

# IMMINGHAM EASTERN RO-RO TERMINAL



Statutory Nuisance Statement

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## Executive Summary

This Statutory Nuisance Statement accompanies an application that has been submitted to the Secretary for State for Transport by Associated British Ports (“ABP”) under the provisions of section 37 of the Planning Act 2008 (PA 2008). ABP is seeking development consent, to be granted by a Development Consent Order (“DCO”), for the construction and operation of the Immingham Eastern Ro-Ro Terminal (“IERRT”).

The IERRT development will comprise the construction and consequent operation of a new roll-on/roll-off (Ro-Ro) facility with three berths together with landside storage capacity within the Port of Immingham, North East Lincolnshire.

The IERRT Project constitutes a Nationally Significant Infrastructure Project (“NSIP”) as defined by section 14(1)(j) and section 24(2) of the PA 2008 on the basis, in summary, that it constitutes an alteration to an existing harbour facility which when operational will be capable of handling in excess of the prescribed the relevant quantity as defined, namely 250 units per year.

This Statutory Nuisance Statement reviews the matters set out in Section 79(1) of the Environmental Protection Act 1990 (“EPA”) in relation to statutory nuisance in the context of the IERRT proposals and considers whether there is any potential for the Project to create statutory nuisance.

This Statement has been prepared in compliance with Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedures) Regulations 2009 (“APFP Regulations”). These Regulations provide that any application for a DCO must be accompanied by a statement setting out whether the proposed development in the context of the matters identifies in Section 79(1) of the EPA could create a statutory nuisance. The Regulations continues to the effect that if it is considered that the proposed development may lead to a statutory nuisance, the applicant must explain how it proposes to mitigate or limit the effects.

Potential statutory nuisance may include noise, vibration, dust, fumes, insects and emissions. Without appropriate mitigation, the construction and operation of the IERRT could potentially create a statutory nuisance.

By virtue, however, of the consolidation of the measures of mitigation proposed by the applicant and as detailed in the accompanying Environmental Statement Volumes 1-3 (Application Document Reference numbers 8.1 – 8.3), the Schedule of Mitigation (Application Document Reference number 9.7); the Construction Environmental Management Plan (CEMP) (Application Document Reference number 9.2); and Drainage Strategy which forms an annex to the Flood Risk Assessment (Application Document Reference number 8.4.11), ABP has demonstrated that the construction and operation of the IERRT is not likely to give rise to any statutory nuisance under the provisions of the EPA.

# 1 Introduction

- 1.1 This Statutory Nuisance Statement accompanies an application submitted to the Secretary for State for Transport by Associated British Ports (“ABP”) under the provisions of section 37 of the Planning Act 2008 (PA 2008) for development consent to be granted by way of a Development Consent Order (“DCO”) for the construction and operation of the Immingham Eastern Ro-Ro Terminal (“IERRT”).
- 1.2 The IERRT development will comprise the construction and consequent operation of a new roll-on/roll-off (Ro-Ro) facility with three berths together with landside storage capacity within the Port of Immingham, North East Lincolnshire.
- 1.3 The IERRT Project constitutes a Nationally Significant Infrastructure Project (“NSIP”) as defined by section 14(1)(j) and section 24(2) of the PA 2008 on the basis, in summary, that it constitutes an alteration to an existing harbour facility which when operational will be capable of handling in excess of the prescribed relevant quantity as defined, namely 250 units per year.
- 1.4 This Statement has been prepared in compliance with the requirements of Regulation 5(2)(f) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the APFP Regulations”) and in accordance with the Department for Communities and Local Government Guidance - *Planning Act 2008: Application form guidance*, (June 2013).
- 1.5 The purpose and objective of this Statement is to consider whether the IERRT project engages one or more of the heads of statutory nuisances set out in Section 79(1) of the Environmental Protection Act 1990 (“the EPA”) and, if so, how ABP, as the applicant proposes to mitigate or limit such nuisances.
- 1.6 This Statutory Nuisance Statement forms part of a suite of documents submitted in support of ABP’s application for the IERRT DCO and as such, should be read alongside those other documents.
- 1.7 In particular, in considering the potential effects of the IERRT development in the context of the matters set out in section 79(1) of the EPA, reference is made to the following -:
  - (a) The Environmental Statement, Volumes 1-3 (Application Document Reference numbers 8.2 – 8.4);
  - (b) The Schedule of Mitigation (Application Document Reference number 9.7);
  - (c) The Construction Environmental Management Plan (CEMP) (Application Document Reference number 9.2); and
  - (d) Drainage Strategy which forms an annex to the Flood Risk Assessment (Application Document Reference number 8.4.11).
- 1.8 After this Introduction, the Statement is divided into the following sections:
- 1.9 Section 2 provides a brief summary of the IERRT proposals.

- 1.10 Section 3 sets out the relevant provisions of the EPA.
- 1.11 Section 4 considers the potential for the IERRT to give rise to statutory nuisance and, if so, how any such issues will be mitigated or limited.

## 2 The Proposals

2.1 The IERRT project comprises the development of a new roll-on/roll-off (Ro-Ro) facility with three berths within the Port of Immingham, North East Lincolnshire. The proposed development will consist of:

### *Marine works -*

- An approach jetty from the shore linked to two floating pontoons appropriately secured in position;
- Two separate finger piers which will provide three berths for Ro-Ro vessels, one berth either side of the northern-most finger pier and the third berth positioned on the northern side off the inner finger pier. The Ro-Ro vessels will then berth alongside with their stern ramps resting upon the floating pontoons;
- A capital dredge of the new berth pocket;
- The disposal of dredged material at sea - provided no beneficial alternative can be identified – which at the time of submission would appear to be the case; and
- The possible provision of impact protection measures should they be required.

### *Landside -*

- The demolition and redevelopment of a number of existing commercial buildings within the boundary of the application site;
- The creation of four connected cargo storage area – all within the statutory port estate;
- Works to improve the areas that will serve as those cargo storage areas, including resurfacing and the provision of new pavements and associated infrastructure;
- A terminal building together with a small welfare building to provide appropriate facilities for terminal operational and administration staff, lorry drivers and passengers;
- A small workshop with fuel station;
- Facilities for UK Border Force ;
- An internal bridge within the application site which crosses over Robinson Road and the ABP managed transit sidings and will act as a link between two of the cargo storage areas.;
- Related utilities and operational infrastructure;
- The creation of a second entrance lane at the Port's East Gate; and
- Environmental enhancement.

### 3 Statutory Context

- 3.1 Regulation 5(2)(f) of the APFP Regulations provides that an application for a DCO must be accompanied by:

*"a statement whether the proposal engages one or more of the matters set out in section 79(1) (statutory nuisances and inspections therefor) of the Environmental Protection Act 1990, and if so how the applicant proposes to mitigate or limit them;"*

- 3.2 Section 79(1) of the EPA (as it applies in England) provides that the following matters constitute "statutory nuisances":

*"(a) any premises in such a state as to be prejudicial to health or a nuisance;*

*(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*

*(c) fumes or gases emitted from premises so as to be prejudicial to health or a nuisance;*

*(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*

*(e) any accumulation or deposit which is prejudicial to health or a nuisance;*

*(f) any animal kept in such a place or manner as to be prejudicial to health or a nuisance;*

*(fa) any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;*

*(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;*

*(g) noise emitted from premises so as to be prejudicial to health or a nuisance;*

*(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street; and*

*(h) any other matter declared by any enactment to be a statutory nuisance.*

- 3.3 It will be noted that section 79(1)(h) of the EPA (above) acts as a general "catch-all" incorporating any statutory nuisance contained in other legislation.



- 3.4 In this context, the Public Health Act 1936 provides that various other matters constitute statutory nuisances for the purposes of the EPA, including the following which are potentially relevant to the IERRT proposals:
- *Section 259(1)(a) - “any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance”;*  
*and*
  - *Section 259(1)(b) – “any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health.”*
- 3.5 Section 79(2) of the EPA and onwards contains exceptions and definitions in respect of statutory nuisance.
- 3.6 The particular exceptions of relevance to the IERRT proposals are:
- *Section 79(4) - “Subsection (1)(c) above [fumes or gases emitted from premises so as to be prejudicial to health or a nuisance] does not apply in relation to premises other than private dwellings”;*
  - *Section 79(5B) – “Subsection (1)(fb) [artificial light emitted from premises so as to be prejudicial to health or a nuisance] does not apply to artificial light emitted from... (b) harbour premises”;* and
  - *Section 79(6A) - “Subsection (1)(ga) above [noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street] does not apply to noise made– (a) by traffic”.*
- 3.7 The definitions applying to Section 79 of the EPA, are set out in Section 79(7) of the EPA, and the following are relevant in this case:
- *‘dust’ does not include dust emitted from a chimney as an ingredient of smoke;*
  - *‘fumes’ means any airborne solid matter smaller than dust;*
  - *‘gas’ includes vapour and moisture precipitated from vapour;*
  - *‘harbour premises’ means premises which form part of a harbour area and which are occupied wholly or mainly for the purposes of harbour operations, and for the purposes of this definition ‘harbour area’ and ‘harbour operations’ have the same meaning as in Part 3 of the Aviation and Maritime Security Act 1990;*
  - *‘industrial, trade or business premises’ means premises used for any industrial, trade or business purposes or premises not so used on which matter is burnt in connection with any industrial,*

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*trade or business process, and premises are used for industrial purposes where they are used for the purposes of any treatment or process as well as where they are used for the purposes of manufacturing;*

- *'noise' includes vibration;*
- *'prejudicial to health' means injurious, or likely to cause injury, to health;*
- *'premises' includes land and, ... any vessel;*
- *'private dwelling' means any building, or part of a building, used or intended to be used, as a dwelling;*
- *'smoke' includes soot, ash, grit and gritty particles emitted in smoke;*
- *'street' means a highway and any other road, footway, square or court that is for the time being open to the public.*

## 4 Potential Breaches of Section 79(1) of the Environmental Protection Act 1990

4.1 This section considers the types of impacts associated with the IERRT that could potentially engage one or more of the matters set out in Section 79(1) of the EPA.

4.2 Placing the IERRT development in the context of the heads of statutory nuisance provided in section 79(1), it is considered that the matters that could potentially be engaged are:

*(b) smoke emitted from premises so as to be prejudicial to health or a nuisance;*

*(d) any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;*

*(e) any accumulation or deposit which is prejudicial to health or a nuisance;*

*(fb) artificial light emitted from premises so as to be prejudicial to health or a nuisance;*

*(g) noise emitted from premises so as to be prejudicial to health or a nuisance;*

*(ga) noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;*

*(h) any other matter declared by any enactment to be a statutory nuisance.*

4.3 The following provisions of section 259 of the Public Health Act 1936 could also potentially be engaged:

*'(1)(a) any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance); and*

*1(b) any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health'.*

### 4.4 Exemptions

4.4.1 The following categories of statutory nuisance are not engaged by the IERRT as they are covered by the exemptions set out at Sections 79(4), 79(5B) and 79(6A) of the EPA respectively:

- subsection 79(1)(c) - fumes or gases emitted from premises – as it does not apply in relation to premises other than private dwellings;
- subsection 79(1)(fb) - artificial light emitted from premises during operation - as it does not apply to harbour premises; and
- subsection 79(1)(ga) – noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street - as it does not apply to noise made by traffic.

4.4.2 Each of the categories of statutory nuisance which could potentially be engaged by the IERRT are considered below.

4.5 **Section 79(1)(b), (d) and (e) of EPA: Smoke emitted from premises; Dust arising on business premises and/ or smoke, fumes or gases emitted from vehicles, machinery or equipment; any accumulation or deposit**

*Construction*

4.5.1 Chapter 13 (Air Quality) of the Environmental Statement (Application Document Reference number 8.2.13) assesses the likely air quality impacts associated with the construction phase of the IERRT. It describes the residual impacts from dust and site plant emissions, arising as a result of construction, which are assessed as not significant. The chapter also assesses the potential impact of construction traffic and marine vessel emissions, arising as a result of construction. These are assessed as not considered to be significant.

4.5.2 Mitigation measures in relation to dust and other emissions arising during the construction of the IERRT are detailed in Chapter 13 (Air Quality) of the Environmental Statement (Application Document Reference number 8.2.13). Specific proposals in this regard are detailed in the CEMP (Application Document Reference number 9.2) - compliance with which will be secured by way of a DCO requirement. The CEMP sets out a range of measures in relation to the control and monitoring of dust and emissions. With the mitigation in place, dust and other emissions during construction will be controlled and will not give rise to any nuisance and will not be prejudicial to health under sections 79(1)(b), 79(1)(d) and/or 79(1)(e) of the EPA.

*Operation*

4.5.3 Chapter 13 (Air Quality) of the Environmental Statement (Application Document Reference number 8.2.13) assesses the likely air quality impacts associated with the operation of the IERRT. It describes the residual impacts from dust and site plant emissions, arising as a result of the operation of the Terminal, which are assessed as not considered to represent a significant effect. It reports that no significant effects on air quality have been identified in respect of the operation of the Terminal although it is noted that some emissions control measures are inherent within the project design of the IERRT.

4.5.4 Mitigation measures in relation to dust and other emissions arising during the operation of the facility are detailed in Chapter 13 (Air Quality) of the Environmental Statement (Application Document Reference number 8.2.13) which sets out a range of measures in relation to the control and monitoring of dust and emissions, including such measures relating to vessel, land-tug and HGV emissions as follows:

- Vessel emissions to comply with relevant emission standards;
- Diesel-fired land-tugs to be gradually phased out and replaced with battery powered land-tugs;
- Prohibiting unnecessary engine idling of all vehicles on site; and
- Enforcement of mandatory speed limits on site.

4.5.5 With the mitigation described above in place, dust and other emissions during the operation of the IERRT will be controlled and will not give rise to any nuisance. The operation of the proposed development will also not be prejudicial to health under sections 79(1)(b), 79(1)(d) and/or 79(1)(e) of the EPA.

#### 4.6 **Section 79(1)(fb) of EPA: Artificial light emitted from premises**

##### *Construction*

4.6.1 Additional temporary construction site lighting is proposed to enable safe working on the construction site in the hours of darkness. This will be set out in the CEMP (Application Document Reference number 9.2) – compliance with which will be secured by way of a requirement in the DCO.

4.6.2 The site is already lit at night due to the ongoing operational usage at the port, which is a “harbour premises”, and does not therefore engage this 'head' of nuisance in light of the exception under section 79(1)(5B)(b) of the EPA for such premises.

4.6.3 As a consequence, the impacts of lighting during construction will not generate a nuisance, nor will any impacts in this regard be prejudicial to health under section 79(1)(fb) of the EPA.

##### *Operation*

4.6.4 As stated above, as the IERRT constitutes harbour premises, this 'head' of nuisance will not be engaged during operation.

#### 4.7 **Sections 79(1)(g) and (ga) of the EPA: Noise emitted from premises and/or from vehicles, machinery and equipment in a street**

##### *Construction*

4.7.1 Chapter 14 (Airborne Noise and Vibration) of the Environmental Statement (Application Document Reference number 8.2.14) assesses the likely noise and vibration impacts associated during the construction of the IERRT. It describes the potential residual impacts from noise and vibration to off-site receptors arising as a result of the construction of the Terminal, which are assessed to be negligible to minor adverse and not significant when mitigation measures are taken into account.

- 4.7.2 Mitigation measures in relation to noise and vibration arising during the construction phase of the proposals are detailed in Chapter 14 (Noise and Vibration) of the Environmental Statement (Application Document Reference number 8.2.14) and are secured by the CEMP (Application Document Reference number 9.2) – compliance with which will be secured by way of a requirement in the DCO. The CEMP sets out a range of measures, including standard construction mitigation. Provision is also made for further construction assessment to take place once the principal contractor is appointed to determine if any further specific mitigation such as temporary local barriers/screening. Provision is also made in the CEMP in respect of vibration, pre-construction condition surveys on nearby buildings and structures, further vibration assessment once ground conditions and piling methods and programme confirmed and the application of a liaison protocol with local businesses/occupiers.
- 4.7.3 With the mitigation measures in place, noise impacts during construction of the IERRT are not expected to generate a nuisance and they will not be prejudicial to health under section 79(1)(g) or (ga) of the EPA.
- 4.7.4 In addition, the 'head' of nuisance under section 79(1)(ga) of the EPA - noise which is emitted from or caused by a vehicle, machinery or equipment in a street - does not apply to noise made 'by traffic', under the exception in section 79(6A)(a) of the EPA. This 'head' of nuisance will, therefore, not be engaged during construction.

#### *Operation*

- 4.7.5 Chapter 14 (Noise and Vibration) of the Environmental Statement (Application Document Reference number 8.2.14) assesses the likely noise and vibration impacts associated with the operation of the IERRT. It describes the residual impacts from noise and vibration arising as a result of on-site activities during the operation of the proposals, which are assessed as being of minor adverse (not significant) effect at some residential properties on Queens Road and Kings Road in Immingham.
- 4.7.6 Mitigation measures in relation to noise and vibration arising from on-site activities during the operation of the proposals are detailed in Chapter 14 (Noise and Vibration) of the Environmental Statement (Application Document Reference number 8.2.14) and will be implemented using standard best practice for operational activities, including the use of electric reefers.
- 4.7.7 Chapter 14 (Noise and Vibration) of the Environmental Statement (Application Document Reference number 8.2.14) also describes the residual impacts from noise and vibration arising as a result of road traffic noise during the operation of the proposals, which are assessed as being up to moderate/major adverse (significant) before mitigation measures are put in place.
- 4.7.8 In terms of mitigation, the DCO contains provision for the offer of a noise mitigation framework for residential properties on Queens Road, which includes facilitating offers of scheme mitigation at receptors which may experience significant effects in respect of noise arising from road traffic

during the operation of the IERRT. Following the installation of an appropriate package of noise insulation measures, the classification of effects at these premises will, it is considered, reduce to not significant. With these mitigation measures in place, noise impacts during operation of the IERRT are not expected to generate a nuisance, and they will not be prejudicial to health under section 79(1)(g) or (ga) of the EPA.

4.7.9 In addition, the 'head' of nuisance under section 79(1)(ga) of the EPA - noise which is emitted from or caused by a vehicle, machinery or equipment in a street - does not apply to noise made 'by traffic', under the exception in section 79(6A)(a) of the EPA. This 'head' of nuisance will, therefore, not be engaged during operation.

#### 4.8 **Section 79(1)(h) of the EPA: Statutory nuisances under the Public Health Act 1936**

4.8.1 The IERRT will not give rise to any statutory nuisance under Section 79(1)(h) of the EPA in respect of Section 259 of the Public Health Act 1936, which relates to:

(a) *“any pond, pool, ditch, gutter or watercourse which is so foul or in such a state as to be prejudicial to health or a nuisance;”* and

(b) *“any part of a watercourse, not being a part ordinarily navigated by vessels employed in the carriage of goods by water, which is so choked or silted up as to obstruct or impede the proper flow of water and thereby to cause a nuisance, or give rise to conditions prejudicial to health.”*

4.8.2 Mitigation measures to protect surface water from pollution during the construction of the proposals are set out in Chapter 11 (Coastal Protection, Flood Defence and Drainage) of the Environmental Statement (Application Document Reference number 8.2.11) and CEMP (Application Document Reference number 9.2) – compliance with which will be secured by way of a requirement in the DCO. The provisions of the CEMP will be implemented to mitigate the magnitude and significance of potential effects during construction. These measures, in particular, require the management of surface water run-off, including sediment/materials in surface water run-off as a result of construction activities:

- Construction waste / debris will be prevented from entering any surface water drainage or water body;
- Surface water drains on roads or within the construction compound will be identified and, where there is a risk that fine particulates or spillages could enter them, the drains will be protected (e.g. using covers or sand bags);
- Debris and other material will be prevented from entering surface water drainage, through maintenance of a clean and tidy site, provision of clearly labelled waste receptacles, grid covers and the presence of site security fencing;



- Temporary drainage facilities will be provided during the construction phase, where necessary, to ensure controlled discharge of surface water run-off. Measures that will be considered for temporary drainage include installation of measures such as swales, silt fences, and appropriately sized settlement tanks/ ponds to reduce sediment load and thus prevent blockages;
  - Where work is required within the channel of a waterbody, for example a new outfall requires construction, works will be undertaken in line with the requirements of the appropriate statutory authority.
- 4.8.3 A number of embedded mitigation features have been incorporated within the design of the IERRT in order to avoid, minimise and reduce potential adverse impacts on coastal protection, flood risk and drainage during operation.
- 4.8.4 In addition, a suitable surface water drainage network and management system will be provided for the IERRT that will provide appropriate interception, conveyance, treatment, and attenuation of surface water run-off.
- 4.8.5 A Drainage Strategy has also been prepared – compliance with which will be secured by way of a requirement in the DCO (appendix to the Flood Risk Assessment (Application Document Reference number 8.4.11) detailing how surface water run-off will be managed on-site during operation.



## 5 Conclusion

- 5.1 This Statement identifies the matters set out in Section 79(1) of the EPA in respect of statutory nuisances and considers whether the proposed IERRT would engage one or more of those matters.
- 5.2 As required by Regulation 5(2)(f) of the APFP Regulations, the applicant, ABP has, in this Statement considered whether the IERRT project has engaged one or more of the matters set out in section 79(1) of the EPA.
- 5.3 With the proposed mitigation in place, as described above, it is not anticipated that there will be a breach of Section 79(1) of the EPA during either the construction or operation of the IERRT and the project will not create a statutory nuisance.
- 5.4 The construction activities that have the potential to create a nuisance will be controlled through the CEMP (Application Document Reference number 9.2) which accompanies the application, compliance with which will be secured by a requirement in the DCO.

## Glossary

<b>Abbreviation / Acronym</b>	<b>Definition</b>
ABP	Associated British Ports
APFP Regulations	Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009
CEMP	Construction Environmental Management Plan
DCO	Development Consent Order
EPA	Environmental Protection Act 1990
HGV	Heavy Goods Vehicle
IERRT	Immingham Eastern Ro-Ro Terminal
NSIP	Nationally Significant Infrastructure Project
PA 2008	Planning Act 2008
Ro-Ro	Roll-on/roll-off
UK	United Kingdom