

IMMINGHAM EASTERN RO-RO TERMINAL



Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 1
For Deadline 1: 15 August 2023

Document 10.2.7

APFP Regulations 2009 – Regulation 5(2)(q)

PINS Reference – TR030007

August 2023

Document Information

Document Information	
Project	Immingham Eastern Ro-Ro Terminal
Document title	Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 1
Commissioned by	Associated British Ports
Document ref	10.2.7
APFP Reg 2009	Regulation 5(2)(q)
Prepared by	ABP Project Team

Date	Version	Revision Details
08/2023	01 – Deadline 1	Submitted at Deadline 1

Contents

1	Executive Summary and Purpose	1
2	Table 1: Summary of the Issue Specific Hearing 1.....	2
3	Table 2: Action Points.....	18
4	Glossary	27
	Appendix 1 – Local Authorities Boundaries Plan.....	28

1 Executive Summary and Purpose

- 1.1 Issue Specific Hearing 1 ('ISH1'), during which consideration was given to the issue specific topic of the **Draft Development Consent Order (dDCO)**, was held on the afternoon of Tuesday 25 July 2023, following which the Rule 8 letter was published on 2 August 2023 ('the Rule 8 Letter'). In the Examination Timetable as appended to the Rule 8 Letter, the Applicant is required to prepare written submissions of oral cases made during ISH1.
- 1.2 At **Table 1** below, this document provides a summary of the submissions and responses made by the Applicant, Associated British Ports during ISH1. Discussion centred on the drafting of the dDCO, and questions which were raised by both the Examining Authority ('the ExA') and those interested parties which were present at the hearing. Other consents and licences which would be required by the Applicant were also discussed.
- 1.3 At **Table 2** below, this document provides a summary of the action points arising from ISH1 and, where these action points fell to Associated British Ports as the Applicant ('the Applicant'), how these have been addressed. The Applicant intends to submit a revised dDCO and Explanatory Memorandum in order to address many of the points raised.

2 Table 1: Summary of the Issue Specific Hearing 1

Item	ExA Question / Context for discussion	Applicant's Response
Agenda Item 1 – Welcome, Introductions and arrangements for the hearing		
1.	The Examining Authority ('ExA') opened the hearing, introduced themselves and invited those parties present to introduce themselves.	Mr Brian Greenwood of Clyde & Co LLP introduced himself, acting on behalf of Associated British Ports ('the Applicant').
Agenda Item 3 – Discussion of the draft Development Consent Order (dDCO)		
2.	The ExA invited the Applicant to summarise its general approach to drafting the dDCO.	Approach to the dDCO - Mr Greenwood on behalf of the Applicant stated that a revised draft of the dDCO would be submitted to the Examination for Deadline 1 which would incorporate and address the majority of comments received from interested parties to date. There are a limited number of port related Development Consent Orders, but the current iteration of the draft Order has had regard to the approved Tilbury 2 and Able Marine Energy Park DCOs. In drafting the DCO for the proposed development, the Applicant has had to ensure that the Order, if approved, will provide the necessary authorisations and powers both to construct and deliver the development in an appropriate timeframe – whilst also authorising its consequent operation. In addition, the draft Order will have to incorporate the restrictions necessary for the protection of the designated marine areas within which the proposed development will be constructed. Negotiations are currently ongoing in this respect with Natural England and the Marine Management Organisation.

<p>3.</p>	<p>The ExA invited the Applicant to respond to a number of drafting points raised by DFDS and CLdN.</p>	<p>General drafting - Mr Greenwood on behalf of the Applicant stated that a number of the points raised by the IPs had already been included in the revised version of the dDCO to be submitted for Deadline 1. As a consequence, Mr Greenwood suggested that it would probably not be helpful at this stage of the Hearing to go through the IP’s comments in detail.</p>
<p>4.</p>	<p>In light of this, the ExA invited the Applicant to take them through the dDCO picking out salient points.</p>	<p>Note of clarification - Mr Greenwood on behalf of the Applicant acknowledged that the terms ‘Harbour Master’ – “Dock Master” and indeed the references to the “Statutory Harbour Authority” could be viewed as being somewhat confusing. As a consequence, he offered to provide a note clarifying the jurisdiction of the Harbour Master and the Dock Master, as well as their relationship to the Applicant, for Deadline 1. That offer having been accepted by the ExA, Mr Greenwood confirmed that he would also incorporate:</p> <ul style="list-style-type: none"> • a discussion of the Applicant’s governance structure for issues of navigational safety, • a clarification of the relationship between the project specific Navigational Risk Assessment with the risk assessment for the port as a whole; • the relationship of the relevant jurisdictions with that of the Health and Safety Executive, particularly in relation to the Immingham Oil Terminal COMAH designation; • clarification of the relationship between, and roles of, Humber Estuary Services, the Port of Immingham Statutory Harbour Authority and the Applicant;

		<ul style="list-style-type: none"> • a plan of the Port of Immingham Statutory Harbour Authority area; and • a plan of the administrative boundaries of the relevant local authorities. <p>Mr Greenwood also confirmed that the term ‘Humber Conservancy Commissioners’ was to be removed from the dDCO as no longer being of relevance and would be substituted with a terms to be agreed with the Humber Harbour Master and his legal representatives.</p>
5.	<p>The ExA asked the Applicant to consider the Navigational Risk Assessment for the Port of Immingham, as opposed to the IERRT NRA which already forms part of the application, could be submitted into the examination.</p>	<p>Mr Greenwood on behalf of the Applicant stated that the Applicant would consider what it would be possible to publish, noting that there may be issues of confidentiality.</p>
6.	<p>The ExA asked for an explanation as to the dDCO’s use of the term ‘the company’ rather than ‘the undertaker’ when referring to the Applicant.</p> <p>The ExA also asked for an explanation of the definitions for ‘relevant planning authority’ and ‘ro-ro unit’.</p>	<p>“Undertaker” - Mr Greenwood on behalf of the Applicant noted that the Able DCO had used the term ‘undertaker’ and ‘company’ and the Tilbury 2 DCO had used the term ‘company’ to refer to the Applicant. Mr Greenwood explained that, as ABP, Applicant for the proposed development is a statutory undertaker in terms of the Port of Immingham’s statutory undertaking. For that reason, Mr Greenwood suggested that it would avoid confusion if the dDCO referred to the Applicant as the “company” and not the “undertaker”. The Applicant would amend the draft Order if the reference to the “company” presented an issue, but in the meantime would be submitting an updated draft of the Explanatory Memorandum at Deadline 1 which would clarify its thinking in this regard.</p>

		<p>Local Planning Authority - Mr Greenwood on behalf of the Applicant undertook to review the suitability of the present definition of ‘local planning authority’ rather than making reference to North East Lincolnshire Council (‘NELC’) as ‘the Council’, acknowledging that NELC operates as both a Highways Authority and a Local Planning Authority. Mr Greenwood noted that, so far as the Applicant is aware, North Lincolnshire Council are not concerned about the potential traffic impacts of the proposed development within their administrative area; noting that the majority of traffic would be routed via the North East Lincolnshire road network.</p> <p>Ro-Ro unit - Mr Greenwood confirmed that the Applicant would review the definition of ‘ro-ro unit’ as relevant to the 660,000 units per annum cap with the potential operator of the proposed berths.</p>
<p>7.</p>	<p>The ExA asked for an explanation as to the incorporation of the 1847 Act in Article 4 of the dDCO.</p>	<p>The 1847 Act – In response to questions from the ExA, Mr Greenwood explained that it was the Applicant’s intention to review the provisions of the 1847 Act which were to be incorporated in the dDCO so as to ensure that all of the necessary provisions were captured and any not required, removed. In addition, the Applicant will also review the Explanatory Memorandum so as to clarify the rational and justification for this provision.</p>

		<p>Mr Owen on behalf of CLdN stated that incorporation of the 1847 Act is standard practice as, for example, it would be important to incorporate section 33 of that Act (the Open Ports Duty).</p>
<p>8.</p>	<p>The ExA asked for the Applicant’s view of representations made by Mr Walker on behalf of DFDS Seaways Plc in relation to the definitions of ‘construct’ and ‘order limits’. In addition, the ExA asked for representations on the definition of ‘vessel’.</p>	<p>Order limits” - “construct” - Mr Greenwood on behalf of the Applicant stated that the relevant definitions to which attention had been drawn would be reviewed and, where necessary, amended in the forthcoming revised draft of the dDCO and Explanatory Memorandum.</p> <p>Mr Greenwood indicated that he had already amended the limits of deviation for the dredge pocket, which previously had no restriction on the dredge depth.</p>
<p>9.</p>	<p>The ExA invited the Applicant to provide an update on negotiations with Interested Parties with regards to Compulsory Acquisition powers.</p>	<p>Compulsory Acquisition - Mr Greenwood on behalf of the Applicant stated that all of the relevant land interests were either tenants or licensees of the Applicant being located within the statutory port estate all of which is in the freehold ownership of the Applicant. The one exception was The Crown Estate who own the bed of the River Humber and with whom negotiations are ongoing.</p> <p>Mr Greenwood expressed optimism regarding the status of negotiations with those land interests, and that it was the hope that no Compulsory Acquisition powers would be required in the final DCO as all of the necessary agreements would be completed during the course of the Examination. It was noted, however, that completion of all of the necessary agreements may not have been achieved by the dates set aside for further Issue Specific Hearings in September.</p>

		Mr Greenwood undertook to keep the ExA informed with regards to progress in this respect.
10.	The ExA asked for the Applicant's view of representations made by Mr Walker on behalf of DFDS Seaways Plc in relation to the drafting of articles 6, 7, 10, 16 and 21.	DFDS drafting suggestions - Mr Greenwood on behalf of the Applicant stated that many of the suggestions raised on behalf of DFDS had already been addressed and would be included in the revised draft of the DCO. The Applicant would review the use of 'tail pieces' such as in Article 21. Where the Applicant did not agree with the points raised, it would make written responses.
11.	The ExA asked for the Applicant's justification for including Article 22 (Power to Appropriate).	Power to Appropriate - Mr Greenwood on behalf of the Applicant stated that the Applicant would clarify the Applicant's rationale for inclusion of this provision in the amended Explanatory Memorandum
12.	The ExA asked the Applicant to discuss Article 28, and what agreements it was envisaged would be required.	Agreements with Highway Authorities - Mr Greenwood stated that a s.278 Agreement was under negotiation with the Highways Authority in relation to the proposed improvements to the Port's East Gate. The Applicant would include an update on discussion of this, and any other necessary agreements, as relevant at the appropriate Deadlines.
13.	The ExA asked the Applicant to review Article 37, asking whether any appeals under this article should be referred to a Magistrates' Court rather than the Secretary of State.	Appeals under the Control of Pollution Act 1974 - Mr Greenwood on behalf of the Applicant agreed to review this Article in light of the ExA's comment and any changes would be reflected in both the draft Order and the Explanatory Memorandum.
14.	The ExA asked the Applicant to explain the current position with regard to Articles 38 to 41.	Savings for Trinity House - Mr Greenwood on behalf of the Applicant stated that Articles 38 to 41 were the subject of ongoing negotiations with Trinity House. He explained that the current position was that the Applicant had accepted the suggestions made by the solicitors for Trinity

		House and that he was awaiting final confirmation of the acceptability of the relevant articles.
15.	In light of Article 42, the ExA asked the Applicant for an update on negotiations with the Crown Estate.	The Crown Estate - Mr Greenwood on behalf of the Applicant confirmed that the Applicant was engaging with the Crown Estate's lawyers with regards to securing the necessary approvals for the construction of the proposed development in the bed of the River, the freehold of which is held by the Crown Estate. In this context, Mr Greenwood explained that ABP has the benefit of a 999 year lease over the bed of the River Humber. Regular updates would be provided at appropriate Deadlines.
16.	The ExA asked the Applicant whether the dDCO required amendment in order to ensure that any revisions to the scheme could not undermine the robustness of the environmental assessment.	Requirements 3 and 7: approval of details - Mr Greenwood on behalf of the Applicant stated that the Applicant required the flexibility afforded by the Requirements as drafted, particularly in light of the amendments that it is anticipated that UK Border Force will require as that part of the scheme evolves. The Requirements have adopted standard precedents but Mr Greenwood agreed that the Applicant should give consideration to amendments that may be required to meet the ExA concerns.
17.	The ExA asked the Applicant to make any necessary changes to the order of the articles and requirements in the dDCO as early as possible, in order to limit the potential for confusion. The ExA also asked the Applicant to ensure that the numbering of requirements remained unchanged through the use of placeholders, in	DCO amendments - Mr Greenwood on behalf of the Applicant confirmed that this would be the case and also confirmed that should any deletions be made, the numbering of Articles/Requirements would remain as submitted, albeit with blank Articles/Requirements if appropriate so as to avoid confusion in terms of reconciliation.

	circumstances where requirements were removed or merged.	
18.	The ExA asked for the Immingham Dock Byelaws 1929 to be added to the Examination Library.	Byelaws - Mr Greenwood on behalf of the Applicant confirmed that these would be provided.
19.	The ExA asked the Applicant to reflect on submissions made by Mr Owen on behalf of CLdN to the effect that the dDCO should oblige the Applicant to maintain a public record of the discharge of requirements by third party bodies.	Discharge of Requirements - Mr Greenwood on behalf of the Applicant stated that the Applicant would consider this suggestion and would consider any precedents which were considered appropriate in the circumstances.
20.	The ExA asked the Applicant to reflect on submissions made by Mr Walker on behalf of DFDS regarding the extent of the work areas as defined in the Works Plans and Schedule 1, as well as the potential for duplication and conflict of construction restrictions.	<p>Works Plans - Mr Greenwood on behalf of the Applicant stated that he was aware of Mr Walker’s concerns in this regard from the submitted Relevant Representations. The Applicant did not necessarily agree with the comments made but the position would be reviewed and any changes considered necessary, formally notified.</p> <p>Construction restrictions - Mr Greenwood on behalf of the Applicant informed the ExA that negotiations in relation to the construction restrictions were ongoing with Natural England and the Marine Management Organisation. Once these had been agreed the Applicant would ensure that the dDCO was both consistent and clear in this regard.</p>
21.	The ExA, in relation to Requirement 10, asked how the Applicant was to be compelled to offer noise insulation and	Noise insulation - Mr Greenwood on behalf of the Applicant stated that the offer of noise insulation was complicated as there were a number of vacant premises on Queen’s Road. It was the Applicant’s intention to

	how any relevant disputes would be resolved.	offer the noise insulation package to all residential occupiers, but as yet, formal negotiations had not commenced. The Applicant will review the drafting of this requirement in light of the representations from the IPs.
22.	The ExA asked the Applicant for its reflections on drafting points offered by the IPs in relation to Requirements 11, 12, 15 and 17.	<p>Requirements - Mr Greenwood on behalf of the Applicant noted that queries by the IPs had been raised in relation to the Requirements concerning –</p> <ul style="list-style-type: none"> - East Gate improvements; - Flood Risk Assessment; - Contaminated Land; and - The Material Management Plan. <p>Whilst not necessarily agreeing with the comments made, Mr Greenwood undertook to give them full consideration – incorporating in the draft DCO as appropriate.</p>
23.	The ExA asked the Applicant to consider revising the list of construction and operational plans and documents contained in Requirement 15.	Construction and operational plans and documents - Mr Greenwood on behalf of the Applicant stated that this Requirement would be reviewed as requested by the ExA.
24.	The ExA asked whether the Applicant had any comments on the submissions of CLdN regarding the level of detail contained in the Construction Environmental Management Plan ('CEMP').	Mr Greenwood on behalf of the Applicant stated that the Applicant would consider its approach to the CEMP, and to the discharging requirements relevant to both the CEMP and the other certified documents. He indicated that this would be finalised by Deadline 1 but consideration of the CEMP and how it should be included in the dDCO, together with any necessary amendments to the Explanatory Memorandum, may not be finalised until Deadline 2.

<p>25.</p>	<p>The ExA asked the Applicant for any comments with regard to the operation of Requirement 18.</p>	<p>Requirement 18 – Impact protection measures - Mr Greenwood on behalf of the Applicant stated that this Requirement was to be amended in line with ongoing negotiations with the Harbour Master. The principal change to be incorporated would be that rather than a “determination” by the Harbour Master as to whether impact protection measures are required, the position would be that the Applicant will have to have due regard to any “recommendation” received from the Humber Harbour Master that to the effect that Work No. 3 is required in the interest of navigational safety.</p> <p>Mr Greenwood explained that the amendment was designed to place the decision as to whether Work 3 should be implemented on the Applicant, not the Humber Harbour Master. The Applicant added that in circumstance where a recommendation from the Harbour Master was received, the Applicant would also be required to inform HOTT.</p> <p>Mr Greenwood further explained that there will be no obligation on the Applicant to accept the recommendation. The Applicant as Statutory Harbour Authority for the Port of Immingham would then consider the recommendation.</p> <p>Ms Hutton on behalf of the Harbour Master confirmed that this position aligned with her understanding of the negotiations between the Harbour Master and the Applicant in that the Humber Harbour Master would not be the appropriate final approval body for the implementation of Work No. 3.</p>
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26.	The ExA expressed concern as to the drafting of Requirement 21(3).	Further information regarding Requirements - Mr Greenwood on behalf of the Applicant stated that this Requirement would be amended in order to remove the deemed approval provision.
27.	The ExA asked the Applicant for representations on Requirement 23 in relation to appeals to the Secretary of State.	Requirement 23 – appeals - Mr Greenwood on behalf of the Applicant stated that the Applicant would review this provision in line with the earlier discussion on appeals to the Secretary of State as opposed to the Magistrates’ court. The Applicant would also consider amendments so that Requirement 23(b) would be self-standing.
28.	The ExA asked the Applicant for an update as to the negotiation of the Deemed Marine Licence with the Marine Management Organisation (‘MMO’).	Deemed Marine Licence - Mr Greenwood on behalf of the Applicant stated that positive negotiations with the MMO were ongoing, and that the latest draft was presently with the MMO for comment.

29.	The ExA asked the Applicant for an update as to the negotiation of the Protective Provisions.	<p>Protective Provisions - Mr Greenwood on behalf of the Applicant stated that:</p> <ul style="list-style-type: none"> • The Humber Conservancy Authority protective provisions were almost agreed, save for use of the name Humber Conservancy Authority which was to be reviewed along with any further comments from the Humber Harbour Master. • Discussions with the Environment Agency had been positive and were almost settled. The Applicant had, within the last week, accepted a request for deemed approvals to be changed to deemed refusals. Ms Annette Hewitson on behalf of the Environment Agency (the 'EA') stated that she did not wish to make any further comment, and that the EA was satisfied that the Applicant would make the aforementioned amendments to deemed refusal. • The Exolum protective provisions were under discussion. • The Applicant had received a mark-up of its draft of the Humber Oil Terminal Trustees ('HOTT') protective provisions from which it would appear that the Parties are currently some distance apart – most notably on the issue of the impact protection measures. Mr Greenwood acknowledged the request of the ExA that the Parties should meet as soon as possible to identify whether the issues between the Parties could be resolved. Mr Greenwood
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		<p>indicated that these protective provisions were likely to be one of the key outstanding issues. The Applicant, in response to a question from the ExA explained that, despite Associated Petroleum Terminals ('APT') being the operator and HOTT being the lessee of the Immingham Oil Terminal, those parties were effectively one and the same in terms of the proposed development and separate protective provisions for HOTT and APT were not required.</p> <ul style="list-style-type: none"> • The Northern Powergrid protective provisions were nearing agreement. • The Anglian Water protective provisions were nearing agreement. • The DB Cargo protective provisions were substantially settled but would fall away once a revised access agreement between the Applicant, DB Cargo and Network Rail had been completed. The wording of this access agreement was settled and the Applicant was awaiting the agreement's completion. • Negotiation of the Network Rail protective provisions had been delayed by concerns relating to lighting in the context of the protection of the railway line which skirted the boundary of the proposed development site. Network Rail were due to visit the
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		<p>site, and the Applicant was hopeful that these concerns could be addressed, albeit that this would likely be later in the process than many of the other protective provisions.</p> <ul style="list-style-type: none"> • The North East Lincolnshire Council protective provisions were nearing agreement. • The Cadent Gas protective provisions were currently with Cadent, with the drafting having been exchanged between the parties a number of times. Finally, • The Operators of Electronic Communication Code Networks protective provisions had been approved by BT, with comments awaited from Virgin Media. <p>Mr Greenwood indicated that discussions with DFDS and CLdN regarding protective provisions had not commenced and he did query whether protective provisions with these two parties were actually required. Mr Greenwood hoped that the solicitors for DFDS and CLDN would indicate in due course what they felt should be included in any protective provision relevant to their clients.</p> <p>In response to submissions from Mr Owen for CLdN with regards to the need for protective provisions in order to safeguard railway lines to the Port of Killingholme, Mr Greenwood stated that the railway track within</p>
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		the Port of Immingham was owned by the Applicant and that the proposed development would have no impact on the line used by CLdN which passes to the west of the proposed development site.
30.	The ExA asked the Applicant whether there had been any discussions between it and the MMO and Historic England regarding the Marine Archaeological Written Scheme of Investigation, and whether this should be a certified document.	Marine Archaeology - Mr Greenwood on behalf of the Applicant stated that correspondence on this issue had been exchanged within the last week, and that the Applicant would provide an update in due course.
31.	The ExA asked whether the Applicant would submit a revised dDCO at Deadline 1 and, if that were the case, whether the Applicant agreed that there would be no need to submit a further draft at Deadline 2.	Draft DCO - Mr Greenwood on behalf of the Applicant stated that it was his intention to circulate a sufficiently meaningful revised dDCO for Deadline 1 and that all interested parties could rely on that version in order to produce their next round of representations.
Agenda Item 4 – Other Consents and Licences		
32.	The ExA asked whether the Applicant anticipated entering into any agreements beyond the highways agreements discussed earlier in ISH1.	Crown Estate agreement – Mr Greenwood on behalf of the Applicant stated that consent from the Crown Estate under s.135 of the Planning Act 2008 would be required.
33.	The ExA asked the Applicant for a response to submissions from Mr Owen	Humber Conservancy - Ms Hutton on behalf of the Harbour Master stated the understanding that Article 34 of the dDCO disapplied the

	on behalf of CLdN regarding the Humber Conservancy Authority licencing regime.	relevant legislation, which was to effectively be replaced with the protective provisions in favour of the Humber Conservancy Authority.
34.	The ExA asked the Applicant to consider whether the separate articles disapplying historic legislation could be merged.	Mr Greenwood on behalf of the Applicant agreed and undertook to amend the drafting accordingly.
Agenda Item 6 – Review of Matters and Actions Arising		
35.	The ExA asked the parties present at the hearing whether there were any action points which they wished to be due for Deadline 2 rather than Deadline 1.	Explanatory Memorandum - Mr Greenwood on behalf of the Applicant stated that, whilst a revised dDCO was required for Deadline 1, was it considered to be the case that a comprehensive draft of the amended Explanatory Memorandum would also be required. The document would be amended as part of the revisions to the dDCO but it would assist the Applicant if the ExA would accept a version which was substantially complete but was a work in progress in some areas. Mr Greenwood did indicate, however, that he would endeavour to provide an amended Explanatory memorandum with the dDCO for Deadline 1.
Hearing closed 18:25pm		

3 Table 2: Action Points

Action	Description	Action by	Deadline	Applicant's Comment/where has the action been answered
1	Review the recording of this ISH and provide any comments by D1.	MMO and NE	D1	
2	Provide a note explaining the roles and responsibilities of the two Statutory Harbour Authorities with particular reference to safety governance roles and interfaces.	Applicant	D1	Please see document submitted at Deadline 1 as document 10.2.13 – The Port of Immingham and River Humber – Management, Control and Regulation.
3	Provide a plan identifying the geographic limits for the Port of Immingham Statutory Harbour Authority's jurisdiction.	Applicant	D1	Document submitted at Deadline 1 as document 10.2.13 – The Port of Immingham and River Humber – Management, Control and Regulation.
4	Provide clarification for the references to "Company" rather than Undertaker in the draft Development Consent Order (dDCO) and check consistency between dDCO and Explanatory Memorandum (EM).	Applicant	D1	Please see updated 3.2 Explanatory Memorandum submitted at Deadline 1.
5	Review definition and usage of "relevant planning authority" having regard to: the site being located within North East Lincolnshire Council's area and the proximity of North Lincolnshire Council's area; and the approvals/consents being required from the planning and	Applicant	D1	Please see updated 3.1 Draft Development Consent Order and updated 3.2 Explanatory Memorandum submitted at Deadline 1 and Appendix 1 to this document.

	highway authorities. A plan identifying the jurisdictions for North East Lincolnshire Council and North Lincolnshire Council should be submitted.			
6	Expand the Explanatory Memorandum justifying the intention for the incorporation of each of cited sections of the 1847 Clauses Act into any made DCO.	Applicant	D1	Please see updated 3.2 Explanatory Memorandum submitted at Deadline 1.
7	Provide clarifying note for the “Order limits” and “limits of deviation” for the proposed marine works.	Applicant	D1	<p>The limits of deviation define the area within which individual works can be constructed, as detailed in Schedule 1 to the draft Development Consent Order (see updated 3.1 Draft Development Consent Order submitted at Deadline 1) and as shown on the Works Plans [APP-007], with the marine works being Work Nos. 1 – 3. The limits of deviation identified for these works is considered to be appropriate for the proposed works.</p> <p>The Order limits – also as shown on the Works Plans [APP-007] – are the outer limit of where the authorised development (including all operations necessary to construct the individual Works) can take place.</p>
8	Review Article 2 definition of vessel with regard to “placement in water”.	Applicant	D1	Please see updated 3.1 Draft Development Consent Order submitted at Deadline 1.

				The revised definition is amended to align with the definition provided by the MMO in its relevant representation at paragraph 3.1.1 [RR-014] , which reflects the definition of “vessel” in The Sizewell C (Nuclear Generating Station) Order 2022.
9	Address DFDS concerns regarding the definitions for “construct” and “maintain”.	Applicant	D1	<p>The Applicant considers that the definitions of “construct” and “maintain” are entirely appropriate and have precedent in made DCOs to date for comparable port-related NSIPs.</p> <p>The definition of “construct” has precedent in The Port of Tilbury (Expansion) Order 2019.</p> <p>The definition of “maintain” has precedent in both The Port of Tilbury (Expansion) Order 2019 and The Able Marine Energy Park Development Consent Order 2014.</p>
10	Review the definition for “ro-ro unit” numbers having regard to the definition used in s24(6) of the Planning Act 2008 and any potentials for motor vehicles to be imported or exported via the Proposed Development.	Applicant	D1	Please see updated 3.1 Draft Development Consent Order and updated 3.2 Explanatory Memorandum submitted at Deadline 1 .
11	Review Articles 6, 7, 10 and 16 further to observations by DFDS at ISH1.	Applicant	D1	<p><u>Article 6</u></p> <p>The Applicant considers that article 6 of the draft DCO is appropriate and has precedent as explained in paragraphs 6.3 – 6.5 of the</p>

			<p>updated 3.2 Explanatory Memorandum submitted at Deadline 1.</p> <p><u>Article 7</u> The Applicant has addressed the comment regarding the ability to vary limits to any extent downwards in respect of Work No. 2 in the updated 3.1 Draft Development Consent Order submitted at Deadline 1.</p> <p>A comment was also raised by DFDS that the Building Schedule [APP-078] rather than the Engineering Sections Drawings and Plans [AS-007] should be referenced in the Article. The approach taken by the Applicant is entirely appropriate given that the proposed development comprises more than just buildings. There is precedent for this in other made DCOs for port-related infrastructure such as The Port of Tilbury (Expansion) Order 2019 and The Able Marine Energy Park Development Consent Order 2014.</p> <p><u>Article 10</u> The Applicant has addressed the comment regarding Article 10(1) in the updated 3.1 Draft Development Consent Order submitted at Deadline 1.</p> <p>The Applicant considers the approach taken in Article 10(2) is entirely appropriate for acquisition of rights in Crown land and has</p>
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				<p>precedent in made DCOs such as The Port of Tilbury (Expansion) Order 2019.</p> <p><u>Article 16</u> The Applicant has addressed the comment regarding Article 16 in the updated 3.1 Draft Development Consent Order submitted at Deadline 1.</p>
12	Respond to CLdN’s concern about the apparent conflict between s33 of the 1847 Clauses Act and Article 22 of the dDCO.	Applicant	D1	<p>The Applicant does not consider that there is a conflict between s33 of the 1847 Clauses Act and Article 22 of the dDCO.</p> <p>Section 33 of the 1847 Clauses Act maintains the open port obligation whilst article 22 of the dDCO provides the Applicant with the ability to appropriate all or part of the proposed development for a specified operator.</p>
13	Provide a fuller justification in the EM for Article 28.	Applicant	D1	Please see updated 3.2 Explanatory Memorandum submitted at Deadline 1.
14	Review the wording for Articles 29 and 37 and the justification for those articles cited in the EM.	Applicant	D1	Please see updated 3.1 Draft Development Consent Order and updated 3.2 Explanatory Memorandum submitted at Deadline 1.
15	Submit the Immingham Dock Byelaws as an Examination document for inclusion in the Examination Library.	Applicant	D1	Please see document submitted at Deadline 1 as document 10.2.17 – Immingham Dock Byelaws.
16	Consider an extra Requirement to maintain a publicly accessible record of approvals sought and granted in connection with the discharge of the proposed Requirements.	Applicant	D1	The Applicant does not consider this to be appropriate and it is clear that where approvals are required, the relevant parties will be part of the process.

17	Clarify the extent of the Work Areas for marine works in relation to Schedule 1 and the boundaries of the local authorities and the Crown Estate with respect to the discharge of Requirements in Schedule 2.	Applicant	D1	<p>The Work Areas for the marine works – being Work Nos. 1 – 3 in Schedule 1 of the dDCO are shown on the Works Plans [APP-007]. The Applicant considers that the limits of deviation for each of these works as shown on Sheets 1 and 2 of the Works Plans [APP-007] are appropriate.</p> <p>The boundaries of the local authorities is provided at Appendix 1 to this document – see action point 5 above.</p> <p>The extent of The Crown Estate’s interest in the proposed development is shown on the Land Plans [APP-006].</p>
18	Review where within any made DCO restrictions relating to the timing for piling should be stated, ie in a single location, and check for any potential inconsistency and confusion.	Applicant	D1	Please see updated 3.1 Draft Development Consent Order submitted at Deadline 1.
19	Review the wording for Requirement 10 in terms of the timing for undertaking any noise insulation measures and the enforcement of this Requirement.	Applicant	D1	The approach to noise insulation for residential properties on Queens Road is being considered and the Applicant will provide a response at Deadline 2.
20	Consider how any made DCO would secure Biodiversity Net Gain.	Applicant	D1	The Environment Act 2021 was given Royal Assent on 9 November 2021. Section 99 and Schedule 15 of the Environment Act 2021 contain provisions relating to Biodiversity Net Gain (BNG). These BNG requirements are not yet in force and Government has indicated

				<p>that the requirement to secure BNG for NSIPs will come into force no later than 2025.</p> <p>Accordingly, there is no requirement for any made DCO to secure BNG.</p>
21	Consider securing in a made DCO the availability of an Operational Traffic Management Plan.	Applicant	D1	<p>In terms of an Operational Traffic Management Plan, Section 7.4 of the Transport Assessment [AS-008] considers the impact of the development and the need for such mitigation against the requirements of the paragraph 5.4.22 of the NPSfP. The conclusion of that assessment is that there is no need for a specific operational traffic management plan to mitigate impacts.</p> <p>It is also noted that ExA Q1 TT1.1 and 1.2 refer to this issue. The Applicant will provide a detailed response to those points at Deadline 2.</p>
22	Consider submission of a Materials Management Plan into the Examination.	Applicant	D1	<p>The Applicant considers that the principles of a materials management plan are presented within the submitted DCO application documents, namely Section 2.7 Recycling and disposing of Waste, Appendix A Construction Materials and Waste Management Assessment, and Appendix B Site Waste Management Plan presented within and as part of the Construction Environmental Management Plan (CEMP) [APP-111].</p>

				<p>The CEMP and supporting appendices detail the commitments and working practices to which the Principal Contractor (PC) must adhere, so as to ensure waste and materials are managed in accordance with applicable legislation.</p> <p>Table 3.6 of the CEMP [APP-111] commits the Applicant and the appointed PC to the following:</p> <p><i>'A Materials Management Plan (MMP), under CL:AIRE (2011) Definition of Waste: Development Industry Code of Practice, will be prepared and implemented to provide suitable controls to facilitate the re-use of materials such as soils and clean crushed concrete. The MMP will detail the procedures and measures to be taken to classify, track, store, dispose of and potentially re-use all excavated materials that are expected to be encountered during the development works'.</i></p>
23	With respect to the Construction Environment Management Plan (CEMP) review whether there is a need for this plan to be cited in Requirements 8 and 15.	Applicant	D1	Please see updated 3.1 Draft Development Consent Order submitted at Deadline 1.
24	Consider whether outline versions for the submitted CEMP and other submitted management plans should be treated as outline plans to be developed into final plans to be	Applicant	D1	Please see response to Action Points 22 and 23 above.

	submitted for approval by the relevant authority(ies) as part of the process for discharging the Requirements stated in Schedule 2 of the dDCO.			
25	Consider redrafting of Requirement 18 to identify the mechanism for ‘triggering’ the implementation of impact protection and agreement of timing constraints for implementation if deemed required.	Applicant	D1	Please see updated 3.1 Draft Development Consent Order submitted at Deadline 1.
26	Review the drafting for Requirement 19.	Applicant	D1	Please see updated 3.1 Draft Development Consent Order submitted at Deadline 1.
27	Review the drafting and potentially rationalise paragraph 3 regarding the Humber Conservancy consenting regime.	Applicant and The Humber Harbour Master	D1	Please see updated 3.1 Draft Development Consent Order and updated 3.2 Explanatory Memorandum submitted at Deadline 1.
28	DFDS to provide draft Protective Provisions for the Applicant’s consideration.	DFDS	D2	
29	CLdN to provide to the Examination information on train paths in relation to their oral submission at ISH1.	CLdN	D2	
30	DFDS and CLdN and Applicant to each to continue their dialogue concerning Protective Provisions outside the Examination.	CLdN DFDS Applicant	D2	At the time of writing, the Applicant is awaiting comments from both CLdN and DFDS in respect of the Protective Provisions each party requires.

4 Glossary

Abbreviation/ Acronym	Definition
ABP	Associated British Ports
APT	Associated Petroleum Terminals
CEMP	Construction Environmental Management Plan
CLdN	CLdN Ports (Killingholme) Limited
dDCO	Draft Development Consent Order
DFDS	DFDS Seaways Plc
EA	Environment Agency
EM	Explanatory Memorandum
ExA	Examining Authority
HOTT	Humber Oil Terminal Trustees Limited
IP	Interested Party
ISH1	Issue Specific Hearing One
MMO	Marine Management Organisation
PC	Principal Contractor

Appendix 1 – Local Authorities Boundaries Plan

