

**SUBMISSION BY THE PLANNING INSPECTORATE PORTAL**

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Your ref: TR030007  
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6 July 2023

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Dear Sir or Madam

**Immingham Eastern Ro-Ro Terminal TR030007**

We act for CLdN Ports Killingholme Limited (Company Registration Number 00278815) of 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU (CLdN).

CLdN submitted a Relevant Representation dated 19th April 2023 [RR-007] and has now received a copy of the Rule 6 letter dated 20 June 2023 [PD-006] (**Rule 6 Letter**). This letter comprises CLdN's response at Pre-Examination Procedural Deadline A (as set out in Annex D to the Rule 6 Letter).

Participation at Preliminary Meeting and Hearings

CLdN will attend the Preliminary Meeting on 25th July 2023. CLdN's representatives will join this session in person. We have included in this letter our initial written submissions on the following matters that are on the agenda for the Preliminary Meeting (Annex A of the Rule 6 Letter):

1. Initial Assessment of Principal Issues (Annex C of the Rule 6 Letter);
2. Examination Programme (Annex D of the Rule 6 Letter);
3. Principal Areas of Disagreement Summary Statement; and
4. Site inspection arrangements.

These matters, as well as the other matters included in the agenda for the Preliminary Meeting, are expected to be the subject of discussion between the Applicant and Interested Parties, and it may assist the Examining Authority for CLdN to provide clarification of its position with respect to some or all of them. Accordingly CLdN wishes to have the opportunity to participate orally at the Preliminary Meeting.

CLdN will also attend in person and wishes to participate orally in Issue Specific Hearing 1 (ISH1) (Development Consent Order) on 25th July 2023.

CLdN does not intend to join the Open Floor Hearing (if it proceeds) also on 25th July 2023.

CLdN's representatives will attend in person and will participate orally in Issue Specific Hearing 2 (ISH2) on 27th July 2023 concerning, amongst other matters:

- Need for the Proposed Development and the capacity of the Humber ports;
- Navigation and Shipping;
- Marine ecology; and
- Onshore highways and transportation.

We look forward to receipt of the detailed agendas for ISH1 and ISH2 as soon as possible. Given in particular the technical and varied nature of the evidence at ISH2, and the need for support from its appointed consultants, CLdN would particularly welcome the publication of a detailed agenda for this hearing session further in advance than the proposed minimum 5 working day period. This will ensure that



adequate time is available for CLdN (and indeed all parties) to make the essential preparations for this hearing and for the session to be as informative as possible for the Examining Authority.

## 1. Comments on Initial Assessment of Principal Issues

1.1. We make the following observations on the Initial Assessment of Principal Issues (Annex C of the Rule 6 Letter):

- a) Project need is currently set out and identified as a sub-heading under the issue of “socio-economic”. We consider that the issue of project need requires proper scrutiny in the context of the application as a whole and particularly in assessing and testing compliance with national planning and marine policy. The importance of the issue of project need, and the requirement to consider it beyond simply applying weight (positive or negative) to socio-economic matters, merits treatment as a standalone Principal Issue. The requirement to consider project need separately from socio-economic matters also appears to have been accepted by the Applicant given there is a standalone chapter in its Environment Statement: Chapter 4 “Need and Alternatives” [APP-040] that is separate to its assessment of socio-economic matters in Chapter 16 [APP-052].
- b) There is no reference to consideration of alternatives to the proposed development. Understanding the availability of alternatives, and examining the work undertaken by the Applicant (or not undertaken as the case may be) in assessing those alternatives is another fundamental issue that requires full scrutiny and examination, particularly given the underlying legal and policy framework with respect to the assessment of alternatives, and taking into account the existing capacity for “Roll-on Roll-off” freight operations on Humberside and related projections on market demand. The issue of considering alternatives is also a fundamental matter taking into account the adverse effects of the proposals, including (but not limited to) the navigational safety risks, terrestrial transport and traffic effects and impacts on marine ecology associated with the proposed development.
- c) Biodiversity, ecology and natural environment – there should be an express reference to the “implications for the integrity of” the HRA designated sites (not just consideration of the effects on designated sites) noting in particular the current uncertainty regarding the adequacy of the information presented by the Applicant (as fully set out in the Relevant Representation from Natural England dated 19th April 2023 [RR-015]).
- d) Climate change – this issue should focus not only on the effects of the project on climate change but the inclusion and effectiveness of measures to avoid, manage, monitor and mitigate those effects, or to adapt to climate change, be resilient and how those measures are to be secured in the development consent order.
- e) There is no mention at all of air quality, or noise and vibration impacts in the Initial Assessment of Principal Issues. These are important considerations in their own right; not least because the Applicant’s own environmental assessment has identified moderate adverse (and potentially significant) effects associated with air quality and noise and vibration that require mitigation (see Chapter 13: Air Quality [APP-049] and Chapter 14: Airborne Noise and Vibration [APP-050]). Both the adequacy of the Applicant’s assessment, as well as related monitoring and mitigation measures (and the mechanism for securing such measures) requires full scrutiny and examination.

## 2. Examination Programme:

2.1. We make the following initial comments on the Examination Programme (Annex D of the Rule 6 Letter):



- a) Item 8 (Deadline 1, Monday 14th August 2023) - CLdN is concerned that setting Monday deadlines encourages weekend working and may put undue pressure on all parties involved in the Examination. We propose that Deadline 1 is moved to Wednesday 16th August 2023.
- b) Item 9 (Deadline 2, Thursday 31st August 2023) – this a particularly onerous deadline for all parties comprising (amongst other matters) the submission of Written Representations, Responses to Comments on Relevant Representations and Responses to the Examining Authority’s Written Questions (ExQ1). We are also mindful that the written summaries of oral hearings (which often supplement what is said at the hearings themselves) and the Comments on Relevant Representations may not be published until later in the week commencing 14th August 2023 (especially if our proposal to move Deadline 1 to Wednesday 16th 2023 is agreed by other parties and accepted by the Examining Authority). Monday 28th August is also the summer bank holiday in England and there may be reduced availability during this week given it is the final week of the English state school summer holidays. For the foregoing reasons, we propose that Deadline 2 is moved to Wednesday 6th September 2023.
- c) Item 10 (Deadline 3, Monday 11th September 2023) – as stated above, CLdN has a preference against Monday deadlines. Also taking into account the proposed change to Deadline 2, we would suggest that Deadline 3 is moved to Wednesday 13th September 2023. This would still afford all parties a reasonable opportunity to make the necessary preparations for the next hearings in the week commencing 25th September 2023 and time for the Planning Inspectorate to process and publish the submissions within the standard working week.
- d) Item 13 (Deadline 4, Monday 9th October 2023), Item 14 (Deadline 5, Monday 23rd October 2023) Item 16 (Deadline 6, Monday 13th November 2023), Item 20 (Deadline 7, Monday 11th December 2023) Item 21 (Deadline 8, Monday 8th January 2024) – for the same reasons as set out above with respect to Monday deadlines, we suggest that these deadlines are adjusted to the following dates:
  - Deadline 4: Tuesday 10th October 2023;
  - Deadline 5: Tuesday 24th October 2023;
  - Deadline 6: Tuesday 14th November 2023;
  - Deadline 7: Tuesday 12th December 2023;
  - Deadline 8: Tuesday 9th January 2024.

### 3. Principal Areas of Disagreement Summary Statement:

- 3.1. CLdN’s Principal Areas of Disagreement Summary Statement (**PADSS**) has been submitted as a separate document alongside this letter.
- 3.2. CLdN has prepared the PADSS in accordance with the Examining Authority’s requested timetable and trusts that it is of assistance in their preparations for the Examination (including the forthcoming hearing sessions and ExQ1). CLdN would however wish to draw attention that in preparing this in accordance with the requested timetable (like most parties) it is still making preparations for the forthcoming hearings and that its Written Representation (where it is obliged to more fully set out its case) is not required to be submitted for approximately eight weeks (31st August 2023). CLdN has also only recently received a first draft Statement of Common Ground from the Applicant (on June 30th) which sets out the Applicant’s positions on various issues including (but not limited to) matters raised in CLdN’s Relevant Representation [RR-007]. We must therefore reserve CLdN’s position at this stage and may need to insert additional areas of disagreement to the PADSS as well as seek to narrow those matters through further engagement with the Applicant and participation in the forthcoming Examination reflecting this work.



4. Site Visits:

With respect to the Accompanied Site Inspection (**ASI**) scheduled for week commencing 25th September 2023, CLdN confirms that it intends to participate and proposes that the ASI encompasses a visit to the Port of Killingholme. The purpose of visiting this location is to observe the existing Ro-Ro operations and understand the existing and potential future capacity to support Ro-Ro freight operations. This is relevant to understanding the need for the proposed development, to undertake a robust consideration of alternatives to the proposal and to properly assess the proposed development against national planning and marine policy. CLdN can provide access to the port and facilitate the necessary safety arrangements.

Yours faithfully



Robbie Owen

Partner and Parliamentary Agent

Head of Infrastructure Planning and Government Affairs

for Pinsent Masons LLP

**Principal Areas of Disagreement Summary Statement – 06 July 2023**

**CLdN Ports Killingholme Limited**

<b>Principal Issue in Question</b>	<b>Brief concern held which will be reported on in full in written submission</b>	<b>What needs to; change, or be included, or amended so as to overcome the disagreement</b>	<b>Likelihood of the concern being addressed during Examination</b>
Policy Compliance	The absence of adequate or demonstrable compliance with the National Policy Statement for Ports, and UK Marine Policy Statement, East Inshore and East Offshore Marine Plans is of significant concern alongside compliance with other planning policy including the National Planning Policy Framework and policies contained in the North East Lincolnshire Local Plan.	See comments in relation to specific issues below.	We have in-principle concern with respect to the proposed development being compliant with national planning policy. However, we will engage with the Applicant through the pre-Examination and Examination stages with a view to addressing, or at least narrowing, the scope of any disagreement with respect to compliance with planning and marine planning policy and the evidence required from the Applicant to achieve this.
Project Need	From the documentation that is available, the Applicant has not adequately explained or supported how the Proposed Development constitutes “sustainable port development” that addresses an identified “need”. CLdN has concern regarding the accuracy and completeness of the information on capacity constraints and market demand that is presented in Chapter 4 of the ES (Need and Alternatives) [APP-040] and Appendix 4.1 (Market Forecast Study Report) [APP-079].	The Applicant would need to fully address the concerns with respect to project need at paragraph 3.3.2 and 4.3.1 of CLdN’s Relevant Representation dated 19 April 2023 [RR-007].	We have in-principle concern with respect to the need for the proposed development, and related compliance with planning policy but will continue to engage constructively with the Applicant on these matters during the course of the Examination to seek to understand any evidence being brought forward to substantiate and support the Applicant’s promoted case and conclusions.
Adequacy and conclusions of the Environmental Statement (ES)	There are a number of weaknesses in the scope and content of the ES, and the apparent assumptions that underpin its conclusions.	The Applicant needs to demonstrably address the concerns identified by CLdN in its Relevant Representation dated 19 <sup>th</sup> April 2023 [APP-007] with respect to Chapter 4 (Need and Alternatives) [APP-040], Chapter 11 (Coastal Protection, Flood Defence and Drainage) [APP-047]; Chapter 15 (Cultural Heritage and Marine Archaeology) [APP-051], Chapter 17 (Traffic and Transport) [APP-053] and Chapter 20 (Cumulative and In-combination Effects) [APP-074].	We will consider any further substantive information on the adequacy of the ES that the Applicant consults on and brings forward in response to Relevant Representations, ExA questions and matters arising in hearings and Written Representations and update and reflect any change in position or narrowing of areas of disagreement consequent on these substantive matters.
Adequacy and conclusions of the Habitats Regulations Assessment (HRA)	The conclusions of the HRA [APP-115], and in particular that the loss of protected habitat would not have an “adverse effect on integrity” of the designated sites, has not been properly evidenced, reasoned or supported by adequate environmental information at this stage.	Substantial additional environmental information, on a wide range of matters, must be further consulted on and submitted by the Applicant in order to satisfy the legal requirements under the Conservation of Habitats and Species Regulations 2017. Further details of the information that is required is set out in Natural England’s Relevant Representation dated 19 <sup>th</sup> April 2023 [RR-015].	The impact of the proposed development on designated sites cannot be fully assessed until this information is available. Accordingly, it is not possible at this stage to confirm the likelihood of this matter being adequately addressed.
Navigational safety and shipping	Significant weaknesses have been identified by other parties with respect to the Applicant’s Navigational Risk Assessment [APP-089]. These include the baseline inputs used to develop the assessment and concerns with the optimistic assumptions (including on the use of tugs and bow thrusters and with respect to mitigation) that underpin the assessment that do not accord with “real world” shipping operations. The assessment	Further work must be undertaken to address the shortcomings of the navigational safety/risk assessment [APP-089] and demonstrate that the Proposed Development can operate safely and without the risk of business interruption to CLdN. In this regard we would also draw attention to and endorse a number of the concerns expressed by DFDS in their Relevant Representation with respect to these matters [RR-008].	We would welcome receipt of updated environmental information that demonstrates the proposed development can operate safely and without the risk of business interruption to CLdN including prioritisation safeguards for the benefit of CLdN. This issue may in part be capable of being safeguarded through the inclusion in the

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	<p>also appears to conflate different methodologies for undertaking an assessment which result in the potential downplaying of effects. CLdN is concerned that apparent deficiencies in the NRA could mean that the impacts of manoeuvring of vessels on the new berths, at Immingham Oil Terminal and the Port of Immingham could impact its operations, particularly if this necessitates restrictions on the passage of vessels upstream and downstream of the Proposed Development or the risks associated with vessel allision/collision that may mean traffic on the River Humber is disrupted or prevented if an incident occurs. This could have significant detrimental effects on scheduled services that utilise the Port of Killingholme.</p>		<p>DCO of adequate protective provisions for the benefit of CLdN (see below).</p>
Dredging proposals	<p>CLdN has concerns with the selection of deposit site HU056 for the disposal of arisings from the capital dredge and future maintenance dredging. Chapter 8 - Water and Sediment Quality [APP-044] and Appendix 2.1 - Waste Hierarchy Assessment [APP-076] do not consider the impact of the disposed, inerodible, material on the depth of HU056 and its continued capacity as a disposal site for maintenance dredge material. Specifically, the potential effects of 40,000m<sup>3</sup> clay at this site does not appear to have been modelled in terms of suspended sediment and bedload transport.</p> <p>It is not clear what parameters of suitability have been applied to determine HU056 as the preferred location for the disposal of the clay material. While Chapter 10: Commercial and Recreational Navigation of the ES (Document Reference 8.2.10) [APP-046] assesses the impact of dredging vessels on traffic, there does not appear to be reference to the potential effects of the inerodible clay material being deposited on the channel bed at HU056 and navigational risk potentially associated with it.</p> <p>CLdN also retains concerns over the impact of the dredging works on disposal site HU60 that it utilises for the disposal of arisings from maintenance dredging, part of its operational undertaking.</p>	<p>The Applicant should enable and secure measures in the DCO to safeguard CLdN's operations, including requirements in the DCO and/or deemed marine licence that secure a safeguarding plan that details the locations and timing of dredging works and which demonstrates that the disposal of dredged material will not cause sediment to be retained within the riverbank system and avoids impacts to other users. The Applicant should also propose protective provisions that secure arrangements for engagement with CLdN and measures to safeguard the navigational channel at the Port of Killingholme and, if necessary, fund any costs incurred by CLdN as a consequence of carrying out additional maintenance dredging works or disposal.</p> <p>Further assessment of the disposal plans should be undertaken to better understand the potential effects on the channel bed, and consequential effects to local hydrodynamics, sediment transport, navigation, and disposal site suitability and capacity.</p>	<p>See following two rows which set out CLdN's current position with respect to seeking to resolve its concerns through securing protective provisions and Requirements in the draft development consent order.</p> <p>We will consider any further substantive information on the adequacy of the ES that the Applicant submits and update and reflect any change in position or narrowing of areas of disagreement consequent on these substantive matters.</p>
Protective provisions	<p>CLdN notes that there are no protective provisions in the draft DCO [APP-013] for the benefit of CLdN and its statutory undertaking</p>	<p>Adequate protective provisions that provide robust protection for CLdN's interests must be agreed with CLdN and secured in the final DCO. Adequate protective provisions to ensure business continuity and safeguard CLdN's assets and existing Port undertaking and duties need to be agreed between the parties before the close of Examination.</p>	<p>To date, the Applicant has not sought to progress such discussions. Accordingly, it is unknown at this stage whether the Applicant intends to take any steps to address this matter, and therefore whether it is likely to be resolved.</p>

Principal Issue in Question	Brief concern held which will be reported on in full in written submission	What needs to; change, or be included, or amended so as to overcome the disagreement	Likelihood of the concern being addressed during Examination
Requirements	Necessary and adequate Requirements have not been included in Schedule 2 to the draft DCO [APP-013].	Further discussion is required between the Applicant and CLdN as to the drafting of existing Requirements, and the inclusion of additional Requirements or alternative control and delivery mechanisms, as well as the potential inclusion of CLdN as a mandatory consultee prior to the discharge of relevant Requirements.	Although CLdN will continue to seek to engage with the Applicant, the detail of the Requirements will necessarily be informed by current technical work and examination submissions. Therefore, it is not possible to confirm at this stage whether this issue is likely to be resolved during the Examination.
Adequacy of consultation	The Applicant has made limited attempts to engage with CLdN both during the pre-application, acceptance and pre-examination stages of the DCO application, for example only having sent to CLdN a draft SoCG on 30 <sup>th</sup> June 2023.	The Applicant needs to take proactive steps to meaningfully engage with CLdN and address its concerns above, including through progressing and finalising a Statement of Common Ground, as now requested by the Examining Authority.	As the Statement of Common Ground with CLdN is now a procedural requirement, CLdN remains hopeful that its concerns with respect to the level of consultation and meaningful engagement by the Applicant will be properly addressed during the Examination. The draft SoCG received from the Applicant on 30 <sup>th</sup> June 2023 is being considered by CLdN. However, from an initial assessment, various matters cannot currently be agreed.