

**Infrastructure Planning
Planning Act 2008
The Infrastructure Planning (Examination Procedure) Rules 2010**

Immingham Eastern Ro-Ro Terminal DCO Application

**Issue Specific Hearing 1 (ISH1) on the DCO
Post Hearing Submissions (including written submissions of oral case)
of
CLdN Ports Killingholme Limited**

CONTENTS

1.	INTRODUCTION	3
2.	WRITTEN SUMMARY OF CLDN'S ORAL SUBMISSIONS	4

1. INTRODUCTION

- 1.1 This document summarises the main oral submissions made by CLdN Ports Killingholme Limited (“**CLdN**”) at Issue Specific Hearing 1 (“**ISH1**”) dealing with the draft Development Consent Order (“**dDCO**”) held on 25th July 2023, in relation to the application for development consent for the Immingham Eastern Ro-Ro Terminal (“**IERRT**”) by Associated British Ports (the “**Applicant**”) (the “**Proposed Development**”).
- 1.2 ISH1 was attended by the Examining Authority (the “**ExA**”), the Applicant, CLdN, and a number of other Interested Parties.
- 1.3 This document does not purport to summarise the oral submissions of parties other than CLdN, and summaries of submissions made by other parties are only included where necessary in order to give context to CLdN’s submissions in response.
- 1.4 The structure of this document generally follows the order of items as they were dealt with at ISH1 set out against the detailed agenda items published by the ExA on 14 July 2023 (the “**Agenda**”). Numbered items referred to are references to the numbered items in the Agenda. Where post hearing notes have been added, those notes are prefixed with “Post-Hearing Note” and set out in italics for clarity.

2. WRITTEN SUMMARY OF CLDN'S ORAL SUBMISSIONS

Agenda Item	Applicant's Response
Item 1	
Welcome, introductions and arrangements for this Issue Specific Hearing 1 (ISH1)	Robbie Owen, for CLdN , did not make any submissions in relation to this agenda item.
Item 2	
Purpose of ISH 1	Robbie Owen, for CLdN , did not make any submissions in relation to this agenda item.
Item 3	
<p>Discussion of the draft Development Consent Order (dDCO), involving the Applicant and other Interested Parties</p> <p>Applicant's explanation of its approach to the drafting of the dDCO [APP-013] and the Explanatory Memorandum (EM) [APP-014].</p> <p>The Articles in the dDCO, including:</p> <ul style="list-style-type: none"> - Article 2 (Interpretation), including the references to "Company" and "relevant planning authority" and the interpretation of "ro-ro unit" - Article 4 (Incorporation of the 1847 Act) - Article 21 (Operation and use of the development) and the meaning of "ro-ro unit" - Article 22 (Power to appropriate) 	<p>Robbie Owen, for CLdN, stated that CLdN has serious concerns that the dDCO [APP-013] had not been drafted with appropriate care, rigour or precision, and with little regard to formal advice and guidance.</p> <p>Mr Owen highlighted, with reference to several examples including Article 7, Requirement 4, Article 2(1) and definitions (or lack thereof) throughout the dDCO, the lack of precision in the drafting of the dDCO which meant in particular that there was no clear delineation of the Proposed Development's parameters should the application be granted. This was particularly demonstrated by the presence of conflicting articles in the dDCO, such as the incorporation of the open port duty under s33 of the Harbours, Docks and Piers Clauses Act 1847, along with the power to appropriate under Article 22 of the dDCO which could allow for the whole terminal to be set aside potentially for a single customer, i.e. for the benefit Stena.</p> <p>Mr Owen noted that the dDCO lacks the required controls and approvals in relation to mitigation. For example, Requirement 8 of the dDCO provides for compliance with a Construction Environmental Management Plan but there is no mechanism for the local planning authority or other body to approve the detailed plan, and only an outline document has been submitted with the application [APP-087]. There is inappropriate use of tailpiece provisions, such as providing powers to the local authority to approve increased numbers of passengers departing from the harbour facility under Article 21(2), despite this being a key parameter of the Applicant's EIA, and which therefore circumvents statutory process and controls. This evidently departs from the very clear guidance in paragraph 17 of the Planning Inspectorate's Advice Note 15 which deals with the drafting of development consent orders.</p> <p>Mr Owen stressed the lack of mechanisms for monitoring compliance with the Requirements under the dDCO for the Proposed Development, should it be granted, as, with reference to Requirement 3, there is no obligation on the Company to maintain a publicly accessible register of the approvals given under the dDCO</p>

<ul style="list-style-type: none"> - Article 28 (Agreements with highway authorities) and what is meant by “agreements” for the purposes of this article - Article 37 (Procedure in relation to appeals under Control of Pollution Act 1974) - Article 42 (Crown Rights). <p>The Schedules in the dDCO:</p> <ul style="list-style-type: none"> - Schedule 2 (Requirements), including paragraph 3 (Amendments to approved details), Any overlapping between paragraphs 8 (Construction and environmental management plan) and 15 (Construction and operational plans and documents), paragraph 10 (Noise insulation), paragraph 18 (Impact protection measures), paragraph 21 (Applications made under requirements), paragraph 23 (Appeals). - Schedule 3 (Deemed Marine Licence), including the drafting matters raised by the Marine Management Organisation. - Schedule 4 (Protective Provisions), including the Applicant’s update relating to negotiating protective provisions and the need for any additional protective provisions identified by IPs in their Relevant Representations. 	<p>Requirements. Mr Owen further referred to a number of Requirements in which insufficient documentation or detail had been provided to allow proper consideration of the dDCO and Proposed Development, and make meaningful submissions. This is a fundamental flaw by which the dDCO fails to meet the test of Requirements being enforceable, precise and reasonable. Among the many examples, there is a lack of clarity around the nature of improvement works required to the East Gate, or means of facilitating them, under Requirement 12 of the dDCO. Requirements 15 (Construction and operational plans and documents) and 17 (Materials Management Plan) lack the necessary plans to determine the operation of these requirements, and Requirements 8, 13 and 15 require compliance with documents that lack sufficient detail for the Examining Authority to be confident when making its recommendations to the Secretary of State that adequate mitigation is secured. Both issues of insufficient information and a lack of mechanisms for oversight are exemplified in Requirement 18 where we are told that impact protection measures may or may not be considered necessary rather than provision being made for the normal control mechanism (i.e. approval of mitigation measures by the Harbour Master with appropriate consultation and consequent obligation to carry out the measures in accordance with the other provisions of the dDCO).</p> <p>Mr Owen additionally brought to the attention of the ExA the inclusion of powers in the dDCO beyond those which the Applicant would appear to require for their Proposed Development. Among the instances cited at the hearing were (i) the modification in Article 37 of the dDCO of the appeals procedures under sections 60 and 61 of the Control of Pollution Act 1974, a power that was applied to a ‘super sewer’ under the densely populated capital city of London, without justification for such a power in the circumstances of the Proposed Development, and (ii) excessive noise nuisance-related powers in Article 29(3) of the dDCO that curtail the ability of local environmental health authorities from bringing proceedings under the Environmental Protection Act 1990 for statutory noise nuisance, which are not standard for projects of the nature of the Proposed Development.</p> <p>Mr Owen emphasised that CLdN is concerned at the lack of any protective provisions for their statutory undertaking. CLdN is a statutory harbour authority pursuant to the North Killingholme Haven Harbour Empowerment Order 1994 and the Humber Sea Terminal (Phase III) Harbour Revision Order 2006. A list of issues to be covered by the protective provisions sought by CLdN would be provided in post hearing submissions, and CLdN would also wish to consider whether there is justification for it to be a statutory consultee in relation to discharge of some of the Requirements where the protective provisions do not resolve their concerns. Mr Owen reiterated that CLdN will engage positively with ABP on these matters.</p> <p>Post Hearing Note:</p> <p><i>CLdN and the Applicant have agreed to discuss the inclusion in the DCO of Protective Provisions for the benefit of CLdN. This was first raised by CLdN in its Relevant Representation dated 19th April [RR-007] (see paragraph 6.1.2). CLdN then received a letter from the Applicant’s solicitor dated 19th July acknowledging the request by CLdN for protective provisions in its Relevant Representation and confirming that the Applicant was prepared to consider the principle of protective provisions for the benefit of CLdN in the dDCO. CLdN</i></p>
--	---

will shortly be responding to the letter from the Applicant's solicitor dated 19th July. In the meantime, a summary of the protections that CLdN requires in the DCO is set out below.

Copies of the North Killingholme Haven Harbour Empowerment Order 1994 and the Humber Sea Terminal (Phase III) Harbour Revision Order 2006 referred to by Mr Owen at ISH1 in relation to Protective Provisions were appended to CLdN's Relevant Representation [RR-007]. The statutory basis that underpins CLdN's operations, and the potential for the Proposed Development to impede or obstruct access to CLdN's statutory undertaking, should be afforded special consideration in the Examination. That must include special consideration (and weight) to be applied to CLdN's request for the inclusion of protective provisions in the dDCO (this being the widely acknowledged primary mechanism for the protection of interests held by statutory undertakers).

In terms of the nature of protective provisions that CLdN considers are required, CLdN will work with the Applicant in seeking to agree measures that it considers are both adequate to robustly protect its interests and operations and otherwise reasonable and proportionate in all respects (for both parties).

CLdN anticipates that this may include protective provisions related to:

- 1. Notification, consultation and a right of approval by CLdN as to the nature and timing of works details (acting reasonably) and rights for CLdN to impose reasonable conditions related to such works.*
- 2. A duty on the Applicant to have regard to the potential disruption, delay or congestion of traffic which may be caused to the affected highways or streets within the vicinity of CLdN's undertaking.*
- 3. The submission to, and approval by, CLdN of a construction management protocol to manage construction traffic on the surrounding road network that affect CLdN's operations.*
- 4. Obligations to remedy any accumulation or erosion in consequence of the construction, maintenance or operation of the Proposed Development that is having an adverse impact on CLdN's operations, if requested by CLdN acting reasonably.*
- 5. Co-operation provisions, including sharing of information upon request.*
- 6. Measures to cease works where there has been, or is likely to be, an adverse impact on CLdN's operations or infrastructure.*
- 7. Indemnification of losses or costs, which may reasonably be incurred by CLdN, and can reasonably be attributable to the Proposed Development, by reason or arising in connection with alterations CLdN will be obliged to make to navigational arrangements or the timing of services, or due to*

	<p><i>accumulation or erosion at CLdN's undertaking, or by virtue of changes CLdN may be obliged to make to dredging disposal arrangements, or any remedial works necessary as the result of contamination being disturbed in, or migrating to, CLdN's undertaking.</i></p> <p>8. <i>Clarity and confirmation that nothing in the Order affects or prejudices the exercise of CLdN's functions by virtue of, or under, the North Killingholme Haven Harbour Empowerment Order 1994 and the Humber Sea Terminal (Phase III) Harbour Revision Order 2006.</i></p> <p><i>In addition, CLdN holds the benefit of agreements with Network Rail that connect the rail sidings within the Port Estate to the national railway network. The impact of the Proposed Development on the rail network is therefore not only a matter for the Applicant in respect of the rail lines running through Immingham. As a minimum, CLdN therefore requires protective provisions to protect the potential future exercise of its legal rights in respect of access to and use of the rail network.</i></p> <p><i>CLdN notes that item 30 of ISH1 Action List [EV2-004] requires CLdN to continue its dialogue concerning Protective Provisions outside the Examination. CLdN will continue to engage with the Applicant on protective provisions and will provide an update to the Examining Authority at Deadline 2.</i></p>
Item 4 – Other Consents	
<p>Other consents, licences and agreements</p> <p>The ExA will request a progress update as well as an indicative timescale for finalising agreements and any required permits and any other property related agreements.</p>	<p>Robbie Owen, for CLdN, did not make any submissions in relation to this agenda item.</p>
Item 5 – AOB	
<p>Any Other Business</p> <p>The ExA may extend an opportunity for the Applicant, IPs and Other Persons to raise matters relevant to topics raised ISH1 that they consider should be</p>	<p>Robbie Owen, for CLdN, did not make any submissions in relation to this agenda item.</p>

<p>examined. If necessary, the Applicant will be provided with a right of reply.</p>	
<p>Item 6 – Subsequent Procedure</p>	
<p>Review of matters and actions arising</p> <p>The ExA will discuss how any actions arising from the discussion of the dDCO are to be addressed by the Applicant, IPs or Other Persons following ISH1. A written action list will be published if required.</p>	<p>Robbie Owen, for CLdN, did not make any submissions in relation to this agenda item.</p>
<p>Close</p>	