

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
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BS1 6PN

Our ref: AN/2023/134135/01-L01
Your ref: TR030007
Date: 19 April 2023

Dear Sir/Madam

Planning Act 2008 – Application for Development Consent for the construction and operation of a new three berth Roll-on/Roll-off (“Ro-Ro”) cargo facility in the Port of Immingham, North East Lincolnshire, DN40 2LZ, known as the Immingham Eastern Ro-Ro Terminal (“IERRT”)

1.0 The Environment Agency’s Role

- 1.1 The Environment Agency is an executive non-departmental public body, established under the Environment Act 1995.
- 1.2 We were established to bring together responsibilities for protecting and improving the environment and to contribute to sustainable development. We take an integrated approach in which we consider all elements of the environment when we plan and carry out our work. This allows us to advise on the best environmental options and solutions, taking into account the different impacts on water, land, air, resources and energy.
- 1.3 We help prevent hundreds of millions of pounds worth of damage from flooding. Our work helps to support a greener economy by protecting and improving the natural environment for beneficial uses, working with businesses to reduce waste and save money, and helping to ensure that the UK economy is ready to cope with climate change. We will facilitate, as appropriate, the development of low carbon sources of energy ensuring people and the environment are properly protected.
- 1.4 We have three main roles:
 - We are an **environmental regulator** – we take a risk-based approach and target our effort to maintain and improve environmental standards and to minimise unnecessary burdens on businesses. We issue a range of permits and consents.

- We are an **environmental operator** – we are a national organisation that operates locally. We work with people and communities across England to protect and improve the environment in an integrated way. We provide a vital incident response capability.
 - We are an **environmental adviser** – we compile and assess the best available evidence and use this to report on the state of the environment. We use our own monitoring information and that of others to inform this activity. We provide technical information and advice to national and local governments to support their roles in policy and decision-making.
- 1.5 The Environment Agency takes action to conserve and secure the proper use of water resources, preserve and improve the quality of rivers, estuaries and coastal waters and groundwaters through pollution control powers and regulating discharge permits.
- 1.6 We have regulatory powers in respect of waste management and remediation of contaminated land designated as special sites. We also encourage the remediation of land contamination through the planning process.
- 1.7 The Environment Agency is the principal flood risk management operating authority. It has the power (but not the legal obligation) to manage flood risk from designated main rivers and the sea. The Environment Agency is also responsible for increasing public awareness of flood risk, flood forecasting and warning and has a general supervisory duty for flood risk management. We also have a strategic overview role for all flood and coastal erosion risk management.
- 2.0 Scope of these Representations**
- 2.1 These Relevant Representations contain an overview of the project issues which fall within our remit. They are given without prejudice to any future detailed representations that we may make throughout the examination process. We may also have further representations to make if supplementary information becomes available in relation to the project.
- 2.2 We have reviewed the Development Consent Order (DCO) application, Environmental Statement (ES) and supporting documents submitted as part of the above-mentioned application, following notification of its acceptance on 9 March 2023. Our comments are presented using the document references and ES Chapter headings relevant to our remit below.
- 3.0 Document 3.1 Draft Development Consent Order [APP-013]**
- 3.1 ***Schedule 1 Authorised Development***
Ancillary Works, Part (i) includes “*flood refuge platform*”: can the applicant please provide detail as to what these are and where they are to be located, as we can find no mention of them in other documents.
- 3.2 ***Schedule 2, Part 1, Requirements***
Requirement 8 – Construction and Environmental Management Plan. This document appears to secure flood risk mitigation measures, particularly during the construction of the project. We, therefore, request that we are included as a consultee to the agreement of any amendments to this document, should they be forthcoming in respect of flood mitigation.

3.3 **Schedule 2, Part 2, Procedure for Discharge of Requirements**

The Environment Agency is of the view that the provisions in this Schedule will not provide sufficient time for adequate consultation to take place for the discharge of Requirements. In particular, paragraph 22(2) requires the discharging authority to notify the applicant in writing of any further information it needs within 10 business days of receipt of the application. This would not provide sufficient time for the discharging authority to request a consultee's comments or for the consultee to adequately consider and respond to the consultation request.

3.4 The Environment Agency requests that this is amended to 20 business days to provide sufficient consultation timescales that align with those in the Development Management Procedure Order 2015, i.e. 21 days (equivalent to 15 business days) in addition to the 5 business days allocated for the relevant discharging authority to issue the consultation.

3.5 Similarly with the appeals procedure, should the discharging authority require additional information/support from a consultee the requirement to respond in 10 days (paragraph 23(2)(e)), would not be adequate.

3.6 We note that the applicant's justification for including these procedural requirements is taken from the Planning Inspectorate Advice Note 15 (Appendix 1) as modified in a number of recent DCOs. However, the practical application of the 10 business day timescale will not facilitate adequate consultation.

3.7 **Schedule 4, Part 2, For the protection of the Environment Agency**

The applicant has requested disapplication of the consent required in relation to the carrying out of a relevant flood risk activity under the Environmental Permitting (England and Wales) Regulations 2016 (included in Part 1, Article 3(1)(c)). We have provided the applicant with a set of provisions that are acceptable to us. However, the provisions included in the draft DCO have been amended (from those provided by the Environment Agency) in Paragraph 20(3)(b) where the phrase "*is deemed to have been refused*" has been amended to read "*is deemed to have been approved*". We do not accept this amendment and will only agree to the disapplication if the original text is restored.

4.0 **Chapter 7: Physical Processes [APP-043 & APP-063]**

4.1 We have reviewed Chapter 7, together with the relevant figures and Appendices and we are satisfied that the appropriate methods and data sources have been applied to the assessment.

4.2 The scale of changes for the development is considered to be small whereas natural ongoing change within the estuary is considered to be large. This view is justified in sections 7.8-7.11, where likely impacts/effects of dredging activities (capital and maintenance) and disposal of dredge spoil, and mitigation (such as there is), are considered. Only activities involving the more dispersible sediments, e.g. alluvium, superficial estuarine sediments, are reviewed – any excavated boulder clay is considered too consolidated to be easily eroded/transported under extant conditions. The analysis of the dispersion plume and sedimentation modelling indicates that the plumes from the dredging/disposal activities disperse to the background quite quickly and that any effects are similar to those that already occur due to existing maintenance dredging, therefore the conclusion is that these activities will result in a low exposure to change.

- 4.3 As the Humber is a large estuary, is naturally a very turbid environment and has a large tidal range, we concur with the view that the potential effects from the development will be small.
- 4.4 We noted that there were problems regarding the recent sub-bottom profiling, with evidence of “*multiples*” and “*ringing*” in the profile traces due to signal attenuation. The report authors attribute this attenuation to the presence of a semi-continuous “*organic sediment*” layer, which is reasonable. Despite these data collection issues, we are satisfied with the interpretation/site characterisation outlined within.
- 4.5 Appendix 7.2 bathymetry plots (Figures 4 & 9): there appears to be an issue with the shading, resulting in inverted topography, i.e. low areas look like they are high areas – the channels look as if they are above the sea-floor as opposed to being incised into it.
- 4.6 Also, regarding figures in general, not just this report – there appear to be some labelling issues as there are instances where cross sections are labelled, but the associated lines on the map are not; for example, Figure 14 - map and Figures 15-17 – cross sections. Scale bars and place names to allow easy identification of features and assist with orientation are also missing from some of the figures.
- 4.7 (Volume 2) Figure 7.19 shows the difference in bed thickness against the baseline, it appears to suggest a difference at the base of the existing defences, but it states it is an undefined value. Could the applicant please clarify why it is undefined.

5.0 Chapter 8: Water and Sediment Quality [APP-044]

- 5.1 We have reviewed the assessment contained in this Chapter, together with the relevant figures and Appendix, for issues within our remit and consider this to be appropriate. We support the conclusion of the Water Framework Directive (WFD) assessment, on the basis that Natural England does not raise any issue in respect of the Habitat Regulations Assessment (HRA) conclusions.

6.0 Chapter 9: Nature Conservation and Marine Ecology [APP-045]

- 6.1 We have reviewed the assessment contained in this Chapter, together with the relevant figures and Appendix 9.1 (we have not reviewed Volume 3, Appendix 9.2 – please see paragraph 6.4 comments below), for issues within our remit (marine ecology and fish receptors) and consider this appropriate.
- 6.2 The Humber estuary acts as the sole gateway for migratory fish into the Humber system, allowing fish to travel upstream from the sea, to spawn in rivers such as the Don, Aire, Ouse, Trent, Wharfe and Derwent; the last of which has SSSI and SAC status. The success of these populations relies wholly on their ability to gain safe passage through the Humber in order for them to complete their life-cycle. As such, any activity taking place in the Humber that hinders the ability of fish to make this journey has the potential to threaten populations throughout the river catchment.
- 6.3 In addition to the above, many fish populations, particularly Atlantic Salmon, are in a fragile, recovering state, following the almost total annihilation of the species within the Humber as a result of the poor water quality and physical barriers introduced by the industrial revolution. Recent work to address some of these issues has seen salmon returning to upstream rivers for the first time in decades.

- 6.4 Please note that due to resource issues we have not been able to review the assessment in respect of noise impacts on migratory fish and defer to any views provided by the Marine Management Organisation (MMO) on this topic. We understand that the MMO is to provide comments in respect of the proposed time restrictions included in the deemed Marine Licence (dML) for percussive piling, which are relevant for the protection of salmon.
- 6.5 When salmon are disturbed, they are prone to swim at speed in an attempt to avoid the perceived danger. In order to ‘sprint’ away the animal can build up an oxygen debt in its tissues that can take some time or even be impossible to repay in waters with low dissolved oxygen. These fish may then become easy prey or just die from this physiological stress. Water has less ability to dissolve oxygen as the temperature rises and salmon have a greater requirement for oxygen at higher water temperatures¹. Where other pollution is present, such as ammonia from foul water discharges, the effect on oxygen demand combined with high water temperature further adds to the stress on salmon. These factors combine to increase stress on salmon as they pass through estuaries in the summer months to the point where many do not succeed in entering freshwater².
- 6.6 The Environment Agency is of the opinion that there are certain periods when water conditions will make fish more vulnerable to disturbance. To reduce the risk of this other schemes³ have proposed real-time monitoring of water quality parameters to limit operations during periods of adverse water quality. The way that this works is that work stops when the water quality falls below certain thresholds measured at agreed locations and does not re-commence until the water quality improves.
- 6.7 Accordingly, we request that the applicant is required to deploy an active monitoring scheme (which may also require a condition in the dML) and a similar restrictive condition is included in the dML to read:

Condition

No percussive piling is to take place while the data from the relevant active monitoring scheme shows either the temperature to be above 21.5 degrees Celsius or dissolved oxygen to be below 5 milligrams per litre, or both.

7.0 Chapter 11: Coastal Protection, Flood Defence and Drainage [APP-047]

- 7.1.1 We note the information within the ‘changes to tidal regime’ section of this chapter: paragraph 11.8.14 states that the project “*has the potential to change wave heights, tidal water levels and rates of erosion or accretion on the foreshore in proximity to the flood defences during the construction phase*”. Paragraph 11.8.15 states that there will be “*no change*” to these factors above natural variations as the local hydrodynamics will remain comparable to the baseline scenario. Paragraph 11.8.16 states that “*the magnitude of any changes in tidal regime is considered to be negligible*” concluding that any changes will be “*neutral and therefore not significant*”. The Flood Risk Assessment, paragraph 7.2.3 also states that there is “*unlikely*” to be an impact on the integrity of the

¹ Alabaster, J. S., Gough, P. J. and Brooker, W. J. (1991), The environmental requirements of Atlantic salmon, *Salmo salar* L., during their passage through the Thames Estuary, 1982–1989. *Journal of Fish Biology*, 38: 741–762.

² Solomon, D. J. and Sambrook, H. T. (2004), Effects of hot dry summers on the loss of Atlantic salmon, *Salmo salar*, from estuaries in South West England. *Fisheries Management and Ecology*, 11: 353–363.

³ Green Port Hull (ABP) Marine Licence (no. L/2012/00383) & The Able Marine Energy Park Development Consent Order 2014

flood defences. Therefore, we request additional explanation/clarification on whether there is going to be an impact on the integrity of the flood defences.

7.1.2 The comments in paragraph 10.1 below are also true of the summary of potential impact, mitigation measures and residual impacts in Table 11.10 in Chapter 11.

Appendix 11.1 Flood Risk Assessment [APP-093]

7.2.1 We note the comments in paragraph 6.2.3 that the applicant intends to raise the finished floor levels (FFLs) of the IERRT buildings by 300mm above the surrounding ground level but has not specified why it is not practicable to raise them any further. Although the Environment Agency recommends the use of suitable flood resistance/resilience measures where FFLs remain below the 'design flood'⁴ level these should only be used where it is not practicable to raise them further. Also, see comments in paragraph 12.4 below regarding flood resilience measures.

7.2.2 We note that paragraph 7.3.14 refers to the standard of protection afforded by the existing flood defences under the applicant's jurisdiction being kept under consideration and reviewed as appropriate for climate change. We are aware (as stated in paragraph 7.3.6 of the Flood Risk Assessment) that there is an agreement that the applicant will raise the flood defences along the Port of Immingham frontage to a crest height of 6.1m AOD (Above Ordnance Datum). This upgrade to the existing defences will reduce the likelihood of overtopping in the future and is therefore key to the future management of flood risk for this location.

7.2.3 Paragraph 8.2.1 states that "*the tidal flood defences are inspected twice a year by the Environment Agency*". This is incorrect as the defences are only inspected annually.

8.0 Chapter 12: Ground Conditions Including Land Quality [APP-048]

8.1 We have reviewed Chapter 12, together with the relevant Appendices. It is understood that the ground investigations undertaken to date have identified potential contamination concerns that require further investigation and assessment. A confirmatory ground investigation has been undertaken and is expected to be completed soon after the submission of the DCO application. It is understood that this confirmatory ground investigation will provide further groundwater monitoring, sampling and testing to support the controlled waters risk assessment. The final remediation strategy will also be revised based on the findings of the confirmatory ground investigation. Furthermore, piling risk assessments are to be undertaken to detail mitigation measures to protect controlled waters from potential pollution associated with piling operations.

8.2 Based on the above, we are satisfied that the approach to assessing the risks posed to controlled waters from contamination is appropriate and is following the Environment Agency's land contamination risk management framework provided in [Land Contamination: Risk Management](#). Schedule 2, Part 1, Requirement 16 in the draft DCO is considered sufficient to ensure that the risks to controlled waters from the proposed development are managed/controlled.

8.3 We will be pleased to provide further advice on the controlled waters risk

⁴ This is a flood event of a given annual flood probability, which is generally taken as tidal flooding with a 0.5% annual probability (1 in 200 chance each year) plus an appropriate allowance for climate change (*Planning Practice Guidance, flood risk and coastal change section Paragraph: 002 Reference ID: 7-002-20220825, DLUCh*).

assessment following the completion of the confirmatory ground investigation interpretative report.

9.0 Chapter 20 Cumulative effects [APP-056]

9.1 We are satisfied that this Chapter includes references to other projects known to us that have been considered alongside the proposed development. We are satisfied, from the evidence presented, that the assessment of cumulative and in-combination effects appears to be reasonable.

10.0 Chapter 21: Impact Assessment Summary [APP-057]

10.1 *Table 21.1: Coastal protection, flood defence and drainage – Construction and Operational Phase* - The mitigation measures for flood defences (on and off-site): Changes in tidal regime e.g. wave heights, water levels, erosion/ deposition due to dredging/ construction activities, are not representative. This is because the Environment Agency has no maintenance programme for the assets on site and only maintains assets that it has responsibility for off-site. Mitigation measures proposed should be regarding ABP's maintenance programme on-site rather than the Environment Agency's. Also, see comments in paragraph 13.2 below in respect of updating the Schedule of Mitigation to reflect this.

11.0 Document 9.1: Consents and Agreements Position Statement [APP-110]

11.1 We have reviewed this document and confirm that the applicant appears to have identified the relevant consents and permits that it would require from the Environment Agency to construct and operate the proposed development. We can confirm that the information in Table 1 adequately reflects the discussions on these consents and permits to date.

12.0 Document 9.2: Construction Environmental Management Plan (CEMP) [APP-111]

12.1 We have reviewed the Construction Environment Management Plan (CEMP) (alongside the surface water drainage arrangements outlined in Sections 3.1-3.4 of the Drainage Strategy included as Annex B to the flood risk assessment [APP-093]) for issues within the Environment Agency's remit.

12.2 Paragraph 2.5 states that "*wheel cleaning facilities will be installed at the site from the start of the construction phase*" for all HGVs to wheel wash prior to leaving. As there will be no requirement for wastewater services from Anglian Water and wastewater is to be managed on-site including septic tanks/sewage treatment plants; it is advised that a discharge permit may be required if discharging to the water environment and best practice utilised to prevent pollution.

12.3 This is also relevant to wash water from batching plants and wastewater from dust/particulate matter suppression/mitigation, which would require a discharge permit if discharging to the water environment. We can provide further advice on surface water and groundwater environment permits to the applicant if required. We note the Applicant acknowledges (as per our comments in paragraph 11.1 above) that should a water discharge permit be required this will be secured prior to the commencement of relevant works.

12.4 Table 3.5 states that "*flood resilience measures can be incorporated into the IERRT project to minimise the amount of damage and reduce recovery time.....*". The applicant should note that such measure will be required, particularly where FFLs are not raised above the design flood level – see paragraph 7.2.1 above.

13.0 Document 9.7 Schedule of Mitigation [APP-116]

13.1 In respect of the “*where mitigation is secured*” column for flood risk (page 11 onwards), this column should recognise that some of the flood resilience and resistance measures are secured through the flood risk assessment and therefore reference to the DCO Schedule 2, Part 1, Requirement 13 should be included.

13.2 This table should also be updated in line with our comments in paragraph 10.1 above regarding inspection and maintenance responsibility for flood defences.

14.0 Further representations

14.1 In summary, we can confirm that we have no objection to the principle of the proposed development, as submitted. The issues outlined above are all capable of resolution and we look forward to receiving additional information to resolve our outstanding concerns. We will also continue to work with the applicant to agree the wording of the protective provisions.

14.2 We reserve the right to add or amend these representations, including requests for DCO Requirements and protective provisions should further information be forthcoming during the examination on issues within our remit.

Should you require any additional information, or wish to discuss these matters further, please do not hesitate to contact me at the number below.

Yours faithfully

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