the drainage plan for the purposes of this Order;

"electronic transmission" means a communication transmitted by means of an electronic communications network or by other means provided it is in an electronic form;

"the engineering sections, drawings and plans" means the plans with that name included in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the engineering sections, drawings and plans for the purposes of this Order;

"the environmental statement" means the entire documents with that name included in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the environmental statement for the purposes of this Order;

"the general arrangement plans" means the plans with that name included in Schedule 7 (plans and documents to be certified) certified as the general arrangement plans by the Secretary of State for the purposes of this Order;

"the harbour master" means the harbour master for the Statutory Conservancy and Navigation Authority;

"HGV" means a heavy goods vehicle;

"HGV driver" means the driver of an HGV for the purposes of transferring freight associated with the commercial ro-ro operation of the authorised development;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"the land plans" means the plans with that name included in Schedule 7 (plans and documents to be certified) certified as the land plans by the Secretary of State for the purposes of this Order;

"the lead local flood authority" means North East Lincolnshire Council;

"the level of high water" means the level of mean high-water springs;

"the lighting plan" means the entire document with that name included in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the lighting plan for the purposes of this Order;

(**a**) 1971 c.80.

(**b**) As amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 56 but none are relevant to this Order.

"the limits of deviation" means the limits of deviation referred to in article 7;

"maintain" includes inspect, repair, adjust, alter or remove and any derivative of "maintain" is to be construed accordingly;

"mean high water level" means the level which is half way between mean high water springs and mean high water neaps;

"mean high water neaps" means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tides at its least;

"mean high water springs" means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tide is at its greatest;

"the MMO" means the Marine Management Organisation;

"Natural England" means the adviser to the Government for the natural environment in England;

"the navigational risk assessment" means the entire document with that name included in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the navigational risk assessment for the purposes of this Order;

"the Order land" means the land on the land plans and described in the book of reference;

"Order limits" means the Order limits shown on the works plans;

"owner", in relation to land, has the same meaning as in section 7 of the 1981 Act;

"passengers" means private individuals travelling by vessel from the authorised development boarding by vehicular transport and not associated with the commercial ro-ro operation and does not include HGV drivers;

"the Port of Immingham" means the statutory port estate including the Port of Immingham statutory harbour authority area;

"public communications provider" has the same meaning as in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(**a**);

"public utility undertaker" means a gas, water, electricity or sewerage undertaker;

"the River Humber" means the tidal estuary from its mouth at the Spurn Peninsula to its confluence with the rivers Ouse and Trent;

"ro-ro" is an acronym for 'Roll on/Roll off' which is a shipping industry term applied to a category of unitised cargo, the embarkation and disembarkation of which is facilitated by a wheeled transfer via a ramp mounted within the structure of the vessel;

"ro-ro unit" means any item of wheeled cargo (whether or not self-propelled);

"the Statutory Conservancy and Navigation Authority" means statutory conservancy and navigation authority for the river Humber (as successor to the Conservancy Commissioners established under the Humber Conservancy Act 1868(**b**)) and including in its role as competent harbour authority and local lighthouse authority for its statutory area;

"statutory undertaker" means any statutory undertaker for the purposes of section 127(8) of the 2008 Act;

"tidal works" means so much of any of the works as is on, under or over tidal waters or tidal lands below the level of high water;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"the UK marine area" has the meaning given to it in section 42 (UK marine area) of the 2009 Act;

"undertaker" means Associated British Ports ("ABP") company number ZC000195 registered at 25 Bedford Street, London, WC2E 9ES who has the benefit of this Order in accordance

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(**a**) 2003 c. 21.
(**b**) 1861 c.lviii.

with section 156 of the 2008 Act and articles 8 (benefit of Order) and 9 (transfer benefit of Order, etc.);

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"the WEMP" means the woodland enhancement management plan included in Schedule 7 (plans and documents to be certified) for the future management of that area of land referenced in Schedules 1 and 2 and certified as the WEMP by the Secretary of State for the purposes of this Order; and

"the works plans" means the plans with that name included in Schedule 7 (plans and documents to be certified) certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the enjoyment of interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All measurements of distances, directions, lengths and volumes referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters, with or without numbers, are to be construed as references to points so lettered on the plan to which the reference applies.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

Disapplication and modification of legislative provisions

3.—(1) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development—

(a) section 23 (prohibition on obstructions, etc. in watercourses) of the Land Drainage Act 1991(**a**);

(b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5 of Schedule 25 (byelaw - making powers of the appropriate agency) to the Water Resources Act 1991(**b**);

(c) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**c**) in respect of a flood risk activity only.

(2) As from the date on which the authorised development is commenced any conditions of a planning permission granted under section 57 of the 1990 Act and which relate to the Order limits

(**a**) 1991 c.59.

(**b**) 1991 c.57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c.16), section 84 of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c.23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c.29) and S.I.. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c.25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the Marine and Coastal Access Act 2009 and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(**c**) S.I. 2016/1154.

cease to have effect to the extent they are inconsistent with the authorised development or anything done in strict accordance with or approved under the requirements set out in Schedule 2 (requirements).

(3) Sections 25 and 26 of the River Humber Conservancy Act 1852(**a**), section 9 (licences for execution of works) of the Humber Conservancy Act 1899(**b**) and section 6(2) (no erections in Humber below river lines or without licence above river lines) and section 8 (sand not to be removed from bed or foreshore of River Humber) of the Humber Conservancy Act 1905(**c**) do not apply to the authorised development.

Incorporation of the 1847 Act

4.—(1) With the exception of sections 5 to 25, 30, 35, 36, 38, 39, 43, 47 to 50, 53 to 55, 59 to 64, 66, 67, 69, 71 to 73, 77 to 102 and 104, the 1847 Act is incorporated in this Order, subject to the modifications stated in sub-paragraph (2).

(2) For the purposes of the 1847 Act, as so incorporated—

(a) the expression "the special Act" means this Order;

(b) the expression "the harbour, dock, or pier" means the works;

(c) the expression "the harbour master" means, in relation to the works, the dock master;

(d) for the meaning assigned to the word "vessel" by section 3 of the 1847 Act there shall be substituted the definition of the word "vessel" contained in article 2(1) above;

(e) section 53 of the 1847 Act shall not be construed as requiring the harbour master to serve upon the master of a vessel a notice in writing of his directions but such directions may be given orally or otherwise communicated to such master; and

(f) provided that a notice which is not in writing shall not be deemed to be sufficient unless in the opinion of the court before which any case may be heard it was not reasonably practicable to serve a written notice on the master of the vessel.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

6.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order, provides otherwise.

(2) This article does not authorise any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

Limits of deviation

7. In carrying out the authorised development comprising the works numbered in Schedule 1 (authorised development) the undertaker may—

(**a**) 1852 c. cxxx.
(**b**) 1899 c. cci.
(**c**) 1905 c. clxxix.

(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans for that work; and

(b) deviate vertically from the levels of the authorised development shown on the engineering sections, drawings and plans:

(i) to any extent upwards as the undertaker considers to be necessary or convenient but not exceeding two metres; or

(ii) save for Work No. 2 in Schedule 1 (authorised development), to any extent downwards as the undertaker considers to be necessary or convenient.

Benefit of Order

8. Subject to article 9 (transfer of benefit of Order etc.) the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

Transfer of benefit of Order, etc.

9.—(1) The undertaker may, with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefits of the provisions of this Order (excluding the deemed marine licence) that apply to that transferor and such statutory rights as may be agreed between the transferor and the transferee; or

(b) grant to another person ("the grantee") for a period agreed between the transferor and the grantee any or all of the benefit of the provisions of this Order that apply to that transferor and such related rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in the provisions of this Order that apply to the undertaker must include references to the transferee or the grantee, as the case may be.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) For the avoidance of doubt sections 72(7) and (8) of the 2009 Act shall continue to apply to all parts of the deemed marine licence.

PART 3

POWERS OF ACQUISITION

Compulsory acquisition of rights

10.—(1) The undertaker may acquire such rights over the Order land as detailed in the book of reference as may be required for the carrying out and use of the authorised development, by creating them as well as acquiring rights already in existence.

(2) Subject to section 8 of the 1965 Act (other provisions as to divided land), as modified by Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Time limit for exercise of powers of compulsory acquisition

11. After the end of the period of 5 years beginning with the day on which this Order comes into force—

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 15 (application of the 1981 Act),

in relation to any part of the Order land.

Private rights over land

12.—(1) Subject to the provisions of this article and to Schedule 4 (protective provisions), all private rights over land subject to compulsory acquisition under this Order are extinguished—

(a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry onto the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

(a) from the date of the acquisition of the right or the benefit of the restrictive covenant being imposed in favour of the undertaker, whether compulsorily or by agreement;

(b) on the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act; or

(c) on the commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

(3) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act applies, or where article 16 (statutory undertakers and operator of the electronic communications code network) applies.

(5) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before:

(i) the completion of the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any rights specified in this notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(6) If any agreement as is referred to in paragraph (6)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(7) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

13.—(1) Any authorised activity which takes place on land within the Order land (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article "authorised activity" means—

(a) the erection, construction, operation or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by this Order; or

(c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation:

(a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where:

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired:

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

Modification of Part 1 of the 1965 Act

14.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(**a**) (extension of time limit during challenge) for "section 23" of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4 substitute "section 118(**b**) (legal challenges relating to application for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 11 (time limit for exercise of powers of compulsory acquisition) of the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 202[]".

(3) In section 11A(**c**) (powers of entry: further notice of entry)—

(a) in subsection (1)(a) after "land" insert "under that provision";

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 11 (time limit for exercise of powers of compulsory acquisition) of the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 202[]".

Application of the 1981 Act

15.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) substitute—

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.".

(4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from ", and this subsection" to the end.

(5) Omit section 5A(**d**) (time limit for general vesting declaration).

(6) In section 5B(**e**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 11 of the associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 20[ ]".

(7) In section 6(**f**) (notices after execution of declaration), in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134(g)(notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(8) In section 7 (constructive notice to treat) in subsection (1)(a), omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)".

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 14 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

(**a**) As inserted by section 202(1) of the Housing and Planning Act 2016.
(**b**) As amended by paragraphs 1, 58 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c.20) and section 92 as inserted by section 186(3) of the Housing and Planning Act 2016 (4) of the Criminal Justice and Courts Act 2015 (c.2).
(**c**) As inserted by section 186(3) of the Housing and Planning Act 2016.
(**d**) Inserted by section 182(2) of the Housing and Planning Act 2016.
(**e**) As inserted by section 202(2) of the Housing and Planning Act 2016.
(**f**) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.
(**g**) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and 5.1. 2017/16.

Statutory undertakers and operator of the electronic communications code network

16. Subject to the provisions of article 10 (compulsory acquisition of rights), Schedule 4 (protective provisions), the undertaker may—

(a) exercise the powers conferred by article 10 (compulsory acquisition of rights) in relation to so much of the Order land as belongs to statutory undertakers, the operator of the electronic communications code network, public communications providers and public utility undertakers;

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers, the operator of the electronic communications code network, public communications providers and public utility undertakers over or within the Order land; and

(c) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers, public utility undertakers and other like bodies within the Order land.

Recovery of costs of new connection

17. Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 16 (statutory undertakers and operator of the electronic communications code network) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

Disregard of certain interests and improvements

18.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the construction of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "the relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed of the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

Set-off for enhancement in value of retained land

19.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 10 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

(a) any increase in the value of the land over which the new rights are required; and

(b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

20. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

PART 4

OPERATIONAL PROVISIONS

Operation and use of development

21.—(1) The undertaker may operate and use the authorised development as harbour facilities in connection with the import and export of ro-ro units to include all forms of accompanied and unaccompanied wheeled cargo units from or to the public highway up to a maximum of 1,800 ro-ro units per day together with occasional use by passengers travelling by vehicle when space is available on a departing vessel.

(2) On those occasions where space is available on a departing vessel—

(a) no more than 100 passengers per day may depart by vessel from the authorised development; and

(b) all such passengers must board the departing vessel or vessels by means of vehicular transport.

Power to appropriate

22.—(1) Regardless of anything in section 33 of the 1847 Act (harbour, dock and pier to be free to the public on payment of rates) or any other enactment, the undertaker may from time to time set apart and appropriate any part of the authorised development for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the undertaker may think fit.

(2) No person or vessel may make use of any part of the authorised development so set apart of appropriated without the consent of the dock master, and—

(a) the dock master may order any person or vessel making use of the authorised development without such consent to be removed;

(b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, extend and apply with the necessary modifications to any such vessel.

Planning legislation

23.—(1) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

(2) It does not constitute a breach of the terms of this Order if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits in accordance with any planning permission granted under the 1990 Act (including a planning permission granted under article 3 (permitted development) and Class B (dock, pier,

harbour, water transport, canal or inland navigation undertakings) of Part 8 of Schedule 2 or Class A (development under local or private Acts or Order) of Part 18 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(**a**)).

PART 5

SUPPLEMENTAL POWERS

Discharge of water

24.—(1) Subject to the provisions of this article, the undertaker may use any watercourse or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make opening into, and connections with, the watercourse or drain.

(2) Any dispute arising from the making of connections to or the use of a watercourse or a drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(**b**) (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse or drain in connection with the authorised development except with the consent of the Board and in accordance with the provisions of Part 13 of Schedule 4 (protective provisions).

(4) The undertaker must not make any opening into or connections with any watercourse of drain in connection with the authorised development or lay down, take up and alter pipes on any land within the Order limits or carry out any specified except in accordance with the provisions of Part 13 of Schedule 4 (protective provisions) and in accordance with plans approved by the Board in accordance with the provisions of Part 13 of Schedule 14 (protective provisions).

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension and the authorised development does not obstruct the path of the Habrough Marsh Drain outfall channel.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016 in respect of a water discharge activity or groundwater activity(**c**).

(7) The undertaker must not in carrying out or maintaining any works under this article, damage or interfere with the bed or banks of any watercourse or drain without the prior written consent of the Board.

(8) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991 (offences of polluting water)(**d**).

(9) The undertaker must monitor the path of the Habrough Marsh Drain outfall channel and report to the Board annually for a period of 10 years whether any substantial changes to the path of the Habrough Marsh Drain outfall channel have occurred as a result of the authorised development, such monitoring to be based on appropriate methods.

(10) In this article other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**e**) have the same meaning as in that Act or other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

(**a**) S.I. 2015/596.
(**b**) 1991 c.56.
(**c**) S.I. 2016/1154.
(**d**) 1991 c.57.
(**e**) 1991 c.57.

Powers to dredge

25.—(1) For the purpose of constructing, operating and maintaining Work No.2, the undertaker may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore of the River Humber within the limits and to the depth specified for that work in accordance with the deemed marine licence.

(2) Subject to paragraph (3), the undertaker may use, deposit or otherwise dispose of materials dredged or removed (other than a wreck within the meaning of Part 9 (salvage and wreck) of the Merchant Shipping Act 1995(**a**) as the undertaker thinks fit.

(3) No materials dredged under the powers of this Order may be disposed of in the UK marine area except in accordance with an approval from the MMO under the deemed marine licence or under any other marine licence granted by the MMO.

Authority to survey and investigate the land

26.—(1) The undertaker may for the purposes of this Order enter on—

(a) any land within the Order limits; and

(b) where reasonably necessary, any land which is adjacent to but outside the Order limits, or which may be affected by the authorised development, and—

(i) survey or investigate the land;

(ii) without limitation to the scope of sub-paragraph (i), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(iii) without limitation to the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and

(iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every occupier of the land.

(3) Any person entering the land under this article on behalf of the undertaker —

(a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) The undertaker must compensate the occupiers of the land for any loss or damage arising by reason of the exercise of the power conferred by this article, such compensation to be determined in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Section 13(**b**) (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125(**c**) (application of compulsory acquisition provisions) of the 2008 Act.

(**a**) 1995 c.21.

(**b**) 1965 c. 56. Section 13 was amended by sections 62(3) and 139(4) to (9) of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Upper Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**c**) 2008 c. 29. Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

Protective works to buildings

27.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 35 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development;

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development; and

(c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

Agreement with highways authority

28.—(1) A highway authority and the undertaker may enter into an agreement in writing with respect to—

(a) the strengthening or improvement of any highway under the powers conferred by this Order; or

(b) such other works as the parties may agree.

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) provide for the highways authority to carry out any function under this Order which relates to the highway or land in question;

(b) include an agreement between the undertaker and the highways authority specifying a reasonable time for completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 6

MISCELLANOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

29.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**a**) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 of the Control of Pollution Act 1974(**b**) (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) of that Act; or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974(**c**) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82

(**a**) 1990 c. 43.
(**b**) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to this Order.
(**c**) 1974 c. 40.

of the Environmental Protection Act 1990(**a**)), does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

(3) In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990(**b**) (offence of contravening abatement notice) in respect of a statutory nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) or (ga)(**c**) (noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b)(**d**) of that Act, it is a defence to show that the nuisance—

(a) is a consequence of the construction, operation, maintenance or use of the authorised development; and

(b) cannot reasonably be avoided.

Deemed marine licence

30. The undertaker is granted a deemed marine licence under Part 4 of the 2009 Act (marine licensing) to carry out the activities specified in Part 1 of Schedule 3 (deemed marine licence), subject to the licence conditions set out in Part 2 of that Schedule.

Trees subject to a Tree Preservation Order

31.—(1) For the purposes only of the authorised development, the undertaker may fell or lop any tree or shrub as identified in the WEMP or cut back roots and undertake such other approved related works in accordance with the WEMP certified under article 33 (certification of plans and documents etc.) of the Order by the Secretary of State.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub.

(3) The duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply.

(4) The authority given by paragraph (1) constitutes a deemed consent under the provisions of North East Lincolnshire Council No. 107 (Long Wood, Laporte Road, Stallingborough) Tree Preservation Order 2002.

Application of Landlord and Tenant Law

32.—(1) This article applies to any agreement entered into by the undertaker under article 9 (transfer of benefit of Order, etc.) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

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(**a**) 1990 c. 43.
(**b**) 1990 c. 43.
(**c**) Section 79(1)(ga) was inserted by section 2(1) and (2)(b) of the Noise and Statutory Nuisance Act 1993.
(**d**) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Certification of plans and documents etc.

33.—(1) As soon as practicable after the making of this Order, the undertaker must, submit copies of each of the plans and documents as set out in Schedule 7 (plans and documents to be certified) to the Secretary of State for certification that they are true copies of those plans and documents.

(2) Where any plan or document set out in Schedule 7 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan and document required to be certified under paragraph (1).

(3) A plan or document so certified will be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of Notices

34.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(**a**) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

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(**a**) 1978 c.30.

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

35.—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the MMO is required under any provision of this Order is not subject to arbitration.

Saving for Trinity House

36. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Provision against danger to navigation

37. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker must as soon as reasonably practicable notify Trinity House, the ABP Statutory Harbour Authority and the Statutory Conservancy and Navigation Authority (as relevant) and must lay down such buoys, exhibit such lights, and take such other steps for preventing danger to navigation, as Trinity House, the ABP Statutory Harbour Authority or Statutory Conservancy and Navigation Authority (as relevant) may from time to time direct.

Lights on tidal works during construction

38. The undertaker must at or near—

(a) a tidal work, including any temporary work; or

(b) any plant, equipment or other obstruction placed in connection with any authorised development, within the area of seaward construction activity in the River Humber,

during the whole time of the construction, alteration, replacement or extension, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to

navigation as Trinity House, the ABP Statutory Harbour Authority or Statutory Conservancy and Navigation Authority (as relevant) may from time to time direct.

Permanent light on tidal works

39. After a completion of a tidal work, the undertaker must at the outer extremity thereof exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House, the ABP Statutory Harbour Authority or Statutory Conservancy and Navigation Authority (as relevant) may from time to time direct.

Crown Rights

40.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent given under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Protective Provisions

41. Schedule 4 (protective provisions) has effect.

Byelaws relating to the authorised development

42.—(1) The Immingham Dock Byelaws 1929 shall be deemed to apply in relation to the authorised development and may be enforced by the undertaker accordingly until such time as new byelaws relating to the authorised development shall be made by the undertaker and come into operation.

(2) In this article "Immingham Dock Byelaws" means the byelaws made by the London and North Eastern Railway Company on the 1st day of January 1929 and confirmed by the Minister of Transport on the 4th day of January 1929.

Signatory text

Name

…..

Date

Department for Transport

SCHEDULES

SCHEDULE 1

Articles 2 and 5

AUTHORISED DEVELOPMENT

In the area of North East Lincolnshire Council and the Order limits, a nationally significant infrastructure project as defined by sections 14(1)(j) and 24 of the 2008 Act being a ro-ro facility together with associated development comprising—

Work No. 1 – The construction of a jetty and three berths as shown on sheets 1 and 2 of the works plans, comprising—

(a) an open piled approach jetty with abutments carrying on its surface a roadway, a footway, utilities, lighting and environmental screens, rising from ground level to cross over existing landside infrastructure and then extending from the shore in a north easterly direction;

(b) a single linkspan bridge carrying on its surface a roadway and footway together with lighting and utilities, extending from the approach jetty to the innermost floating pontoon;

(c) two floating pontoons connected by a linkspan, each with lighting, power, cable management system, utilities and a small crew shelter, secured in position by restraint dolphins, each located about a finger pier to accommodate the loading and unloading ramps of berthed ro-ro vessels;

(d) two finger piers of open piled construction each with navigation markers, lighting, shore power infrastructure and connections for berthed vessels and water bunkering facilities—

(i) the northern finger pier to be constructed with berthing faces on both its northern and southern elevations equipped with mooring infrastructure; and

(ii) the southern finger pier to be constructed with a berthing face only on its northern elevation equipped with mooring infrastructure.

Work No. 2 – A dredged berthing pocket as identified on sheets 1 and 2 of the works plans with a depth of up to 9.0 metres below Chart Datum.

Work No. 3 – The construction of vessel impact protection measures as shown on sheet 1 of the works plans formed of—

(a) a single row of tubular piles with a reinforced concrete capping beam, the outer facing elevation of the beam which may be equipped with fendering units and panels; and/or

(b) a piled dolphin structure with a capping slab and fendering units.

Associated development within the meaning of section 115(2) of the 2008 Act—

Work No. 4 – The construction and laying out of the northern ro-ro freight and container storage area as shown on sheets 2 and 3 of the works plans comprising—

(a) a landside ramp and bankseat linking the approach jetty to the northern storage area;

(b) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth works;

(c) the surfacing of the storage area;

(d) the construction of a substation and a frequency converter station for shore power provision to the berths;

(e) the demolition of existing buildings;

(f) the construction of ancillary buildings;

(g) the construction of parking areas for vehicles, including cars and motorbikes using the ancillary buildings;

(h) the erection of security fencing, gates and lighting; and

(i) installation of maintenance access track.

Work No. 5 – The construction and laying out of the southern and central ro-ro freight storage area as shown on sheets 3 and 4 of the works plans comprising—

(a) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth works;

(b) the surfacing of the storage area;

(c) the construction of a terminal building, welfare building for HGV drivers, administrative staff and passengers awaiting embarkation and a workshop and fuel station;

(d) the construction of parking areas for vehicles, including cars and motorbikes using the ancillary buildings;

(e) administrative and inspection buildings and infrastructure for the UK Border Force;

(f) entry and exit gates and security huts;

(g) the construction of new level crossings; and

(h) the erection of security fencing, gates and lighting.

Work No. 6 – The construction and laying out of the western ro-ro freight storage area as shown on sheets 4 and 5 of the works plans comprising—

(a) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth;

(b) the surfacing of the storage area; and

(c) the erection of security fencing, gates and lighting.

Work No. 7 – As shown on sheets 2 and 3 of the works plans namely the construction of a bridge within the port estate to connect the northern storage area with the central storage area crossing Robinson Road and port infrastructure, together with bridge approaches, including bridge lighting and utilities.

Work No. 8 – As shown on sheets 2 and 4 of the works plans, improvements within the port estate to the junction of Robinson Road and East Dock Road comprising—

(a) the separation of the Exolum Terminal access road and the Robinson Road and East Dock Road junction;

(b) repositioning/straightening of the Robinson Road and East Dock Road junction to improve HGV access to and from East Dock Road; and

(c) associated infrastructure works.

Work No. 9 – The closure to all traffic along the length of East Riverside road between the East Dock Road junction and immediately to the north of the existing access to the parking / laydown / maintenance area for the Habrough Marsh Drain outfall as shown on sheet 2 of the works plans. Traffic to and from the businesses on East Riverside to the west of the East Dock Road junction to be diverted via East Dock Road.

Work No. 10 – As shown on sheets 3 and 4 of the works plans, improvements within the port estate to Gresley Way comprising—

(a) the provision of new a connector road from Robinson Road to Gresley Way for all incoming and outgoing traffic between the terminal and the port's East Gate, including a new level crossing;

(b) the provision of new 'T' junction between Gresley Way and the connector road;

(c) minor road alignment improvements to Gresley Way before the new terminal access;

(d) new access and egress to and from the terminal on to Gresley Way; and

(e) associated infrastructure, improvement works.

Work No. 11 – As shown on sheet 4 of the works plans, improvements and alterations to the entrance/exit to Shed 26 comprising—

(a) provision of new 'T' junction between Gresley Way and the connector road opposite the entrance to Shed 26; and

(b) provision of a new entrance and exit road from Shed 26 to the connector road.

Work No. 12 – As shown on sheet 3 of the works plans, improvements to the East Gate entrance comprising—

(a) the construction of an additional access lane into the port including traffic control and security;

(b) demolition of the existing gate house;

(c) a new gate house;

(d) new security fencing and gates; and

(e) the extension of the footway from East Gate to the Queens Road bus stop.

Work No. 13 – As shown on sheet 3 of the works plans, comprising works to deliver the woodland ecological enhancement works within the administrative boundary of North East Lincolnshire Council and within the Order limits to be carried out in accordance with the WEMP.

Ancillary works

For the purposes of and in connection with any of the works detailed above the construction, maintenance and operation of such works and further associated development within the Order limits which does not give rise to any materially new or materially different effects than those assessed in the environmental statement, consisting of—

(a) works to upgrade, alter and relocate existing utilities infrastructure and to install additional infrastructure;

(b) an improved and expanded fire water system;

(c) a modified and improved security entrance and internal road layout and installation of emergency traffic management measures;

(d) drainage infrastructure, landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(e) site preparation works, site clearance (including fencing and demolition of existing structures and buildings);

(f) earthworks (including soil stripping and storage, site levelling);

(g) remediation of contamination;

(h) construction compounds and working sites, storage areas, temporary vehicle parking, ramps and other means of access, construction fencing, perimeter enclosure, security fencing, welfare facilities and other construction-related buildings, lighting, machinery, apparatus, and works; and

(i) electrical upgrades to existing substations, electrical apparatus and cabling to and from existing substations to the new development, connection of apparatus or cabling to the new development, flood refuge platforms, operational lighting, CCTV equipment and such other works, apparatus and conveniences as may be necessary or expedient for the purposes of or in connection with the authorised development.

SCHEDULE 2

Article 5

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

"the Board" means the North East Lindsey Internal Drainage Board;

"CL:AIRE" means the registered charity (No. 1075611) and an environmental body registered with ENTRUST (Entrust No. 119820) also incorporated as a company, limited by guarantee and registered in England and Wales (reg no. 3740059) which provides technical secretariat services for industry wide programmes and is responsible for the registration of Qualified Persons able to issue declarations under the DoW CoP;

"commence" means the commencement of any material operation (as defined in section 56(4)(**a**) of the 1990 Act) forming part of the authorised development other than operations consisting of environmental surveys and monitoring, investigations for the purpose of assessing ground conditions, receipt and erection of construction plant and equipment, erection of any temporary means of enclosure, the temporary display of site notices or advertisements, and "commencement" is to be construed accordingly;

"the drainage strategy" means the document entitled drainage strategy annexed to the flood risk assessment as approved by the Board;

"the DoW CoP" means the CL:AIRE Definition of Waste: Development Industry Code of Practice;

"Enhanced Operational Controls" means the controls set out in the document of that description in Schedule 7 (plans and documents to be certified) certified by the Secretary of State for the purposes of this Order;

"flood risk assessment" means the document of that description in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the flood risk assessment for the purposes of this Order; "impact protection measures" means—

(a) part (a) of Work No.3 as defined in Schedule 1 to this Order; or

(b) part (b) of Work No. 3 as defined in Schedule 1 to this Order; or

(c) both parts (a) and (b) of Work No. 3 as defined in Schedule 1 to this Order;

"IOT" means the Immingham Oil Terminal;

"IOT Operators" means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd, with "Associated Petroleum Terminals (Immingham) Ltd" meaning Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title and "Humber Oil Terminal Trustees Ltd" meaning Humber Oil Terminal Trustees Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"lighting plan" means the document of that description in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the lighting plan for the purposes of this Order;

"marine works" means Work Nos. 1-3 as defined in Schedule 1 to this Order;

(**a**) As amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 56 but none are relevant to this Order.

"the materials management plan" means a written materials management plan as required in Requirement 17;

"National Highways" means the strategic highways company appointed and licensed by the Secretary of State for Transport on 1 April 2015;

"operational freight management plan" means the operational freight management plan included in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State for the purposes of this Order;

"the outline onshore construction environmental management plan" means the document of that description in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State as the outline onshore construction environmental management plan for the purposes of this Order;

"the permitted preliminary works" means–

(d) works consisting of the removal of existing structures and site clearance works; and

(e) works consisting of any part of the off-site mitigation works, the installation of wheel cleaning facilities, the installation and diversion of utility services, surveys and the provision of temporary contractors' facilities.

"the port" means the Port of Immingham;

"Qualified Person" means a person appearing on the register of Qualified Persons for the CL:AIRE Definition of Waste: Development Industry Code of Practice;

"the remediation strategy" means a written strategy for remediation as may be required in Requirement 16; and

"travel plan" means the travel plan included in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State for the purposes of this Order.

Time limit for commencement of the authorised development

2. The authorised development must commence within 5 years of the date on which this Order comes into force.

Amendments to approved details

3. With respect to any requirement which requires the authorised development to be carried out in accordance with the details of schemes or plans approved under this Schedule the approved details or schemes or plans are taken to include any amendments that may subsequently be approved in writing by the appropriate body.

Construction hours – onshore works

4.—(1) Subject to sub-paragraph (2), no works of construction for Work Numbers 4 to 13 inclusive and any ancillary works associated with those onshore works shall take place on bank holidays nor outside the hours of 07:00 to 19:00 - Monday to Friday and 07:00 to 13:00 - Saturday.

(2) Works of construction for Work Numbers 4 to 13 inclusive are permitted outside the hours detailed in sub-paragraph (1) provided such works —

(a) do not give rise to any materially new or materially different effects than those assessed in the environmental statement; and

(b) do not exceed maximum permitted levels of noise at each agreed monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the Council for specific construction activities; and

(c) are —

(i) works that cannot be interrupted; or

(ii) emergency works; or

(iii) works that are carried out with the prior approval of the Council.

(3) Any emergency works carried out under sub-paragraph (2)(c)(ii) must be notified to the Council within 72 hours of their commencement.

Travel plan

5.—(1) The operation of the authorised development must not be commenced until a final version of the travel plan has been submitted to and approved in writing by the Council.

(2) The authorised development must be carried out in accordance with the travel plan approved pursuant to sub-paragraph(1).

Piling and marine construction works restrictions

6.—(1) Piling and marine construction works may be undertaken 24 hours a day Monday to Sunday (inclusive) provided that such works are undertaken in accordance with paragraph 12, Part 2 of Schedule 3 (deemed marine licence).

(2) Any emergency works carried out in accordance with paragraph 12, Part 2 of Schedule 3 (deemed marine licence) must be notified to the Council within 72 hours of their commencement.

(3) Works for the capital dredge may be undertaken without restriction as to timing or day.

External appearance and height of the authorised development

7.—(1) Construction of—

(a) the terminal building and the welfare building for HGV drivers and passengers awaiting embarkation and related ancillary buildings as identified as part of Work No. 5(c);

(b) the proposed administrative and inspection buildings for UK Border Force as identified as Work No. 5(e); and

(c) the proposed ancillary buildings as identified as part of Work No. 4(f),

must not be commenced until the details of the location, heights relative to the proposed finished ground levels and external materials to be used in the construction of all new permanent buildings and structures, including the colour, materials and finishes, have been submitted to and approved in writing by the Council. Thereafter the authorised development must be implemented in accordance with the details approved by the Council.

(2) The authorised development must be carried out in general accordance with the general arrangement plans.

(3) The authorised development will not be in general accordance with the general arrangement plans if any departure from the general arrangement plans would give rise to any materially new or materially different effects that have not been assessed in the environmental statement.

Onshore construction and environmental management plan

8.—(1) No part of the authorised development shall be commenced until an onshore construction environmental management plan has been submitted to and approved by the Council and National Highways (on matters related to its functions), following consultation with the MMO, Natural England, the Environment Agency, Network Rail, Royal Mail and the Board on matters related to their respective functions.

(2) The onshore construction environmental management plan submitted and approved under sub-paragraph (1) must be in accordance with the outline onshore construction environmental management plan, including the outline plans and skeleton management plans identified and included in the outline onshore construction environmental management plan.

(3) The construction of the authorised development must be undertaken in accordance with the approved onshore construction environmental management plan.

Surface water drainage

9.—(1) The authorised development must not be commenced, save for the permitted preliminary works, until a final version of the drainage strategy has been submitted to and approved in writing by the Board. The onshore parts of the authorised development shall be implemented in accordance with the approved drainage strategy.

(2) The drainage strategy submitted and approved under sub-paragraph (1) shall be in general accordance with the drainage strategy annexed to the flood risk assessment which forms Appendix 11.1 of the environmental statement.

Noise insulation

10.—(1) Prior to the commencement of the authorised development the undertaker must offer the owner and occupier of each of the residential buildings along Queen's Road, a package of noise insulation mitigation to reduce internal noise levels in sensitive rooms. The noise insulation will be designed to reduce the noise level by at least the maximum predicted increase in road traffic noise (7.4 decibels) due to the operation of the authorised development, taking into consideration the performance of the existing glazing and ventilation.

(2) If the package of mitigation, or such alternative package as may reasonably be requested by the owner and occupier, offered in accordance with sub-paragraph (1) is agreed in writing by the owner and occupier of the residential property within the period specified in the offer, which must not be less than 30 days starting with the day after the offer has been received by the owner and occupier, then the package of mitigation must be implemented at the undertaker's cost prior to the commencement of the authorised development.

(3) Any dispute arising between the undertaker and the owner and occupier of a residential building along Queen's Road under this requirement is to be determined by arbitration as provided in article 35 (arbitration).

Woodland management

11. The operation of the authorised development must not be commenced until a final version of the WEMP has been submitted to and approved in writing by the Council. The authorised development must be implemented in accordance with the approved WEMP.

East Gate Improvements (Work No. 12)

12. The operation of the authorised development must not be commenced until—

(a) the undertaker has entered into such agreements as may be necessary with the Council in connection with Work No. 12 as set out in Schedule 1 to this Order; and

(b) the agreed works have been completed and are available for use.

Operational freight management plan

13.—(1) The operation of the authorised development must not be commenced until a final version of the operational freight management plan has been submitted to and approved in writing by the Council and National Highways (on matters related to its functions).

(2) The authorised development must be carried out in accordance with the operational freight management plan approved pursuant to sub-paragraph (1).

Lighting plan

14.—(1) No part of the authorised development may be brought into operation until a written scheme of the proposed operational lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Council and Network Rail.

(2) The written scheme submitted under sub-paragraph (1) must be in general accordance with the lighting plan.

(3) The authorised development must be operated in accordance with the scheme approved under sub-paragraph (1).

Flood risk assessment

15. The authorised development must be constructed and operated in accordance with the flood risk assessment.

Contaminated land

16.—(1) No part of Work Nos. 4 to 13 inclusive and any ancillary works associated with those onshore works numbers shall be commenced until a written remediation strategy applicable to the relevant part of Work Nos. 4 to 13 inclusive and any ancillary works associated with those onshore works numbers, dealing with any contamination of that land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved in writing by the Council.

(2) The remediation strategy submitted for approval must include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site. The remediation strategy submitted for approval must also include a procedure for handling any unexpected contamination encountered during the undertaking of the construction works.

(3) Any remediation must be carried out in accordance with the approved remediation strategy.

Materials Management Plan

17.—(1) A written materials management plan in compliance with the provisions of the CL:AIRE DoW CoP must be produced and submitted to a Qualified Person for approval and issue of a declaration (made under the CL:AIRE DoW CoP), such declaration to be approved by CL:AIRE and submitted to the Environment Agency and the Council for its records, before any works to which the materials management plan relates commence.

(2) Any works to which the material management plan relates must be undertaken in accordance with the materials management plan as approved pursuant to sub-paragraph (1).

Impact Protection Measures for the IOT trunkway

18.—(1) In the event that the Statutory Conservancy and Navigation Authority or the dock master determine that the impact protection measures comprising Work No. 3(a) are required, upon receiving notification of that decision from the Statutory Conservancy and Navigation Authority or the dock master, the undertaker must construct the impact protection measures.

(2) Upon receiving notification of the Statutory Conservancy and Navigation Authority's or dock master's determination referred to in sub-paragraph (1):

(a) the undertaker must within 10 business days, notify the IOT Operators and the MMO of that determination; and

(b) within 30 business days, notify the IOT Operators and the MMO as to the steps it intends to take as a result of the Statutory Conservancy and Navigation Authority's or dock master's notification.

(3) The construction of Work No. 3(a) must not be commenced until the undertaker has consulted with the Statutory Conservancy and Navigation Authority, the dock master, the IOT Operators and the MMO as to the detailed design of Work No. 3(a) and has had regard to any consultative representations received by the undertaker.

(4) No works for the construction of Work No. 3(a) may be commenced until the undertaker has obtained the written consent of the Statutory Conservancy and Navigation Authority to construct Work No. 3(a).

(5) The detailed design referred to in sub-paragraph (3) must be:

(a) within the limits of deviation shown on the relevant plans of the works plans;

(b) in general accordance with the detail shown on the relevant engineering, sections, drawings and plans; and

(c) in general accordance with the detail shown on the relevant general arrangement plans.

Impact Protection Measures for the IOT finger pier

19.— Prior to the commencement of the commercial operation of Berth 1, using the berth numbering adopted on General Arrangements Plan B2429400-JAC-00-ZZ-DR-ZZ-0202 Revision P05, the undertaker must—

(a) notify the Statutory Conservancy and Navigation Authority, the dock master, the MMO and IOT Operators of its intention to install the impact protection measures comprising Work No. 3(b);

(b) agree a programme of works with the parties identified in sub-paragraph (a) above; and

(c) install the impact protection measures detailed as Work No. 3(b).

Amending the Port of Immingham Marine Operations Manual

20. — (1) The undertaker must not commence marine commercial operations until the dock master has amended the Port of Immingham Marine Operations Manual (the "Manual") to incorporate the Enhanced Operational Controls prescribing operating procedures for arrival at and departure from the authorised development.

(2) The dock master will—

(a) notify the IOT Operators of its amendments to the Manual insofar as they relate to the operation of the authorised development; and

(b) will publish the amended navigational controls on the Port of Immingham webpage.

(3) The undertaker will operate the authorised development only in accordance with the Manual referred to in sub–paragraph (1) as may be amended and re-published from time to time.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

21. In this Part of this Schedule, "discharging authority" means any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement.

Applications made under requirements

22.—(1) Subject to sub-paragraph (3) where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement included in this Order, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of 8 weeks beginning with—

(a) the day immediately following that on which the application is received by the discharging authority; or

(b) where further information is requested under paragraph 23, the day immediately following that on which the further information has been supplied by the undertaker, or such longer period as may be agreed in writing by the undertaker and the discharging authority.

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions, and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

(3) In the event that the discharging authority does not determine an application in relation to any of Work Numbers 4 to 13 inclusive and any ancillary works associated with those onshore works within the period set out in sub-paragraph (1), the discharging authority is taken to have granted all parts of the application (without any condition or qualification) at the end of that period unless otherwise agreed in writing.

Further information regarding requirements

23.—(1) In relation to any application referred to in paragraph 22, the discharging authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary, the discharging authority must, within 24 business days of receipt of the application, notify the undertaker in writing specifying the further information required or any longer period as may be agreed in writing between the undertaker and the Council.

(3) If the discharging authority does not give the notification within the period specified in subparagraph (2) it is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Appeals

24.—(1) The undertaker may appeal to the Secretary of State in the event that—

(a) The discharging authority refuses an application for any consent, agreement or approval required by—

(i) a requirement in Part 1 of this Schedule; or

(ii) a document referred to in any requirement contained in Part 1 of this Schedule,

or grants it subject to conditions to which the undertaker objects;

(b) on receipt of a request for further information pursuant to paragraph 23 of this Part of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

(c) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the

time period set out in paragraph 22(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority;

(c) as soon as is practicable but not later than 21 days after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the adjudicator") and must notify the appeal parties of the identity of the adjudicator and the address to which all correspondence for the attention of the adjudicator must be sent;

(d) the appointed adjudicator must specify a start date no later than 21 days following the appointment subject to any extension as may be agreed by the parties;

(e) the discharging authority must submit their written representations together with any other representations to the adjudicator in respect of the appeal within 10 business days of the start date specified by the adjudicator and must ensure that copies of their written representations and any other representations as sent to the adjudicator are sent to the undertaker on the day on which they are submitted to the adjudicator;

(f) the appeal parties must make any counter-submissions to the adjudicator within 10 business days of receipt of written representations pursuant to sub-paragraph (e) above; and

(g) the adjudicator must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but no later than 21 days after the end of the 10 business day period for counter-submissions under sub-paragraph (f).

(3) The appointment of the adjudicator pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) In the event that the adjudicator considers that further information is necessary to enable the adjudicator to consider the appeal the adjudicator must as soon as practicable notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the adjudicator and to the other appeal parties by the date specified by the adjudicator. The adjudicator must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the adjudicator within 10 business days of the date specified by the adjudicator but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c)-(g).

(6) On an appeal under this paragraph, the adjudicator may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the discharging authority (whether the appeal related to that of it or not),

and may deal with the application as if it had been made to the adjudicator in the first instance.

(7) The adjudicator may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the adjudicator such written representations as have been sent outside of the relevant time limits.

(8) The adjudicator may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the adjudicator that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the adjudicator on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) If an approval is given by the adjudicator pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the discharging authority.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the adjudicator to be paid by the discharging authority, the reasonable costs of the adjudicator are to be met by the undertaker.

(12) On application by the discharging authority or the undertaker, the adjudicator may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the adjudicator must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may replace it.

Anticipatory steps towards compliance with any requirement

25. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Article 30

DEEMED MARINE LICENCE

PART 1

GENERAL

Interpretation

1.—(1) In this Schedule—

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act;

"2021 sediment sampling plan" means—

(a) the plan approved by the MMO on 24 September 2021, which details—

(i) a detailed dredging methodology;

(ii) dredge locations;

(iii) dredge amounts (total and annual, if applicable);

(iv) dredge depths;

(v) duration of dredging activities;

(vi) whether the dredge is a capital dredging activity or a maintenance dredging activity; and

(vii) specific gravity of the material or material type; and

(b) any further sediment sampling analyses which may be approved by the MMO in accordance with condition 18(2) prior to the expiry of the 2021 sediment sampling plan;

"alluvial materials" means dredged unconsolidated material of alluvial origin;

"the authorised development" means the construction, operation and maintenance of a Roll on Roll off facility on the River Humber as described in Schedule 1 to this Order and has the meaning given in paragraph 3(2);

"business day" means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971;

"business hours" means the period from 09:00 until 17:00 on any business day;

"capital dredge" means the dredging to a depth not previously dredged, or to a depth not dredged within the last 10 years and is generally undertaken to create or deepen navigational channels, berths or to remove material deemed unsuitable for the foundation of a construction project and "capital dredging" shall be construed accordingly;

"Chart Datum" means 3.9 m below ordinance datum (Newlyn), corresponding with a depth of 7.6m of the outer sill of the Port of Immingham;

"cold weather construction restriction strategy" means the strategy of that description referred to in condition 8 of Part 2 of this Schedule 3;

"commence" means beginning to carry out any part of a licensed activity and "commenced" and "commencement" are to be construed accordingly;

"condition" means a condition in Part 2 and Part 3 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

"the environmental statement" means the document of that description certified under article 33 (certification of plans and documents etc.) of the Order, certified by the Secretary of State as the environmental statement for the purposes of the Order;

"existing marine licence" means licence L/2014/00429 or any subsequent equivalent successor licence as may be granted that permits the disposal of dredged arising from the Port of Immingham;

"future sediment sampling plan" means—

(a) any further sediment sampling plan approved by the MMO in accordance with condition 18(2) which details—

(i) a detailed dredging methodology;

(ii) dredge locations;

(iii) dredge amounts (total and annual, if applicable);

(iv) dredge depths;

(v) duration of dredging activities;

(vi) whether the dredge is a capital dredging activity or a maintenance dredging activity; and

(vii) specific gravity of the material or material type;

"glacial clay" means consolidated dredged materials laid down during the last glaciation;

"high water" means daily high tides in every lunar day;

"HU056" means the area bounded by co-ordinates (53°39.3000'N, 00°10.4898'W), (53°39.0499'N, 00°10.4700'W), (53°38.8201'N, 00°09.4398'W), (53°39.3000'N, 00°10.4898'W);

"HU060" means the area bounded by co-ordinates—

(53°38.7439'N, 00°10.4434'W), (53°38.7499'N, 00°10.4536'W), (53°38.7575'N, 00°10.4677'W), (53°38.7648'N, 00°10.4823'W), (53°38.7718'N, 00°10.4974'W), (53°38.7784'N, 00°10.5128'W), (53°38.7847'N, 00°10.5287'W), (53°38.7906'N, 00°10.5450'W), (53°38.7962'N, 00°10.5617'W), (53°38.8013'N, 00°10.5787'W), (53°38.8061'N, 00°10.5960'W), (53°38.8105'N, 00°10.6136'W), (53°38.8145'N, 00°10.6315'W), (53°38.8181'N, 00°10.6496'W), (53°38.8213'N, 00°10.6679'W), (53°38.8240'N, 00°10.6864'W), (53°38.8264'N, 00°10.7051'W), (53°38.8283'N, 00°10.7239'W), (53°38.8298'N, 00°10.7428'W), (53°38.8309'N, 00°10.7618'W), (53°38.8315'N, 00°10.7809'W), (53°38.8317'N, 00°10.8000'W), (53°38.8315'N, 00°10.8191'W), (53°38.8309'N, 00°10.8382'W), (53°38.8298'N, 00°10.8572'W), (53°38.8283'N, 00°10.8761'W), (53°38.8264'N, 00°10.8949'W), (53°38.8240'N, 00°10.9136'W), (53°38.8213'N, 00°10.9321'W), (53°38.8181'N, 00°10.9504'W), (53°38.8145'N, 00°10.9685'W), (53°38.8105'N, 00°10.9864'W), (53°38.8061'N, 00°11.0040'W), (53°38.8013'N, 00°11.0213'W), (53°38.7962'N, 00°11.0383'W),

(53°38.7906’N, 00°11.0550’W), (53°38.7847’N, 00°11.0713’W), (53°38.7784’N, 00°11.0872’W), (53°38.7718’N, 00°11.1026’W), (53°38.7648’N, 00°11.1177’W), (53°38.7575’N, 00°11.1323’W), (53°38.7499’N, 00°11.1464’W), (53°38.7439’N, 00°11.1567’W), (53°38.7438’N, 00°11.1564’W), (53°38.5320’N, 00°10.8000’W), (53°38.7438’N, 00°10.4436’W), (53°38.7439’N, 00°10.4434’W)

“intertidal mudflat” means exposed mud between mean high water springs and mean low water springs;

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity authorised in paragraph 3 of this Schedule;

“local planning authority” means North East Lincolnshire Council;

“maintenance dredge” means a dredge undertaken to keep channels, berths and other areas at their designed depths, involving removing recently accumulated sediments such as mud, sand and gravel to a level that is not lower than it has been at any time during the past 10 years;

“marine piles” means piles that will be in a free water condition during construction;

“marine written scheme of investigation” means the marine archaeological written scheme of investigation contained in appendix 15.3 to the environmental statement;

“MCMS” means the Marine Case Management System provided by the MMO;

“mean high water springs” means the average of high water heights occurring at the time of spring tides;

“mean low water springs” means the average of low water heights occurring at the time of spring tides;

“the MMO” means the Marine Management Organisation;

“named vessel” means a vessel whose name and type has been notified to the MMO in writing;

“Natural England” means the adviser to the Government for the natural environment in England;

“Notice to Mariners” means any notice to mariners which may be issued by the Admiralty, Trinity House, the Statutory Conservancy and Navigation Authority, government departments or harbour and pilotage authorities advising mariners of important matters affecting navigational safety;

“outline offshore construction environmental management plan” means the document of that description certified under article 33 (certification of plans and documents etc.) of the Order, certified by the Secretary of State as the outline offshore construction environmental management plan for the purposes of the Order;

“the Order” means the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Order 20[ ]; and

“percussive piles” means driven piles but excludes the handling, placing and vibro-driving of piles;

“percussive piling” for the purposes of this licence means the driving of piles by percussive means but does not include the handling, placing or vibro-piling of piles;

“the Port of Immingham” means the statutory port estate including the Port of Immingham statutory harbour authority area;

“the River Humber” means the tidal estuary from its mouth at the Spurn Peninsula to its confluence with the rivers Ouse and Trent;

“sea bed” means the ground under the sea;

“undertaker” means Associated British Ports (“ABP”) company number ZC000195 registered at 25 Bedford Street, London, WC2E 9ES and any agent, contractor or sub-contractor acting on its behalf; and

“vessel” means every description of vessel, however propelled or moved and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil

vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to four decimal places.

(3) Tonnages of dredged materials are expressed in wet tonnes.

Contacts

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this licence is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH, telephone 0300 123 1032 and, unless otherwise advised in writing, where contact to the local MMO office (local office) is required, the following contact details must be used: Marine Management Organisation, The MMO District Office – Crosskill House, Mill Lane, Beverley, HU17 9JB, telephone 0208 720 1344, Email – beverley@marinemanagement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consents@marinemanagement.org.uk or where contact to the local MMO office is required is beverley@marinemanagement.org.uk.

(3) Unless otherwise advised in writing by the MMO, MCMS must be used for all licence returns or applications to vary this licence. The MCMS address is: https://marinelicensing.marinemanagement.org.uk/mmofox5/fox/live/MMO_LOGIN/login.

(4) Unless otherwise stated in writing by the MMO, all notifications required by this licence must be sent by the undertaker to the MMO using MCMS.

Licensed marine activities

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the undertaker to carry out licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemption specified by order) of the 2009 Act.

(2) For the purposes of this licence "the authorised development" means the construction operation and maintenance of a Roll on Roll off facility on the River Humber—

(a) comprising—

(i) an open piled approach jetty with abutments carrying on its surface a roadway, a footway, utilities, lighting and environmental screens, rising from ground level to cross over existing landside infrastructure and then extending from the shore in a north easterly direction (Work No.1);

(ii) a single linkspan bridge carrying on its surface a roadway and footway together with lighting and utilities, extending from the approach jetty to the innermost floating pontoon (Work No.1);

(iii) two floating pontoons connected by a linkspan, each with lighting, power, cable management system, utilities and a small crew shelter, secured in position by restraint dolphins, each located about a finger pier to accommodate the loading and unloading ramps of berthed ro-ro vessels (Work No.1);

(iv) two finger piers of open piled construction each with navigation markers, lighting, shore power infrastructure and connections for berthed vessels and water bunkering facilities—

(aa) the northern finger pier to be constructed with berthing faces on both its northern and southern elevations equipped with mooring infrastructure (Work No.1);

(bb) the southern finger pier to be constructed with a berthing face only on its northern elevation equipped with mooring infrastructure (Work No.1);

(v) piling works and construction operations within the River Humber (Work No.1);

(vi) related capital dredging works within the River Humber for the above and the disposal of any arisings from such dredgings (Work No.2);

(vii) The construction of—

(aa) a vessel impact protection barrier formed of a single row of tubular piles with a reinforced concrete capping beam, the outer facing elevation of the beam may be equipped with fendering units and panels (Work No.3(a)); and

(bb) a piled dolphin structure with a capping slab, with piles installed at each corner of the dolphin structure equipped with donut roller fenders (Work No.3(b)); and

(viii) the continued use of two existing surface water outfalls;

(b) Activities which will include works to—

(i) clean, refurbish, re-construct, strengthen or maintain any work or structure; and

(ii) place and maintain works and structures including jetty furniture, fenders and impact protection; and

(c) such other incidental works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins and fenders) and lighting.

Licence to dredge and deposit

4.—(1) Capital dredge – Subject to paragraph 5, the undertaker is permitted to undertake a capital dredge to a depth of -9 metres Chart Datum (with an allowance for the tolerances of the dredging equipment) of the berth pocket the grid coordinates for which are specified in paragraph 5(2) .

(2) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table—

Material	*Volume (m3)*	*Specific gravity*	*Maximum tonnage (wet tonnes)*	*Disposal site*
Alluvial materials	150,000	1.35	202,500	HU060
Glacial clay	40,000	2.26	90,400	HU056

(3) Maintenance dredge – the undertaker is permitted to carry out maintenance dredging within the statutory harbour authority area of the Port of Immingham for the purposes of maintaining the authorised development under section 75 of the 2009 Act in accordance with the existing marine licence.

(4) Deposit of dredged arisings—

(a) The capital dredge will create arisings of glacial clay and alluvial materials which must be deposited at deposit grounds HU056 and HU060;

(b) The maintenance dredge will create arisings of alluvial materials which must be deposited at the licenced deposit ground HU060 in accordance with the existing marine licence.

Details of licensed marine activities

5.—(1) The grid coordinates within the UK Marine Area within which the undertaker may carry out a licensed activity (save for the capital dredge and disposal) are specified below—

Point reference	*Latitude*	*Longitude*
1	53.62711082	-0.179454009
2	53.62748148	-0.179008789
3	53.63004695	-0.178898384
4	53.63198621	-0.176987837
5	53.62889877	-0.168536653
6	53.62874293	-0.168641588
7	53.62841556	-0.167318049
8	53.62814789	-0.166235931
9	53.62796289	-0.166266125
10	53.62773154	-0.166760098
11	53.62716945	-0.168370825
12	53.62528877	-0.1723239
13	53.62449396	-0.17508587
14	53.62512213	-0.1750807
15	53.62520845	-0.175123251
16	53.625269	-0.175226494

(2) No capital dredging may be carried out by the undertaker other than within the area within the grid coordinates for the area of the River Humber specified below and more particularly identified as the berthing pocket under Work No 2 on sheets 1 and 2 of the works plans—

Point of reference	*Latitude*	*Longitude*
17	53.626229	-0.17082
18	53.629182	-0.178936
3	53.630047	-0.178898
19	53.631567	-0.1774
20	53.628371	-0.168614

PART 2

CONDITIONS APPLYING TO ALL LICENSABLE ACTIVITIES

Before Licensed Activities

Notifications regarding licensed activities

6.—(1) The undertaker must inform the MMO—

(a) at least 5 business days prior to the commencement of the first licensed activity; and

(b) within 5 business days following the completion of the final licensed activity,

of the commencement or the completion (as applicable).

(2) The undertaker must provide the following information to the MMO—

(a) the name and function in writing of any agent or contractor or sub-contractor that will carry on any licensed activity on behalf of the undertaker; and

(b) such notification must be received by the MMO in writing not less than 24 hours before the commencement of the licensed activity.

(3) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors, and sub-contractors that will be carrying out any licensed activity on behalf of the undertaker.

(4) The undertaker must keep a copy of this licence and any subsequent revisions or amendments available for inspection at its registered address and any site office location at or adjacent to a construction site.

(5) Any changes to details supplied under sub-paragraph (2) must be notified to the MMO in writing no less than 24 hours prior to the agent, contractor or named vessel engaging in the licensed activity in question.

(6) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

(7) Copies of this licence must be available for inspection at the following locations—

(a) the undertaker's office at the Port of Immingham; and

(b) during the construction of the authorised development only, at any site office which is adjacent to or near the River Humber and which has been provided for the purposes of the construction of the authorised development.

(8) The undertaker must request that the masters responsible for the named vessels that will be carrying out any licensed activity on behalf of the undertaker as notified to the MMO under condition 6(5) make a copy of this licence available for inspection on board such named vessels during the carrying out of any licensed activity.

Agents / contractors / sub-contractors

7.—(1) The undertaker must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in paragraph 3 of this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

(2) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on any licensed activity listed in section 3 of this licence on behalf of the undertaker.

Cold weather construction restriction strategy

8. No construction operations for any licensed activity are to commence until a cold weather construction restriction strategy is submitted to and agreed by the MMO in consultation with Natural England. The strategy shall include the following—

(a) a provision that no construction operations (other than to finish driving any pile that is in the process of being driven at the point that the cold weather restriction comes into force) shall take place following 7 consecutive days of zero or sub zero temperatures (where the temperature does not exceed zero degrees centigrade for more than six hours in any day) or any other formula as may be agreed with the MMO to define short periods of thaw;

(b) the establishment of three temperature monitoring points within the Humber Estuary; and

(c) a provision that, if the piling restriction specified in sub-paragraph (a) above comes into effect as a consequence of cold weather conditions, it will be reviewed as follows—

(i) after 24 hours of above freezing temperatures the restriction will be lifted on a temporary basis provided that the weather forecast relevant for the area including the Port of Immingham, (as agreed with the MMO) indicates that freezing conditions will not return within five days; and

(ii) after a further 5 clear days of above-freezing temperatures, the restrictions will be lifted entirely.

Marine Noise Registry

9.—(1) Only when impact driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry (MNR)—

(a) prior to the commencement of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements; and

(b) within 12 weeks of completion of impact pile driving, information on the exact locations and specific dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements.

(2) The undertaker must notify the MMO of the successful submission of Forward Look requirements.

Marine written scheme of archaeological investigation

10.—(1) A final version of the marine written scheme of investigation must be submitted to and approved by the MMO in writing before any works to which the final version of the marine written scheme of investigation relate commence.

(2) The licensed activities must be carried out in accordance with the marine written scheme of investigation approved pursuant to sub-paragraph (1).

During Licensed Activities

Offshore Construction Environmental Management Plan

11.—(1) No licensed activities shall be commenced until an offshore construction environmental management plan in relation to those activities has been submitted to and approved by the MMO following consultation with the local planning authority, the Environment Agency and Natural England on matters related to their respective functions.

(2) The offshore construction environmental management plan submitted and approved under sub-paragraph (1) must be in accordance with the outline offshore construction environmental management plan, including the outline plans and skeleton management plans included in the outline offshore construction environmental management plan.

(3) The undertaker must undertake the capital dredge in accordance with the offshore construction environmental management plan approved under sub-paragraph (1).

Piling and marine construction works

12.—(1) Subject to sub-paragraph (2) below, the piling of marine piles in connection with the authorised development shall be subject to the following conditions—

(a) There shall be at least a 20 minutes "soft start" period prior to the commencement of any piling; and

(b) The form of soft start shall be submitted to and agreed in writing by the MMO in consultation with Natural England on matters related to its functions prior to the commencement of piling.

(2) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, shall be created, and 30 minutes prior to the commencement of percussive piling a search must be undertaken of the zone, with the purpose of identifying whether any marine mammals enter the zone, and if such mammals are observed within the zone, percussive piling must not be commenced until the mammals have cleared the zone or until 20 minutes after the last visual detection, subject to sub-paragraph (4).

(3) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, shall be maintained during percussive piling with the purpose of identifying whether any marine mammals enter the zone and if such mammals are observed, percussive piling must cease until the mammals have cleared the zone and there is no further detection after 20 minutes.

(4) Where percussive piling is paused for any reason other than the detection of marine mammals, then recommencement of the percussive piling shall be subject to the provisions be paragraph (2) save for where the active and mobile 500 metre marine mammals observation zone has been observed throughout the period of the pause in operations and no such mammals were observed entering the zone, in which case percussive piling may be recommenced immediately.

(5) Wherever possible the undertaker will use vibro-piling methodology whilst it is recognised that percussive piling may be required to drive the piles to their ultimately required depth.

(6) The undertaker must use a noise suppression system consisting of a piling sleeve with noise insulating properties for percussive piling.

(7) Subject to sub-paragraph (8) below, the undertaker must ensure that no marine construction activity for the approach jetty, linkspan, innermost pontoon and the inner finger pier shall take place between 1 October and 31 March inclusive in any year located within 200 metres of the exposed intertidal mudflat.

(8) During the restricted period between 1 October and 31 March inclusive in any year, marine construction activity may be undertaken provided that at distances less than 200 metres of exposed intertidal mudflat provided that an acoustic barrier/visual screening is installed on both sides of any semi-completed structure and construction activity will then be undertaken on the approach jetty itself, behind the screens, with no use of large heavy plant.

(9) During the period between 1 October and 31 March inclusive in any year, the undertaker must ensure that on all floating construction barges an acoustic barrier/screening is placed on the side of the barges closest to the foreshore, and construction activity can only be undertaken from the side of the barge facing away from the foreshore.

(10) No piling of marine piles within the waterbody is to take place between 1 March and 31 March, 1 June and 30 June and 1 August and 31 October inclusive in any one calendar year after sunset and before sunrise on any day, save for any—

(a) piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water;

(b) emergency works; and

(c) piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.

(11) The undertaker must ensure that no percussive piling of marine piles within the waterbody shall take place between 1 April and 31 May inclusive in any one calendar year, save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water.

(12) Percussive piling of marine piles is to be restricted at other times as follows—

(a) from 1 June to 30 June inclusive in any year, the maximum duration of percussive piling permitted within any four-week period must not exceed—

(i) 140 hours where a single piling rig is in operation; or

(ii) 196 hours where two or more rigs are in operation; and

(b) from 1 August to 31 October inclusive in any year, the maximum duration of percussive piling permitted within any four-week period must not exceed—

(i) 140 hours where a single piling rig is in operation; or

(ii) 196 hours where two or more rigs are in operation,

save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water and save for percussive piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.

(13) The measurement of time during each work-block described in sub-paragraph (12) of this licence must begin at the start of each timeframe, roll throughout it, then cease at the end, where measurement will begin again at the start of the next timeframe, such process to be repeated until the end of piling works.

(14) Percussive piling must only be carried out in accordance with the cold weather construction restriction strategy.

Percussive piling reporting protocol

13.—(1) The undertaker must submit weekly reports to the MMO of the duration of percussive piling that is undertaken on any given day on which piling takes place during the construction of the authorised development, unless otherwise agreed in writing with the MMO.

(2) The reports submitted to the MMO pursuant to sub–paragraph (1) must include a log of the number and approximate location of piling rigs which are in operation on any given day, along with the number of piles driven.

(3) The undertaker will hold fortnightly meetings with the MMO to discuss the weekly reports submitted under sub-paragraph (1) and agree any corrective action if required, unless otherwise agreed in writing with the MMO.

(4) Subject to sub–paragraph (5), where percussive piling is paused, the recommencement of the percussive piling shall be subject to the provisions of sub–paragraph (1)(a) of paragraph 12 ("the contingency period").

(5) The contingency period must not exceed a total of 80 minutes in any given day on which percussive piling takes place.

Concrete and cement

14. Waste concrete, slurry or wash water from concrete or cement activities must not be discharged, intentionally or unintentionally, into the marine environment. Concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any water body or surface water drain.

Coatings and treatment

15. The undertaker must ensure that any coatings or treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by the Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

Pollution and Spills

16.—(1) Bunding and/or storage facilities must be installed to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment. Secondary containment must be used with a capacity of no less than 110% of the container's storage capacity.

(2) Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of being identified in accordance with the following, unless otherwise advised in writing by the MMO—

(a) within business hours on any business days: 0300 200 2024;

(b) any other time: 07770 977 825; or

(c) at all times if other numbers are unavailable: 0845 051 8486 or dispersants@marinemanagement.org.uk.

(3) All wastes must be stored in designated areas that are isolated from surface water drains, open water and contained to prevent any spillage.

(4) The undertaker must comply with the existing marine pollution contingency plan in place for the Port of Immingham as detailed in the construction environmental management plan.

Disposal at Sea

17.—(1) The undertaker must inform the MMO of the location and quantities of material deposited each month under the licence. This information must be submitted to the MMO by 15 February each year for the months August to January inclusive and by 15 August each year for the months February to July inclusive.

(2) The undertaker must ensure that only inert material of natural origin produced during dredging shall be deposited in the disposal sites—

(a) HU060 (alluvial materials); and

(b) HU056 (glacial clay),

or any other site approved in writing by the MMO.

Sediment sampling

18.—(1) Any sediment sampling analyses undertaken by a laboratory validated by the MMO and approved by the MMO as part of either the 2021 sediment sampling plan or any future sediment sampling plan is valid for a period of 3 years from the date when those analyses were undertaken.

(2) Where the validity period for sediment sampling analyses as set out in sub-paragraph (1) above expires, the undertaker must submit a future sediment sampling plan request to the MMO for its approval and any sediment sampling analyses from such future sediment sampling plan must be submitted to the MMO for consultation.

(3) The undertaker must undertake the capital dredge in accordance with the 2021 sediment sampling plan or the future sediment sampling plan approved under sub-paragraph (2).

19. The material to be disposed of within the disposal sites referred to in paragraph 4(4) must be placed evenly within the boundaries of that site.

20. During the course of disposal at sea, deposited material must be distributed evenly over the disposal site.

Dropped objects

21.—(1) The undertaker must report all dropped objects to the MMO using the dropped object procedure form as soon as reasonably practicable and in any event within 24 hours of becoming aware of an incident.

(2) On receipt of the dropped object procedure form, the MMO may require, acting reasonably, the undertaker to carry out relevant surveys. The undertaker must carry out surveys in accordance with the MMO's reasonable requirements and must report the results of such surveys to the MMO.

(3) On receipt of such survey results, the MMO may, acting reasonably, require the undertaker to remove specific obstructions from the seabed. The undertaker must carry out removals of specific obstructions from the seabed in accordance with the MMO's reasonable requirements and its own expense.

Notice to Mariners

22.—(1) Local mariners, fishermen's organisations and the UK Hydrographic Office must be notified of any licensed activity or phase of licensed activity through a local Notice to Mariners.

(2) A Notice to Mariners must be issued at least 5 days before the commencement of each licensed activity or phase of licensed activity.

(3) The MMO and Marine Coastguard Agency must be sent a copy of the notification within 24 hours of issue. The Notice to Mariners must include —

(a) the start and end dates for the works;

(b) a summary of the works to be undertaken;

(c) the location of the works area, including coordinated in accordance with World Geodetic System 1984 (WGS84); and

(d) any markings of the works area that will be put in place.

23. A copy of the notice must be provided to the MMO via MCMS within 24 hours of issue of a notice under sub-paragraph (1).

PART 3

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Meaning of "application"

24. In this Part, "application" means a submission by the undertaker for approval by the MMO of any document, strategy, information or plan under conditions 8 (cold weather construction restriction strategy), 9 (marine noise registry), 10 (marine written scheme of investigation), 11 (construction environmental management plan) and 18 (sediment sampling).

Further information regarding application

25. The MMO may request in writing such further information from the undertaker as is necessary to enable the MMO to consider an application.

Determination of application

26.—(1) In determining the application the MMO may have regard to—

(a) the application and any supporting information or documentation;

(b) any further information provided by the undertaker; and

(c) such other matters as the MMO thinks relevant.

(2) Having considered the application the MMO must—

(a) grant the application unconditionally;

(b) grant the application subject to the conditions as the MMO thinks fit; or

(c) refuse the application.

Notice of determination

27.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable after the application is received by the MMO.

(2) Where the MMO has made a request under paragraph 25, the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable once the further information is received.

(3) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

SCHEDULE 4

Article 41

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF THE STATUTORY CONSERVANCY AND NAVIGATION AUTHORITY FOR THE HUMBER

Interpretation

1. In this Part of this Schedule—

"authorised works" means any work, operation or activity that the undertaker is authorised by this Order to construct or carry out;

"environmental document" means—

(a) the environment statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement; and

(b) any other document containing environmental information provided by the undertaker to the Secretary of State or the Statutory Conservancy and Navigation Authority or Trinity House for the purposes of any tidal works approval under article 37 (provision against danger to navigation), article 38 (lights on tidal works during construction) or article 39 (permanent lights on tidal works);

"plans" includes sections, drawings, specifications, calculations and method statements;

"the river" means the River Humber; and

"the Statutory Conservancy and Navigation Authority" means for the purposes of this Protective Provision Associated British Ports in its capacity as statutory conservancy and navigation authority for the river Humber (as successor to the Conservancy Commissioners established under the Humber Conservancy Act 1868) and including in its role as competent harbour authority and local lighthouse authority for its statutory area.

General

2.—(1) The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and the Statutory Conservancy and Navigation Authority, have effect until the commencement of the operation of the authorised development for the protection of the Statutory Conservancy and Navigation Authority and the users of the river.

(2) For the purposes of this Part of this Schedule, the definition of "tidal work" is taken to include—

(a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and

(b) any authorised work which affects the river or any functions of the Statutory Conservancy and Navigation Authority , whether or not that authorised work is within the limits of the Statutory Conservancy and Navigation Authority.

Tidal Works: approval of detailed design

3.—(1) Prior to the commencement of the authorised development in the marine environment the undertaker must submit to the Statutory Conservancy and Navigation Authority plans and sections of the tidal works or operation and such further particulars as the Statutory Conservancy and Navigation Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) Any approval of the Statutory Conservancy and Navigation Authority required under this paragraph shall be deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable requirements as the Statutory Conservancy and Navigation Authority may make for the protection of—

(a) traffic in, or the flow or regime of, the river;

(b) the use of its operational land or the river for the purposes of performing its functions; or

(c) the performance of any of its functions connected with environmental protection.

(3) Requirements made under sub-paragraph (2) 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 undertaker does not commence construction of the tidal work approved within a prescribed period.

(4) Before making a decision on any such approval, the Statutory Conservancy and Navigation Authority must take into account any opinion on plans and sections provided to it by the Environment Agency.

(5) Whenever the undertaker provides the Secretary of State with an environmental document it must at the same time send a copy to the Statutory Conservancy and Navigation Authority.

Commencement of Tidal Works

4. Any operations for the construction of any tidal work approved in accordance with this Order, once commenced, must be carried out by the undertaker without unnecessary delay and to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority so that river traffic, the flow or regime of the river and the exercise of the Statutory Conservancy and Navigation Authority's functions do not suffer more interference than is reasonably practicable, and an authorised officer of the Statutory Conservancy and Navigation Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Discharges, etc.

5.—(1) The undertaker must not without the Consent of the Statutory Conservancy and Navigation Authority —

(a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or

(b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Statutory Conservancy and Navigation Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Statutory Conservancy and Navigation Authority may reasonably impose.

(3) Any such approval is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 24 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

(5) The undertaker must not, in exercise of the powers conferred by article 24 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Statutory Conservancy and Navigation Authority.

Obstruction in river

6. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure comprised in any permanent work), the undertaker, as soon as reasonably practicable after the receipt of notice in writing from the Statutory Conservancy and Navigation Authority requiring such action, must remove it from the river or, if it is not reasonably practicable to remove it—

(a) cut the obstruction off at such level below the bed of the river as the Statutory Conservancy and Navigation Authority may reasonably direct; or

(b) take such other steps to make the obstruction safe as the Statutory Conservancy and Navigation Authority may reasonably require.

Removal etc. of the Statutory Conservancy and Navigation Authority 's moorings and buoys

7. If—

(a) by reason of the construction of any tidal work it is reasonably necessary for the Statutory Conservancy and Navigation Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Statutory Conservancy and Navigation Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and

(b) the Statutory Conservancy and Navigation Authority gives to the undertaker not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the undertaker may make in response to the notice within 14 days of the receipt of the notice,

the undertaker must pay the costs reasonably so incurred by the Statutory Conservancy and Navigation Authority.

Navigational lights, buoys, etc.

8. In addition to any Requirement imposed under this Order the undertaker, at or near every tidal work, and any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming part of the River Humber), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Statutory Conservancy and Navigation Authority may from time to time reasonably require.

Removal of temporary works

9. On completion of the construction of any part of a permanent authorised work, the undertaker must as soon as practicable remove—

(a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and

(b) any materials, plant and equipment used for such construction,

and must make good the site to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority.

Protective action

10.—(1) If any tidal work—

(a) is constructed otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given pursuant to paragraph 3; or

(b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker at the undertaker'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 Part of this Schedule; or

(ii) the condition that has been breached; or

(b) in any case within sub-paragraph (1)(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.

(3) If the undertaker does not comply with a notice under sub-paragraph (1), or is unable to do so, the Statutory Conservancy and Navigation Authority may in writing require the undertaker 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 the Statutory Conservancy and Navigation Authority reasonably requires) to its former condition; or

(b) take such other action as the Statutory Conservancy and Navigation Authority 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 undertaker, in compliance with its duties under any enactment and, in particular, under section 48A of the Harbours Act 1964(**a**), must take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the Statutory Conservancy and Navigation Authority.

(5) If the Statutory Conservancy and Navigation Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Statutory Conservancy and Navigation Authority must notify the undertaker of that environmental impact, the reasons why the Statutory Conservancy and Navigation Authority believes that the environmental impact is being caused by the tidal work and of measures that the Statutory Conservancy and Navigation Authority reasonably believes are necessary to counter or mitigate that environmental impact.

(6) The undertaker must implement the measures that the Statutory Conservancy and Navigation Authority has notified to the undertaker or must implement such other measures as the undertaker believes are necessary to counter the environmental impact identified, giving reasons to the Statutory Conservancy and Navigation Authority as to why it has implemented such other measures.

Abandoned or decayed works

11.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(**a**) 1964 c.40.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

(a) to repair and restore the work or part of it; or

(b) if the undertaker so elects, to remove the tidal work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Statutory Conservancy and Navigation Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

Facilities for navigation

12.—(1) The undertaker must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Statutory Conservancy and Navigation Authority and must ensure that access to such aids remains available during and following construction of any tidal works.

(2) The undertaker must provide at any tidal works, or must afford reasonable facilities at such works (including an electricity supply) for the Statutory Conservancy and Navigation Authority to provide at the undertaker's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Statutory Conservancy and Navigation Authority may deem necessary by reason of the construction of any tidal works, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The undertaker must comply with the directions of the Statutory Conservancy and Navigation Authority from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Sedimentation, etc.: remedial action

13.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

(a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and

(b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Statutory Conservancy and Navigation Authority be removed or made good.

(2) The undertaker must either—

(a) pay to the Statutory Conservancy and Navigation Authority any additional expense to which the Statutory Conservancy and Navigation Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or

(b) carry out the necessary dredging at its own expense and subject to the prior approval of the Statutory Conservancy and Navigation Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the Statutory Conservancy and Navigation Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Indemnity

14.—(1) The undertaker is responsible for and must make good to the Statutory Conservancy and Navigation Authority all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Authority by reason of—

(a) the construction or operation of the authorised works or the failure of the authorised works;

(b) anything done in relation to a mooring or buoy under paragraph 8; or

(c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,

and the undertaker must indemnify the Statutory Conservancy and Navigation Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

(a) by the Statutory Conservancy and Navigation Authority on behalf of the undertaker; or

(b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Statutory Conservancy and Navigation Authority, or in a manner approved by the Statutory Conservancy and Navigation Authority, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the Statutory Conservancy and Navigation Authority or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) The Statutory Conservancy and Navigation Authority must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

Statutory functions

15.—(1) Subject to article 3 (disapplication and modification of legislative provisions) and this paragraph, any function of the undertaker or any officer of the undertaker, whether conferred by or under this Order or any other enactment, is subject to—

(a) any enactment relating to the Statutory Conservancy and Navigation Authority;

(b) any byelaw, direction or other requirement made by the Statutory Conservancy and Navigation Authority under any enactment; and

(c) any other exercise by the Statutory Conservancy and Navigation Authority of any function conferred by or under any enactment.

(2) The undertaker must not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 4 (incorporation of the Act of 1847) except with the consent of the harbour master, which must not be unreasonably withheld.

(3) The dock master must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 4 (incorporation of the 1847 Act), if to do so would conflict with a special direction given to the same vessel by the harbour master.

(4) The Statutory Conservancy and Navigation Authority must consult the undertaker before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the authorised development.

(5) The Statutory Conservancy and Navigation Authority must consult the undertaker before giving any general direction which directly affects the construction, operation or maintenance of the authorised development.

Operating procedures

16.—(1) Before commencing marine commercial operations the undertaker must submit to the Statutory Conservancy and Navigation Authority for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development.

(2) The undertaker must not submit the statement referred to in sub–paragraph (1) unless it has first consulted with the harbour master, the dock master for the Port of Immingham and the IOT Operators, as defined in Part 4 of this Schedule, and has had due regard to their representations.

(3) Prior to granting or refusing approval of the statement referred to in sub–paragraph (1), the Statutory Conservancy and Navigation Authority may carry out its own navigational risk assessment and may impose reasonable conditions on the approval for the purposes set out in paragraph 3(2)(a) to (c) of this Part of this Schedule.

(4) The undertaker must operate the authorised development only in accordance with such procedure as approved, including any approved alteration made from time to time.

Removal of wrecks and obstructions, etc. Oil Spillage Plan

17. The undertaker must consult the Statutory Conservancy and Navigation Authority before submitting any oil pollution emergency plan to the Maritime and Coastguard Agency and must ensure that any such plan is compatible with the Statutory Conservancy and Navigation Authority's existing plan known as "Humber Clean" or such other plan as supersedes "Humber Clean".

PART 2

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Application

18.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

"the Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" shall be construed accordingly;

"flood management infrastructure" includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"plans" includes sections, drawings, specifications, calculations and method statements; and

"specified work" means any part of the authorised development that intersects with or sits over or above, touches or otherwise interferes with the flood management infrastructure, including the maintenance and inspection thereof.

19.—(1) Prior to the commencement of any specified work the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 23.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any flood management infrastructure or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so, the Agency must provide reasons for the grounds of refusal.

20. The undertaker must ensure—

(a) that the authorised development including the associated development does not touch any existing flood management infrastructure; and

(b) that the authorised development including the associated development does not impede the Agency's access to the flood management infrastructure for maintenance and inspection purposes and where required the development is constructed to a sufficient height above the flood management infrastructure to facilitate the aforesaid access.

21. On completion of the works, all debris and surplus material must be removed from the land adjacent to the flood defence to avoid erosion, to the satisfaction of the Agency.

22. The undertaker must bring the conditions contained in paragraphs 19 to 21 to the attention of any agent or contractor responsible for carrying out the authorised development.

23. Any dispute arising between the undertaker and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article 35 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 3

FOR THE PROTECTION OF EXOLUM

Application

24. For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect until the commencement of the operation of the authorised development.

Interpretation

25. In this Protective Provision—

"apparatus" means the pipe-line and storage system and ancillary apparatus owned, operated or maintained by Exolum and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"Exolum" means Exolum Pipeline System Ltd and Exolum Immingham Limited and any successor in title;

"functions" includes powers and duties;

"in" in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by Exolum and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in Exolum in respect of those items;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

"premises" means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities and jetties;

"specified work" means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and

"working day" means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of apparatus

26. Irrespective of any provision in this Order or anything shown on the land plans—

(a) the undertaker may not acquire any apparatus, premises or any right of Exolum in respect of any apparatus or any of Exolum's interests in land;

(b) the undertaker must not obstruct or render less convenient the access to any apparatus or premises or interfere with or affect Exolum's ability to operate the apparatus, otherwise than by agreement with Exolum, agreement not to be unreasonably delayed or withheld;

(c) any right of Exolum to maintain, repair, renew, adjust, alter or inspect any apparatus may not be extinguished by the undertaker until any necessary alternative apparatus which allows Exolum to fulfil its functions in a manner not less efficient than previously has been constructed and is in operation to the reasonable satisfaction of Exolum;

(d) the undertaker must not require that any apparatus is relocated or diverted or removed, otherwise than by agreement with Exolum; and

(e) where alternative apparatus is proposed or reasonably necessary in consequence of the exercise of any of the powers conferred by the Order, the undertaker must afford to Exolum the necessary facilities and rights for the construction of any alternative apparatus.

Relevant Works

27.—(1) In this paragraph—

"relevant works" means any works forming any part of the authorised development as do, will or are likely to affect any apparatus or Exolum's access to any apparatus including those which involve—

(a) A physical connection or attachment to any apparatus;

(b) Works within 15 metres of any apparatus;

(c) The crossing of any apparatus by other utilities;

(d) The use of explosives within 400 metres of any apparatus; or

(e) Piling, undertaking of a 3D seismic survey or the sinking of boreholes within 30 metres of any apparatus.

(2) Unless a shorter period is otherwise agreed in writing between the undertaker and Exolum, not less than 35 days before commencing any relevant works, the undertaker must submit to Exolum the works details for the relevant works and such further particulars as Exolum may reasonably require and submit to the Undertaker within 28 days of receipt of the works details and no relevant works are to be commenced until Exolum, acting reasonably, has approved the works details.

(3) The relevant works must be executed only in accordance with the works details approved by Exolum under this sub-paragraph 3 including any reasonable requirements notified to the

undertaker by Exolum and Exolum shall be entitled to watch and inspect the execution of those works.

(4) Nothing in this Schedule shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3 metres of the apparatus unless that apparatus is redundant and disconnected from Exolum's remaining system.

(5) If Exolum in accordance with sub-paragraph 27(2) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any Apparatus and gives written notice to the undertaker of that requirement, this deed applies as if the removal of the Apparatus had been required by the undertaker and agreed with Exolum pursuant to sub-paragraph 27(2).

(6) Nothing in this sub-paragraph 6 precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and Exolum) in no case less than 28 days before commencing the execution of any relevant works, new works details, instead of the works details previously submitted, and having done so the provisions of this sub-paragraph 6 apply to and in respect of the new works details.

(7) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of the apparatus, or (wherever situated) impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the works details to be submitted to Exolum under sub-paragraph 27(2) shall be detailed including a method statement describing—

(a) the exact position of the works;

(b) the level at which the works are to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Expenses

28.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Exolum the reasonable costs and expenses incurred by Exolum in, or in connection with—

(a) the inspection, removal, alteration or works for the protection of any apparatus;

(b) the watching and inspecting the execution of any specified work including relevant works;

(c) the imposition of reasonable requirements for the protection or alteration of apparatus; and

(d) the undertaking by Exolum of its obligations under this protective provision including the review and assessment of plans and works details.

which may reasonably be required in consequence of the execution of any such works as are required under this protective provision.

(2) The undertaker shall pay Exolum's reasonable direct costs incurred in the management and handling of any expenses paid under this protective provision.

(3) There will be no deduction from any sum payable under this protective provision as a result of—

(a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing apparatus; or

(b) the placing of apparatus in substitution of the existing apparatus that may defer the time for renewal of the existing apparatus in the ordinary course.

(4) Upon the submission of an invoice detailing the proper and reasonable costs and expenses incurred by Exolum, the undertaker shall pay Exolum within 30 days from the date on which the invoice is received.

Damage to property and other losses

29.—(1) Subject to the following provisions of this paragraph, the undertaker must—

(a) pay Exolum for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Exolum for which Exolum is legally liable as a result of legally sustainable claims brought against Exolum by any third party solely arising out of the carrying out of any works associated with the authorised development;

(b) pay the cost reasonably incurred by Exolum in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any works associated with the authorised development; and

(c) pay the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any works associated with the authorised development.

(2) Irrespective of anything to the contrary elsewhere in this protective provision—

(a) the undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this protective provision; and

(b) neither the undertaker nor Exolum are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(3) Exolum must give to the undertaker reasonable notice of any claim or demand to which this paragraph 30 applies. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Exolum must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. Exolum must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(4) The requirement to give reasonable notice of any claim or demand to the undertaker in sub-paragraph (3) above shall not apply in the event of an emergency or where the safety of the apparatus is at risk, in which case Exolum may take necessary action and notify the undertaker of its costs promptly afterwards.

30.—(1) Where in consequence of the proposed construction of any of the authorised development, Exolum requires the protection or alteration of apparatus under the terms of this protective provision, the undertaker must use its best endeavours to co–ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Exolum's undertaking.

(2) Exolum must use reasonable endeavours to cooperate with the undertaker for the purposes outlined in this paragraph 30.

(3) The undertaker and Exolum must act reasonably in respect of any given term of this protective provision and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this protective provision it must not be unreasonably withheld or delayed.

Miscellaneous

31. Nothing in this protective provision affects the provisions of any enactment or agreement regulating the relations between the undertaker and Exolum in respect of any apparatus laid or

erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order. In the case of any inconsistency, in the context of the authorised development, the provisions of this Order prevail.

32. Any dispute arising between the Undertaker and Exolum under this Part of this Schedule is to be determined by arbitration in accordance with article 35 (arbitration).

Emergency circumstances

33.—(1) The undertaker acknowledges that Exolum provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.

(2) In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this Order and Exolum shall not be in breach of its obligations to proceed—

(a) circumstances in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or

(d) any circumstances identified by the COBRA committee of His Majesty's Government (or any successor committee thereof); or

(e) any situation, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect Exolum's apparatus "mid-works") to account for the suspension.

(4) Exolum shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.

PART 4

FOR THE PROTECTION OF THE IOT OPERATORS

Application

34. The provisions of this Part of this Schedule shall apply for the protection of the IOT Operators, unless otherwise agreed in writing at any time between the undertaker and the IOT Operators.

Interpretation

35. In this Part of this protective provision—

"apparatus" means the pipe-line and storage system owned or maintained by the IOT Operators and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"Associated Petroleum Terminals (Immingham) Ltd" means Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"functions" includes powers and duties;

"Humber Oil Terminal Trustees Ltd" means Humber Oil Terminal Trustees Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"in" in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"IOT Operators" means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd;

"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by IOT Operators and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in IOT Operators in respect of those items;

"specified work" means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and

"working day" means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of apparatus

36. Irrespective of any provision in this Order or anything shown on the land plans—

(a) the undertaker may not acquire any apparatus or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with the IOT Operators; and

(b) any right of the IOT Operators to maintain, repair, renew, adjust, alter or inspect any apparatus may not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the IOT Operators.

Expenses

37. Subject to the following provisions of this paragraph, during the construction of the authorised development the undertaker must pay to IOT Operators the reasonable costs and expenses incurred by the IOT Operators in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus; or

(b) the watching and inspecting the execution of any specified work; or

(c) the imposition of reasonable requirements for the protection or alteration of apparatus,

which may reasonably be required in consequence of the execution of any such works as are required under this Schedule.

Damage to property and other losses

38.—(1) Subject to the following provisions of this paragraph, the undertaker must—

(a) grant the IOT Operators, upon reasonable notice access to any apparatus during the carrying out of any relevant works reasonably required for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice. For the purposes of this subparagraph (a), 'apparatus' includes any connection into pipelines or associated

infrastructure operated by the IOT Operators and/or any successor pipeline system operator.

(b) pay the IOT Operators for all loss, damage, liability, costs and expenses reasonably suffered or incurred by the IOT Operators for which the IOT Operators is legally liable as a result of legally sustainable claims brought against the IOT Operators by any third party solely arising out of the carrying out of any relevant works;

(c) pay the cost reasonably incurred by the IOT Operators in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works; and

(d) pay the cost reasonably incurred by the IOT Operators in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to the IOT Operators for any other expenses, losses, damages, penalty or costs incurred by the IOT Operators by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works.

(2) Irrespective of anything to the contrary elsewhere in this protective provision—

(a) the undertaker and the IOT Operators must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and

(b) neither the undertaker nor the IOT Operators are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(3) The IOT Operators must give to the undertaker reasonable notice of any claim or demand to which this paragraph 38 applies. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The IOT Operators must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. The IOT Operators must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(4) In this paragraph—

"relevant works" means such of the authorised development as—

(a) does, will or is likely to affect any apparatus; or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

39.—(1) Where as a consequence of the construction of any part of the authorised development, the undertaker requires the removal of apparatus or the IOT Operators, acting reasonably, requires the protection or alteration of apparatus, the undertaker must, if it agrees that such works are necessary, use its best endeavours to co–ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the IOT Operators' undertaking and the IOT Operators must use its best endeavours to cooperate with the undertaker for that purpose.

(2) the undertaker and the IOT Operators must act reasonably in compliance with the terms of this protective provision and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required it must not be unreasonably withheld or delayed.

Miscellaneous

40. Nothing in this protective provision affects the provisions of any enactment or agreement regulating the relations between the undertaker and the IOT Operators in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that in connection with the construction of the authorised development, the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this protective provision. In the case of any inconsistency in the context of the authorised development, the provisions of this Order, including this protective provision, prevail.

Emergency circumstances

41.—(1) the undertaker acknowledges that the IOT Operators provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.

(2) In the following circumstances, the IOT Operators may on written notice to the undertaker require the immediate suspension of works to construct the authorised development if such works necessitate the stopping or suspending of the supply of product through any apparatus and the IOT Operators shall not be in breach of its obligations under this protective provision in circumstances—

(a) in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or

(d) identified by the COBRA committee of His Majesty's Government (or any successor committee thereof) as identified as falling within any of the above sub-paragraphs of this paragraph; or

(e) where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect the IOT Operators' apparatus "mid-works") to account for the suspension.

(4) The IOT Operators shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.

PART 5

FOR THE PROTECTION OF NORTHERN POWERGRID

Application

42. For the protection of Northern Powergrid the following provisions, unless otherwise agreed in writing between the undertaker and Northern Powergrid, have effect for the duration of the construction of the authorised works, including (for the avoidance of doubt)—

(a) where this Order is amended by way of supplementary order, then the following provisions have effect for the construction of the development authorised by such supplementary order; and

(b) where a diversion or replacement of Northern Powergrid's apparatus is required during the construction phase of this Order or any supplementary order, the following provisions have effect for as long as it takes for the diversion or replacement to be completed.

Interpretation

43. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised works" means so much of the works authorised by this Order which affect existing Northern Powergrid's apparatus within the Order limits;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"Northern Powergrid" means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid's undertaking;

"supplementary order" means any order that is made by the Secretary of State that supersedes or amends this Order, including for the avoidance of doubt a non-material change order or a new application for a development consent order in respect of the Immingham Eastern Ro-Ro Terminal development; and

"working day" means a day other than a Saturday or a Sunday or public holiday in England.

Acquisition of Land

44. Regardless of any provision in this Order or anything shown on the land plans the undertaker must not acquire any apparatus or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

Removal of Apparatus

45.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted or is authorised by written agreement from Northern Powergrid, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(**a**) 1989 c.29.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 42 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

46.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

47.—(1) Not less than 28 working days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment), or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 45, the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may

be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 24 working days beginning with the date on which a plan, section and description under sub-paragraph (1) is submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 3 and 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 45.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

48.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 50 days of receipt of a valid VAT invoice all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 45(2) including without limitation—

(i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 45(3) all costs reasonably incurred as a result of such action;

(ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(iv) the approval of plans;

(v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule); and

(b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 46(1) having first decommissioned such apparatus;

(c) where any payment falls due pursuant to paragraph 48(1), Northern Powergrid shall—

(i) provide an itemised invoice or reasonable expenses claim to the undertaker; and

(ii) provide ‘reminder letters’ to the undertaker for payment to be made within the 50 days on the following days after the invoice or reasonable expenses claim to the undertaker:

(aa) 15 days (‘reminder letter 1’);

(bb) 29 days (‘reminder letter 2’);

(cc) 43 days (‘reminder letter 3’).

(iii) commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim on the fiftieth day of receipt of the same where payment has not been made.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) if in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(3) For the purposes of sub-paragraph (2)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such an extension is required in consequence of the execution of any such works as are referred to in paragraph 45(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(4) The undertaker shall not be liable for any claim by Northern Powergrid for charges, costs or expenses under this paragraph 48 unless prior to Northern Powergrid undertaking the relevant works and/or incurring those charges, costs or expenses, the undertaker has—

(a) received an estimate of that charge, cost or expense along with all necessary supporting information required to evidence the amount and reasonableness of, and the reasonable steps taken to minimise, the charge, cost or expense and a timescale in which the undertaker will be required to make payment, and

(b) approved the estimate in writing (approval not to be unreasonably withheld or delayed),

and Northern Powergrid may not commence any work in relation to which an estimate is submitted until it has been agreed in writing by the undertaker,

(5) The undertaker will use reasonable endeavours to agree the amount of any estimates submitted to it under sub-paragraph (4) within 15 working days of receipt, and must acknowledge as part of its approval that any estimate is only an estimate and may be subject to change.

(6) Subject to Northern Powergrid updating the undertaker by way of submission of an updated estimate for approval under sub-paragraph (4) where any charges, costs or expenses are anticipated to exceed an approved estimate, the undertaker's approval of an estimate shall in no way limit National Powergrid's recovery under this paragraph 48, and the undertaker shall pay the actual costs incurred by Northern Powergrid and submitted for payment whether such costs are above or below the estimate provided and upon making payment under this paragraph, the undertaker may—

(a) confirm to Northern Powergrid that the charge, cost or expense is accepted; or

(b) confirm to Northern Powergrid that the charge, cost or expense if not accepted and the reasons why it considers this to be the case.

and Northern Powergrid must take in to account any representations made by the undertaker in accordance with sub-paragraph (b) and must following receipt of such representations confirm whether or not the requested refund, or any part thereof, is accepted or rejected, and the reasons why it considered this to be the case; and make payment of the requested refund, or part thereof which is not rejected, as applicable such confirmation or payment not to be unreasonably withheld or delayed.

(7) Either party may refer any difference or dispute arising out of sub-paragraph (6) above to arbitration in accordance with article 35 (arbitration) of the Order.

Damage to property and other losses

49.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 45(2), or in consequence of the, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule any subsidence resulting from any of these works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,

by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes 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 Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 49 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 49 for claims reasonably incurred by Northern Powergrid.

(5) Where Northern Powergrid is liable to pay any amount to a third party as described in sub-paragraph (1), the total liability of the undertaker to Northern Powergrid under sub-paragraph (1) in respect of each third party claim shall be limited to the extent that Northern Powergrid has

properly paid expenses, losses, demands, damages, claims, penalties, costs, interest or any other liability arising from any proceedings to such third party pursuant to—

(a) any statutory compensation scheme, obligation pursuant to its transmission license, or any agreement regulated thereby;

(b) an award of damages by a court or a settlements or compromise of a claim, demand or proceeding provided that Northern Powergrid will not admit liability or offer to settle with a third party without the undertaker's consent (not to be unreasonably withheld or delayed).

50. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

51. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 45 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 48, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use all reasonable endeavours to co-operate with the undertaker for those purposes.

52. If in consequence of an agreement reached in accordance with paragraph 44 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

53. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

54.—(1) Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction of the authorised development. Such liaison shall be carried out where any works are:

(a) within 15m of any above ground apparatus; and/or

(b) are to a depth of between 0–4m below ground level.

PART 6

FOR THE PROTECTION OF ANGLIAN WATER

Application

55. For the protection of Anglian Water the following provisions have effect until the commencement of the operation of the authorised development, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

56. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited;

"apparatus" means:

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage including for the avoidance of doubt any decommissioned works, mains, pipes or other apparatus;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991(**a**);

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and

(e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus,

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

Protective works to buildings

57. The undertaker, in the case of the powers conferred by article 27 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

58. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

59.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

(a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 60.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed

(**a**) 1991 c.56.

in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of Anglian Water's apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

60.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016(**a**) or other legislation.

Retained apparatus

61.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 59(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 59(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres; and

(c) 6 metres where the diameter of the pipe exceeds 400 millimetres.

(**a**) S.I. 2016/1154.

Expenses and costs

62.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

63.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 59 or 61(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

64. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 59(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 59(4), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

65. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

66. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

67. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 7

FOR THE PROTECTION OF NETWORK RAIL

Application

68. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 81, any other person on whom rights or obligations are conferred by that paragraph.

Interpretation

69. In this Part of this Schedule—

"asset protection agreement" means an agreement, should such be required, to regulate the construction and maintenance of the specified work in a form to be agreed from time to time between the undertaker and Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of their powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited company number 02904587, registered at Waterloo General Office, London SE1 8SW, and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the

meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited, and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"protective works" means any works specified by the engineer under paragraph 72(4);

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or a tenant or licensee of Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment; and

"regulatory consents" means any consent or approval required under:

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 6 (maintenance of authorised development) in respect of such works.

70.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

71.—(1) The undertaker must not exercise the powers conferred by—

(a) article 5 (development consent granted by the Order);

(b) article 6 (maintenance of the authorised development);

(c) article 13 (power to override easements and other rights)

(d) article 16 (statutory undertakers and operator of the electronic communications code network);

(e) article 26 (authority to survey and investigate the land);

(f) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(g) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(h) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act or article 16 (statutory undertakers and operator of the electronic communications code network) or article 13 (power to override easements and other rights or private rights of way) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or diverted with the consent of Network Rail.

(4) No powers of compulsory acquisition are being sought in relation to railway property.

(5) The undertaker must not under the powers of this Order acquire or use or acquire new rights over or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.

(6) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(7) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion). The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

72.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 35 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works in question until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

73.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 72 must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 72;

(b) under the supervision (where appropriate) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

74.—(1) The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

75. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

76.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be

permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work because which in the opinion of the engineer it is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any approval of the specified work or protective work in question under paragraph 72(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 77(a), provide such details of the formula or method of calculation by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

77. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 72(3) or in constructing any protective works under the provisions of paragraph 72(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer be required to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

78. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as not adversely to affect railway property.

79. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

80. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

81.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance or operation of a specified work or a protective work or the failure of it;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development—

(i) in respect of any damage caused to, or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(ii) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker indemnify and keep indemnified Network Rail in respect of such costs, from and against all claims and demands arising out of or in connection with a specified work or protective work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or its employees, contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

82. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other

liabilities for which the undertaker is or will become liable pursuant to this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 81(3) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

83. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

84. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

85. The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State's consent under article 9 (transfer of benefit of Order, etc.) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

86. The undertaker must no later than 28 days from the date that the plans and documents referred to in article 33 (certification of plans and documents etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail.

87. Any dispute arising between the undertaker and Network Rail under this Part of this Schedule is to be determined by arbitration in accordance with article 35 (arbitration).

PART 8

FOR THE PROTECTION OF NORTH EAST LINCOLNSHIRE COUNCIL (AS LEAD LOCAL FLOOD AUTHORITY)

Application

88. The provisions of this Part of this Schedule apply until the commencement of the operation of the authorised development for the protection of North East Lincolnshire Council (as lead local flood authority within the meaning of the Flood and Water Management Act 2010) unless otherwise agreed between the undertaker and North East Lincolnshire Council.

Interpretation

89. In this Part of this Schedule—

"authorised officer" means an officer authorised to by North East Lincolnshire Council;

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" are construed accordingly;

"drainage work" means any ordinary watercourse and includes any land which is expected to provide flood storage capacity for an ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse;

"ordinary watercourse" has the meaning as given in section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means any works carried out in relation to or which may affect any ordinary watercourse, drain or culvert in a manner that would be likely to affect the flow of the watercourse.

90.—(1) Before beginning to construct any specified work, the undertaker must submit to North East Lincolnshire Council plans of the specified work and such further particulars available to it as North East Lincolnshire Council may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by North East Lincolnshire Council, or determined under sub-paragraph (3).

(3) Any approval of North East Lincolnshire Council required under sub-paragraph (2)—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 28 days of the receipt of the plans for approval or where further particulars are submitted under sub-paragraph (1) within 28 days of the submission of those particulars, or where further particulars are received under sub-paragraph (1), within 28 days of the receipt of those particulars, and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as it may make for the protection of any drainage work or for the prevention of flooding and

(d) North East Lincolnshire Council must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

91. Without limitation on the scope of paragraph 90 the requirements which North East Lincolnshire Council may make include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including any new works as well as alterations to existing works) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of the specified work.

92.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by North East Lincolnshire Council under paragraph 90 be constructed—

(a) without unnecessary delay in accordance with the plans approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of North East Lincolnshire Council,

and an authorised officer of North East Lincolnshire Council is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to North East Lincolnshire Council not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective work required by North East Lincolnshire Council over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of Schedule, North East Lincolnshire Council may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and North East Lincolnshire Council in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as North East Lincolnshire Council reasonably requires.

(4) Subject to sub-paragraph 5 and paragraph 90, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, North East Lincolnshire Council may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, North East Lincolnshire Council must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

93.—(1) Subject to sub-paragraph 2 the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of North East Lincolnshire Council it may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and North East Lincolnshire Council in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as North East Lincolnshire Council reasonably requires.

(3) Subject to sub-paragraph 4 and paragraph 90, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, North East Lincolnshire Council may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph 2, North East Lincolnshire Council must not, except in a case of an emergency, exercise the powers conferred by sub-paragraph 3 until the dispute has been finally determined.

(5) This paragraph does not apply to—

(a) drainage works which are vested in North East Lincolnshire Council, or which North East Lincolnshire Council or another person is liable to maintain and is not precluded by the powers of the Order from doing so; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

94. Subject to paragraph 93, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of North East Lincolnshire Council and if the undertaker fails to do so, North East Lincolnshire Council may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

95.—(1) The undertaker must indemnify North East Lincolnshire Council in respect of all costs, charges and expenses which North East Lincolnshire Council may reasonably incur or have to pay or which it may sustain—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of the specified work in respect of an ordinary watercourse or any protective works required by North East Lincolnshire Council under this Part of this Schedule.

(2) The maximum amount payable to North East Lincolnshire Council under paragraph 92 or 94 is to be the same as would have been payable to North East Lincolnshire Council in accordance with the scale of charges for pre-application advice and land drainage consent applications published by North East Lincolnshire Council from time to time.

96.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify North East Lincolnshire Council from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, North East Lincolnshire Council by reason of—

(a) any damage to any drainage work so as to impair its efficiency for flood defence or land drainage purposes;

(b) any raising or lowering of the water table in land adjoining or affected by a specified work or adjoining any sewers, drains and watercourses;

(c) any flooding, increased flooding or impaired drainage of any such lands as are mentioned in paragraph 93;

(d) any claim in respect of pollution under the Control of Pollution Act 1974(**a**);

(e) damage to property including property owned by third parties; or

(f) injury to or death of any person,

which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) North East Lincolnshire Council must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

97. The fact that any work or thing has been executed or done by the undertaker in accordance with plans approved by North East Lincolnshire Council, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not (in the absence of negligence on the part of North East Lincolnshire Council, its officers, contractors or agents) relieve the undertaker from any liability under the provisions of this Part of this Schedule.

98. Any dispute arising between the undertaker and North East Lincolnshire Council under this Part of this Schedule is to be determined by arbitration in accordance with article 35 (arbitration).

PART 9

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS COMPANY

Application

99. The provisions of this Part of this Schedule shall apply for the protection of Cadent, unless otherwise agreed in writing between the undertaker and Cadent.

Interpretation

100. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

(**a**) 1974 c. 40.

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" means Work No. 6 as defined in Schedule 1 to this Order and includes any ancillary works (as defined in Schedule 1 to this Order) associated with Work No. 6;

"Cadent" means Cadent Gas Limited (Company Number 10080864) whose registered office is situated at Cadent, Pilot Way, Ansty, Coventry, England, CV7 9JU) and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"commence" has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations for the purposes of archaeological or ecological investigations and investigations of the existing condition of the ground or of structures;

"decommissioned apparatus" means any disused no longer maintained by Cadent as a consequence of the authorised development and for which rights have been surrendered and references to "decommission" and "decommissioned" shall be construed accordingly;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule and references to "deeds of consent" shall be construed accordingly;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"rights" shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 103(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 103(2) or otherwise; and/or

(c) include any of the activities that are referred to in CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets); and

"undertaker" means the undertaker as defined in article 2 of this Order.

Protective works to buildings

101.—(1) The undertaker, in the case of the powers conferred by article 27 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) pay compensation to Cadent for any loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

102.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph 104(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail subject to the proviso in paragraph 99 above.

(4) Any agreement or consent granted by Cadent under paragraph 105 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 104(1).

(5) As a condition of an agreement between the parties in sub-paragraph 104(1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus subject to the satisfaction of the undertaker and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

Removal of apparatus

103.—(1) If, for the purpose of executing any works in, on, under or over any land held or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 104(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(2) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(4) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

(5) Where apparatus is to be decommissioned pursuant to sub–paragraph (4) such apparatus shall be filled with concrete save where Cadent determines (in its absolute discretion) that this method of decommissioning would not be appropriate and in such circumstances the undertaker shall be able to require the removal of such apparatus at the undertaker's expense unless such removal is not practicable in which case Cadent shall decommission the apparatus as it sees fit.

Facilities and rights for alternative apparatus

104.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed

between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 112 (arbitration) of this protective provision and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

105.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 103(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

(a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in the vicinity of Cadent's Assets CD/SP /SSW22 and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 106.

Expenses

106.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or paid by Cadent in connection with the negotiation of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the approval of plans;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and

(f) any watching brief pursuant to sub-paragraph 105(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this

Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

107.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 9 (transfer benefit of Order, etc.) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this

sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 107.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

Enactments and agreements

108. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made and which will continue to have effect.

Co-operation

109. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 103(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 105, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

110. For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

111. If in consequence of the agreement reached in accordance with sub-paragraph 104(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

112. Save for differences or disputes arising under sub-paragraphs 103(2), 103(4), 105(1), and paragraph 106 any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 35 (arbitration) to be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institute of Civil Engineers and in settling any difference or dispute, the arbitrator must have regard to the requirements of Cadent for ensuring the safety, economic and efficient operation of Cadent's apparatus.

Notices

113. The plans submitted to Cadent by the undertaker pursuant to sub-paragraph 105(1) must be sent to Cadent Gas Limited Plant Protection by e-mail to plantprotection@cadentgas.com copied by e-mail to landservices@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 10

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

Application

114. For the protection of any operator, referred to in this Part of this Schedule, the following provisions have effect until the commencement of the operation of the authorised development, unless otherwise agreed in writing between the undertaker and the operator.

Interpretation

115. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003;

"the code rights" has the same meaning as in the Paragraph 3 of the electronic communications code;

"electronic communications apparatus" has the same meaning as in electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

"the electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

116. The exercise of the powers of article 16 (statutory undertakers and operator of the electronic communications code network) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic code.

117.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of the authorise development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes 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 an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 35 (arbitration).

118. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

119. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 11

FOR THE PROTECTION OF DFDS SEAWAYS PLC

Application

120. The provisions of this Part of this Schedule shall apply for the protection of DFDS, unless otherwise agreed in writing at any time between the undertaker and DFDS.

Interpretation

121. In this Part of this Schedule—

"authorised work" means any work specified in Schedule 1;

"DFDS" means DFDS Seaways plc, company number 01554521 registered at Nordic House, Western Access Road, Immingham Dock, Immingham, DN40 2LZ; and

"environmental document" means the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement.

Consultation and notification

122. The undertaker must, at least 28 days before the undertaker commences the construction of any authorised work, or any phase of any authorised work, that has been assessed in any environmental document as being likely to interfere with DFDS' use of the Port of Immingham or the surrounding road network, inform DFDS in writing stating what is proposed and have regard to any response received from DFDS.

Indemnity

123.—(1) The undertaker is responsible for and must make good to DFDS all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by DFDS by reason of—

(a) the construction of the authorised works; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged in the construction of the authorised works.

(2) DFDS must give the undertaker no less than 28 days' notice in writing, providing a detailed explanation and justification for any such claim, as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

(3) Nothing in sub-paragraph (1) imposes 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 DFDS, its officers, servants, contractors or agents.

Operations

124. Before commencing any marine commercial operations the undertaker must provide DFDS with a copy of the Statutory Conservancy and Navigation Authority's approval of the written statement of proposed safe operating procedures for access to and egress from the authorised development, including any approved alteration made from time to time.

Disputes

125. Any dispute arising between the undertaker and DFDS under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).

PART 12

FOR THE PROTECTION OF CLDN PORTS KILLINGHOLME LIMITED

Application

126. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and CLdN, for the protection of CLdN until the commencement of operation of the authorised development.

Interpretation

127.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.

(2) In this part of this Schedule—

"CLdN" means CLdN Ports Killingholme Limited, company number 00278815, whose principal office is at 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU as statutory harbour authority for and operator of the Port and any successor in title or function to the Port;

"the CLdN disposal site" means Humber 3A/Clay Huts (HU060) disposal site situated adjacent to Clay Huts and Holme Ridge in the river Humber;

"environmental document" means environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement;

"the Port" means any land (including land covered by water) at Killingholme for the time being owned or used by CLdN for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls or works held in connection with that undertaking;

"specified work" means any work, activity or operation authorised by this Order, by the Town and Country Planning Act (General Permitted Development) Order 2015 or by any planning permission given under the Town and Country Planning Act 1990, and any vessel movements, which has been assessed in any environmental document as being likely to interfere with—

(a) the Port or access (including over water) to and from the Port; or

(b) CLdN's ability to carry out disposal activities at the CLdN disposal site; or

(c) the functions of CLdN as the statutory harbour authority for the Port.

Cooperation

128. The undertaker and CLdN must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

Notice of and consultation on works and vessel movements

129. The undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of any specified work at least 20 days prior to the commencement of the specified work.

130. Any operations for the construction of any specified work, once commenced, must be carried out by the undertaker so that CLdN does not suffer more interference than is reasonably necessary.

Indemnity

131.—(1) During the construction of the authorised development, the Undertaker must indemnify CLdN against all financial losses, costs, charges, damages, expenses, claims and demands which may reasonably be incurred or occasioned to CLdN by reason or arising in connection with—

(a) any obstruction which prevents or materially hinders access into or out of the Port, which is caused by or attributable to the undertaker or its agents or contractors in exercising the power of this Order, save for where such an obstruction is as a result of the lawful actions or direction of the Statutory Conservancy and Navigation Authority;

(b) the undertaking by CLdN of works or measures to prevent or remedy a danger or impediment to navigation or access to or from the Port arising from the exercise by the undertaker of its powers under this Order; or

(c) any additional costs of disposal of dredging arisings from the Port incurred by CLdN as a result of the undertaker's use of the CLdN disposal site.

(2) Nothing in sub-paragraph (1) imposes 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 CLdN, its officers, servants, contractors or agents.

(3) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify CLdN from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph until the commencement of the operation of the authorised development.

Arbitration

132. Unless otherwise agreed in writing, any dispute arising between the undertaker and CLdN under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).

PART 13

FOR THE PROTECTION OF THE INTERNAL DRAINAGE BOARD

Application

133. The provisions of this Part of this Schedule have effect for the protection of the Board unless otherwise agreed in writing between the undertaker and the Board.

Interpretation

134. In this part of this Schedule—

"construction" includes execution, placing, altering, replacing, relaying and removal; and "construct" and "constructed" must be construed accordingly;

"drainage work" means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

"evidence" includes hydraulic modelling, infiltration test results and geotechnical evaluations;

"ordinary watercourse" has the meaning given in section 72 (Interpretation) of the Land Drainage Act 1991(**a**);

"plans" includes sections, drawings, specifications and method statements;

"specified works" means—

(a) the making of any opening into or connections with any watercourse or drain in connection with the authorised development; and/or

(b) so much of any work or operation of the authorised development as is in, on, under, over or within 9 metres of a drainage work for which the Board has responsibility or is otherwise likely to—

(i) affect any drainage work;

(ii) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work;

(iii) affect the flow of water in any drainage work; or

(iv) affect the conservation, distribution or use of water resources.

135. The undertaker musty not make any opening into or connections with any watercourse or drain in connection with the authorised development or carry out any specified work except—

(a) in accordance with plans approved by the Board in accordance with this Part of this Schedule; and

(b) where the Board has been given the opportunity to supervise the making of the opening or connection,

and no discharge of water under article 24 (discharge of water) shall be made until details of the location and rate of discharge have been submitted to and approved in writing by the Board.

(2) Before beginning to construct any specified work, the undertaker must submit to the Board plans of the specified work, evidence to support said plans and any such further particulars available to it as the Board may within 28 days of the submission of the plans reasonably require (or submission of further particulars if required by the Board).

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 143.

(4) Any approval of the Board required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or the submission of further particulars if applicable) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements and conditions as the Board may consider appropriate.

(**a**) 1991 c. 59. There are amendments to section 72 but none are relevant.

(5) The Board must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4).

(6) Where under this Part of this Schedule the Board is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the Board complies with its obligations to consult other appropriate agencies, to have regard to any guidance issued by any appropriate supervisory body and has regard to its obligations under statute.

136. Without limiting paragraph 135, the requirements which the Board may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work or the authorised development.

137.—(1) Subject to sub–-paragraph (2), any specified work, and all protective works required by the Board under paragraph 136, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and

(b) to the reasonable satisfaction of the Board, and an officer of the Board is entitled to give such notice as may be reasonably required in the circumstances to watch and inspect the construction of such works.

(2) The undertaker must give to the Board—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date on which it or the authorised development is brought into use.

(3) If the Board reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the Board is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Board may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Board in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Board reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Board may execute the works specified in the notice, and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Board must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally resolved by agreement or determined under paragraph 143.

138. If by reason of the construction of the authorised development or any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made

good by the undertaker to the reasonable satisfaction of the Board and, if the undertaker fails to do so, the Board may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

139. If the Board considers that, as a direct result of the construction and/or operation of the authorised development the outfall of the Habrough Drain has been obstructed or impaired and either—

(a) the obstruction has the potential to impede or affect the flow of water from the Habrough Drain into the River Humber; or

(b) the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action,

such obstruction, impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and if the Undertaker fails to do so, the Board may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

140. The undertaker must compensate the Board in respect of all costs, charges and expenses that the Board may reasonably incur, have to pay or may sustain—

(a) in the examination or approval of plans and evidence under this Part of this Schedule;

(b) in inspecting the proposed site for and construction of any specified work or any protective works required by the Board under this Part of this Schedule; and

(c) in carrying out of any surveys or tests by the Board that are reasonably required in connection with the authorised development and/or construction of the specified work.

141.—(1) Without limiting the other provisions of this Part of this Schedule, the undertaker must compensate the Board in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, reasonably recovered from or reasonably incurred by the Board by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; and

(b) any flooding or increased flooding of any such land which is caused by, or results from, the authorised development, the construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

142. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Board, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

143. Any dispute between the undertaker and the Board under this Part of this Schedule, unless otherwise agreed, must be determined by arbitration under article 35 (arbitration).

SCHEDULE 5

Article 10

MODIFICATIONS OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications set out in this Schedule as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A)(relevant valuation date) of the 1961 Act substitute—

"(5A) If—

(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act (as modified by paragraph 5(5) of Schedule 6 to the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 202[ ]);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 to the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 202[ ] to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purposes of exercising that right."

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

(a) for "land is acquired or taken" substitute "a right over land is purchased";

(b) for "acquired or taken from him" substitute "over which the right is exercisable".

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act, and modified by article 15 (modification of Part 1 of the 1965 Act) applies to the compulsory acquisition of a right by the creation of a new right under article 10 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows—

(a) references in the 1965 Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

(i) the right acquired or to be acquired; or

(ii) the land over which the right is or is to be exercisable.

(b) for section 7 (measure of compensation) of the 1965 Act substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

(2) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (persons without power to sell their interests);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

(3) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 10 (compulsory acquisition of rights), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry: further notices of entry), 11B(c) (counter-notice requiring possession to be taken on a specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

(4) Section 20(f) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

(5) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 15(2) (modification of Part 1 the 1965 Act) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(6) For schedule 2A to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 15 (application of the 1981 Act) of the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 202[ ] in respect of the land to which the notice to treat relates.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served ("the decision period").

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right,

(b) the use to be made of the right proposed to be acquired, and

(c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal."

SCHEDULE 6

Article 10

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

Plot reference number shown on Land Plans	**Works for which Plots are required**	**Extent of Acquisition**
1	Work No. 4 and Work	Acquisition of permanent rights (including

	No. 7	restrictive covenants) over land
2a	Work No. 4 and Work No. 7	Acquisition of permanent rights (including restrictive covenants) over land
2b	Work No. 4 and Work No. 7	Acquisition of permanent rights (including restrictive covenants) over land
3	Work No. 4 and Work No. 7	Acquisition of permanent rights (including restrictive covenants) over land
4	Work No. 4 and Work No. 7	Acquisition of permanent rights (including restrictive covenants) over land
5a	Work No. 4 and Work No. 7	Acquisition of permanent rights (including restrictive covenants) over land
5b	Work No. 4 and Work No. 7	Acquisition of permanent rights (including restrictive covenants) over land
6	Work No. 4 and Work No. 7	Acquisition of permanent rights (including restrictive covenants) over land
14	Work No. 1, Work No. 2 and Work No. 3	Acquisition of interests and rights over land

SCHEDULE 7

Article 33

PLANS AND DOCUMENTS TO BE CERTIFIED

(1) *Document*	*(2)* *Document Reference*
the book of reference	Document Reference 4.1
the drainage plan	Document Reference 2.7
the engineering sections, drawings and plans	Document Reference 2.6 v4
the Enhanced Operational Controls	Document Reference 10.2.109
the environmental statement	The environmental statement chapters (Document Reference 8.2), figures (Document Reference 8.3), appendices (Document Reference 8.4) subject to the substitutions set out below: (a) volume 1, chapter 2: proposed development document reference 8.2.2 v2; (b) volume 1, chapter 3: details of project construction and operation 8.2.3 v2; (c) volume 1, chapter 6: impact assessment approach document reference 8.2.6 v2; (d) volume 1, chapter 20: cumulative and in-combination effects document reference 8.2.20 v2; (e) volume 2, figure 8.3.20: location of projects, developments and activities that are scoped into the inter-project effects assessment document

	reference 8.3.20 v2; (f) volume 3, appendix (g) volume 3, appendix 10.1: navigational risk assessment document reference 8.4.10(a) v2; (h) volume 3, appendix 10.2: navigation simulation study – part 1 document reference 8.4.10(b) v2; (i) volume 3, appendix 10.2: navigation simulation study – part 2 document reference 8.4.10(b) v2; (j) volume 3, appendix 10.3: navigational simulation – stakeholder demonstrations document reference 8.4.10(c) v2; (k) volume 3, appendix 17.1: transport assessment document reference 8.4.17(a) v2; and (l) volume 3, transport assessment addendum document reference 8.4.17(a).1.
the environmental statement addendum	Document Reference 10.3.8
the flood risk assessment	Document Reference 8.4.11
the general arrangement plans	Document Reference 2.5 v2
the land plans	Document Reference 2.2
the lighting plan	Document Reference 2.8 v2
the operational freight management plan	Document Reference 10.2.76 v2
the outline offshore construction environmental management plan	Document Reference 9.2.2 v2
the outline onshore construction environmental management plan	Document Reference 9.2.1 v2
the supplementary navigation information report with appendices	Document Reference 10.2.72
the travel plan	Document Reference 8.4.17(b) v2
the WEMP	Document Reference 9.4
the works plans	Document Reference 2.3 v2

EXPLANATORY NOTE

(This note is not part of the Order)

This Order grants development consent for and authorises Associated British Ports (referred to in this Order as the undertaker) to construct, operate and maintain a new RoRo facility with three berths additional marine infrastructure, a dredged berthing pocket, and associated development within the Port of Immingham.

The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of all documents mentioned in this Order and certified in accordance with article 33 (certification of plans and documents etc.) of this Order may be inspected free of charge during working hours at ABP's Registered Office, 25 Bedford Street, London, WC2E 9ES.

STATUTORY INSTRUMENTS

2024 No. 0000

INFRASTRUCTURE PLANNING

The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024

Made - - - -	*4th October 2024*
Coming into force - -	*25th October 2024*

CONTENTS

SCHEDULES

An application has been made to the Secretary of State under section 37 of the Planning Act 2008(**a**) ("the 2008 Act") in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**), for an order granting development consent.

The application was examined by a panel of three members pursuant to Chapter 2 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act, and the Infrastructure Planning (Examination Procedure) Rules 2010(**c**).

The panel, having examined the application with the documents that accompanied the application and the representations made and not withdrawn, has, in accordance with section 74(2) of the 2008 Act, made a report and recommendation to the Secretary of State.

The Secretary of State, having considered the representations made and not withdrawn and the report and recommendations made by the Panel, has decided to make an Order granting development consent for the development described in the application with modifications which in the opinion of the Secretary of State do not make any substantial changes to the proposals comprised in the application.

The Secretary of State, in exercise of the powers conferred by sections 114(**d**), 115(**e**), 117(**f**), 120(**g**) and 122(**h**) of, and paragraphs 1 to 3, 10 to 16, 24, 26, 30A and 30B, 36, and 37 of Part 1 of Schedule 5(**i**) to, the 2008 Act, makes the following Order—

(**a**) 2008 c. 29. Section 37 was amended by Schedule 13 to the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2017/752, S.I. 2018/378, S.I. 2019/734, S.I. 2020/764, S.I. 2020/1534, S.I. 2021/978, S.I. 2022/634 and S.I. 2023/1071.
(**c**) S.I. 2010/103, amended by S.I. 2012/635.
(**d**) Section 114 was amended by paragraph 55 of Schedule 13 to the Localism Act 2011.
(**e**) Section 115 was amended by paragraph 56 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011, section 160 of the Housing and Planning Act 2016 (c. 22) and section 43 of the Wales Act 2017 (c. 4).
(**f**) Section 117 was amended by paragraph 58 of Schedule 13 and Part 20 of Schedule 25 to the Localism Act 2011.
(**g**) Section 120 was amended by section 140 of and paragraph 60 of Schedule 13 to the Localism Act 2011.
(**h**) Section 122 was amended by paragraph 62 of Schedule 13 to the Localism Act 2011.
(**i**) Part 1 of Schedule 5 was amended by paragraph 4 of Schedule 8 and Part 2 of Schedule 22 to the Marine and Coastal Access Act 2009 (c. 23), paragraph 71 of Schedule 13 to the Localism Act 2011 and paragraph 76 of Schedule 6 to the Wales Act 2017.

PART 1

PRELIMINARY

Citation and Commencement

1. This Order may be cited as the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 and comes into force on 25th October 2024.

Interpretation

2.—(1) "the 1847 Act" means the Harbours, Docks and Piers Clauses Act 1847(**a**);

"the 1961 Act" means the Land Compensation Act 1961(**b**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**c**);

"the 1980 Act" means the Highways Act 1980(**d**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**e**);

"the 1990 Act" means the Town and Country Planning Act 1990(**f**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**g**);

"the 2008 Act" means the Planning Act 2008(**h**);

"the 2009 Act" means the Marine and Coastal Access Act 2009(**i**);

"ABP Statutory Harbour Authority" means the undertaker in its capacity as the local lighthouse authority and as the statutory harbour authority for the Port of Immingham including that part of the estuary of the River Humber immediately adjacent to the port;

"authorised development" means the development and associated development described in Schedule 1 (authorised development) and any other development authorised by this Order, which is development within the meaning of section 32 (meaning of "development") of the 2008 Act;

"berthing pocket" means the area bounded by the co-ordinates given in paragraph 5(2) (details of licensed marine activities) of Schedule 3 (deemed marine licence) and shown on sheets 1 and 2 of the works plans;

"Board" means the North East Lindsey Internal Drainage Board;

"book of reference" means the document of that description listed in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"business day" means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(**j**);

"Chart Datum" in relation to any dredging is 3.9 metres below ordnance datum (Newlyn);

"commence" means the commencement of any material operation as defined in section 56 (4)(**k**) of the 1990 Act forming part of the authorised development other than operations

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(**a**) 1847 c. 27.
(**b**) 1961 c. 33.
(**c**) 1965 c. 56.
(**d**) 1980 c. 66.
(**e**) 1981 c. 66.
(**f**) 1990 c. 8. Section 206(1) was amended by section 192(8) to, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c. 29). There are other amendments to the 1990 Act which are not relevant to this Order.
(**g**) 1991 c. 22.
(**h**) 2008 c. 29.
(**i**) 2009 c. 23.
(**j**) 1971 c. 80.
(**k**) Section 56 was amended by paragraph 10(2) of Schedule 7 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 56 which are not relevant to this Order.

consisting of environmental surveys and monitoring, investigations for the purposes of assessing ground conditions, the receipt and erection of construction plant and equipment, the erection of any temporary means of enclosure, the temporary display of site notices or advertisement and "commencement" is to be construed accordingly;

"construct" includes execution, placing, altering, replacing, relaying and removal and "construction" is to be construed accordingly;

"Council" means North East Lincolnshire Council, or any successor authority, acting in its capacity as the local planning authority;

"deemed marine licence" means the marine licence granted by article 30 (deemed marine licence);

"dock master" means the dock master for the Port of Immingham statutory harbour authority area;

"drainage plan" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the drainage plan for the purposes of this Order;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

"engineering sections, drawings and plans" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the engineering sections, drawings and plans for the purposes of this Order;

"environmental statement" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the environmental statement for the purposes of this Order;

"general arrangement plans" means the document of that description listed in Schedule 7 and certified as the general arrangement plans by the Secretary of State for the purposes of this Order;

"harbour master" means the harbour master for the Statutory Conservancy and Navigation Authority;

"HGV" has the same meaning as heavy goods vehicle in section 58(1) (general interpretation) of the Goods Vehicles (Licensing of Operators) Act 1995;

"HGV driver" means the driver of an HGV for the purposes of transferring freight associated with the commercial ro-ro operation of the authorised development;

"highway" has the same meaning as in section 328 (meaning of "highway") of the 1980 Act;

"highway authority" has the same meaning as in the 1980 Act;

"land plans" means the document of that description listed in Schedule 7 and certified as the land plans by the Secretary of State for the purposes of this Order;

"level of high water" means the level of mean high-water springs;

"lighting plan" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the lighting plan for the purposes of this Order;

"limits of deviation" means the limits of deviation referred to in article 7 (limits of deviation);

"maintain" includes inspect, repair, adjust, alter or remove, provided such works do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, and any derivative of "maintain" is to be construed accordingly;

"mean high water level" means the level which is half way between mean high water springs and mean high water neaps;

"mean high water neaps" means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tides at its least;

"mean high water springs" means the average throughout the year of the heights of two successive high waters during those periods of 24 hours when the range of the tide is at its greatest;

"MMO" means the Marine Management Organisation;

"navigational risk assessment" means the document of that description listed in Schedule 7 and certified by the Secretary of State as the navigational risk assessment for the purposes of this Order;

"Order land" means the land shown on the land plans and which is described in the book of reference;

"Order limits" means the limits shown on the works plans;

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(**a**);

"passengers" means private individuals travelling by vessel from the authorised development, boarding by vehicular transport and not associated with the commercial ro-ro operation and not including HGV drivers;

"Port of Immingham" means the statutory port estate including the Port of Immingham statutory harbour authority area;

"public communications provider" has the same meaning as in section 151(1) (interpretation of chapter 1) of the Communications Act 2003(**b**);

"public utility undertaker" means a gas, water, electricity or sewerage undertaker;

"River Humber" means the tidal estuary from its mouth at the Spurn Peninsula to its confluence with the rivers Ouse and Trent;

"ro-ro" is an acronym for 'Roll on/Roll off' which is a shipping industry term applied to a category of unitised cargo, the embarkation and disembarkation of which is facilitated by a wheeled transfer via a ramp mounted within the structure of the vessel;

"Statutory Conservancy and Navigation Authority" means the statutory conservancy and navigation authority for the river Humber (as successor to the Conservancy Commissioners established under the Humber Conservancy Act 1868(**c**)) and includes its role as competent harbour authority and local lighthouse authority for its statutory area;

"statutory undertaker" means any statutory undertaker for the purposes of section 127(8) (statutory undertakers' land) of the 2008 Act;

"tidal works" means so much of any of the authorised development as are on, under or over tidal waters or tidal lands below the level of high water;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"UK marine area" has the meaning given to it in section 42 (UK marine area) of the 2009 Act;

"undertaker" means Associated British Ports ("ABP") company number ZC000195 whose registered office is at 25 Bedford Street, London, WC2E 9ES;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"WEMP" means the woodland enhancement management plan included in Schedule 7 (plans and documents to be certified) for the future management of that area of land referenced in Schedules 1 and 2 and certified as the WEMP by the Secretary of State for the purposes of this Order; and

"works plans" means the plans with that name included in Schedule 7 (plans and documents to be certified) certified as the works plans by the Secretary of State for the purposes of this Order.

(**a**) 1981 c. 67. The definition of "owner" in section 7 was amended by the Planning and Compensation Act 1991 (c. 34).
(**b**) 2003 c. 21.
(**c**) 1861 c. lviii.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the airspace above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the enjoyment of interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in the Order land.

(3) All measurements of distances, directions, lengths and volumes referred to in this Order are approximate and distances between points on a work comprised in the authorised development are taken to be measured along that work.

(4) For the purposes of this Order, all areas described in square metres in the book of reference are approximate.

(5) References in this Order to points identified by letters, with or without numbers, are to be construed as references to points so lettered on the plan to which the reference applies.

(6) References in this Order to numbered works are references to the works as numbered in Schedule 1 (authorised development).

Disapplication and modification of legislative provisions

3.—(1) The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development—

(a) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(**a**);

(b) the provisions of any byelaws made under, or having effect as if made under, paragraph 5 of Schedule 25 (byelaw-making powers of the appropriate agency) to the Water Resources Act 1991(**b**); and

(c) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**c**) in respect of a flood risk activity only.

(2) On and after the date on which the authorised development is commenced, any conditions of a planning permission granted under section 57 (planning permission required for development) of the 1990 Act and which relate to the land within the Order limits cease to have effect to the extent they are inconsistent with the authorised development or anything done in accordance with or approved under the requirements set out in Schedule 2 (requirements).

(3) Sections 25 (penalties for improper deposit of hard materials in the river) and 26 (no mud to be cast into the river except as admiralty direct) of the River Humber Conservancy Act 1852(**d**), section 9 (licences for execution of works) of the Humber Conservancy Act 1899(**e**), section 6(2) (no erections in Humber below river lines or without licence above river lines) and section 8 (sand &c. not to be removed from bed or foreshore of River Humber without licence of Commissioners) of the Humber Conservancy Act 1905(**f**) do not apply to the authorised development.

Incorporation of the 1847 Act

4.—(1) With the exception of sections 5 to 25, 30, 35, 36, 38, 39, 43, 47 to 50, 53 to 55, 59 to 64, 66, 67, 69, 71 to 73, 77 to 102 and 104, the 1847 Act is incorporated in this Order, subject to the modifications stated in sub-paragraph (2).

(2) For the purposes of the 1847 Act, as so incorporated—

(a) the expression "the special Act" means this Order;

(**a**) 1991 c. 59.
(**b**) 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009 (c. 23), paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.
(**c**) S.I. 2016/1154.
(**d**) 1852 c. cxxx.
(**e**) 1899 c. cci.
(**f**) 1905 c. clxxix.

(b) the expression "the harbour, dock, or pier" means the authorised development;

(c) the expression "the harbour master" means, in relation to the authorised development, the dock master;

(d) the meaning assigned to the word "vessel" by section 3 of the 1847 Act is replaced by the definition of "vessel" contained in article 2(1); and

(e) section 53 of the 1847 Act shall not be construed as requiring the harbour master to serve upon the master of a vessel a notice in writing of his directions but such directions may be given orally or otherwise communicated to such master, provided that a notice which is not in writing shall not be deemed to be sufficient unless in the opinion of the court before which any case may be heard it was not reasonably practicable to serve a written notice on the master of the vessel.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by the Order

5. Subject to the provisions of this Order including the requirements in Schedule 2 (requirements), the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

Maintenance of authorised development

6.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under it, provides otherwise.

(2) This article does not authorise any works which are likely to give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Limits of deviation

7. In carrying out the authorised development comprising the works numbered in Schedule 1 (authorised development) the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans for that work; and

(b) deviate vertically from the levels of the authorised development shown on the engineering sections, drawings and plans:

(i) to any extent upwards as the undertaker considers to be necessary or convenient but not exceeding two metres; or

(ii) save for Work No. 2 in Schedule 1 (authorised development), to any extent downwards as the undertaker considers to be necessary or convenient.

Benefit of Order

8. Subject to article 9 (transfer of benefit of Order, etc.) the provisions of this Order conferring powers on the undertaker have effect solely for the benefit of the undertaker.

Transfer of benefit of Order, etc.

9.—(1) The undertaker may, with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (excluding the deemed marine licence) that apply to the undertaker and such statutory rights as may be agreed between the undertaker and the transferee; or

(b) grant to another person ("the grantee") for a period agreed between the undertaker and the grantee any or all of the benefit of the provisions of this Order that apply to the undertaker and such related rights as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in the provisions of this Order that apply to the undertaker must include references to the transferee or the grantee, as the case may be.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

PART 3

POWERS OF ACQUISITION

Compulsory acquisition of rights

10.—(1) Subject to the following paragraphs of this article, the undertaker may acquire compulsorily such rights over the Order land or impose restrictive covenants affecting the land as is required for the carrying out and use of the authorised development, by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 6 (land in which new rights etc. may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants to the extent specified in relation to that land in column (3) of that Schedule and for the purposes of that part of the authorised development specified in column (2) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as modified by Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

Time limit for exercise of powers of compulsory acquisition

11. After the end of the period of 5 years beginning with the day on which this Order comes into force—

(a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act as modified by article 14 (modification of Part 1 of the 1965 Act); and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 15 (application of the 1981 Act),

in relation to any part of the Order land.

Private rights over land

12.—(1) Subject to the provisions of this article and to Schedule 4 (protective provisions), all private rights over land subject to compulsory acquisition under this Order are extinguished on—

(a) the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) the date of entry onto the land by the undertaker under section 11(1)(**a**) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant on—

(a) the date of the acquisition of the right or the benefit of the restrictive covenant being imposed in favour of the undertaker, whether compulsorily or by agreement;

(b) the date of entry onto the land by the undertaker under section 11(1) of the 1965 Act; or

(c) the commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is earlier.

(3) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152(**b**) (compensation in case where no right to claim in nuisance) of the 2008 Act, to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) This article does not apply in relation to any right to which section 138(**c**) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 16 (statutory undertakers and operator of the electronic communications code network) applies.

(5) Paragraphs (1) and (2) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it; or

(iii) the undertaker's entry onto it,

that any or all of those paragraphs do not apply to any rights specified in this notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(6) If any agreement as is referred to in paragraph (5)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(7) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

13.—(1) Any authorised activity which takes place on land within the Order land (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by

(**a**) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1); and section 186 of the Housing and Planning Act 2016 (c. 22).
(**b**) Section 152 was amended by S.I. 2009/1307.
(**c**) Section 138 was amended by section 23 of the Growth and Infrastructure Act 2013 (c. 27) and S.I. 2017/1285.

any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) In this article "authorised activity" means—

(a) the erection, construction, operation or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by this Order; or

(c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

(i) the compensation is to be estimated in connection with a purchase under that Act; or

(ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

(a) is liable to pay compensation by virtue of paragraph (4); and

(b) fails to discharge that liability,

the liability is enforceable against the undertaker.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph of this article.

Modification of Part 1 of the 1965 Act

14.—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125(**a**) (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(**b**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 4" substitute "section 118(**c**) (legal challenges relating to application for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 11 (time limit for exercise of powers of compulsory acquisition) of the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024".

(3) In section 11A(**d**) (powers of entry: further notice of entry)—

(a) in subsection (1)(a) after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(**a**) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(**b**) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016. Section 4A(1) was amended by section 185(2)(b) of the Levelling-up and Regeneration Act 2023 (c. 55).

(**c**) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c.20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c.2).

(**d**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 11(time limit for exercise of powers of compulsory acquisition) of the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024".

Application of the 1981 Act

15.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) substitute—

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.".

(4) In section 5(**a**) (earliest date for execution of declaration), in subsection (2), omit the words from ", and this subsection" to the end.

(5) Omit section 5A(**b**) (time limit for general vesting declaration).

(6) In section 5B(**c**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the applicable period for the purposes of section 5A" substitute "section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 11of the associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024".

(7) In section 6(**d**) (notices after execution of declaration), in subsection (1)(b) for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134(**e**) (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(8) In section 7(**f**) (constructive notice to treat) in subsection (1)(a), omit the words "(as modified by section 4 of the Acquisition of Land Act 1981)".

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 14 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Statutory undertakers and operator of the electronic communications code network

16. Subject to the provisions of article 10 (compulsory acquisition of rights) and Schedule 4 (protective provisions), the undertaker may—

(a) exercise the powers conferred by article 10 (compulsory acquisition of rights) in relation to so much of the Order land as belongs to statutory undertakers, the operator of the electronic communications code network, public communications providers and public utility undertakers;

(b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers, the operator of the electronic communications code network, public communications providers and public utility undertakers over or within the Order land; and

(c) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers, public utility undertakers within the Order land.

(**a**) Section 5 was amended by paragraph 6 of Schedule 15 to the Housing and Planning Act 2016.
(**b**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 and amended by section 185(3)(a) of the Levelling-up and Regeneration Act 2023.
(**c**) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 and amended by section 185(3)(b) of the Levelling up and Regeneration Act 2023.
(**d**) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).
(**e**) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.1. 2017/16.
(**f**) Section 7(1) was substituted by section 199 of, and paragraph 3 of Schedule 18 to, the Housing and Planning Act 2016.

Recovery of costs of new connection

17. Where any apparatus of a public utility undertaker or public communications provider is removed under article 16 (statutory undertakers and operator of the electronic communications code network) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

Disregard of certain interests and improvements

18.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the construction of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "the relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed of the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

Set-off for enhancement in value of retained land

19.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 10 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

(a) any increase in the value of the land over which the new rights are required; and

(b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

20. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

PART 4

OPERATIONAL PROVISIONS

Operation and use of development

21.—(1) The undertaker may operate and use the authorised development as harbour facilities in connection with the import and export of ro-ro units to include all forms of accompanied and unaccompanied wheeled cargo units from or to the public highway up to a maximum of 1,800 ro-ro units per day together with occasional use by passengers travelling by vehicle when space is available on a departing vessel.

(2) On those occasions where space is available on a departing vessel—

(a) no more than 100 passengers per day may depart by vessel from the authorised development; and

(b) all such passengers must board the departing vessel or vessels by means of vehicular transport.

(3) In this article "ro-ro unit" means any item of wheeled cargo (whether or not self-propelled).

Power to appropriate

22.—(1) Regardless of anything in section 33 (harbour, dock and pier to be free to the public on payment of rates) of the 1847 Act or any other enactment, the undertaker may from time to time set apart and appropriate any part of the authorised development for the exclusive or preferential use and accommodation of any trade, person, vessel or goods or any class of trader, vessel or goods, subject to the payment of such charges and to such terms, conditions and regulations as the undertaker may think fit.

(2) No person or vessel may make use of any part of the authorised development so set apart or appropriated without the consent of the dock master, and—

(a) the dock master may order any person or vessel making use of the authorised development without such consent to be removed;

(b) the provisions of section 58 of the 1847 Act (powers of harbour master as to mooring of vessels in harbour), as incorporated by this Order, extend and apply with the necessary modifications to any such vessel.

Planning legislation

23.—(1) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of the 1990 Act.

(2) It does not constitute a breach of the terms of this Order if, following the coming into force of this Order, any development, or any part of a development, is carried out or used within the Order limits in accordance with any planning permission granted under the 1990 Act (including a planning permission granted under article 3 (permitted development) and Class B (dock, pier, harbour, water transport, canal or inland navigation undertakings) of Part 8 of Schedule 2 or Class A (development under local or private Acts or Order) of Part 18 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015(**a**)).

(**a**) S.I. 2015/596.

PART 5

SUPPLEMENTAL POWERS

Discharge of water

24.—(1) Subject to the provisions of this article, the undertaker may use any watercourse or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse or drain.

(2) Any dispute arising from the making of connections to or the use of a watercourse or a drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106(**a**) (right to communicate with public sewers) of the Water Industry Act 1991(**b**)

(3) The undertaker must not discharge any water into any watercourse or drain except with the consent of the Board and in accordance with the provisions of Part 13 of Schedule 4 (protective provisions).

(4) The undertaker must not make any opening into or connections with any watercourse or drain in connection with the authorised development or lay down, take up or alter pipes on any land within the Order limits or carry out any specified work except in accordance with the provisions of Part 13 of Schedule 4 and in accordance with plans approved by the Board in accordance with the provisions of Part 13 of Schedule 4 .

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension and the authorised development does not obstruct the path of the Habrough Marsh Drain outfall channel.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**c**) in respect of a water discharge activity or groundwater activity.

(7) The undertaker must not, in carrying out or maintaining any works under this article, damage or interfere with the bed or banks of any watercourse or drain without the prior written consent of the Board.

(8) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) (offences of polluting water) of the Water Resources Act 1991(**d**).

(9) The undertaker must monitor the path of the Habrough Marsh Drain outfall channel and report to the Board annually for a period of 10 years from the commencement of the authorised development as to whether any substantial changes to the path of the Habrough Marsh Drain outfall channel have occurred as a result of the authorised development.

(10) In this article expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**e**) have the same meaning as in that Act.

(11) In paragraph (4), "specified work" has the same meaning as in Part 13 of Schedule 4.

Powers to dredge

25.—(1) For the purpose of constructing, operating and maintaining Work No.2, the undertaker may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore of the River

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(**a**) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29)

(**b**) 1991 c. 56.

(**c**) S.I. 2016/1154.

(**d**) 1991 c. 57.

(**e**) 1991 c. 57.

Humber within the limits and to the depth specified for that work in accordance with the deemed marine licence.

(2) Subject to paragraph (3), the undertaker may use, deposit or otherwise dispose of materials dredged or removed (other than a wreck within the meaning of Part 9 (salvage and wreck) of the Merchant Shipping Act 1995(**a**)) as the undertaker thinks fit.

(3) No materials dredged under the powers of this Order may be disposed of in the UK marine area except in accordance with an approval from the MMO under the deemed marine licence or under any other marine licence granted by the MMO.

Authority to survey and investigate the land

26.—(1) The undertaker may for the purposes of this Order enter on—

(a) any land within the Order limits; and

(b) where reasonably necessary, any land which is adjacent to but outside the Order limits, or which may be affected by the authorised development, and—

(i) survey or investigate the land;

(ii) without limitation to the scope of sub-paragraph (i), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(iii) without limitation to the scope of sub-paragraph (i), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and

(iv) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every occupier of the land.

(3) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.

(4) Any person entering the land under this article on behalf of the undertaker —

(a) must, if so required, before or after entering the land, produce written evidence of their authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(5) The undertaker must compensate the occupiers of the land for any loss or damage arising by reason of the exercise of the power conferred by this article, such compensation to be determined in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13(**b**) (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125(**c**) (application of compulsory acquisition provisions) of the 2008 Act.

Protective works to buildings

27.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(**a**) 1995 c.21.

(**b**) 1965 c. 56. Section 13 was amended by sections 62(3) and 139(4) to (9) of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Upper Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**c**) 2008 c. 29. Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised development is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works to a building under this article the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter and survey a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (5)(c) or (5)(d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 35 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of 5 years beginning with the day on which the part of the authorised development carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152(**a**) (compensation in case where no right to claim in nuisance) of the 2008 Act .

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, as if it were a dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development;

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development; and

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(**a**) Section 152 was amended by S.I. 2009/1307.

(c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

Agreement with highway authority

28.—(1) A highway authority and the undertaker may enter into an agreement in writing with respect to—

(a) the strengthening or improvement of any highway under the powers conferred by this Order; or

(b) such other works as the parties may agree.

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) provide for the highway authority to carry out any function under this Order which relates to the highway or land in question;

(b) include an agreement between the undertaker and the highway authority specifying a reasonable time for completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 6

MISCELLANOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

29.—(1) Where proceedings are brought under section 82(1)(**a**) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990 in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order is to be made, and no fine may be imposed, under section 82(2)(**b**) of that Act if—

(a) the defendant shows that the nuisance—

(i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site) of the Control of Pollution Act 1974, or a consent given under section 61(**c**) (prior consent for work on construction site) of that Act; or

(ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974(**d**)), does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

(3) In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990(**e**) (offence of contravening abatement notice) in respect of a statutory nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or

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(**a**) 1990 c. 43.

(**b**) Subsection (2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40); there are other amendments to this subsection which are not relevant to this Order.

(**c**) 1974 c. 40. Section 61 was amended by section 133(2) of, and Schedule 7 to, the Building Act 1984 (c. 55) and section 162 of, and paragraph 15(3) of Schedule 15 to, the Environmental Protection Act 1990 (c. 43).

(**d**) 1974 c. 40.

(**e**) 1990 c. 43.

a nuisance) or (ga)(**a**) (noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b)(**b**) of that Act, it is a defence to show that the nuisance—

(a) is a consequence of the construction, operation, maintenance or use of the authorised development; and

(b) cannot reasonably be avoided.

Deemed marine licence

30. The undertaker is granted a deemed marine licence under Part 4 of the 2009 Act (marine licensing) to carry out the activities specified in Part 1 of Schedule 3 (deemed marine licence), subject to the licence conditions set out in Part 2 of that Schedule.

Trees subject to a tree preservation order

31.—(1) For the purposes only of the authorised development, the undertaker may fell or lop any tree or shrub as identified in the WEMP or cut back roots and undertake such other approved related works in accordance with the WEMP.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub.

(3) The duty contained in section 206(1) (replacement of trees) of the 1990 Act is not to apply.

(4) The authority given by paragraph (1) constitutes a deemed consent under the provisions of North East Lincolnshire Council No. 107 (Long Wood, Laporte Road, Stallingborough) Tree Preservation Order 2002.

Application of landlord and tenant law

32.—(1) This article applies to any agreement entered into by the undertaker under article 9 (transfer of benefit of Order, etc.) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Certification of plans and documents etc.

33.—(1) This article applies to any agreement entered into by the undertaker under article 9 (transfer of benefit of Order, etc.) so far as it relates to the terms on which any land is subject to a lease granted by or under that agreement.

(2) Where any plan or document set out in Schedule 7 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form

(**a**) Section 79(1)(ga) was inserted by section 2(1) and (2)(b) of the Noise and Statutory Nuisance Act 1993.
(**b**) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

amended to the Secretary of State's satisfaction is the version of the plan and document required to be certified under paragraph (1).

(3) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

34.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7(**a**) (references to service by post) of the Interpretation Act 1978 as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled only where—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;

(b) the notice or document is capable of being accessed by the recipient;

(c) the notice or document is legible in all material respects; and

(d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

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(**a**) 1978 c.30.

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

(10) In this article—

(a) "electronic transmission" means a communication transmitted—

(i) by means of an electronic communications network; or

(ii) by other means provided it is in an electronic form;

and in this definition "electronic communications network" has the same meaning as in section 32(1)(**a**) (meaning of electronic communications networks and services) of the Communications Act 2003;

(b) "legible in all material respects" means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Arbitration

35.—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) Any matter for which the consent or approval of the Secretary of State or the MMO is required under any provision of this Order is not subject to arbitration.

Saving for Trinity House

36. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

Provision against danger to navigation

37. In case of damage to, or destruction or decay of, a tidal work or any part of it, the undertaker must as soon as reasonably practicable notify Trinity House, the ABP Statutory Harbour Authority and the Statutory Conservancy and Navigation Authority and must lay down such buoys, exhibit such lights, and take such other steps for preventing danger to navigation as Trinity House, the ABP Statutory Harbour Authority or Statutory Conservancy and Navigation Authority may from time to time direct.

Lights on tidal works during construction

38.—(1) The undertaker must at or near—

(a) a tidal work, including any temporary work; or

(b) any plant, equipment or other obstruction placed in connection with any authorised development, within the area of seaward construction activity in the River Humber,

during the whole time of the construction or extension, every night from sunset to sunrise exhibit such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House, the ABP Statutory Harbour Authority or Statutory Conservancy and Navigation Authority may from time to time direct.

(2) In this article, "area of seaward construction activity" means the area of the sea within the Order limits.

(**a**) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

Permanent light on tidal works

39. After the completion of a tidal work, the undertaker must at the outer extremity of it exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as Trinity House, the ABP Statutory Harbour Authority or Statutory Conservancy and Navigation Authority may from time to time direct.

Crown rights

40.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent given under paragraph (1) may be given unconditionally or subject to terms and conditions; and is deemed to have been given in writing where it is sent electronically.

Protective provisions

41. Schedule 4 (protective provisions) has effect.

Byelaws relating to the authorised development

42.—(1) The Immingham Dock Byelaws 1929 apply in relation to the authorised development and may be enforced by the undertaker accordingly until such time as new byelaws relating to the authorised development are made by the undertaker and come into operation.

(2) In this article "Immingham Dock Byelaws 1929" means the byelaws made by the London and North Eastern Railway Company on the 1st day of January 1929 and confirmed by the Minister of Transport on the 4th day of January 1929.

Signed by authority of the Secretary of State for Transport

Gareth Leigh
Head of Transport and Works Act Orders Unit
Department for Transport

4th October 2024

SCHEDULES

SCHEDULE 1

Articles 2 and 7

AUTHORISED DEVELOPMENT

In the area of North East Lincolnshire Council and the Order limits, a nationally significant infrastructure project as defined by sections 14(1)(j) and 24 of the 2008 Act being a ro-ro facility together with associated development comprising—

Work No. 1 – The construction of a jetty and three berths as shown on sheets 1 and 2 of the works plans, comprising—

(a) an open piled approach jetty with abutments carrying on its surface a roadway, a footway, utilities, lighting and environmental screens, rising from ground level to cross over existing landside infrastructure and then extending from the shore in a north easterly direction;

(b) a single linkspan bridge carrying on its surface a roadway and footway together with lighting and utilities, extending from the approach jetty to the innermost floating pontoon;

(c) two floating pontoons connected by a linkspan, each with lighting, power, cable management system, utilities and a small crew shelter, secured in position by restraint dolphins, each located about a finger pier to accommodate the loading and unloading ramps of berthed ro-ro vessels;

(d) two finger piers of open piled construction each with navigation markers, lighting, shore power infrastructure and connections for berthed vessels and water bunkering facilities—

(i) the northern finger pier to be constructed with berthing faces on both its northern and southern elevations equipped with mooring infrastructure; and

(ii) the southern finger pier to be constructed with a berthing face only on its northern elevation equipped with mooring infrastructure.

Work No. 2 – A dredged berthing pocket as identified on sheets 1 and 2 of the works plans with a depth of up to 9.0 metres below Chart Datum.

Work No. 3 – The construction of vessel impact protection measures as shown on sheet 1 of the works plans formed of—

(a) a single row of tubular piles with a reinforced concrete capping beam, the outer facing elevation of the beam which may be equipped with fendering units and panels; and/or

(b) a piled dolphin structure with a capping slab and fendering units.

Associated development within the meaning of section 115(2) of the 2008 Act—

Work No. 4 – The construction and laying out of the northern ro-ro freight and container storage area as shown on sheets 2 and 3 of the works plans comprising—

(a) a landside ramp and bankseat linking the approach jetty to the northern storage area;

(b) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth works;

(c) the surfacing of the storage area;

(d) the construction of a substation and a frequency converter station for shore power provision to the berths;

(e) the demolition of existing buildings;

(f) the construction of ancillary buildings;

(g) the construction of parking areas for vehicles, including cars and motorbikes using the ancillary buildings;

(h) the erection of security fencing, gates and lighting; and

(i) installation of maintenance access track.

Work No. 5 – The construction and laying out of the southern and central ro-ro freight storage area as shown on sheets 3 and 4 of the works plans comprising—

(a) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth works;

(b) the surfacing of the storage area;

(c) the construction of a terminal building, welfare building for HGV drivers, administrative staff and passengers awaiting embarkation and a workshop and fuel station;

(d) the construction of parking areas for vehicles, including cars and motorbikes using the ancillary buildings;

(e) administrative and inspection buildings and infrastructure for the UK Border Force;

(f) entry and exit gates and security huts;

(g) the construction of new level crossings; and

(h) the erection of security fencing, gates and lighting.

Work No. 6 – The construction and laying out of the western ro-ro freight storage area as shown on sheets 4 and 5 of the works plans comprising—

(a) the working of land for port facilities, the removal of materials, the laying of port infrastructure and services together with associated civil works and earth;

(b) the surfacing of the storage area; and

(c) the erection of security fencing, gates and lighting.

Work No. 7 – As shown on sheets 2 and 3 of the works plans namely the construction of a bridge within the port estate to connect the northern storage area with the central storage area crossing Robinson Road and port infrastructure, together with bridge approaches, including bridge lighting and utilities.

Work No. 8 – As shown on sheets 2 and 4 of the works plans, improvements within the port estate to the junction of Robinson Road and East Dock Road comprising—

(a) the separation of the Exolum Terminal access road and the Robinson Road and East Dock Road junction;

(b) repositioning/straightening of the Robinson Road and East Dock Road junction to improve HGV access to and from East Dock Road; and

(c) associated infrastructure works.

Work No. 9 – The closure to all traffic along the length of East Riverside road between the East Dock Road junction and immediately to the north of the existing access to the parking / laydown / maintenance area for the Habrough Marsh Drain outfall as shown on sheet 2 of the works plans. Traffic to and from the businesses on East Riverside to the west of the East Dock Road junction to be diverted via East Dock Road.

Work No. 10 – As shown on sheets 3 and 4 of the works plans, improvements within the port estate to Gresley Way comprising—

(a) the provision of new a connector road from Robinson Road to Gresley Way for all incoming and outgoing traffic between the terminal and the port's East Gate, including a new level crossing;

(b) the provision of new 'T' junction between Gresley Way and the connector road;

(c) minor road alignment improvements to Gresley Way before the new terminal access;

(d) new access and egress to and from the terminal on to Gresley Way; and

(e) associated infrastructure, improvement works.

Work No. 11 – As shown on sheet 4 of the works plans, improvements and alterations to the entrance/exit to Shed 26 comprising—

(a) provision of new 'T' junction between Gresley Way and the connector road opposite the entrance to Shed 26; and

(b) provision of a new entrance and exit road from Shed 26 to the connector road.

Work No. 12 – As shown on sheet 3 of the works plans, improvements to the East Gate entrance comprising—

(c) the construction of an additional access lane into the port including traffic control and security;

(d) demolition of the existing gate house;

(e) a new gate house;

(f) new security fencing and gates; and

(g) the extension of the footway from East Gate to the Queens Road bus stop.

Work No. 13 – As shown on sheet 3 of the works plans, comprising works to deliver the woodland ecological enhancement works within the administrative boundary of North East Lincolnshire Council and within the Order limits to be carried out in accordance with the WEMP.

Ancillary works

For the purposes of and in connection with any of the works detailed above, the construction, maintenance and operation of such works and further associated development within the Order limits which do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement, consisting of—

(a) works to upgrade, alter and relocate existing utilities infrastructure and to install additional infrastructure;

(b) an improved and expanded fire water system;

(c) a modified and improved security entrance and internal road layout and installation of emergency traffic management measures;

(d) drainage infrastructure, landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;

(e) site preparation works, site clearance (including fencing and demolition of existing structures and buildings);

(f) earthworks (including soil stripping and storage, site levelling);

(g) remediation of contamination;

(h) construction compounds and working sites, storage areas, temporary vehicle parking, ramps and other means of access, construction fencing, perimeter enclosure, security fencing, welfare facilities and other construction-related buildings, lighting, machinery, apparatus, and works; and

(i) electrical upgrades to existing substations, electrical apparatus and cabling to and from existing substations to the new development, connection of apparatus or cabling to the new development, flood refuge platforms, operational lighting, CCTV equipment and such other works, apparatus and conveniences as may be necessary or expedient for the purposes of or in connection with the authorised development.

SCHEDULE 2

Articles 3 and 5

REQUIREMENTS

PART 1

REQUIREMENTS

Interpretation

1. In this Part of this Schedule—

"drainage strategy" means the document of that description annexed to the flood risk assessment as approved by the Board;

"Enhanced Operational Controls" means the controls set out in the document of that description listed in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State as the Enhanced Operational Controls for the purposes of this Order;

"flood risk assessment" means the document of that description in Schedule 7 (plans and documents to be certified) certified by the Secretary of State as the flood risk assessment for the purposes of this Order;

"impact protection measures" means—

(a) part (a) of Work No.3 as defined in Schedule 1 to this Order; or

(b) part (b) of Work No. 3 as defined in Schedule 1 to this Order; or

(c) both parts (a) and (b) of Work No. 3 as defined in Schedule 1 to this Order;

"IOT" means the Immingham Oil Terminal;

"IOT Operators" means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd, with "Associated Petroleum Terminals (Immingham) Ltd" meaning Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title and "Humber Oil Terminal Trustees Ltd" meaning Humber Oil Terminal Trustees Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"National Highways" means National Highways Limited (company number 09346363) whose registered office is Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ or any such successor or replacement body that may from time to time be primarily responsible for the functions, duties and responsibilities currently exercised by that statutory body;

"operational freight management plan" means the operational freight management plan included in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State for the purposes of this Order;

"outline onshore construction environmental management plan" means the document of that description in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State as the outline onshore construction environmental management plan for the purposes of this Order; and

"travel plan" means the travel plan included in Schedule 7 (plans and documents to be certified) and certified by the Secretary of State for the purposes of this Order.

Time limit for commencement of the authorised development

2. The authorised development must commence within 5 years of the date on which this Order comes into force.

Amendments to approved details

3. With respect to any requirement which requires the authorised development to be carried out in accordance with the details of schemes or plans approved under this Schedule the approved details or schemes or plans are taken to include any amendments that may subsequently be approved in writing by the approving body.

Construction hours – onshore works

4.—(1) Subject to sub-paragraph (2), no construction work for Work Nos. 4 to 13 or any ancillary works associated with them may take place on bank holidays or outside the hours of 07:00 to 19:00 Mondays to Fridays and 07:00 to 13:00 on Saturdays.

(2) Construction work for Work Nos. 4 to 13 may take place outside the hours mentioned in sub-paragraph (1) provided such works —

(a) do not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement; and

(b) do not exceed maximum permitted levels of noise at each agreed monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the Council for specific construction activities; and

(c) are —

(i) works that cannot be interrupted; or

(ii) emergency works; or

(iii) works that are carried out with the prior approval of the Council.

(3) Any emergency works carried out under sub-paragraph (2)(c)(ii) must be notified to the Council within 72 hours of their commencement.

(4) In this requirement, "bank holiday" means a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971(**a**).

Travel plan

5.—(1) The operation of the authorised development must not be commenced until a final version of the travel plan has been submitted to and approved in writing by the Council.

(2) The authorised development must be carried out in accordance with the travel plan approved pursuant to sub-paragraph (1).

Piling and marine construction works restrictions

6.—(1) Piling and marine construction works may be undertaken 24 hours a day on Mondays to Sundays provided that such works are undertaken in accordance with paragraph 12 of Part 2 of Schedule 3 (deemed marine licence).

(2) Any emergency works carried out in accordance with paragraph 12 of Part 2 of Schedule 3 must be notified to the Council within 72 hours of their commencement.

(3) Works for the capital dredge, which has the same meaning as in paragraph 1(1)(b) of Part 1 of Schedule 3, may be undertaken without restriction as to time or day.

External appearance and height of the authorised development

7.—(1) Construction of—

(a) the terminal building and the welfare building for HGV drivers and passengers awaiting embarkation and related ancillary buildings as identified as part of Work No. 5(c);

(b) the proposed administrative and inspection buildings for UK Border Force as identified as Work No. 5(e); and

(c) the proposed ancillary buildings as identified as part of Work No. 4(f),

must not be commenced until the details of the location, heights relative to the proposed finished ground levels, and external materials to be used in the construction of all new permanent buildings and structures, including the colour, materials and finishes, have been submitted to and approved in writing by the Council.

(2) The authorised development must be implemented in accordance with the details approved by the Council.

(3) The authorised development must be carried out in accordance with the general arrangement plans.

(4) The authorised development will not be in accordance with the general arrangement plans if any departure from the general arrangement plans would give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

Onshore construction environmental management plan

8.—(1) No part of the authorised development may be commenced until an onshore construction environmental management plan has been submitted to and approved in writing by the Council and National Highways (on matters related to its functions), following consultation with the MMO, Natural England, the Environment Agency, Network Rail, Royal Mail and the Board on matters related to their respective functions.

(2) The onshore construction environmental management plan submitted and approved under sub-paragraph (1) must be in accordance with the outline onshore construction environmental management plan, including the outline plans and skeleton management plans identified and included in the outline onshore construction environmental management plan.

(**a**) 1971 c.80.

(3) The construction of the authorised development must be undertaken in accordance with the approved onshore construction environmental management plan.

Surface water drainage

9.—(1) The authorised development, save for the permitted preliminary works, must not be commenced until a final version of the drainage strategy has been submitted to and approved in writing by the Board. The onshore parts of the authorised development shall be implemented in accordance with the approved drainage strategy.

(2) The final version of the drainage strategy submitted and approved under sub-paragraph (1) must be in accordance with the drainage strategy.

(3) In this requirement, "the permitted preliminary works" means–

(a) works consisting of the removal of existing structures and site clearance works; and

(b) works consisting of any part of the off-site mitigation works, the installation of wheel cleaning facilities, the installation and diversion of utility services, surveys and the provision of temporary contractors' facilities.

Noise insulation

10.—(1) Prior to the commencement of the authorised development the undertaker must offer the owner and occupier of each of the residential buildings along Queens Road, Immingham a package of noise insulation mitigation to reduce internal noise levels in sensitive rooms. The noise insulation must be designed to reduce the noise level by at least the maximum predicted increase in road traffic noise (7.4 decibels) due to the operation of the authorised development, taking into consideration the performance of the existing glazing and ventilation.

(2) If the package of mitigation, or such alternative package as may reasonably be requested by the owner and occupier, offered in accordance with sub-paragraph (1) is agreed in writing by the owner and occupier of the residential building within the period specified in the offer, which must not be less than 30 days starting with the day after the offer has been received by the owner and occupier, then the package of mitigation must be implemented at the undertaker's cost prior to the commencement of the authorised development.

(3) Any dispute arising between the undertaker and the owner and occupier of a residential building along Queens Road, Immingham under this requirement is to be determined by arbitration as provided in article 35 (arbitration).

Woodland management

11. The operation of the authorised development must not be commenced until a final version of the WEMP has been submitted to and approved in writing by the Council. The authorised development must be implemented in accordance with the approved WEMP.

East Gate Improvements (Work No. 12)

12. The operation of the authorised development must not be commenced until—

(a) the undertaker has entered into such agreements with the Council as may be necessary in connection with Work No. 12 ; and

(b) the agreed works constituting Work No. 12 have been completed and are available for use.

Operational freight management plan

13.—(1) The operation of the authorised development must not be commenced until a final version of the operational freight management plan has been submitted to and approved in writing by the Council and National Highways (on matters related to its functions).

(2) The authorised development must be carried out in accordance with the operational freight management plan approved pursuant to sub-paragraph (1).

Lighting plan

14.—(1) No part of the authorised development may be brought into operation until a written scheme of the proposed operational lighting to be provided for that part of the authorised development has been submitted to and approved in writing by the Council and Network Rail.

(2) The written scheme submitted under sub-paragraph (1) must be in general accordance with the lighting plan.

(3) The authorised development must be operated in accordance with the scheme approved under sub-paragraph (1).

Flood risk assessment

15. The authorised development must be constructed and operated in accordance with the flood risk assessment.

Contaminated land

16.—(1) No part of Work Nos. 4 to 13 inclusive and any ancillary works associated with those onshore works numbers shall be commenced until a written remediation strategy applicable to the relevant part of Work Nos. 4 to 13 inclusive and any ancillary works associated with those onshore works numbers, dealing with any contamination of that land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved in writing by the Council.

(2) The remediation strategy submitted for approval must include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site. The remediation strategy submitted for approval must also include a procedure for handling any unexpected contamination encountered during the undertaking of the construction works.

(3) Any remediation must be carried out in accordance with the approved remediation strategy.

Materials Management Plan

17.—(1) A written materials management plan in compliance with the provisions of the CL:AIRE DoW CoP must be produced and submitted to a Qualified Person for approval and issue of a declaration (made under the CL:AIRE DoW CoP), such declaration to be approved by CL:AIRE and submitted to the Environment Agency and the Council for its records, before any works to which the materials management plan relates commence.

(2) Any works to which the material management plan relates must be undertaken in accordance with the materials management plan as approved pursuant to sub-paragraph (1).

(3) In this requirement—

(a) "CL:AIRE" means the registered charity (No. 1075611) and an environmental body registered with ENTRUST (Entrust No. 119820) also incorporated as a company, limited by guarantee and registered in England and Wales (reg no. 3740059) which provides technical secretariat services for industry wide programmes and is responsible for the registration of Qualified Persons able to issue declarations under the DoW CoP;

(b) "the DoW CoP" means the CL:AIRE Definition of Waste: Development Industry Code of Practice; and

(c) "Qualified Person" means a person appearing on the register of Qualified Persons for the CL:AIRE Definition of Waste: Development Industry Code of Practice.

Impact Protection Measures for the IOT trunkway

18.—(1) In the event that the Statutory Conservancy and Navigation Authority or the dock master determine that the impact protection measures comprising Work No. 3(a) are required, upon receiving notification of that decision from the Statutory Conservancy and Navigation Authority or the dock master, the undertaker must construct the impact protection measures.

(2) Upon receiving notification of the Statutory Conservancy and Navigation Authority's or dock master's determination referred to in sub-paragraph (1):

(a) the undertaker must within 10 business days, notify the IOT Operators and the MMO of that determination; and

(b) within 30 business days, notify the IOT Operators and the MMO as to the steps it intends to take as a result of the Statutory Conservancy and Navigation Authority's or dock master's notification.

(3) The construction of Work No. 3(a) must not be commenced until the undertaker has consulted the Statutory Conservancy and Navigation Authority, the dock master, the IOT Operators and the MMO as to the detailed design of Work No. 3(a) and has had regard to any consultative representations received by the undertaker.

(4) No works for the construction of Work No. 3(a) may be commenced until the undertaker has obtained the written consent of the Statutory Conservancy and Navigation Authority to construct Work No. 3(a).

(5) The detailed design referred to in sub-paragraph (3) must be:

(a) within the limits of deviation shown on the relevant plans of the works plans;

(b) in general accordance with the detail shown on the relevant engineering, sections, drawings and plans; and

(c) in general accordance with the detail shown on the relevant general arrangement plans.

Impact Protection Measures for the IOT finger pier

19.—(1) Prior to the commencement of the commercial operation of Berth 1, using the berth numbering adopted on General Arrangements Plan B2429400-JAC-00-ZZ-DR-ZZ-0202 Revision P05, the undertaker must—

(a) notify the Statutory Conservancy and Navigation Authority, the dock master, the MMO and IOT Operators of its intention to install the impact protection measures comprising Work No. 3(b);

(b) agree a programme of works with the parties identified in sub-paragraph (a) above; and

(c) install the impact protection measures detailed as Work No. 3(b).

Amending the Port of Immingham Marine Operations Manual

20.—(1) The undertaker must not commence marine commercial operations until the dock master has amended the Port of Immingham Marine Operations Manual (the "Manual") to incorporate the Enhanced Operational Controls prescribing operating procedures for arrival at and departure from the authorised development.

(2) As soon as reasonably practicable after the amendment mentioned in paragraph (1), the dock master must—

(a) notify the IOT Operators of its amendments to the Manual insofar as they relate to the operation of the authorised development; and

(b) publish the amended navigational controls on the Port of Immingham webpage.

(3) The undertaker must operate the authorised development only in accordance with the Manual referred to in sub–paragraph (1) as may be amended and re-published from time to time.

PART 2

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

Interpretation

21. In this Part of this Schedule, "discharging authority" means any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement.

Applications made under requirements

22.—(1) Subject to sub-paragraph (3), where an application has been made to the discharging authority for any consent, agreement or approval required by a requirement included in this Order, or for any consent, agreement or approval further to any document referred to in any such requirement, the discharging authority must give notice to the undertaker of its decision on the application within a period of 8 weeks beginning with—

(a) the day immediately following that on which the application is received by the discharging authority; or

(b) where further information is requested under paragraph 23, the day immediately following that on which the further information has been supplied by the undertaker,

or such longer period as may be agreed in writing by the undertaker and the discharging authority.

(2) In determining any application made to the discharging authority for any consent, agreement or approval required by a requirement contained in Part 1 of this Schedule, the discharging authority may—

(a) give or refuse its consent, agreement or approval; or

(b) give its consent, agreement or approval subject to reasonable conditions,

and where consent, agreement or approval is refused or granted subject to conditions the discharging authority must provide its reasons for that decision with the notice of the decision.

(3) In the event that the discharging authority does not determine an application in relation to any of Work Nos. 4 to 13 inclusive and any ancillary works associated with those onshore works within the period set out in sub-paragraph (1), the discharging authority is deemed to have granted all parts of the application (without any condition or qualification) at the end of that period unless otherwise agreed in writing.

(4) An application under sub-paragraph (3) must include a statement informing the discharging authority—

(a) of the period mentioned in paragraph (1); and

(b) that if they do not respond before the end of that period, consent will be deemed to have been granted.

Further information regarding requirements

23.—(1) In relation to any application referred to in paragraph 22, the discharging authority may request such further information from the undertaker as it considers necessary to enable it to consider the application.

(2) If the discharging authority considers that further information is necessary, the discharging authority must, within 24 business days of receipt of the application, notify the undertaker in writing specifying the further information required or must do so within any longer period as may be agreed in writing between the undertaker and the discharging authority.

(3) If the discharging authority does not give the notification within the period specified in subparagraph (2) it is deemed to have sufficient information to consider the application and is not entitled to request further information without the prior agreement of the undertaker.

Appeals

24.—(1) The undertaker may appeal to the Secretary of State in the event that—

(a) the discharging authority refuses an application for any consent, agreement or approval required by—

(i) a requirement in Part 1 of this Schedule; or

(ii) a document referred to in any requirement contained in Part 1 of this Schedule,

or grants it subject to conditions to which the undertaker objects;

(b) on receipt of a request for further information pursuant to paragraph 23 of this Part of this Schedule, the undertaker considers that either the whole or part of the specified information requested by the discharging authority is not necessary for consideration of the application; or

(c) on receipt of any further information requested, the discharging authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The appeal process is as follows—

(a) any appeal by the undertaker must be made within 42 days of the date of the notice of the decision or determination, or (where no determination has been made) the expiry of the time period set out in paragraph 22(1), giving rise to the appeal referred to in sub-paragraph (1);

(b) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the discharging authority;

(c) as soon as is practicable but not later than 21 days after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal ("the adjudicator") and must notify the appeal parties of the identity of the adjudicator and the address to which all correspondence for the attention of the adjudicator must be sent;

(d) the appointed adjudicator must specify a start date no later than 21 days following the appointment subject to any extension as may be agreed by the parties;

(e) the discharging authority must submit their written representations together with any other representations to the adjudicator in respect of the appeal within 10 business days of the start date specified by the adjudicator and must ensure that copies of their written representations and any other representations as sent to the adjudicator are sent to the undertaker on the day on which they are submitted to the adjudicator;

(f) the appeal parties must make any counter-submissions to the adjudicator within 10 business days of receipt of written representations pursuant to sub-paragraph (e) above; and

(g) the adjudicator must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but no later than 21 days after the end of the 10 business day period for counter-submissions under sub-paragraph (f).

(3) The appointment of the adjudicator pursuant to sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(4) If the adjudicator considers that further information is necessary to enable the adjudicator to consider the appeal the adjudicator must, as soon as practicable, notify the appeal parties in writing specifying the further information required, the appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required pursuant to sub-paragraph (4) must be provided by the party from whom the information is sought to the adjudicator and to the other appeal parties by the date specified by the adjudicator. The adjudicator must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the adjudicator within 10 business days of the date specified by the adjudicator but must otherwise be in accordance with the process and time limits set out in sub-paragraphs (2)(c)-(g).

(6) On an appeal under this paragraph, the adjudicator may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the discharging authority (whether the appeal related to that of it or not),

and may deal with the application as if it had been made to the adjudicator in the first instance.

(7) The adjudicator may proceed to a decision on an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the adjudicator such written representations as have been sent outside of the relevant time limits.

(8) The adjudicator may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the adjudicator that there is sufficient material to enable a decision to be made on the merits of the case.

(9) The decision of the adjudicator on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for a judicial review.

(10) If an approval is given by the adjudicator pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the discharging authority.

(11) Save where a direction is given pursuant to sub-paragraph (12) requiring the costs of the adjudicator to be paid by the discharging authority, the reasonable costs of the adjudicator are to be met by the undertaker.

(12) On application by the discharging authority or the undertaker, the adjudicator may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the adjudicator must have regard to relevant guidance on the Planning Practice Guidance website or any official circular or guidance which may replace it.

Anticipatory steps towards compliance with any requirement

25. If before this Order came into force the undertaker or any other person took any steps that were intended to be steps towards compliance with any provision of Part 1 of this Schedule, those steps may be taken into account for the purpose of determining compliance with that provision if they would have been valid steps for that purpose had they been taken after this Order came into force.

SCHEDULE 3

Articles 2 and 30

DEEMED MARINE LICENCE

PART 1

GENERAL

Interpretation

1.—(1) In this Schedule—

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act;

"2021 sediment sampling plan" means—

(a) the plan approved by the MMO on 24 September 2021, which details—

(i) a detailed dredging methodology;

(ii) dredge locations;

(iii) dredge amounts (total and annual, if applicable);

(iv) dredge depths;

(v) duration of dredging activities;

(vi) whether the dredge is a capital dredging activity or a maintenance dredging activity; and

(vii) specific gravity of the material or material type; and

(b) any further sediment sampling analyses which may be approved by the MMO in accordance with condition 18(2) prior to the expiry of the 2021 sediment sampling plan;

"alluvial materials" means dredged unconsolidated material of alluvial origin;

"the authorised development" means the construction, operation and maintenance of a Roll on Roll off facility on the River Humber as described in Schedule 1 to this Order and has the meaning given in paragraph 3(2);

"business day" means a day other than a Saturday or Sunday, Good Friday, Christmas Day or a bank holiday in England and Wales under section 1 of the Banking and Financial Dealings Act 1971;

"business hours" means the period from 09:00 until 17:00 on any business day;

"capital dredge" means the dredging to a depth not previously dredged, or to a depth not dredged within the last 10 years and is generally undertaken to create or deepen navigational channels, berths or to remove material deemed unsuitable for the foundation of a construction project and "capital dredging" shall be construed accordingly;

"Chart Datum" means 3.9 m below ordinance datum (Newlyn), corresponding with a depth of 7.6m of the outer sill of the Port of Immingham;

"cold weather construction restriction strategy" means the strategy of that description referred to in condition 8 of Part 2 of this Schedule 3;

"commence" means beginning to carry out any part of a licensed activity and "commenced" and "commencement" are to be construed accordingly;

"condition" means a condition in Part 2 and Part 3 of this licence and references in this licence to numbered conditions are to the conditions with those numbers in Part 2;

"the environmental statement" means the document of that description certified under article 33 (certification of plans and documents etc.) of the Order, certified by the Secretary of State as the environmental statement for the purposes of the Order;

"existing marine licence" means licence L/2014/00429 or any subsequent equivalent successor licence as may be granted that permits the disposal of dredged arising from the Port of Immingham;

"future sediment sampling plan" means—

(a) any further sediment sampling plan approved by the MMO in accordance with condition 18(2) which details—

(i) a detailed dredging methodology;

(ii) dredge locations;

(iii) dredge amounts (total and annual, if applicable);

(iv) dredge depths;

(v) duration of dredging activities;

(vi) whether the dredge is a capital dredging activity or a maintenance dredging activity; and

(vii) specific gravity of the material or material type;

"glacial clay" means consolidated dredged materials laid down during the last glaciation;

"high water" means daily high tides in every lunar day;

"HU056" means the area bounded by co-ordinates (53°39.3000'N, 00°10.4898'W), (53°39.0499'N, 00°10.4700'W), (53°38.8201'N, 00°09.4398'W), (53°39.3000'N, 00°10.4898'W);

"HU060" means the area bounded by co-ordinates—

(53°38.7439’N, 00°10.4434’W), (53°38.7499’N, 00°10.4536’W), (53°38.7575’N, 00°10.4677’W), (53°38.7648’N, 00°10.4823’W), (53°38.7718’N, 00°10.4974’W), (53°38.7784’N, 00°10.5128’W), (53°38.7847’N, 00°10.5287’W), (53°38.7906’N, 00°10.5450’W), (53°38.7962’N, 00°10.5617’W), (53°38.8013’N, 00°10.5787’W), (53°38.8061’N, 00°10.5960’W), (53°38.8105’N, 00°10.6136’W), (53°38.8145’N, 00°10.6315’W), (53°38.8181’N, 00°10.6496’W), (53°38.8213’N, 00°10.6679’W), (53°38.8240’N, 00°10.6864’W), (53°38.8264’N, 00°10.7051’W), (53°38.8283’N, 00°10.7239’W), (53°38.8298’N, 00°10.7428’W), (53°38.8309’N, 00°10.7618’W), (53°38.8315’N, 00°10.7809’W), (53°38.8317’N, 00°10.8000’W), (53°38.8315’N, 00°10.8191’W), (53°38.8309’N, 00°10.8382’W), (53°38.8298’N, 00°10.8572’W), (53°38.8283’N, 00°10.8761’W), (53°38.8264’N, 00°10.8949’W), (53°38.8240’N, 00°10.9136’W), (53°38.8213’N, 00°10.9321’W), (53°38.8181’N, 00°10.9504’W), (53°38.8145’N, 00°10.9685’W), (53°38.8105’N, 00°10.9864’W), (53°38.8061’N, 00°11.0040’W), (53°38.8013’N, 00°11.0213’W), (53°38.7962’N, 00°11.0383’W), (53°38.7906’N, 00°11.0550’W), (53°38.7847’N, 00°11.0713’W), (53°38.7784’N, 00°11.0872’W), (53°38.7718’N, 00°11.1026’W), (53°38.7648’N, 00°11.1177’W), (53°38.7575’N, 00°11.1323’W), (53°38.7499’N, 00°11.1464’W), (53°38.7439’N, 00°11.1567’W), (53°38.7438’N, 00°11.1564’W), (53°38.5320’N, 00°10.8000’W), (53°38.7438’N, 00°10.4436’W), (53°38.7439’N, 00°10.4434’W)

“intertidal mudflat” means exposed mud between mean high water springs and mean low water springs;

“licensable activity” means an activity licensable under section 66 of the 2009 Act;

“licensed activity” means any activity authorised in paragraph 3 of this Schedule;

“local planning authority” means North East Lincolnshire Council;

“maintenance dredge” means a dredge undertaken to keep channels, berths and other areas at their designed depths, involving removing recently accumulated sediments such as mud, sand and gravel to a level that is not lower than it has been at any time during the past 10 years;

“marine piles” means piles that will be in a free water condition during construction;

“marine written scheme of investigation” means the marine archaeological written scheme of investigation contained in appendix 15.3 to the environmental statement;

“MCMS” means the Marine Case Management System provided by the MMO;

“mean high water springs” means the average of high water heights occurring at the time of spring tides;

“mean low water springs” means the average of low water heights occurring at the time of spring tides;

“the MMO” means the Marine Management Organisation;

“named vessel” means a vessel whose name and type has been notified to the MMO in writing;

“Natural England” means the adviser to the Government for the natural environment in England;

“Notice to Mariners” means any notice to mariners which may be issued by the Admiralty, Trinity House, the Statutory Conservancy and Navigation Authority, government departments or harbour and pilotage authorities advising mariners of important matters affecting navigational safety;

“outline offshore construction environmental management plan” means the document of that description certified under article 33 (certification of plans and documents etc.) of the Order, certified by the Secretary of State as the outline offshore construction environmental management plan for the purposes of the Order;

“the Order” means the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Order 20[ ]; and

“percussive piles” means driven piles but excludes the handling, placing and vibro-driving of piles;

"percussive piling" for the purposes of this licence means the driving of piles by percussive means but does not include the handling, placing or vibro-piling of piles;

"the Port of Immingham" means the statutory port estate including the Port of Immingham statutory harbour authority area;

"the River Humber" means the tidal estuary from its mouth at the Spurn Peninsula to its confluence with the rivers Ouse and Trent;

"sea bed" means the ground under the sea;

"undertaker" means Associated British Ports ("ABP") company number ZC000195 registered at 25 Bedford Street, London, WC2E 9ES and any agent, contractor or sub-contractor acting on its behalf; and

"vessel" means every description of vessel, however propelled or moved and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water.

(2) Unless otherwise specified, all geographical co-ordinates given in this Schedule are in latitude and longitude degrees and minutes to four decimal places.

(3) Tonnages of dredged materials are expressed in wet tonnes.

Contacts

2.—(1) Unless otherwise advised in writing by the MMO, the address for postal correspondence with the MMO for the purposes of this licence is the Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle upon Tyne NE4 7YH, telephone 0300 123 1032 and, unless otherwise advised in writing, where contact to the local MMO office (local office) is required, the following contact details must be used: Marine Management Organisation, The MMO District Office – Crosskill House, Mill Lane, Beverley, HU17 9JB, telephone 0208 720 1344, Email – beverley@marinemanagement.org.uk.

(2) Unless otherwise advised in writing by the MMO, the address for electronic communication with the MMO for the purposes of this licence is marine.consents@marinemanagement.org.uk or where contact to the local MMO office is required is beverley@marinemanagement.org.uk.

(3) Unless otherwise advised in writing by the MMO, MCMS must be used for all licence returns or applications to vary this licence. The MCMS address is: https://marinelicensing.marinemanagement.org.uk/mmofox5/fox/live/MMO_LOGIN/login.

(4) Unless otherwise stated in writing by the MMO, all notifications required by this licence must be sent by the undertaker to the MMO using MCMS.

Licensed marine activities

3.—(1) Subject to the licence conditions in Part 2, this licence authorises the undertaker to carry out licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 (exemption specified by order) of the 2009 Act.

(2) For the purposes of this licence "the authorised development" means the construction operation and maintenance of a Roll on Roll off facility on the River Humber—

(a) comprising—

(i) an open piled approach jetty with abutments carrying on its surface a roadway, a footway, utilities, lighting and environmental screens, rising from ground level to cross over existing landside infrastructure and then extending from the shore in a north easterly direction (Work No.1);

(ii) a single linkspan bridge carrying on its surface a roadway and footway together with lighting and utilities, extending from the approach jetty to the innermost floating pontoon (Work No.1);

(iii) two floating pontoons connected by a linkspan, each with lighting, power, cable management system, utilities and a small crew shelter, secured in position by restraint dolphins, each located about a finger pier to accommodate the loading and unloading ramps of berthed ro-ro vessels (Work No.1);

(iv) two finger piers of open piled construction each with navigation markers, lighting, shore power infrastructure and connections for berthed vessels and water bunkering facilities—

(aa) the northern finger pier to be constructed with berthing faces on both its northern and southern elevations equipped with mooring infrastructure (Work No.1);

(bb) the southern finger pier to be constructed with a berthing face only on its northern elevation equipped with mooring infrastructure (Work No.1);

(v) piling works and construction operations within the River Humber (Work No.1);

(vi) related capital dredging works within the River Humber for the above and the disposal of any arisings from such dredgings (Work No.2);

(vii) the construction of—

(aa) a vessel impact protection barrier formed of a single row of tubular piles with a reinforced concrete capping beam, the outer facing elevation of the beam may be equipped with fendering units and panels (Work No.3(a)); and

(bb) a piled dolphin structure with a capping slab, with piles installed at each corner of the dolphin structure equipped with donut roller fenders (Work No.3(b)); and

(viii) the continued use of two existing surface water outfalls;

(b) activities which will include works to—

(i) clean, refurbish, re-construct, strengthen or maintain any work or structure; and

(ii) place and maintain works and structures including jetty furniture, fenders and impact protection; and

(c) such other incidental works as may be necessary or convenient for the purposes of, or in connection with or in consequence of, the construction, maintenance, operation or use of the authorised development, including works for the accommodation or convenience of vessels (including but not limited to berthing and mooring facilities, ladders, buoys, bollards, dolphins and fenders) and lighting.

Licence to dredge and deposit

4.—(1) Capital dredge – Subject to paragraph 5, the undertaker is permitted to undertake a capital dredge to a depth of -9 metres Chart Datum (with an allowance for the tolerances of the dredging equipment) of the berth pocket the grid coordinates for which are specified in paragraph 5(2) .

(2) The materials must be dredged in the approximate quantities and deposited at the locations according to the following table—

Material	*Volume (m3)*	*Specific gravity*	*Maximum tonnage (wet tonnes)*	*Disposal site*
Alluvial materials	150,000	1.35	202,500	HU060
Glacial clay	40,000	2.26	90,400	HU056

(3) Maintenance dredge – the undertaker is permitted to carry out maintenance dredging within the statutory harbour authority area of the Port of Immingham for the purposes of maintaining the

authorised development under section 75 of the 2009 Act in accordance with the existing marine licence.

(4) Deposit of dredged arisings—

(a) The capital dredge will create arisings of glacial clay and alluvial materials which must be deposited at deposit grounds HU056 and HU060;

(b) The maintenance dredge will create arisings of alluvial materials which must be deposited at the licenced deposit ground HU060 in accordance with the existing marine licence.

Details of licensed marine activities

5.—(1) The grid coordinates within the UK Marine Area within which the undertaker may carry out a licensed activity (save for the capital dredge and disposal) are specified below—

Point reference	*Latitude*	*Longitude*
1	53.62711082	-0.179454009
2	53.62748148	-0.179008789
3	53.63004695	-0.178898384
4	53.63198621	-0.176987837
5	53.62889877	-0.168536653
6	53.62874293	-0.168641588
7	53.62841556	-0.167318049
8	53.62814789	-0.166235931
9	53.62796289	-0.166266125
10	53.62773154	-0.166760098
11	53.62716945	-0.168370825
12	53.62528877	-0.1723239
13	53.62449396	-0.17508587
14	53.62512213	-0.1750807
15	53.62520845	-0.175123251
16	53.625269	-0.175226494

(2) No capital dredging may be carried out by the undertaker other than within the area within the grid coordinates for the area of the River Humber specified below and more particularly identified as the berthing pocket under Work No. 2 on sheets 1 and 2 of the works plans—

Point of reference	*Latitude*	*Longitude*
17	53.626229	-0.17082
18	53.629182	-0.178936
3	53.630047	-0.178898
19	53.631567	-0.1774
20	53.628371	-0.168614

PART 2

CONDITIONS APPLYING TO ALL LICENSABLE ACTIVITIES

Before Licensed Activities

Notifications regarding licensed activities

6.—(1) The undertaker must inform the MMO—

(a) at least 5 business days prior to the commencement of the first licensed activity; and

(b) within 5 business days following the completion of the final licensed activity,

of the commencement or the completion (as applicable).

(2) The undertaker must provide the following information to the MMO—

(a) the name and function in writing of any agent, contractor or sub-contractor that will carry on any licensed activity on behalf of the undertaker; and

(b) such notification must be received by the MMO in writing not less than 24 hours before the commencement of the licensed activity.

(3) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors, and sub-contractors that will be carrying out any licensed activity on behalf of the undertaker.

(4) The undertaker must keep a copy of this licence and any subsequent revisions or amendments available for inspection at its registered address and any site office location at or adjacent to a construction site.

(5) Any changes to details supplied under sub-paragraph (2) must be notified to the MMO in writing no less than 24 hours prior to the agent, contractor or named vessel engaging in the licensed activity in question.

(6) Only those persons notified to the MMO in accordance with this condition are permitted to carry out a licensed activity.

(7) Copies of this licence must be available for inspection at the following locations—

(a) the undertaker's office at the Port of Immingham; and

(b) during the construction of the authorised development only, at any site office which is adjacent to or near the River Humber and which has been provided for the purposes of the construction of the authorised development.

(8) The undertaker must request that the masters responsible for the named vessels that will be carrying out any licensed activity on behalf of the undertaker as notified to the MMO under condition 6(5) make a copy of this licence available for inspection on board such named vessels during the carrying out of any licensed activity.

Agents / contractors / sub-contractors

7.—(1) The undertaker must notify the MMO in writing of any agents, contractors or sub-contractors that will carry on any licensed activity listed in paragraph 3 of this licence on behalf of the undertaker. Such notification must be received by the MMO no less than 24 hours before the commencement of the licensed activity.

(2) The undertaker must ensure that a copy of this licence and any subsequent revisions or amendments has been provided to, read and understood by any agents, contractors or sub-contractors that will carry on any licensed activity listed in section 3 of this licence on behalf of the undertaker.

Cold weather construction restriction strategy

8. No construction operations for any licensed activity are to commence until a cold weather construction restriction strategy is submitted to and agreed by the MMO in consultation with Natural England. The strategy shall include the following—

(a) a provision that no construction operations (other than to finish driving any pile that is in the process of being driven at the point that the cold weather restriction comes into force) shall take place following 7 consecutive days of zero or sub zero temperatures (where the temperature does not exceed zero degrees centigrade for more than six hours in any day) or any other formula as may be agreed with the MMO to define short periods of thaw;

(b) the establishment of three temperature monitoring points within the Humber Estuary; and

(c) a provision that, if the piling restriction specified in sub-paragraph (a) above comes into effect as a consequence of cold weather conditions, it will be reviewed as follows—

(i) after 24 hours of above freezing temperatures the restriction will be lifted on a temporary basis provided that the weather forecast relevant for the area including the Port of Immingham, (as agreed with the MMO) indicates that freezing conditions will not return within five days; and

(ii) after a further 5 clear days of above-freezing temperatures, the restrictions will be lifted entirely.

Marine Noise Registry

9.—(1) Only when impact driven or part-driven pile foundations are proposed to be used as part of the foundation installation the undertaker must provide the following information to the Marine Noise Registry (MNR)—

(a) prior to the commencement of the licensed activities, information on the expected location, start and end dates of impact pile driving to satisfy the Marine Noise Registry's Forward Look requirements; and

(b) within 12 weeks of completion of impact pile driving, information on the exact locations and specific dates of impact pile driving to satisfy the Marine Noise Registry's Close Out requirements.

(2) The undertaker must notify the MMO of the successful submission of Forward Look requirements.

Marine written scheme of archaeological investigation

10.—(1) A final version of the marine written scheme of investigation must be submitted to and approved by the MMO in writing before any works to which the final version of the marine written scheme of investigation relate commence.

(2) The licensed activities must be carried out in accordance with the marine written scheme of investigation approved pursuant to sub-paragraph (1).

During Licensed Activities

Offshore Construction Environmental Management Plan

11.—(1) No licensed activities shall be commenced until an offshore construction environmental management plan in relation to those activities has been submitted to and approved by the MMO following consultation with the local planning authority, the Environment Agency and Natural England on matters related to their respective functions.

(2) The offshore construction environmental management plan submitted and approved under sub-paragraph (1) must be in accordance with the outline offshore construction environmental management plan, including the outline plans and skeleton management plans included in the outline offshore construction environmental management plan.

(3) The undertaker must undertake the capital dredge in accordance with the offshore construction environmental management plan approved under sub-paragraph (1).

Piling and marine construction works

12.—(1) Subject to sub-paragraph (2) below, the piling of marine piles in connection with the authorised development shall be subject to the following conditions—

(a) There shall be at least a 20 minutes "soft start" period prior to the commencement of any piling; and

(b) The form of soft start shall be submitted to and agreed in writing by the MMO in consultation with Natural England on matters related to its functions prior to the commencement of piling.

(2) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, shall be created, and 30 minutes prior to the commencement of percussive piling a search must be undertaken of the zone, with the purpose of identifying whether any marine mammals enter the zone, and if such mammals are observed within the zone, percussive piling must not be commenced until the mammals have cleared the zone or until 20 minutes after the last visual detection, subject to sub-paragraph (4).

(3) An active and mobile 500 metre marine mammals observation zone, the centre point of which will be the location of the particular marine pile being driven percussively, shall be maintained during percussive piling with the purpose of identifying whether any marine mammals enter the zone and if such mammals are observed, percussive piling must cease until the mammals have cleared the zone and there is no further detection after 20 minutes.

(4) Where percussive piling is paused for any reason other than the detection of marine mammals, then recommencement of the percussive piling shall be subject to the provisions be paragraph (2) save for where the active and mobile 500 metre marine mammals observation zone has been observed throughout the period of the pause in operations and no such mammals were observed entering the zone, in which case percussive piling may be recommenced immediately.

(5) Wherever possible the undertaker will use vibro-piling methodology whilst it is recognised that percussive piling may be required to drive the piles to their ultimately required depth.

(6) The undertaker must use a noise suppression system consisting of a piling sleeve with noise insulating properties for percussive piling.

(7) Subject to sub-paragraph (8) below, the undertaker must ensure that no marine construction activity for the approach jetty, linkspan, innermost pontoon and the inner finger pier shall take place between 1 October and 31 March inclusive in any year located within 200 metres of the exposed intertidal mudflat.

(8) During the restricted period between 1 October and 31 March inclusive in any year, marine construction activity may be undertaken provided that at distances less than 200 metres of exposed intertidal mudflat provided that an acoustic barrier/visual screening is installed on both sides of any semi-completed structure and construction activity will then be undertaken on the approach jetty itself, behind the screens, with no use of large heavy plant.

(9) During the period between 1 October and 31 March inclusive in any year, the undertaker must ensure that on all floating construction barges an acoustic barrier/screening is placed on the side of the barges closest to the foreshore, and construction activity can only be undertaken from the side of the barge facing away from the foreshore.

(10) No piling of marine piles within the waterbody is to take place between 1 March and 31 March, 1 June and 30 June and 1 August and 31 October inclusive in any one calendar year after sunset and before sunrise on any day, save for any—

(a) piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water;

(b) emergency works; and

(c) piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.

(11) The undertaker must ensure that no percussive piling of marine piles within the waterbody shall take place between 1 April and 31 May inclusive in any one calendar year, save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water.

(12) Percussive piling of marine piles is to be restricted at other times as follows—

(a) from 1 June to 30 June inclusive in any year, the maximum duration of percussive piling permitted within any four-week period must not exceed—

(i) 140 hours where a single piling rig is in operation; or

(ii) 196 hours where two or more rigs are in operation; and

(b) from 1 August to 31 October inclusive in any year, the maximum duration of percussive piling permitted within any four-week period must not exceed—

(i) 140 hours where a single piling rig is in operation; or

(ii) 196 hours where two or more rigs are in operation,

save for any percussive piling of marine piles undertaken on exposed mudflat outside the water column at periods of low water and save for percussive piling operations that have been initiated where an immediate cessation of the activity would form an unsafe working practice.

(13) The measurement of time during each work-block described in sub-paragraph (12) of this licence must begin at the start of each timeframe, roll throughout it, then cease at the end, where measurement will begin again at the start of the next timeframe, such process to be repeated until the end of piling works.

(14) Percussive piling must only be carried out in accordance with the cold weather construction restriction strategy.

Percussive piling reporting protocol

13.—(1) The undertaker must submit weekly reports to the MMO of the duration of percussive piling that is undertaken on any given day on which piling takes place during the construction of the authorised development, unless otherwise agreed in writing with the MMO.

(2) The reports submitted to the MMO pursuant to sub–paragraph (1) must include a log of the number and approximate location of piling rigs which are in operation on any given day, along with the number of piles driven.

(3) The undertaker will hold fortnightly meetings with the MMO to discuss the weekly reports submitted under sub-paragraph (1) and agree any corrective action if required, unless otherwise agreed in writing with the MMO.

(4) Subject to sub–paragraph (5), where percussive piling is paused, the recommencement of the percussive piling shall be subject to the provisions of sub–paragraph (1)(a) of paragraph 12 ("the contingency period").

(5) The contingency period must not exceed a total of 80 minutes in any given day on which percussive piling takes place.

Concrete and cement

14. Waste concrete, slurry or wash water from concrete or cement activities must not be discharged, intentionally or unintentionally, into the marine environment. Concrete and cement mixing and washing areas must be contained and sited at least 10 metres from any water body or surface water drain.

Coatings and treatment

15. The undertaker must ensure that any coatings or treatments are suitable for use in the marine environment and are used in accordance with guidelines approved by the Health and Safety Executive and the Environment Agency Pollution Prevention Control Guidelines.

Pollution and Spills

16.—(1) Bunding and/or storage facilities must be installed to contain and prevent the release of fuel, oils, and chemicals associated with plant, refuelling and construction equipment, into the marine environment. Secondary containment must be used with a capacity of no less than 110% of the container's storage capacity.

(2) Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of being identified in accordance with the following, unless otherwise advised in writing by the MMO—

(a) within business hours on any business days: 0300 200 2024;

(b) any other time: 07770 977 825; or

(c) at all times if other numbers are unavailable: 0845 051 8486 or dispersants@marinemanagement.org.uk.

(3) All wastes must be stored in designated areas that are isolated from surface water drains, open water and contained to prevent any spillage.

(4) The undertaker must comply with the existing marine pollution contingency plan in place for the Port of Immingham as detailed in the construction environmental management plan.

Disposal at Sea

17.—(1) The undertaker must inform the MMO of the location and quantities of material deposited each month under the licence. This information must be submitted to the MMO by 15 February each year for the months August to January inclusive and by 15 August each year for the months February to July inclusive.

(2) The undertaker must ensure that only inert material of natural origin produced during dredging shall be deposited in the disposal sites—

(a) HU060 (alluvial materials); and

(b) HU056 (glacial clay),

or any other site approved in writing by the MMO.

Sediment sampling

18.—(1) Any sediment sampling analyses undertaken by a laboratory validated by the MMO and approved by the MMO as part of either the 2021 sediment sampling plan or any future sediment sampling plan is valid for a period of 3 years from the date when those analyses were undertaken.

(2) Where the validity period for sediment sampling analyses as set out in sub-paragraph (1) above expires, the undertaker must submit a future sediment sampling plan request to the MMO for its approval and any sediment sampling analyses from such future sediment sampling plan must be submitted to the MMO for consultation.

(3) The undertaker must undertake the capital dredge in accordance with the 2021 sediment sampling plan or the future sediment sampling plan approved under sub-paragraph (2).

19. The material to be disposed of within the disposal sites referred to in paragraph 4(4) must be placed evenly within the boundaries of that site.

20. During the course of disposal at sea, deposited material must be distributed evenly over the disposal site.

Dropped objects

21.—(1) The undertaker must report all dropped objects to the MMO using the dropped object procedure form as soon as reasonably practicable and in any event within 24 hours of becoming aware of an incident.

(2) On receipt of the dropped object procedure form, the MMO may require, acting reasonably, the undertaker to carry out relevant surveys. The undertaker must carry out surveys in accordance with the MMO's reasonable requirements and must report the results of such surveys to the MMO.

(3) On receipt of such survey results, the MMO may, acting reasonably, require the undertaker to remove specific obstructions from the seabed. The undertaker must carry out removals of specific obstructions from the seabed in accordance with the MMO's reasonable requirements and its own expense.

Notice to Mariners

22.—(1) Local mariners, fishermen's organisations and the UK Hydrographic Office must be notified of any licensed activity or phase of licensed activity through a local Notice to Mariners.

(2) A Notice to Mariners must be issued at least 5 days before the commencement of each licensed activity or phase of licensed activity.

(3) The MMO and Marine Coastguard Agency must be sent a copy of the notification within 24 hours of issue. The Notice to Mariners must include —

(a) the start and end dates for the works;

(b) a summary of the works to be undertaken;

(c) the location of the works area, including coordinated in accordance with World Geodetic System 1984 (WGS84); and

(d) any markings of the works area that will be put in place.

23. A copy of the notice must be provided to the MMO via MCMS within 24 hours of issue of a notice under sub-paragraph (1).

PART 3

PROCEDURE FOR THE DISCHARGE OF CONDITIONS

Meaning of "application"

24. In this Part, "application" means a submission by the undertaker for approval by the MMO of any document, strategy, information or plan under conditions 8 (cold weather construction restriction strategy), 9 (marine noise registry), 10 (marine written scheme of investigation), 11 (construction environmental management plan) and 18 (sediment sampling).

Further information regarding application

25. The MMO may request in writing such further information from the undertaker as is necessary to enable the MMO to consider an application.

Determination of application

26.—(1) In determining the application the MMO may have regard to—

(a) the application and any supporting information or documentation;

(b) any further information provided by the undertaker; and

(c) such other matters as the MMO thinks relevant.

(2) Having considered the application the MMO must—

(a) grant the application unconditionally;

(b) grant the application subject to the conditions as the MMO thinks fit; or

(c) refuse the application.

Notice of determination

27.—(1) Subject to sub-paragraph (2) or (3), the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable after the application is received by the MMO.

(2) Where the MMO has made a request under paragraph 25, the MMO must give notice to the undertaker of the determination of the application as soon as reasonably practicable once the further information is received.

(3) Where the MMO refuses the application the refusal notice must state the reasons for the refusal.

SCHEDULE 4

Articles 12, 16, 24 and 41

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF THE STATUTORY CONSERVANCY AND NAVIGATION AUTHORITY FOR THE HUMBER

Interpretation

1. In this Part of this Schedule—

"area of jurisdiction" means the area within the harbour limits, being the area in which the powers of the dock master may be exercised;

"authorised works" means any work, operation or activity that the undertaker is authorised by this Order to construct or carry out;

"environmental document" means—

(a) the environment statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement; and

(b) any other document containing environmental information provided by the undertaker to the Secretary of State or the Statutory Conservancy and Navigation Authority or Trinity House for the purposes of any tidal works approval under article 37 (provision against danger to navigation), article 38 (lights on tidal works during construction) or article 39 (permanent lights on tidal works);

"plans" includes sections, drawings, specifications, calculations and method statements;

"the river" means the River Humber; and

"the Statutory Conservancy and Navigation Authority" means for the purposes of this Protective Provision Associated British Ports in its capacity as statutory conservancy and navigation authority for the river Humber (as successor to the Conservancy Commissioners established under the Humber Conservancy Act 1868) and including in its role as competent harbour authority and local lighthouse authority for its statutory area.

General

2.—(1) The provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and the Statutory Conservancy and Navigation Authority, have effect until the commencement of the operation of the authorised development for the protection of the Statutory Conservancy and Navigation Authority and the users of the river.

(2) For the purposes of this Part of this Schedule, the definition of "tidal work" is taken to include—

(a) any projection over the river outside the area of jurisdiction by booms, cranes and similar plant or machinery, whether or not situated within the area of jurisdiction; and

(b) any authorised work which affects the river or any functions of the Statutory Conservancy and Navigation Authority , whether or not that authorised work is within the limits of the Statutory Conservancy and Navigation Authority.

Tidal Works: approval of detailed design

3.—(1) Prior to the commencement of the authorised development in the marine environment the undertaker must submit to the Statutory Conservancy and Navigation Authority plans and sections of the tidal works or operation and such further particulars as the Statutory Conservancy and Navigation Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.

(2) Any approval of the Statutory Conservancy and Navigation Authority required under this paragraph shall be deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable requirements as the Statutory Conservancy and Navigation Authority may make for the protection of—

(a) traffic in, or the flow or regime of, the river;

(b) the use of its operational land or the river for the purposes of performing its functions; or

(c) the performance of any of its functions connected with environmental protection.

(3) Requirements made under sub-paragraph (2) 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 undertaker does not commence construction of the tidal work approved within a prescribed period.

(4) Before making a decision on any such approval, the Statutory Conservancy and Navigation Authority must take into account any opinion on plans and sections provided to it by the Environment Agency.

(5) Whenever the undertaker provides the Secretary of State with an environmental document it must at the same time send a copy to the Statutory Conservancy and Navigation Authority.

Commencement of Tidal Works

4. Any operations for the construction of any tidal work approved in accordance with this Order, once commenced, must be carried out by the undertaker without unnecessary delay and to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority so that river traffic, the flow or regime of the river and the exercise of the Statutory Conservancy and Navigation Authority's functions do not suffer more interference than is reasonably practicable, and an authorised officer of the Statutory Conservancy and Navigation Authority is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Discharges, etc.

5.—(1) The undertaker must not without the Consent of the Statutory Conservancy and Navigation Authority—

(a) deposit in or allow to fall or be washed into the river any gravel, soil or other material; or

(b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise.

(2) Any consent of the Statutory Conservancy and Navigation Authority under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the Statutory Conservancy and Navigation Authority may reasonably impose.

(3) Any such approval is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1).

(4) In its application to the discharge of water into the river, article 24 (discharge of water) has effect subject to the terms of any conditions attached to a consent given under this paragraph.

(5) The undertaker must not, in exercise of the powers conferred by article 24 (discharge of water), damage or interfere with the beds or banks of any watercourse forming part of the river unless such damage or interference is approved as a tidal work under this Order or is otherwise approved in writing by the Statutory Conservancy and Navigation Authority.

Obstruction in river

6. If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of a structure

comprised in any permanent work), the undertaker, as soon as reasonably practicable after the receipt of notice in writing from the Statutory Conservancy and Navigation Authority requiring such action, must remove it from the river or, if it is not reasonably practicable to remove it—

(a) cut the obstruction off at such level below the bed of the river as the Statutory Conservancy and Navigation Authority may reasonably direct; or

(b) take such other steps to make the obstruction safe as the Statutory Conservancy and Navigation Authority may reasonably require.

Removal etc. of the Statutory Conservancy and Navigation Authority 's moorings and buoys

7. If—

(a) by reason of the construction of any tidal work it is reasonably necessary for the Statutory Conservancy and Navigation Authority to incur reasonable costs in temporarily or permanently altering, removing, re-siting, repositioning or reinstating existing moorings or aids to navigation (including navigation marks or lights) owned by the Statutory Conservancy and Navigation Authority, or laying down and removing substituted moorings or buoys, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and

(b) the Statutory Conservancy and Navigation Authority gives to the undertaker not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the undertaker may make in response to the notice within 14 days of the receipt of the notice,

the undertaker must pay the costs reasonably so incurred by the Statutory Conservancy and Navigation Authority.

Navigational lights, buoys, etc.

8. In addition to any requirement imposed under this Order the undertaker, at or near every tidal work, and any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level forming part of the River Humber), must exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Statutory Conservancy and Navigation Authority may from time to time reasonably require.

Removal of temporary works

9. On completion of the construction of any part of a permanent authorised work, the undertaker must as soon as practicable remove—

(a) any temporary tidal work carried out only for the purposes of that part of the permanent work; and

(b) any materials, plant and equipment used for such construction,

and must make good the site to the reasonable satisfaction of the Statutory Conservancy and Navigation Authority.

Protective action

10.—(1) If any tidal work—

(a) is constructed otherwise than in accordance with the requirements of this Part of this Schedule or with any condition in an approval given pursuant to paragraph 3; or

(b) during construction gives rise to sedimentation, scouring, currents or wave action detrimental to traffic in, or the flow or regime of, the river,

then the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker at the undertaker'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 Part of this Schedule; or

(ii) the condition that has been breached; or

(b) in any case within sub-paragraph (1)(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.

(3) If the undertaker does not comply with a notice under sub-paragraph (1), or is unable to do so, the Statutory Conservancy and Navigation Authority may in writing require the undertaker 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 the Statutory Conservancy and Navigation Authority reasonably requires) to its former condition; or

(b) take such other action as the Statutory Conservancy and Navigation Authority 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 undertaker, in compliance with its duties under any enactment and, in particular, under section 48A of the Harbours Act 1964(**a**), must take such action as is necessary to prevent or mitigate those environmental impacts and in doing so must consult and seek to agree the necessary measures with the Statutory Conservancy and Navigation Authority.

(5) If the Statutory Conservancy and Navigation Authority becomes aware that any tidal work is causing an environmental impact over and above those anticipated by any environmental document, the Statutory Conservancy and Navigation Authority must notify the undertaker of that environmental impact, the reasons why the Statutory Conservancy and Navigation Authority believes that the environmental impact is being caused by the tidal work and of measures that the Statutory Conservancy and Navigation Authority reasonably believes are necessary to counter or mitigate that environmental impact.

(6) The undertaker must implement the measures that the Statutory Conservancy and Navigation Authority has notified to the undertaker or must implement such other measures as the undertaker believes are necessary to counter the environmental impact identified, giving reasons to the Statutory Conservancy and Navigation Authority as to why it has implemented such other measures.

Abandoned or decayed works

11.—(1) If any tidal work or any other work of which the undertaker is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level) is abandoned or falls into decay, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice either to repair or restore the work, or any part of it, or to remove the work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(2) If any tidal work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the river, the Statutory Conservancy and Navigation Authority may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

(a) to repair and restore the work or part of it; or

(**a**) 1964 c.40.

(b) if the undertaker so elects, to remove the tidal work and (to such extent as the Statutory Conservancy and Navigation Authority reasonably requires) to restore the site to its former condition.

(3) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice, or after beginning has failed to make reasonably expeditious progress towards their implementation, the Statutory Conservancy and Navigation Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker.

Facilities for navigation

12.—(1) The undertaker must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the agreement of the Statutory Conservancy and Navigation Authority and must ensure that access to such aids remains available during and following construction of any tidal works.

(2) The undertaker must provide at any tidal works, or must afford reasonable facilities at such works (including an electricity supply) for the Statutory Conservancy and Navigation Authority to provide at the undertaker's cost, from time to time, such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation of users of the river in general as the Statutory Conservancy and Navigation Authority may deem necessary by reason of the construction of any tidal works, and must ensure that access remains available to apparatus during and following construction of such works.

(3) The undertaker must comply with the directions of the Statutory Conservancy and Navigation Authority from time to time with regard to the lighting on the tidal works or within the harbour, or the screening of such lighting, so as to ensure safe navigation on the river.

Sedimentation, etc.: remedial action

13.—(1) This paragraph applies if any part of the river becomes subject to sedimentation, scouring, currents or wave action which—

(a) is, during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which all the tidal works constructed under this Order are completed, wholly or partly caused by a tidal work; and

(b) for the safety of navigation or for the protection of works in the river, should in the reasonable opinion of the Statutory Conservancy and Navigation Authority be removed or made good.

(2) The undertaker must either—

(a) pay to the Statutory Conservancy and Navigation Authority any additional expense to which the Statutory Conservancy and Navigation Authority may reasonably be put in dredging the river to remove the sedimentation or in making good the scouring so far as (in either case) it is attributable to the tidal work; or

(b) carry out the necessary dredging at its own expense and subject to the prior approval of the Statutory Conservancy and Navigation Authority, such prior approval not to be unreasonably withheld or delayed;

and the reasonable expenses payable by the undertaker under this paragraph include any additional expenses accrued or incurred by the Statutory Conservancy and Navigation Authority in carrying out surveys or studies in connection with the implementation of this paragraph.

Indemnity

14.—(1) The undertaker is responsible for and must make good to the Statutory Conservancy and Navigation Authority all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by the Authority by reason of—

(a) the construction or operation of the authorised works or the failure of the authorised works;

(b) anything done in relation to a mooring or buoy under paragraph 8; or

(c) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,

and the undertaker must indemnify the Statutory Conservancy and Navigation Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

(a) by the Statutory Conservancy and Navigation Authority on behalf of the undertaker; or

(b) by the undertaker, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Statutory Conservancy and Navigation Authority, or in a manner approved by the Statutory Conservancy and Navigation Authority, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the Statutory Conservancy and Navigation Authority or its duly authorised representative, employee, contractor or agent) excuse the undertaker from liability under the provisions of this paragraph.

(3) The Statutory Conservancy and Navigation Authority must give the undertaker reasonable notice of any such claim or demand as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

Statutory functions

15.—(1) Subject to article 3 (disapplication and modification of legislative provisions) and this paragraph, any function of the undertaker or any officer of the undertaker, whether conferred by or under this Order or any other enactment, is subject to—

(a) any enactment relating to the Statutory Conservancy and Navigation Authority;

(b) any byelaw, direction or other requirement made by the Statutory Conservancy and Navigation Authority under any enactment; and

(c) any other exercise by the Statutory Conservancy and Navigation Authority of any function conferred by or under any enactment.

(2) The undertaker must not take any action in the river outside the area of jurisdiction under sections 57 and 65 of the 1847 Act as incorporated by article 4 (incorporation of the Act of 1847) except with the consent of the harbour master, which must not be unreasonably withheld.

(3) The dock master must not give or enforce any special direction to any vessel under section 52 of the 1847 Act, as incorporated by article 4 (incorporation of the 1847 Act), if to do so would conflict with a special direction given to the same vessel by the harbour master.

(4) The Statutory Conservancy and Navigation Authority must consult the undertaker before making any byelaw which directly applies to or which could directly affect the construction, operation or maintenance of the authorised development.

(5) The Statutory Conservancy and Navigation Authority must consult the undertaker before giving any general direction which directly affects the construction, operation or maintenance of the authorised development.

Operating procedures

16.—(1) Before commencing marine commercial operations the undertaker must submit to the Statutory Conservancy and Navigation Authority for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development.

(2) The undertaker must not submit the statement referred to in sub–paragraph (1) unless it has first consulted with the harbour master, the dock master for the Port of Immingham and the IOT Operators, as defined in Part 4 of this Schedule, and has had due regard to their representations.

(3) Prior to granting or refusing approval of the statement referred to in sub–paragraph (1), the Statutory Conservancy and Navigation Authority may carry out its own navigational risk assessment and may impose reasonable conditions on the approval for the purposes set out in paragraph 3(2)(a) to (c) of this Part of this Schedule.

(4) The undertaker must operate the authorised development only in accordance with such procedure as approved, including any approved alteration made from time to time.

Removal of wrecks and obstructions, etc. Oil Spillage Plan

17. The undertaker must consult the Statutory Conservancy and Navigation Authority before submitting any oil pollution emergency plan to the Maritime and Coastguard Agency and must ensure that any such plan is compatible with the Statutory Conservancy and Navigation Authority's existing plan known as "Humber Clean" or such other plan as supersedes "Humber Clean".

PART 2

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

Application

18.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this part of this Schedule—

"the Agency" means the Environment Agency;

"construction" includes execution, placing, altering, replacing, relaying and removal and excavation and "construct" and "constructed" shall be construed accordingly;

"flood management infrastructure" includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

"plans" includes sections, drawings, specifications, calculations and method statements; and

"specified work" means any part of the authorised development that intersects with or sits over or above, touches or otherwise interferes with the flood management infrastructure, including the maintenance and inspection thereof.

19.—(1) Prior to the commencement of any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 23.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or receipt of further particulars if such particulars have been requested by the Agency for approval; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any flood management infrastructure or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, if requested to do so, the Agency must provide reasons for the grounds of refusal.

20. The undertaker must ensure—

(a) that the authorised development including the associated development does not touch any existing flood management infrastructure; and

(b) that the authorised development including the associated development does not impede the Agency's access to the flood management infrastructure for maintenance and inspection purposes and where required the development is constructed to a sufficient height above the flood management infrastructure to facilitate the aforesaid access.

21. On completion of the works, all debris and surplus material must be removed from the land adjacent to the flood defence to avoid erosion, to the satisfaction of the Agency.

22. The undertaker must bring the conditions contained in paragraphs 19 to 21 to the attention of any agent or contractor responsible for carrying out the authorised development.

23. Any dispute arising between the undertaker and the Agency under this part of this Schedule shall, if the parties agree, be determined by arbitration under article 35 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 3

FOR THE PROTECTION OF EXOLUM

Application

24. For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect until the commencement of the operation of the authorised development.

Interpretation

25. In this Protective Provision—

"apparatus" means the pipe-line and storage system and ancillary apparatus owned, operated or maintained by Exolum and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"Exolum" means Exolum Pipeline System Ltd and Exolum Immingham Limited and any successor in title;

"functions" includes powers and duties;

"in" in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by Exolum and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in Exolum in respect of those items;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

"premises" means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities and jetties;

"specified work" means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and

"working day" means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of apparatus

26. Irrespective of any provision in this Order or anything shown on the land plans—

(a) the undertaker may not acquire any apparatus, premises or any right of Exolum in respect of any apparatus or any of Exolum's interests in land;

(b) the undertaker must not obstruct or render less convenient the access to any apparatus or premises or interfere with or affect Exolum's ability to operate the apparatus, otherwise than by agreement with Exolum, agreement not to be unreasonably delayed or withheld;

(c) any right of Exolum to maintain, repair, renew, adjust, alter or inspect any apparatus may not be extinguished by the undertaker until any necessary alternative apparatus which allows Exolum to fulfil its functions in a manner not less efficient than previously has been constructed and is in operation to the reasonable satisfaction of Exolum;

(d) the undertaker must not require that any apparatus is relocated or diverted or removed, otherwise than by agreement with Exolum; and

(e) where alternative apparatus is proposed or reasonably necessary in consequence of the exercise of any of the powers conferred by the Order, the undertaker must afford to Exolum the necessary facilities and rights for the construction of any alternative apparatus.

Relevant Works

27.—(1) In this paragraph—

"relevant works" means any works forming any part of the authorised development as do, will or are likely to affect any apparatus or Exolum's access to any apparatus including those which involve—

(a) a physical connection or attachment to any apparatus;

(b) works within 15 metres of any apparatus;

(c) the crossing of any apparatus by other utilities;

(d) the use of explosives within 400 metres of any apparatus; or

(e) piling, undertaking of a 3D seismic survey or the sinking of boreholes within 30 metres of any apparatus.

(2) Unless a shorter period is otherwise agreed in writing between the undertaker and Exolum, not less than 35 days before commencing any relevant works, the undertaker must submit to Exolum the works details for the relevant works and such further particulars as Exolum may reasonably require and submit to the Undertaker within 28 days of receipt of the works details and no relevant works are to be commenced until Exolum, acting reasonably, has approved the works details.

(3) The relevant works must be executed only in accordance with the works details approved by Exolum under this sub-paragraph 3 including any reasonable requirements notified to the undertaker by Exolum and Exolum shall be entitled to observe and inspect the execution of those works.

(4) Nothing in this Schedule shall authorise the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3 metres of the apparatus unless that apparatus is redundant and disconnected from Exolum's remaining system.

(5) If Exolum, in accordance with sub-paragraph 27(2), and in consequence of the works proposed by the undertaker, reasonably requires the removal of any Apparatus and gives written notice to the undertaker of that requirement, this deed applies as if the removal of the Apparatus had been required by the undertaker and agreed with Exolum pursuant to sub-paragraph 27(2).

(6) Nothing in this sub-paragraph (6) precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and Exolum) in no case less than 28 days before commencing the execution of any relevant works, new works details, instead of the works details previously submitted, and having done so the provisions of this sub-paragraph 6 apply to and in respect of the new works details.

(7) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of the apparatus, or (wherever situated) impose any load directly upon the apparatus or involve embankment works within 15 metres of the apparatus, the works details to be submitted to Exolum under sub-paragraph 27(2) shall be detailed including a method statement describing—

(a) the exact position of the works;

(b) the level at which the works are to be constructed or renewed;

(c) the manner of their construction or renewal;

(d) the position of the apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to the apparatus.

Expenses

28.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Exolum the reasonable costs and expenses incurred by Exolum in, or in connection with—

(a) the inspection, removal, alteration or works for the protection of any apparatus;

(b) the observation and inspection of the execution of any specified work including relevant works;

(c) the imposition of reasonable requirements for the protection or alteration of apparatus; and

(d) the undertaking by Exolum of its obligations under this protective provision including the review and assessment of plans and works details.

which may reasonably be required in consequence of the execution of any such works as are required under this protective provision.

(2) The undertaker shall pay Exolum's reasonable direct costs incurred in the management and handling of any expenses paid under this protective provision.

(3) There will be no deduction from any sum payable under this protective provision as a result of—

(a) the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing apparatus; or

(b) the placing of apparatus in substitution of the existing apparatus that may defer the time for renewal of the existing apparatus in the ordinary course.

(4) Upon the submission of an invoice detailing the proper and reasonable costs and expenses incurred by Exolum, the undertaker shall pay Exolum within 30 days from the date on which the invoice is received.

Damage to property and other losses

29.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Exolum the reasonable costs and expenses incurred by Exolum in, or in connection with—

(a) pay Exolum for all loss, damage, liability, costs and expenses reasonably suffered or incurred by Exolum for which Exolum is legally liable as a result of legally sustainable claims brought against Exolum by any third party solely arising out of the carrying out of any works associated with the authorised development;

(b) pay the cost reasonably incurred by Exolum in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any works associated with the authorised development; and

(c) pay the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason or in consequence of any such damage or interruption provided that the same arises in

consequence of the carrying out of any works associated with the authorised development.

(2) Irrespective of anything to the contrary elsewhere in this protective provision—

(a) the undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this protective provision; and

(b) neither the undertaker nor Exolum are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(3) Exolum must give to the undertaker reasonable notice of any claim or demand to which this paragraph 30 applies. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. Exolum must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. Exolum must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(4) The requirement to give reasonable notice of any claim or demand to the undertaker in sub-paragraph (3) above shall not apply in the event of an emergency or where the safety of the apparatus is at risk, in which case Exolum may take necessary action and notify the undertaker of its costs promptly afterwards.

30.—(1) Where in consequence of the proposed construction of any of the authorised development, Exolum requires the protection or alteration of apparatus under the terms of this protective provision, the undertaker must use its best endeavours to co–ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Exolum's undertaking.

(2) Exolum must use reasonable endeavours to cooperate with the undertaker for the purposes outlined in this paragraph 30.

(3) The undertaker and Exolum must act reasonably in respect of any given term of this protective provision and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this protective provision it must not be unreasonably withheld or delayed.

Miscellaneous

31. Nothing in this protective provision affects the provisions of any enactment or agreement regulating the relations between the undertaker and Exolum in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order. In the case of any inconsistency, in the context of the authorised development, the provisions of this Order prevail.

32. Any dispute arising between the Undertaker and Exolum under this Part of this Schedule is to be determined by arbitration in accordance with article 35 (arbitration).

Emergency circumstances

33.—(1) The undertaker acknowledges that Exolum provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.

(2) In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this Order and Exolum shall not be in breach of its obligations to proceed—

(a) circumstances in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or

(d) any circumstances identified by the COBRA committee of His Majesty's Government (or any successor committee thereof); or

(e) any situation, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect Exolum's apparatus "mid-works") to account for the suspension.

(4) Exolum shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.

PART 4

FOR THE PROTECTION OF THE IOT OPERATORS

Application

34. The provisions of this Part of this Schedule shall apply for the protection of the IOT Operators, unless otherwise agreed in writing at any time between the undertaker and the IOT Operators.

Interpretation

35. In this Part of this protective provision—

"apparatus" means the pipe-line and storage system owned or maintained by the IOT Operators and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"Associated Petroleum Terminals (Immingham) Ltd" means Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"functions" includes powers and duties;

"Humber Oil Terminal Trustees Ltd" means Humber Oil Terminal Trustees Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

"in" in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"IOT Operators" means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd;

"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by IOT Operators and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and

such legal interest and benefit of property rights and covenants as are vested in IOT Operators in respect of those items;

"specified work" means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and

"working day" means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of apparatus

36. Irrespective of any provision in this Order or anything shown on the land plans—

(a) the undertaker may not acquire any apparatus or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with the IOT Operators; and

(b) any right of the IOT Operators to maintain, repair, renew, adjust, alter or inspect any apparatus may not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the IOT Operators.

Expenses

37. Subject to the following provisions of this paragraph, during the construction of the authorised development the undertaker must pay to IOT Operators the reasonable costs and expenses incurred by the IOT Operators in, or in connection with—

(a) the inspection, removal, alteration or protection of any apparatus; or

(b) the watching and inspecting the execution of any specified work; or

(c) the imposition of reasonable requirements for the protection or alteration of apparatus,

which may reasonably be required in consequence of the execution of any such works as are required under this Schedule.

Damage to property and other losses

38.—(1) Subject to the following provisions of this paragraph, the undertaker must—

(a) grant the IOT Operators, upon reasonable notice access to any apparatus during the carrying out of any relevant works reasonably required for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice. For the purposes of this subparagraph (a), 'apparatus' includes any connection into pipelines or associated infrastructure operated by the IOT Operators and/or any successor pipeline system operator.

(b) pay the IOT Operators for all loss, damage, liability, costs and expenses reasonably suffered or incurred by the IOT Operators for which the IOT Operators is legally liable as a result of legally sustainable claims brought against the IOT Operators by any third party solely arising out of the carrying out of any relevant works;

(c) pay the cost reasonably incurred by the IOT Operators in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works; and

(d) pay the cost reasonably incurred by the IOT Operators in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to the IOT Operators for any other expenses, losses, damages, penalty or costs incurred by the IOT Operators by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works.

(2) Irrespective of anything to the contrary elsewhere in this protective provision—

(a) the undertaker and the IOT Operators must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and

(b) neither the undertaker nor the IOT Operators are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.

(3) The IOT Operators must give to the undertaker reasonable notice of any claim or demand to which this paragraph 38 applies. The undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. The IOT Operators must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. The IOT Operators must, at the request of the undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.

(4) In this paragraph—

"relevant works" means such of the authorised development as—

(a) does, will or is likely to affect any apparatus; or

(b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

39.—(1) Where as a consequence of the construction of any part of the authorised development, the undertaker requires the removal of apparatus or the IOT Operators, acting reasonably, requires the protection or alteration of apparatus, the undertaker must, if it agrees that such works are necessary, use its best endeavours to co–ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the IOT Operators' undertaking and the IOT Operators must use its best endeavours to cooperate with the undertaker for that purpose.

(2) the undertaker and the IOT Operators must act reasonably in compliance with the terms of this protective provision and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required it must not be unreasonably withheld or delayed.

Miscellaneous

40. Nothing in this protective provision affects the provisions of any enactment or agreement regulating the relations between the undertaker and the IOT Operators in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that in connection with the construction of the authorised development, the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this protective provision. In the case of any inconsistency in the context of the authorised development, the provisions of this Order, including this protective provision, prevail.

Emergency circumstances

41.—(1) The undertaker acknowledges that the IOT Operators provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.

(2) In the following circumstances, the IOT Operators may on written notice to the undertaker require the immediate suspension of works to construct the authorised development if such works necessitate the stopping or suspending of the supply of product through any apparatus and the IOT Operators shall not be in breach of its obligations under this protective provision in circumstances—

(a) in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or

(b) in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or

(c) in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or

(d) identified by the COBRA committee of His Majesty's Government (or any successor committee thereof) as identified as falling within any of the above sub-paragraphs of this paragraph; or

(e) where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.

(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect the IOT Operators' apparatus "mid-works") to account for the suspension.

(4) The IOT Operators shall not be liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.

PART 5

FOR THE PROTECTION OF NORTHERN POWERGRID

Application

42. For the protection of Northern Powergrid the following provisions, unless otherwise agreed in writing between the undertaker and Northern Powergrid, have effect for the duration of the construction of the authorised works, including (for the avoidance of doubt)—

(a) where this Order is amended by way of supplementary order, then the following provisions have effect for the construction of the development authorised by such supplementary order; and

(b) where a diversion or replacement of Northern Powergrid's apparatus is required during the construction phase of this Order or any supplementary order, the following provisions have effect for as long as it takes for the diversion or replacement to be completed.

Interpretation

43. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in the Electricity Act 1989(**a**)), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"authorised works" means so much of the works authorised by this Order which affect existing Northern Powergrid's apparatus within the Order limits;

(**a**) 1989 c.29.

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"Northern Powergrid" means Northern Powergrid (Yorkshire) PLC (Company Number 04112320) whose registered address is Lloyds Court, 78 Grey Street, Newcastle upon Tyne NE1 6AF;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impacts of the works on Northern Powergrid's undertaking;

"supplementary order" means any order that is made by the Secretary of State that supersedes or amends this Order, including for the avoidance of doubt a non-material change order or a new application for a development consent order in respect of the Immingham Eastern Ro-Ro Terminal development; and

"working day" means a day other than a Saturday or a Sunday or public holiday in England.

Acquisition of Land

44. Regardless of any provision in this Order or anything shown on the land plans the undertaker must not acquire any apparatus or override any easement or other interest of Northern Powergrid otherwise than by agreement with Northern Powergrid, such agreement not to be unreasonably withheld or delayed.

Removal of Apparatus

45.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted or is authorised by written agreement from Northern Powergrid, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid 42 days' advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

Facilities and rights for alternative apparatus

46.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

47.—(1) Not less than 28 working days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to (including conducting any activities whether intentionally or unintentionally, through for example ground or machinery collapse, which may affect Northern Powergrid's apparatus or encroach on safety distances to live equipment), or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 45, the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 24 working days beginning with the date on which a plan, section and description under sub-paragraph (1) is submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 3 and 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 45.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

48.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid within 50 days of receipt of a valid VAT invoice all reasonable and proper expenses costs or charges incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 45(2) including without limitation—

(i) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation in the event that it is agreed Northern Powergrid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 45(3) all costs reasonably incurred as a result of such action;

(ii) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(iii) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(iv) the approval of plans;

(v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule); and

(b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 46(1) having first decommissioned such apparatus;

(c) where any payment falls due pursuant to paragraph 48(1), Northern Powergrid shall—

(i) provide an itemised invoice or reasonable expenses claim to the undertaker; and

(ii) provide 'reminder letters' to the undertaker for payment to be made within the 50 days on the following days after the invoice or reasonable expenses claim to the undertaker:

(aa) 15 days ('reminder letter 1');

(bb) 29 days ('reminder letter 2');

(cc) 43 days ('reminder letter 3'); and

(iii) commence debt proceedings to recover any unpaid itemised invoice or reasonable expenses claim on the fiftieth day of receipt of the same where payment has not been made.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1) if in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration)

to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) must be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

(3) For the purposes of sub-paragraph (2)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such an extension is required in consequence of the execution of any such works as are referred to in paragraph 45(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(4) The undertaker shall not be liable for any claim by Northern Powergrid for charges, costs or expenses under this paragraph 48 unless prior to Northern Powergrid undertaking the relevant works and/or incurring those charges, costs or expenses, the undertaker has—

(a) received an estimate of that charge, cost or expense along with all necessary supporting information required to evidence the amount and reasonableness of, and the reasonable steps taken to minimise, the charge, cost or expense and a timescale in which the undertaker will be required to make payment, and

(b) approved the estimate in writing (approval not to be unreasonably withheld or delayed),

and Northern Powergrid may not commence any work in relation to which an estimate is submitted until it has been agreed in writing by the undertaker.

(5) The undertaker will use reasonable endeavours to agree the amount of any estimates submitted to it under sub-paragraph (4) within 15 working days of receipt, and must acknowledge as part of its approval that any estimate is only an estimate and may be subject to change.

(6) Subject to Northern Powergrid updating the undertaker by way of submission of an updated estimate for approval under sub-paragraph (4) where any charges, costs or expenses are anticipated to exceed an approved estimate, the undertaker's approval of an estimate shall in no way limit National Powergrid's recovery under this paragraph 48, and the undertaker shall pay the actual costs incurred by Northern Powergrid and submitted for payment whether such costs are above or below the estimate provided and upon making payment under this paragraph, the undertaker may—

(a) confirm to Northern Powergrid that the charge, cost or expense is accepted; or

(b) confirm to Northern Powergrid that the charge, cost or expense if not accepted and the reasons why it considers this to be the case,

and Northern Powergrid must take in to account any representations made by the undertaker in accordance with sub-paragraph (b) and must following receipt of such representations confirm whether or not the requested refund, or any part thereof, is accepted or rejected, and the reasons why it considered this to be the case; and make payment of the requested refund, or part thereof which is not rejected, as applicable such confirmation or payment not to be unreasonably withheld or delayed.

(7) Either party may refer any difference or dispute arising out of sub-paragraph (6) above to arbitration in accordance with article 35 (arbitration) of the Order.

Damage to property and other losses

49.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 45(2), or in consequence of the, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the

undertaker under this Schedule any subsidence resulting from any of these works, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, or Northern Powergrid becomes liable to pay any amount to a third party as a consequence of any default, negligence or omission by the undertaker in carrying out the authorised works, the undertaker must—

(a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage or restoring the supply; and

(b) indemnify Northern Powergrid for any other expenses, loss, damages, penalty, proceedings, claims or costs incurred by or recovered from Northern Powergrid,

by reason or in consequence of any such damage or interruption or Northern Powergrid becoming liable to any third party.

(2) Nothing in sub-paragraph (1) imposes 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 Northern Powergrid, its officers, employees, servants, contractors or agents.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 49 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 49 for claims reasonably incurred by Northern Powergrid.

(5) Where Northern Powergrid is liable to pay any amount to a third party as described in sub-paragraph (1), the total liability of the undertaker to Northern Powergrid under sub-paragraph (1) in respect of each third party claim shall be limited to the extent that Northern Powergrid has properly paid expenses, losses, demands, damages, claims, penalties, costs, interest or any other liability arising from any proceedings to such third party pursuant to—

(a) any statutory compensation scheme, obligation pursuant to its transmission license, or any agreement regulated thereby; or

(b) an award of damages by a court or a settlement or compromise of a claim, demand or proceeding provided that Northern Powergrid will not admit liability or offer to settle with a third party without the undertaker's consent (not to be unreasonably withheld or delayed).

50. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Cooperation

51. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northern Powergrid requires the removal of apparatus under paragraph 45 or otherwise or Northern Powergrid makes requirements for the protection or alteration of apparatus under paragraph 48, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and the need to ensure the safe and efficient operation of Northern Powergrid's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and Northern Powergrid shall use all reasonable endeavours to co-operate with the undertaker for those purposes.

52. If in consequence of an agreement reached in accordance with paragraph 44 or the powers granted under this Order the access to any apparatus or alternative apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus or

alternative apparatus as will enable Northern Powergrid to maintain or use the said apparatus no less effectively than was possible before such obstruction.

53. The plans submitted to Northern Powergrid by the undertaker pursuant to this Part of the Schedule must be sent to Northern Powergrid at property@northernpowergrid.com or such other address as Northern Powergrid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

54.—(1) Where practicable, the undertaker and Northern Powergrid will make reasonable efforts to liaise and co-operate in respect of information that is relevant to the safe and efficient construction of the authorised development. Such liaison shall be carried out where any works are:

(a) within 15m of any above ground apparatus; and/or

(b) are to a depth of between 0–4m below ground level.

PART 6

FOR THE PROTECTION OF ANGLIAN WATER

Application

55. For the protection of Anglian Water the following provisions have effect until the commencement of the operation of the authorised development, unless otherwise agreed in writing between the undertaker and Anglian Water.

Interpretation

56. In this Part of this Schedule—

"1991 Act" means the New Roads and Street Works Act 1991;

"alternative apparatus" means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in a manner no less efficient than previously;

"Anglian Water" means Anglian Water Services Limited;

"apparatus" means:

(a) works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage including for the avoidance of doubt any decommissioned works, mains, pipes or other apparatus;

(b) any drain or works vested in Anglian Water under the Water Industry Act 1991(**a**);

(c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

(d) any drainage system constructed for the purpose of reducing the volume of surface water entering any public sewer belonging to Anglian Water; and

(e) includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus,

and for the purpose of this definition, where words are defined by section 219 of that Act, they shall be taken to have the same meaning;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

(**a**) 1991 c.56.

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

Protective works to buildings

57. The undertaker, in the case of the powers conferred by article 27 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

58. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

59.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that Anglian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Anglian Water to maintain that apparatus in that land must not be extinguished, until—

(a) alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Anglian Water in accordance with sub-paragraphs (2) to (8); and

(b) facilities and rights have been secured for that alternative apparatus in accordance with paragraph 60.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Anglian Water 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the undertaker reasonably needs to remove any of Anglian Water's apparatus) the undertaker must, subject to sub-paragraph (3), afford to Anglian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(5) Anglian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 35 (arbitration), and after the grant to Anglian Water of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker or to the extent that Anglian Water fails to proceed with that work in accordance with sub-paragraph (5) or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water.

(7) If Anglian Water fails either reasonably to approve, or to provide reasons for its failure to approve along with an indication of what would be required to make acceptable, any proposed details relating to required removal works under sub-paragraph (2) within 28 days of receiving a notice of the required works from the undertaker, then such details are deemed to have been approved. For the avoidance of doubt, any such "deemed consent" does not extend to the actual undertaking of the removal works, which shall remain the sole responsibility of Anglian Water or its contractors.

(8) Whenever alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use best endeavours to comply with Anglian Water's reasonable requests for a reasonable period of time to enable Anglian Water to—

(a) make network contingency arrangements; or

(b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

Facilities and rights for alternative apparatus

60.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Anglian Water facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and Anglian Water or in default of agreement settled by arbitration in accordance with article 35 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Anglian Water than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Anglian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(3) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016(**a**) or other legislation.

Retained apparatus

61.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus (or any means of access to it) the removal of which has not been required by the undertaker under paragraph 59(2), the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If Anglian Water in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 59(2).

(**a**) S.I. 2016/1154.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(7) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph, works are deemed to be in land near Anglian Water's apparatus (where it is a pipe) if those works fall within the following distances measured from the medial line of such apparatus—

(a) 4 metres where the diameter of the pipe is less than 250 millimetres;

(b) 5 metres where the diameter of the pipe is between 250 and 400 millimetres; and

(c) 6 metres where the diameter of the pipe exceeds 400 millimetres.

Expenses and costs

62.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Anglian Water by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

63.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 59 or 61(2), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Anglian Water, or there is

any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

(a) bear and pay the cost reasonably incurred by Anglian Water in making good such damage or restoring the supply; and

(b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents.

(4) Anglian Water must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made, without the consent of the undertaker (such consent not to be unreasonably withheld or delayed) who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

64. Where in consequence of the proposed construction of any of the authorised development, the undertaker or Anglian Water requires the removal of apparatus under paragraph 59(2) or Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 59(4), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Anglian Water's undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

65. Where the undertaker identifies any apparatus which may belong to or be maintainable by Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it shall inform Anglian Water of the existence and location of the apparatus as soon as reasonably practicable.

66. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

67. The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

PART 7

FOR THE PROTECTION OF NETWORK RAIL

Application

68. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 81, any other person on whom rights or obligations are conferred by that paragraph.

Interpretation

69. In this Part of this Schedule—

"asset protection agreement" means an agreement, should such be required, to regulate the construction and maintenance of the specified work in a form to be agreed from time to time between the undertaker and Network Rail;

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail by the Secretary of State in exercise of their powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited company number 02904587, registered at Waterloo General Office, London SE1 8SW, and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited, and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"protective works" means any works specified by the engineer under paragraph 72(4);

"railway operational procedures" means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or a tenant or licensee of Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or works, apparatus or equipment; and

"regulatory consents" means any consent or approval required under:

(c) the Railways Act 1993;

(d) the network licence; and/or

(e) any other relevant statutory or regulatory provisions;

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

"specified work" means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 6 (maintenance of authorised development) in respect of such works.

70.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

71.—(1) The undertaker must not exercise the powers conferred by—

(a) article 5 (development consent granted by the Order);

(b) article 6 (maintenance of the authorised development);

(c) article 13 (power to override easements and other rights);

(d) article 16 (statutory undertakers and operator of the electronic communications code network);

(e) article 26 (authority to survey and investigate the land);

(f) the powers conferred by section 203 (power to override easements and rights) of the Housing and Planning Act 2016;

(g) the powers conferred by section 172 (right to enter and survey land) of the Housing and Planning Act 2016;

(h) any powers in respect of the temporary possession of land under the Neighbourhood Planning Act 2017,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act or article 16 (statutory undertakers and operator of the electronic communications code network) or article 13 (power to override easements and other rights or private rights of way) in relation to any right of access of Network Rail to railway property, but such right of access may be extinguished or diverted with the consent of Network Rail.

(4) No powers of compulsory acquisition are being sought in relation to railway property.

(5) The undertaker must not under the powers of this Order acquire or use or acquire new rights over or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property except with the consent of Network Rail.

(6) The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

(7) Where Network Rail is asked to give its consent under this paragraph, such consent must not be unreasonably withheld but may be given subject to reasonable conditions but it shall never be unreasonable to withhold consent for reasons of operational or railway safety (such matters to be in Network Rail's absolute discretion). The undertaker must enter into an asset protection agreement prior to the carrying out of any specified work.

72.—(1) The undertaker must, before commencing construction of any specified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 35 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the

engineer to communicate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works in question until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

73.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 72 must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 72;

(b) under the supervision (where appropriate) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work or a protective work, the undertaker must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its employees, contractors or agents or any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its employees, contractors or agents.

74.—(1) The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work or a protective work during its construction; and

(b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or a protective work or the method of constructing it.

75. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such

information as it may reasonably require with regard to such works or the method of constructing them.

76.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work or a protective work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work or the protective work because which in the opinion of the engineer it is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work or the protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the undertaker must, regardless of any approval of the specified work or protective work in question under paragraph 72(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 77(a), provide such details of the formula or method of calculation by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

77. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 72(3) or in constructing any protective works under the provisions of paragraph 72(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work or a protective work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work or a protective work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the reasonable opinion of the engineer be required to be imposed by reason or in consequence of the construction or failure of a specified work or a protective work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work or a protective work.

78. If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work or the protective work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice,

take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as not adversely to affect railway property.

79. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work or a protective work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

80. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work or protective work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

81.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance or operation of a specified work or a protective work or the failure of it;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development—

(i) in respect of any damage caused to, or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

(ii) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development,

and the undertaker indemnify and keep indemnified Network Rail in respect of such costs, from and against all claims and demands arising out of or in connection with a specified work or protective work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will not (if it was done without negligence on the part of Network Rail or its employees, contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including

but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

82. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable pursuant to this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 81(3) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

83. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

84. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

85. The undertaker must give written notice to Network Rail where any application is proposed to be made by the undertaker for the Secretary of State's consent under article 9 (transfer of benefit of Order, etc.) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

86. The undertaker must no later than 28 days from the date that the plans and documents referred to in article 33 (certification of plans and documents etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail.

87. Any dispute arising between the undertaker and Network Rail under this Part of this Schedule is to be determined by arbitration in accordance with article 35 (arbitration).

PART 8

FOR THE PROTECTION OF NORTH EAST LINCOLNSHIRE COUNCIL (AS LEAD LOCAL FLOOD AUTHORITY)

Application

88. The provisions of this Part of this Schedule apply until the commencement of the operation of the authorised development for the protection of North East Lincolnshire Council (as lead local flood authority within the meaning of the Flood and Water Management Act 2010) unless otherwise agreed between the undertaker and North East Lincolnshire Council.

Interpretation

89. In this Part of this Schedule—

"authorised officer" means an officer authorised to by North East Lincolnshire Council;

"construction" includes execution, placing, altering, replacing, relaying and removal and "construct" and "constructed" are construed accordingly;

"drainage work" means any ordinary watercourse and includes any land which is expected to provide flood storage capacity for an ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse;

"ordinary watercourse" has the meaning as given in section 72 (interpretation) of the Land Drainage Act 1991;

"plans" includes sections, drawings, specifications and method statements; and

"specified work" means any works carried out in relation to or which may affect any ordinary watercourse, drain or culvert in a manner that would be likely to affect the flow of the watercourse.

90.—(1) Before beginning to construct any specified work, the undertaker must submit to North East Lincolnshire Council plans of the specified work and such further particulars available to it as North East Lincolnshire Council may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by North East Lincolnshire Council, or determined under sub-paragraph (3).

(3) Any approval of North East Lincolnshire Council required under sub-paragraph (2)—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 28 days of the receipt of the plans for approval or where further particulars are submitted under sub-paragraph (1) within 28 days of the submission of those particulars, or where further particulars are received under sub-paragraph (1), within 28 days of the receipt of those particulars, and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as it may make for the protection of any drainage work or for the prevention of flooding and

(d) North East Lincolnshire Council must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

91. Without limitation on the scope of paragraph 90 the requirements which North East Lincolnshire Council may make include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including any new works as well as alterations to existing works) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of the specified work.

92.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by North East Lincolnshire Council under paragraph 90 be constructed—

(a) without unnecessary delay in accordance with the plans approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of North East Lincolnshire Council,

and an authorised officer of North East Lincolnshire Council is entitled to watch and inspect the construction of such works.

(2) The undertaker must give to North East Lincolnshire Council not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If any part of a specified work or any protective work required by North East Lincolnshire Council over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of Schedule, North East Lincolnshire Council may by notice in

writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and North East Lincolnshire Council in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as North East Lincolnshire Council reasonably requires.

(4) Subject to sub-paragraph 5 and paragraph 90, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, North East Lincolnshire Council may execute the works specified in the notice and any reasonable expenditure incurred by it in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, North East Lincolnshire Council must not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

93.—(1) Subject to sub-paragraph 2 the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of North East Lincolnshire Council it may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and North East Lincolnshire Council in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as North East Lincolnshire Council reasonably requires.

(3) Subject to sub-paragraph 4 and paragraph 90, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, North East Lincolnshire Council may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph 2, North East Lincolnshire Council must not, except in a case of an emergency, exercise the powers conferred by sub-paragraph 3 until the dispute has been finally determined.

(5) This paragraph does not apply to—

(a) drainage works which are vested in North East Lincolnshire Council, or which North East Lincolnshire Council or another person is liable to maintain and is not precluded by the powers of the Order from doing so; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

94. Subject to paragraph 93, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of North East Lincolnshire Council and if the undertaker fails to do so, North East Lincolnshire Council may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

95.—(1) The undertaker must indemnify North East Lincolnshire Council in respect of all costs, charges and expenses which North East Lincolnshire Council may reasonably incur or have to pay or which it may sustain—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of the specified work in respect of an ordinary watercourse or any protective works required by North East Lincolnshire Council under this Part of this Schedule.

(2) The maximum amount payable to North East Lincolnshire Council under paragraph 92 or 94 is to be the same as would have been payable to North East Lincolnshire Council in accordance with the scale of charges for pre-application advice and land drainage consent applications published by North East Lincolnshire Council from time to time.

96.—(1) Without affecting the other provisions of this Part of this Schedule, the undertaker must indemnify North East Lincolnshire Council from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, which may be made or taken against, recovered from, or incurred by, North East Lincolnshire Council by reason of—

(a) any damage to any drainage work so as to impair its efficiency for flood defence or land drainage purposes;

(b) any raising or lowering of the water table in land adjoining or affected by a specified work or adjoining any sewers, drains and watercourses;

(c) any flooding, increased flooding or impaired drainage of any such lands as are mentioned in paragraph 93;

(d) any claim in respect of pollution under the Control of Pollution Act 1974(**a**);

(e) damage to property including property owned by third parties; or

(f) injury to or death of any person,

which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) North East Lincolnshire Council must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

97. The fact that any work or thing has been executed or done by the undertaker in accordance with plans approved by North East Lincolnshire Council, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not (in the absence of negligence on the part of North East Lincolnshire Council, its officers, contractors or agents) relieve the undertaker from any liability under the provisions of this Part of this Schedule.

98. Any dispute arising between the undertaker and North East Lincolnshire Council under this Part of this Schedule is to be determined by arbitration in accordance with article 35 (arbitration).

PART 9

FOR THE PROTECTION OF CADENT GAS LIMITED AS GAS COMPANY

Application

99. The provisions of this Part of this Schedule shall apply for the protection of Cadent, unless otherwise agreed in writing between the undertaker and Cadent.

Interpretation

100. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of Cadent to enable Cadent to fulfil its statutory functions in a manner no less efficient than previously;

(**a**) 1974 c. 40.

"apparatus" means any gas mains, pipes, pressure governors, ventilators, cathodic protections, cables or other apparatus belonging to or maintained by Cadent for the purposes of gas supply together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of Cadent for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised works" means Work No. 6 as defined in Schedule 1 to this Order and includes any ancillary works (as defined in Schedule 1 to this Order) associated with Work No. 6;

"Cadent" means Cadent Gas Limited (Company Number 10080864) whose registered office is situated at Cadent, Pilot Way, Ansty, Coventry, England, CV7 9JU) and/or its successors in title and/or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986;

"commence" has the same meaning as in article 2 of this Order and commencement shall be construed to have the same meaning save that for the purposes of this Part of the Schedule the terms commence and commencement include operations for the purposes of archaeological or ecological investigations and investigations of the existing condition of the ground or of structures;

"decommissioned apparatus" means any disused no longer maintained by Cadent as a consequence of the authorised development and for which rights have been surrendered and references to "decommission" and "decommissioned" shall be construed accordingly;

"deed of consent" means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary and/or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Part of this Schedule and references to "deeds of consent" shall be construed accordingly;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by Cadent (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for Cadent's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"rights" shall include rights and restrictive covenants, and in relation to decommissioned apparatus the surrender of rights, release of liabilities and transfer of decommissioned apparatus;

"specified works" means any of the authorised works or activities undertaken in association with the authorised works which—

(a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under sub-paragraph 103(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under sub-paragraph 103(2) or otherwise; and/or

(c) include any of the activities that are referred to in CD/SP/SSW/22 (Cadent's policies for safe working in the vicinity of Cadent's Assets); and

"undertaker" means the undertaker as defined in article 2 of this Order.

Protective works to buildings

101.—(1) The undertaker, in the case of the powers conferred by article 27 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of Cadent and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of Cadent or any interruption in the supply of gas by Cadent, as the case may be, is caused, the undertaker must bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) pay compensation to Cadent for any loss sustained by it; and

(b) indemnify Cadent against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by Cadent, by reason of any such damage or interruption.

(2) Nothing in this paragraph imposes any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of Cadent or its contractors or workmen; and Cadent will give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made by Cadent, save in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving the undertaker an opportunity to make representations as to the claim or demand.

Acquisition of land

102.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire any land interest or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of Cadent otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph 104(1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between Cadent and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement and/or other legal or land interest of Cadent and/or affects the provisions of any enactment or agreement regulating the relations between Cadent and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as Cadent reasonably requires enter into such deeds of consent and variations upon such terms and conditions as may be agreed between Cadent and the undertaker acting reasonably and which must be no less favourable on the whole to Cadent unless otherwise agreed by Cadent, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) The undertaker and Cadent agree that where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by Cadent and/or other enactments relied upon by Cadent as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail subject to the proviso in paragraph 99 above.

(4) Any agreement or consent granted by Cadent under paragraph 105 or any other paragraph of this Part of this Schedule, shall not be taken to constitute agreement under sub-paragraph 104(1).

(5) As a condition of an agreement between the parties in sub-paragraph 104(1) that involves de-commissioned apparatus being left in situ the undertaker must accept a surrender of any existing easement and/or other interest of Cadent in such decommissioned apparatus subject to the

satisfaction of the undertaker and consequently acquire title to such decommissioned apparatus and release Cadent from all liabilities in respect of such de-commissioned apparatus from the date of such surrender.

Removal of apparatus

103.—(1) If, for the purpose of executing any works in, on, under or over any land held or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to Cadent advance written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Cadent reasonably needs to move or remove any of its apparatus) the undertaker must afford to Cadent to its satisfaction (taking into account sub-paragraph 104(1) below) the necessary facilities and rights—

(a) for the construction of alternative apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus);

(b) subsequently for the maintenance of that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus); and

(c) to allow access to that apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus).

(2) If the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Cadent may, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker in obtaining the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for Cadent to use its compulsory purchase powers to this end unless it (in its absolute discretion) elects to so do.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Cadent and the undertaker.

(4) Cadent must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the prior grant to Cadent of such facilities and rights as are referred to in sub-paragraph (2) or (3) have been afforded to Cadent to its satisfaction, then proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to decommission or remove any apparatus required by the undertaker to be decommissioned or removed under the provisions of this Part of this Schedule.

(5) Where apparatus is to be decommissioned pursuant to sub–paragraph (4) such apparatus shall be filled with concrete save where Cadent determines (in its absolute discretion) that this method of decommissioning would not be appropriate and in such circumstances the undertaker shall be able to require the removal of such apparatus at the undertaker's expense unless such removal is not practicable in which case Cadent shall decommission the apparatus as it sees fit.

Facilities and rights for alternative apparatus

104.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for Cadent facilities and rights in land for the access to, construction and maintenance alternative apparatus in substitution for apparatus to be decommissioned or removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Cadent and must be no less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be decommissioned or removed unless otherwise agreed by Cadent.

(2) If the facilities and rights to be afforded by the undertaker and agreed with Cadent under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to Cadent than the facilities and rights enjoyed by it in respect of the apparatus to be

decommissioned or removed (in Cadent's opinion) then the terms and conditions to which those facilities and rights are subject in the matter will be referred to arbitration in accordance with paragraph 112 (arbitration) of this protective provision and the arbitrator shall make such provision for the payment of compensation by the undertaker to Cadent as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection of Cadent

105.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to Cadent a plan and, if reasonably required by Cadent, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to Cadent under sub-paragraph (1) must include a method statement and describe—

(a) the exact position of the works;

(b) the level at which these are proposed to be constructed or renewed;

(c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;

(d) the position of all apparatus;

(e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and

(f) any intended maintenance regimes.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until Cadent has given written approval of the plan so submitted.

(4) Any approval of Cadent required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (5) or (7); and,

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, Cadent may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works to which this paragraph applies must only be executed in accordance with the plan, submitted under sub-paragraph (1) and (2) or as relevant sub-paragraph (4), as approved or as amended from time to time by agreement between the undertaker and Cadent and in accordance with all conditions imposed under sub-paragraph (4)(a), and Cadent will be entitled to watch and inspect the execution of those works.

(7) Where Cadent requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to Cadent's satisfaction prior to the commencement of any authorised works (or any relevant part thereof) for which protective works are required prior to commencement

(8) If Cadent, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under sub-paragraph 103(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to Cadent notice as soon as is reasonably practicable and a plan of those works and must comply with—

(a) the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances; and

(b) sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker must comply with the Cadent's policies for safe working in the vicinity of Cadent's Assets CD/SP /SSW22 and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that Cadent retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 106.

Expenses

106.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to Cadent on demand all charges, costs and expenses reasonably anticipated or incurred by Cadent in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised works as are referred to in this Part of this Schedule including without limitation—

(a) any costs reasonably incurred by or paid by Cadent in connection with the negotiation of rights or the exercise of statutory powers for such apparatus including without limitation all costs (including professional fees) incurred by Cadent in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(c) the approval of plans;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(e) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule; and

(f) any watching brief pursuant to sub-paragraph 105(6).

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 35 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Cadent by virtue of sub-paragraph (1) will be reduced by the amount of that excess save where it is not possible or appropriate in the circumstances (including due to statutory or regulatory changes) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Cadent in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Cadent any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

107.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule (including without limitation relocation, diversion, decommissioning, construction and maintenance of apparatus or alternative apparatus) or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of Cadent, or there is any interruption in any service provided, or in the supply of any goods, by Cadent, or Cadent becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably incurred by Cadent in making good such damage or restoring the supply; and

(b) indemnify Cadent for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Cadent, by reason or in consequence of any such damage or interruption or Cadent becoming liable to any third party as aforesaid other than arising from any default of Cadent.

(2) The fact that any act or thing may have been done by Cadent on behalf of the undertaker or in accordance with a plan approved by Cadent or in accordance with any requirement of Cadent or under its supervision including under any watching brief will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless Cadent fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Cadent, its officers, servants, contractors or agents; and

(b) any authorised works and/or any other works authorised by this Part of this Schedule carried out by Cadent as an assignee, transferee or lessee of the undertaker with the benefit of the Order pursuant to section 156 of the Planning Act 2008 or article 9 (transfer benefit of Order, etc.) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised works yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 107.

(4) Cadent must give the undertaker reasonable notice of any such third party claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the promoter and considering their representations.

Enactments and agreements

108. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between Cadent and the undertaker, nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and Cadent in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made and which will continue to have effect.

Co-operation

109. Where in consequence of the proposed construction of any of the authorised works, the undertaker or Cadent requires the removal of apparatus under sub-paragraph 103(2) or Cadent makes requirements for the protection or alteration of apparatus under paragraph 105, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Cadent's undertaking and Cadent shall use its best endeavours to co-operate with the undertaker for that purpose.

110. For the avoidance of doubt whenever Cadent's consent, agreement or approval is required in relation to plans, documents or other information submitted by Cadent or the taking of action by Cadent, it must not be unreasonably withheld or delayed.

Access

111. If in consequence of the agreement reached in accordance with sub-paragraph 104(1) or the powers granted under this Order the access to any apparatus (including appropriate working areas required to reasonably and safely undertake necessary works by Cadent in respect of the apparatus) is materially obstructed, the undertaker must provide such alternative rights and means of access to such apparatus as will enable Cadent to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

112. Save for differences or disputes arising under sub-paragraphs 103(2), 103(4), 105(1), and paragraph 106 any difference or dispute arising between the undertaker and Cadent under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Cadent, be determined by arbitration in accordance with article 35 (arbitration) to be referred to and settled by a single arbitrator to be agreed between the parties, or failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) to the President of the Institute of Civil Engineers and in settling any difference or dispute, the arbitrator must have regard to the requirements of Cadent for ensuring the safety, economic and efficient operation of Cadent's apparatus.

Notices

113. The plans submitted to Cadent by the undertaker pursuant to sub-paragraph 105(1) must be sent to Cadent Gas Limited Plant Protection by e-mail to plantprotection@cadentgas.com copied by e-mail to landservices@cadentgas.com and sent to the General Counsel Department at Cadent's registered office or such other address as Cadent may from time to time appoint instead for that purpose and notify to the undertaker.

PART 10

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

Application

114. For the protection of any operator, referred to in this Part of this Schedule, the following provisions have effect until the commencement of the operation of the authorised development, unless otherwise agreed in writing between the undertaker and the operator.

Interpretation

115. In this Part of this Schedule—

"the 2003 Act" means the Communications Act 2003;

"the code rights" has the same meaning as in the Paragraph 3 of the electronic communications code;

"electronic communications apparatus" has the same meaning as in electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

"the electronic communications code network" means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the undertaker is providing or proposing to provide;

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

"operator" means the operator of an electronic communications code network.

116. The exercise of the powers of article 16 (statutory undertakers and operator of the electronic communications code network) is subject to Part 10 (undertaker's works affecting electronic communications apparatus) of the electronic code.

117.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of the authorised development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator, the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes 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 an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the

undertaker and if such consent, is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 35 (arbitration).

118. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

119. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.

PART 11

FOR THE PROTECTION OF DFDS SEAWAYS PLC

Application

120. The provisions of this Part of this Schedule shall apply for the protection of DFDS, unless otherwise agreed in writing at any time between the undertaker and DFDS.

Interpretation

121. In this Part of this Schedule—

"authorised work" means any work specified in Schedule 1;

"DFDS" means DFDS Seaways plc, company number 01554521 registered at Nordic House, Western Access Road, Immingham Dock, Immingham, DN40 2LZ; and

"environmental document" means the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement.

Consultation and notification

122. The undertaker must, at least 28 days before the undertaker commences the construction of any authorised work, or any phase of any authorised work, that has been assessed in any environmental document as being likely to interfere with DFDS' use of the Port of Immingham or the surrounding road network, inform DFDS in writing stating what is proposed and have regard to any response received from DFDS.

Indemnity

123.—(1) The undertaker is responsible for and must make good to DFDS all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by DFDS by reason of—

(a) the construction of the authorised works; or

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged in the construction of the authorised works.

(2) DFDS must give the undertaker no less than 28 days' notice in writing, providing a detailed explanation and justification for any such claim, as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

(3) Nothing in sub-paragraph (1) imposes 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 DFDS, its officers, servants, contractors or agents.

Operations

124. Before commencing any marine commercial operations the undertaker must provide DFDS with a copy of the Statutory Conservancy and Navigation Authority's approval of the written statement of proposed safe operating procedures for access to and egress from the authorised development, including any approved alteration made from time to time.

Disputes

125. Any dispute arising between the undertaker and DFDS under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).

PART 12

FOR THE PROTECTION OF CLDN PORTS KILLINGHOLME LIMITED

Application

126. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and CLdN, for the protection of CLdN until the commencement of operation of the authorised development.

Interpretation

127.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.

(2) In this part of this Schedule—

"CLdN" means CLdN Ports Killingholme Limited, company number 00278815, whose principal office is at 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU as statutory harbour authority for and operator of the Port and any successor in title or function to the Port;

"the CLdN disposal site" means Humber 3A/Clay Huts (HU060) disposal site situated adjacent to Clay Huts and Holme Ridge in the river Humber;

"environmental document" means environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement;

"the Port" means any land (including land covered by water) at Killingholme for the time being owned or used by CLdN for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls or works held in connection with that undertaking;

"specified work" means any work, activity or operation authorised by this Order, by the Town and Country Planning Act (General Permitted Development) Order 2015 or by any planning permission given under the Town and Country Planning Act 1990, and any vessel movements, which has been assessed in any environmental document as being likely to interfere with—

(a) the Port or access (including over water) to and from the Port; or

(b) CLdN's ability to carry out disposal activities at the CLdN disposal site; or

(c) the functions of CLdN as the statutory harbour authority for the Port.

Cooperation

128. The undertaker and CLdN must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

Notice of and consultation on works and vessel movements

129. The undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of any specified work at least 20 days prior to the commencement of the specified work.

130. Any operations for the construction of any specified work, once commenced, must be carried out by the undertaker so that CLdN does not suffer more interference than is reasonably necessary.

Indemnity

131.—(1) During the construction of the authorised development, the Undertaker must indemnify CLdN against all financial losses, costs, charges, damages, expenses, claims and demands which may reasonably be incurred or occasioned to CLdN by reason or arising in connection with—

(a) any obstruction which prevents or materially hinders access into or out of the Port, which is caused by or attributable to the undertaker or its agents or contractors in exercising the power of this Order, save for where such an obstruction is as a result of the lawful actions or direction of the Statutory Conservancy and Navigation Authority;

(b) the undertaking by CLdN of works or measures to prevent or remedy a danger or impediment to navigation or access to or from the Port arising from the exercise by the undertaker of its powers under this Order; or

(c) any additional costs of disposal of dredging arisings from the Port incurred by CLdN as a result of the undertaker's use of the CLdN disposal site.

(2) Nothing in sub-paragraph (1) imposes 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 CLdN, its officers, servants, contractors or agents.

(3) Without limiting the generality of sub-paragraph (1), the undertaker must indemnify CLdN from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph until the commencement of the operation of the authorised development.

Arbitration

132. Unless otherwise agreed in writing, any dispute arising between the undertaker and CLdN under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).

PART 13

FOR THE PROTECTION OF THE INTERNAL DRAINAGE BOARD

Application

133. The provisions of this Part of this Schedule have effect for the protection of the Board unless otherwise agreed in writing between the undertaker and the Board.

Interpretation

134. In this part of this Schedule—

"construction" includes execution, placing, altering, replacing, relaying and removal; and "construct" and "constructed" must be construed accordingly;

"drainage work" means any ordinary watercourse and includes any land that provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall,

embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

"evidence" includes hydraulic modelling, infiltration test results and geotechnical evaluations;

"ordinary watercourse" has the meaning given in section 72 (Interpretation) of the Land Drainage Act 1991(**a**);

"plans" includes sections, drawings, specifications and method statements;

"specified work" means—

(a) the making of any opening into or connections with any watercourse or drain in connection with the authorised development; and/or

(b) so much of any work or operation of the authorised development as is in, on, under, over or within 9 metres of a drainage work for which the Board has responsibility or is otherwise likely to—

(i) affect any drainage work;

(ii) affect the total volume or volumetric rate of flow of water in or flowing to or from any drainage work;

(iii) affect the flow of water in any drainage work; or

(iv) affect the conservation, distribution or use of water resources.

135. The undertaker must not make any opening into or connections with any watercourse or drain in connection with the authorised development or carry out any specified work except—

(a) in accordance with plans approved by the Board in accordance with this Part of this Schedule; and

(b) where the Board has been given the opportunity to supervise the making of the opening or connection,

and no discharge of water under article 24 (discharge of water) shall be made until details of the location and rate of discharge have been submitted to and approved in writing by the Board.

(2) Before beginning to construct any specified work, the undertaker must submit to the Board plans of the specified work, evidence to support said plans and any such further particulars available to it as the Board may within 28 days of the submission of the plans reasonably require (or submission of further particulars if required by the Board).

(3) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 143.

(4) Any approval of the Board required under this paragraph—

(a) must not be unreasonably withheld or delayed;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval (or the submission of further particulars if applicable) or, in the case of a refusal, if it is not accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements and conditions as the Board may consider appropriate.

(5) The Board must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (4).

(6) Where under this Part of this Schedule the Board is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that the Board complies with its obligations to consult other appropriate agencies, to have regard to any guidance issued by any appropriate supervisory body and has regard to its obligations under statute.

136. Without limiting paragraph 135, the requirements which the Board may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified work

(**a**) 1991 c. 59. There are amendments to section 72 but none are relevant.

(including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work or the authorised development.

137.—(1) Subject to sub–-paragraph (2), any specified work, and all protective works required by the Board under paragraph 136, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part; and

(b) to the reasonable satisfaction of the Board, and an officer of the Board is entitled to give such notice as may be reasonably required in the circumstances to watch and inspect the construction of such works.

(2) The undertaker must give to the Board—

(a) not less than 14 days' notice in writing of its intention to commence construction of any specified work; and

(b) notice in writing of its completion not later than 7 days after the date on which it or the authorised development is brought into use.

(3) If the Board reasonably requires, the undertaker must construct all or part of the protective works so that they are in place before the construction of the specified work.

(4) If any part of a specified work or any protective work required by the Board is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Board may by notice in writing require the undertaker at the undertaker's expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Board in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Board reasonably requires.

(5) Subject to sub-paragraph (6), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Board may execute the works specified in the notice, and any expenditure reasonably incurred by it in so doing is recoverable from the undertaker

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Board must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally resolved by agreement or determined under paragraph 143.

138. If by reason of the construction of the authorised development or any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or the drainage work is otherwise damaged, the impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and, if the undertaker fails to do so, the Board may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

139. If the Board considers that, as a direct result of the construction and/or operation of the authorised development the outfall of the Habrough Drain has been obstructed or impaired and either—

(a) the obstruction has the potential to impede or affect the flow of water from the Habrough Drain into the River Humber; or

(b) the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action,

such obstruction, impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Board and if the Undertaker fails to do so, the Board may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

140. The undertaker must compensate the Board in respect of all costs, charges and expenses that the Board may reasonably incur, have to pay or may sustain—

(a) in the examination or approval of plans and evidence under this Part of this Schedule;

(b) in inspecting the proposed site for and construction of any specified work or any protective works required by the Board under this Part of this Schedule; and

(c) in carrying out of any surveys or tests by the Board that are reasonably required in connection with the authorised development and/or construction of the specified work.

141. Without limiting the other provisions of this Part of this Schedule, the undertaker must compensate the Board in respect of all claims, demands, proceedings, costs, damages, expenses or loss that may be made or taken against, reasonably recovered from or reasonably incurred by the Board by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; and

(b) any flooding or increased flooding of any such land which is caused by, or results from, the authorised development, the construction of the specified work or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

142. The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Board, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under this Part of this Schedule.

143. Any dispute between the undertaker and the Board under this Part of this Schedule, unless otherwise agreed, must be determined by arbitration under article 35 (arbitration).

SCHEDULE 5

Article 10

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply in respect of compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) For section 5A(5A)(relevant valuation date) of the 1961 Act substitute—

"(5A) If—

(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) (powers of entry) of the 1965 Act(**a**) (as modified by paragraph 5(5) of Schedule 5 (modification of compensation and compulsory purchase enactments) to the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024);

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 5 to

(**a**) Section 5A was inserted by section103 of the Planning and Compulsory Purchase Act 2004 (c. 5) and amended by section 199(2) of, and paragraph 9 of Schedule 18 to, the Housing and Planning Act 2016. There are other amendments to section 5A which are not relevant to this Order.

the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 to acquire an interest in the land; and

(c) the acquiring authority enters on and takes possession that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purposes of exercising that right."

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1)(**b**) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

(a) for "land is acquired or taken" substitute "a right over land is purchased";

(b) for "acquired or taken from him" substitute "over which the right is exercisable".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 14 (modification of Part 1 of the 1965 Act)), applies to the compulsory acquisition of a right by the creation of a new right under article 10 (compulsory acquisition of rights)—

(a) with the modifications specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired; or

(b) the land over which the right is or is to be exercisable.

(3) For section 7 (measure of compensation) of the 1965 Act substitute—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act."

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (owners under incapacity);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

(5) Section 11(**c**) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry

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(**a**) 1973 c. 26.

(**b**) There are amendments to section 44 which are not relevant to this Order.

(**c**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188

required by subsection (1) of that section (as it applies to compulsory acquisition under article 10 (compulsory acquisition of rights), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right; and sections—

(a) 11A(**a**) (powers of entry: further notices of entry);

(b) 11B(**b**) (counter-notice requiring possession to be taken on a specified date);

(c) 12(**c**) (penalty for unauthorised entry); and

(d) 13(**d**) (entry on warrant in the event of obstruction) of the 1965 Act,

are modified correspondingly.

(6) Section 20(**e**) (tenants at will, etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 14(4) is also modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For schedule 2A to the 1965 Act substitute—

"SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 (execution of declaration) of the 1981 Act as applied by article 15 (application of the 1981 Act) of the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 in respect of the land to which the notice to treat relates.

2. In this Schedule, "house" includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory ("the owner") may serve a counter-notice requiring the acquiring authority to purchase the owner's interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

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of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.

(**a**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(**b**) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.

(**c**) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(**d**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(**e**) Section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served ("the decision period").

7. If the acquiring authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the acquiring authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory; or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right,

(b) the use to be made of the right proposed to be acquired, and

(c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the acquiring authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal."

SCHEDULE 6

Article 10

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

(1)	*(2)*	*(3)*

Plot reference number shown on land plans	*Works for which Plots are required*	*Extent of acquisition*
1	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
2a	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
2b	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
3	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
4	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
5a	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
5b	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
6	Work Nos. 4 and 7	Acquisition of permanent rights (including restrictive covenants) over land
9	Work No. 6	Acquisition of permanent rights (including restrictive covenants) over land
14	Work Nos. 1, 2 and 3	Acquisition of interests and rights over land

SCHEDULE 7

Articles 2 and 33

PLANS AND DOCUMENTS TO BE CERTIFIED

(1) *Document*	*(2)* *Document Reference*
the book of reference	Document Reference 4.1 v2
the drainage plan	Document Reference 2.7
the engineering sections, drawings and plans	Document Reference 2.6 v4
the Enhanced Operational Controls	Document Reference 10.2.109
the environmental statement	The environmental statement chapters (Document Reference 8.2), figures (Document Reference 8.3), appendices (Document Reference 8.4) subject to the substitutions set out below: (a) volume 1, chapter 2: proposed development document reference 8.2.2 v2; (b) volume 1, chapter 3: details of project construction and operation 8.2.3 v2; (c) volume 1, chapter 6: impact assessment approach document reference 8.2.6 v2;

	(d) volume 1, chapter 20: cumulative and in-combination effects document reference 8.2.20 v2; (e) volume 2, figure 8.3.20: location of projects, developments and activities that are scoped into the inter-project effects assessment document reference 8.3.20 v2; (f) volume 3, appendix (g) volume 3, appendix 10.1: navigational risk assessment document reference 8.4.10(a) v2; (h) volume 3, appendix 10.2: navigation simulation study – part 1 document reference 8.4.10(b) v2; (i) volume 3, appendix 10.2: navigation simulation study – part 2 document reference 8.4.10(b) v2; (j) volume 3, appendix 10.3: navigational simulation – stakeholder demonstrations document reference 8.4.10(c) v2; (k) volume 3, appendix 17.1: transport assessment document reference 8.4.17(a) v2; and (l) volume 3, transport assessment addendum document reference 8.4.17(a).1.
the environmental statement addendum	Document Reference 10.3.8
the flood risk assessment	Document Reference 8.4.11
the general arrangement plans	Document Reference 2.5 v2
the land plans	Document Reference 2.2 v2
the lighting plan	Document Reference 2.8 v2
the operational freight management plan	Document Reference 10.2.76 v2
the outline offshore construction environmental management plan	Document Reference 9.2.2 v2
the outline onshore construction environmental management plan	Document Reference 9.2.1 v2
the supplementary navigation information report with appendices	Document Reference 10.2.72
the travel plan	Document Reference 8.4.17(b) v2
the WEMP	Document Reference 9.4
the works plans	Document Reference 2.3 v2

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Associated British Ports (referred to in this Order as the undertaker) to construct, operate and maintain a new RoRo facility with three berths additional marine infrastructure, a dredged berthing pocket, and associated development within the Port of Immingham.

The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of all documents mentioned in this Order and certified in accordance with article 33 (certification of plans and documents etc.) of this Order may be inspected free of charge during working hours at ABP's Registered Office, 25 Bedford Street, London, WC2E 9ES.