

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

Immingham Eastern Ro-Ro Terminal DCO Application

**Issue Specific Hearing 2 (ISH2)
Post Hearing Submissions (including written submissions of oral case)
of
CLdN Ports Killingholme Limited**

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1. INTRODUCTION

- 1.1 This document summarises the main oral submissions made by CLdN Ports Killingholme Limited (“**CLdN**”) at Issue Specific Hearing 2 (“**ISH2**”) dealing with the Need Case and Environmental Statement held on 27th July 2023, in relation to the application for development consent for the Immingham Eastern RoRo Terminal (“**IERRT**”) by Associated British Ports (the “**Applicant**”) (the “**Proposed Development**”).
- 1.2 ISH2 was attended by the Examining Authority (the “**ExA**”), the Applicant, CLdN, and a number of other Interested Parties.
- 1.3 Where the ExA has requested additional information from CLdN on particular matters in the ISH2 Action Points [**EV3-012**], CLdN’s responses are set out in this written summary as post hearing notes.
- 1.4 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.
- 1.5 The structure of this document generally follows the order of items as they were dealt with at ISH2 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 2 (ISH2)	Rose Grogan, for CLdN , did not make any submissions in relation to this agenda item.
Item 2	
<p>Need for the Proposed Development</p> <p>The Applicant to give a five minute summary of its need case for the Proposed Development including but not limited to:</p> <p>a) Projections and assumptions for short-sea trade growth, future preferences in shipping and transport and existing capacity at Humber ports.</p> <p>b) Consideration of alternatives to satisfy the stated need case.</p> <p>c) The meaning and implications of the phrase "to ensure resilience" in the Need and Alternatives statement [APP-049, para 4.2.53].</p> <p>d) A concise summary response to the concerns raised in Relevant Representations regarding the need case.</p> <p>IPs participating in this agenda item to give five minute summaries of their need cases, including the following:</p>	<p>Rose Grogan, for CLdN, explained that CLdN has an in-principle objection to the Proposed Development because it does not meet policy tests in the National Policy Statement for Ports (“NPSP”). It is not “sustainable” port development in terms of being the right development in the right place and responding to need. Moreover, it does not constitute “desirable” harbour development in accordance with Regulation 6(3) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (the “APFP Regulations”).</p> <p>Ms Grogan further noted that the Applicant has claimed there is an “imperative need” (paragraphs 4.1.3 and 4.2.7 of Chapter 4 (Need and Alternatives) of the Applicant’s Environmental Statement [APP-040]) for more capacity in the Humber but this is based on a number of incorrect assumptions. Examples of such assumptions are that the Port of Killingholme is exceeding operational capacity, that demand on the Humber will grow in line with an inflated GDP, that Stena line is unable to operate from the Port of Killingholme, and that RoRo demand on the Humber is going to more than double by 2050 from 746,000 units today to 1.5 million. Furthermore, Ms Grogan explained that the Applicant has failed to properly consider making best use of existing facilities on the Humber, which must be the logical starting point for responding to need.</p> <p>Ms Grogan summarised that there is existing capacity on the Humber to accommodate realistic growth projections to 2050 without having to create a new terminal with all of the consequential adverse effects in terms of transport, ecology, navigational risk and other matters that are subject to this Examination.</p> <p>Responding to submissions by Mr Strachan KC, Ms Grogan agreed that the NPSP sets out an in-principle need for port development generally, but that does not rule out investigating whether the Proposed Development responds to need in the Examination. Ms Grogan noted that the alleged imperative need for new port development is a “golden thread” through the Applicant’s submission. Need is relevant to both policy compliance and the planning balance and so requires examination. In addition, the policy position that there is a general need for port development does not remove the requirement to demonstrate that the Proposed Development constitutes “...<i>sustainable port development that caters for long term growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity</i>” (paragraph 3.3.1 of the NPSP).</p>

a) Whether they object to the Proposed Development in principle; whether they are neutral in respect of the Proposed Development; or whether they support the Proposed Development and if so, why.

b) Any comments on the case made by the Applicant on the need for the Proposed Development.

The ExA will then ask any questions it may have in respect to the oral and written cases made by the Applicant and other IPs

Ms Grogan explained that it is important to look at what is meant by “sustainable development”. This is an orthodox and well understood planning term. It means, in effect, the right development in the right location and responding to a need. It is incumbent on the Applicant to identify what need it is they consider that the Proposed Development purports to be responding to and whether the Proposed Development actually achieves that objective is fundamental to determining whether or not the DCO Application should be granted.

Ms Grogan stated that the NPSP necessitates interrogating the need. The Applicant has put that as an ‘imperative need’, and that is what must therefore be interrogated and understood.

Ms Grogan further stated that the characterisation of why the Proposed Development is required also affects other matters. It has implications for the way the Applicant has put their case on alternatives and affects the planning balance. It therefore requires investigation.

Ms Grogan noted that the Applicant’s Planning Statement [APP-019], refers to the APFP Regulations, at page 33. As the Proposed Development constitutes harbour development, the Applicant is required to include a statement which explains why the order is “desirable”. “Desirable”, under Regulation 6(3) of the APFP Regulations, means that it is in the interest of:

“a) securing the improvement, maintenance, or management of the harbour in an efficient and economical manner; or

b) facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea-going ships”.

What is required to meet that test, and how the development actually scores it, are not explained and justified by the Applicant.

Ms Grogan stated that the Applicant have put forward their position that there is an urgent and imperative need for more RoRo capacity on the Humber. However CLdN’s position is that this is based on a number of assumptions that are not accurate, and do not reflect their operational experience. In contrast to the Applicant, which is a port operator, and Stena, which is a shipping line on the Humber, CLdN is well placed to provide accurate information about existing capacity and operations on the Humber because it is both a port operator and shipping line. Taking this into account, **Ms Grogan** made the following comments on behalf of CLdN:

- 1) In terms of existing capacity on the Humber, the Applicant asserts that the Proposed Development is needed now because capacity on the Humber is constrained. CLdN does not accept that. There is existing capacity to accommodate growth. One example is that the Applicant’s assessment of existing capacity puts operations at CLdN at 113% capacity. That appears to have been based on a Google Maps image looking at what is on site at one particular time without knowing the amount of land that CLdN actually has access to for RoRo units, etc., storage. For the avoidance of doubt, CLdN is not operating at 113% capacity.
- 2) The Applicant says that there is additionally a need to accommodate growth. Their growth assumptions are tied in large part to GDP growth, but they do not reflect current economic conditions. They are based on an assumption of 3.2% GDP yet current GDP growth is 0.1%. It follows that it is

not at all clear where the growth the Applicant refers to materialising in the next 25 years is actually coming from. If the Applicant is correct in its projection, then one would see the market and other operators responding to that in an urgent way, which is not what is happening and does not reflect CLdN's commercial or operational experience. **Mr Strachan** (for the Applicant) said that the Humber is the barometer of UK trade. But current data is not showing the kind of exponential growth that the Applicant has set out in their application documents.

- 3) In relation to need, this application appears to be based on servicing one operator: Stena. Whilst the details of commercial negotiations between CLdN and Stena are confidential, Stena were offered a long-term contract for their Hoek van Holland service from the Port of Killingholme. Conversely the material in the application documents suggests that Stena cannot continue to be accommodated at Killingholme. This appears to be a commercial and operational preference for Stena rather than an actual *need* to relocate operations. It is also necessary to examine what the effect of relocating Stena would be on capacity if it is simply a move to accommodate operational preferences rather than a response to a need. In short, this simply involves moving existing operations around the area rather than addressing any shortfall in capacity. Furthermore, moving to the Proposed Development will free up capacity at Killingholme, which also casts doubt on the justification for the Proposed Development on the grounds of addressing capacity.
- 4) Linked to the point above, a full understanding of what is being proposed in terms of operations is needed, and the ExA has not yet been provided with that. This is relevant to the need case but also other areas, including transport. One example is that Article 21(1) of the dDCO [**APP-013**] currently includes a cap of 660,000 RoRo units per annum, which is a very significant increase on Stena's current operations. The 660,000 cap is more than four times Stena's current throughput. There is also an assumption in those documents that RoRo demand on the Humber is going to more than double by 2050 from 746,000 units today to 1.5 million units. CLdN has seen no evidence to support that assumption. CLdN is also aware of the storage being proposed as part of the Proposed Development. However the extent of land take for storage use is several times what Stena's operations require at the Port of Killingholme.
- 5) The Applicant has dismissed credible alternatives based on this alleged imperative need, in the face of significant adverse effects of the Proposed Development. They have not looked at alternative options on the Humber to make best use of existing facilities for: a) existing operational requirements; and b) a realistic projection of growth, which, as set out earlier, must be the logical starting point for looking at responding to any perceived need.

Ms Grogan explained that CLdN's position is that capacity is already available. There is no current constraint. Rather there is room to accommodate realistic growth projections to 2050 without having to create a new terminal with all of the consequential adverse effects that brings in terms of transport, ecology, navigational risk and other matters that will be scrutinised further throughout the Examination.

Ms Grogan stated that the needs of Stena Line are expressly stated as one of the core reasons for the Proposed Development in the location proposed (paragraph 1.15(ii), and in more detail in paragraphs 4.18-4.23 in the Planning Statement [APP-019]), indicating that they are a key intended user of the development.

Ms Grogan stated that the operations of the Proposed Development are described broadly in ES Chapter 3 (Project Construction and Operation) [APP-039] in relation to throughput, inbound/outbound cargo, and passengers, but without reference to particular users or operators.

However, **Ms Grogan** explained that in Chapter 4 (Need and Alternatives) [APP-040], the Applicant's need case driven by a lack of suitable RoRo facilities on the Humber is expressly based (among other reasons) on Stena Line's need for access to port facilities following the termination of Stena Line's agreement with CLdN (paragraph 4.2.61). Chapter 4 further notes that Stena Line therefore needs a 'more permanent' river facility supported by suitable necessary landside facilities and storage which the Proposed Development would provide (paragraphs 4.2.59 – 4.2.68). The Applicant comments that no other facility on the Humber can meet Stena Line's needs, "but even if they did none would be suitable because they are all currently in the control of competitors of Stena Line" (paragraph 4.2.68). This may suggest that the Applicant intends to protect use of the Proposed Development for Stena above the interests of potential competitors. Should that be the position taken by the Applicant, it is not clear how this facility will (flexibly and effectively) provide for the projected future market demand purported in their need case or be operated in accordance with the Applicant's Open Port Duty.

The Applicant reinforces the driving role Stena Line has in the development proposals by justifying its proposed location on the basis that "Stena Line has made it very clear to ABP that there is no alternative location to meet their specific needs other than the Humber Estuary" (paragraph 4.3.17, ES Chapter 4 (Need and Alternatives) [APP-040]). As such, the Proposed Development appears to have been designed for Stena Line, implying that they are intending or expecting to have primary (and potentially exclusive) use of the facility.

In response to a follow-up question from the ExA on capacity at the Port of Killingholme, **Benjamin Dove-Seymour, Director at CLdN**, informed the ExA that CLdN has six berths, with three berths typically in operation including for Stena's Hoek van Holland service. Spare berthing capacity provides for resilience, and spare berthing capacity can be used. **Mr Dove-Seymour** explained that capacity is not determined based solely on available berths, but also the nature of visiting vessels. Those vessels move around all but one berth at the Port of Killingholme, depending on vessel type. **Mr Dove-Seymour** stated that it is important to understand that spare capacity enables future expansion, which is also enabled by the availability of additional operational land at the terminal.

Post-Hearing Note 1: the Europoort service occupied a fourth berth.

Ms Grogan indicated that CLdN would provide a further outline of CLdN's view on demand up to 2050 by Deadline 1.

Post-Hearing Note 2: ISH2 Action List [EV2-004] Item 5 - Provide CLdN's expectations for future demand on the Humber for Ro-Ro capacity through to 2050 including the anticipated distribution between accompanied and unaccompanied RoRo freight [a draft by D1 and full version by D2] .

CLdN Response:

CLdN is continuing to work on the market growth assessment to supplement its submissions at paragraph 3.3.1 of its Relevant Representation [RR-007] and has now appointed an independent market analyst to assist with reviewing CLdN's data. Taking this into consideration, and on further reflection following ISH2, CLdN considers that it would be unhelpful to the Examination to be provided with initial figures by themselves in isolation (including assessments based on GDP growth) because the future landscape for demand for RoRo and unitised freight is not simply a function of GDP growth and it will not assist the Examination to have two different sets of figures i.e. CLdN's and the Applicant's without underlying detail of other factors that will shape how growth is best accommodated (including by modes of transport (unaccompanied/accompanied) and existing RoRo capacity on the Humber).

CLdN's expectations on market growth, informed by the independent market analyst, will be incorporated into CLdN's Written Representation, alongside information and assessment of the actual existing operational capacity at Killingholme and the likely impact of trends highlighted by Applicant as justification for the Proposed Development, including switches from accompanied to unaccompanied freight, and also the operational and market factors that will impact on: a) market growth; and b) the Proposed Development's share of any growth.

Post-Hearing Note 3: ISH2 Action List [EV2-004] Item 7 - Provide a plan for the Port of Killingholme identifying its berth numbers.

CLdN Response:

A plan that identifies the berth numbers is appended to this submission. CLdN has also written to the Applicant (on 11th August) with a plan, itinerary and timings to inform the preparation of Applicant's draft itinerary for the Accompanied Site Inspection (ASI) (due to be submitted at Deadline 1 on 15th August 2023).

Item 3

<p>Effects on landside transportation and effects for existing occupiers of the Port of Immingham unconnected with navigation and shipping</p> <p>The ExA will ask questions of the Applicant and IPs participating in this agenda item concerning:</p> <ul style="list-style-type: none"> a) Road traffic surveys and predicted traffic generation b) Distribution of vehicular traffic entering and exiting the Port of Immingham in association with the operation of the Proposed Development c) Effects for the operation of the public highway and whether there is any need for mitigation and what form any such mitigation might take d) Operational effects for existing occupiers of the port other than shipping and navigation 	<p>Rose Grogan, for CLdN, introduced Andrew Ross of Royal HaskoningDHV UK Limited (“RHDHV”). Mr Ross, for CLdN, outlined CLdN’s concern that the ratio of unaccompanied to accompanied trailers (28% accompanied and 72% unaccompanied) provided by the Applicant at paragraph 5.2.3(d) and (e) of Appendix 17.1 Transport Assessment to the Environmental Statement [AS-008], is unsubstantiated. The number is low, and provides for a smoother traffic profile based on high rates of unaccompanied trailers, which does not reflect the peaks of accompanied trailers which relate to sailing times at RoRo facilities. This is further impacted by an unsubstantiated and underestimated 10% ratio for HGV traffic arriving or departing without a trailer for unaccompanied freight.</p> <p>In terms of the distribution of traffic across the East and West gates of the Port of Immingham, Ms Grogan further noted that the Applicant has relied on proximity of the East Gate to the facility in their distribution calculations, but not taken account of traffic movements in relation to storage areas. There is no apparent separation between the red line site boundary for the Proposed Development and the rest of the port. There is no control proposed to keep freight from passing through the terminal on the red line site to use the Western Gate, and no plan to control that secured by a Requirement in the dDCO.</p> <p>Mr Ross added that paragraphs 3.2.5 to 3.2.9 of Chapter 3 of the Environmental Statement [APP-039] (Details of Project Construction and Operation) indicate that some freight will be directed to storage areas to the west of the development. These factors are not taken account of in the simple ‘journey time’ calculation applied by the Applicant.</p> <p>Ms Grogan also noted that average traffic flow data has been used which smooths out traffic flow over weeks, months and years to an average, rather than showing seasonal peaks and troughs which inevitably impacts on the assessment. Mr Ross elaborated that daily average HGV demand has been used for the Transport Assessment [AS-008], which appears to be derived by using the ceiling of 660,000 units and dividing it by 364 working days, per paragraph 5.2.5 of the Environmental Statement Appendix 17.1 Transport Assessment [AS-008]. This creates a weekly profile that assumes the same demand from Monday to Sunday with no peaks, and CLdN’s experience is that freight traffic has peaks mid-week so a flat averaging out distorts the overall traffic impacts.</p> <p>Mr Ross emphasised that these issues are basic building blocks in the Transport Assessment. They put a question mark on the impact assessment outcomes prior to a higher level of sensitivity test being undertaken and in the absence of any control on HGV movements in the DCO. Ms Grogan summarised that together this means that no reasonable “worst case” scenario on a weekly basis has been assessed. It is best case, not worst – which is a fundamental issue with respect to compliance with the Infrastructure Planning (EIA) Regulations 2017.</p> <p>Post-Hearing Note 4: ISH2 Action List [EV2-004] Item 14 - Endeavour to agree a ratio for accompanied and unaccompanied Ro-Ro freight throughput for the purposes of assessing the Proposed Development’s effect on the operation of the public highway; and Item 15 - Endeavour to agree a methodology for assessing the</p>
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capacity of the Port of Immingham's West Gate to accommodate vehicular traffic associated with the operation of the Proposed Development.

CLdN Response:

On Thursday 10th August, Mr Ross met with representatives of the Applicant, the Applicant's consultants David Tucker Associates (DTA), and DFDS and their consultants GHD Transport Limited (GHD), to discuss the parameters and methodology of the Applicant's traffic assessment. All parties stated an objective of agreeing baseline data so that constructive discussion could be had on the assessment outputs. This will be captured in their Statements of Common Ground (SoCG). CLdN has committed to sharing with the Applicant the data they hold on HGV traffic with and without an accompanying trailer. Mr Ross, on behalf of CLdN, will participate in a further meeting on Wednesday 30th August to discuss further modelling by DTA based on the data shared between CLdN, DFDS and the Applicant.

As a general update on progress with the SoCG: following the discussion at ISH1 and ISH2, the work now undertaken to inform and prepare its Written Representation and the discussion on 10th August on transport matters, CLdN considers that it is now in a position to prepare a meaningful update to the SoCG issued by the Applicant on 30 June 2023. CLdN has contacted the Applicant to this effect and to confirm that it intends to share an updated draft of the SoCG prior to Deadline 2 (5th September).

Railways

Ms Grogan noted that CLdN is seeking assurance of no impact on their railway interests and the provision of rail pathway information as a written submission was discussed.

Post-Hearing Note 5: *CLdN notes that this has been included as item 29 on the ISH1 Action List [EV2-004] and that this submission must be made at Deadline 2.*

Post-Hearing Note 6: *ISH2 Action List [EV2-004] Item 18 - Provide a note explaining the concern about the Proposed Development's operation on the movement of rail going freight in and out of the Port of Killingholme.*

CLdN Response:

The Applicant has included within their draft DCO the power to carry out work to construct new railway and railway bridges at their Estate (Work No. 7, Schedule 1 to the dDCO [APP-013]. Whilst it is correct that the section of rail through Immingham is controlled by the Applicant, it then reverts to Network Rail control to the west for the section that runs through the Able Marine Energy Park and then the CLdN site. CLdN has the benefit of legal rights in respect of connecting rail sidings within CLdN's estate to the national network pursuant to the Junctions, Sidings and Works Agreement dated 19th October 1926, Supplemental Agreement dated 11 September 1958 and Sidings Agreement dated 10th October 1967. Although at present CLdN is not using the rail sidings on its Estate and does not handle rail freight cargos, CLdN retains the option to handle these

	<p><i>should this be required by a customer by preserving its connection agreement and defending against any potential impediments to handling future rail freight traffic. Under the above agreements, CLdN can notify Network Rail that it wishes to handle freight trains and Network Rail is obliged to take steps to manage and maintain the rail infrastructure to enable the connections for and transit of freight trains serving the Port of Killingholme. Train paths themselves are not an issue for CLdN, only for the freight (train) operating company providing the rail freight service for the relevant customer. Currently CLdN has no indication that it would be an issue for a FOC to access the Port of Killingholme; and is of the view that other parties using the line are not entitled to diminish CLdN's ability to operate rail freight services given that these are in the control only of Network Rail.</i></p> <p><i>CLdN was granted protective provisions in relation to its legal right to connect to the national rail network under Part 6 of Schedule 9 to the Able Marine Energy Park Development Consent Order 2014, under its former name, C.RO Ports (Killingholme) Limited, in order to protect this connection right from interference from additional rail traffic potentially associated with that development. Under paragraphs 68 and 69 of those provisions, the undertaker must not exercise their powers under the Order to unreasonably prevent access to the railway for the purposes of its undertaking, and the construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use of the railway in connection with CLdN's statutory harbour undertaking.</i></p> <p><i>CLdN considers that it is reasonable and proportionate to have its legal rights in respect of connecting to the rail network similarly protected with appropriate protective provisions in the DCO for the Proposed Development.</i></p>
Item 4	
<p>Any effects for the integrity of the Humber Estuary Special Area of Conservation, Special Protection Area and Ramsar site (the designated sites)</p> <p>Applicant to give a <u>five minute</u> summary of its case with respect to the Proposed Development's effect on the integrity of the designated sites. That summary should address any progress in addressing the matters raised by the Marine Management Organisation [RR-014] and Natural England [RR-015] in their Relevant Representations</p>	<p>In light of Natural England's submissions the day before the hearing, and indication that the Applicant had provided Natural England with a note on their SSSI submissions that had not been shared with the other Interested Parties, Rose Grogan, for CLdN, indicated that CLdN and its expert witness Louise Bridges, of APEM Limited for CLdN, would provide written submissions on their concerns related to this agenda item after having had the opportunity to review these documents.</p> <p><i>Post-Hearing Note 7: ISH2 Action List [EV2-004] Item 20 - With respect to the habitat losses identified by the Applicant, clarify the position about the significance of those losses upon the integrity for the designated sites.</i></p> <p><u>CLDN Response:</u></p>

<p>and representations that have been made with respect to cumulative and in-combination effects.</p> <p>Other IPs participating in the discussion of this agenda item to summarise their cases (up to <u>five minutes</u>) with respect to the effects of the Proposed Development on the integrity of the designated sites, having regard to their Relevant Representations and any other written submissions that they have made up until Pre-Examination Procedural Deadline A.</p> <p>The ExA will then ask any questions it may have in respect to the oral and written cases made by the Applicant and other IPs</p>	<p><i>CLdN acknowledges the change in stated direct loss of intertidal habitat between the PEIR and ES, from 1.65 hectares (ha) to 0.012 ha loss from capital dredge and 0.006 ha loss from piling, and is content that when considered in isolation this is a negligible loss in the physical area.</i></p> <p><i>CLdN retains concern that cumulative and in-combination impacts have not been properly assessed, as it appears that not all relevant projects have been included for consideration within Chapter 20 (Cumulative and In-combination) of the Environmental Statement [APP-056]. It is also unclear from this document which sources have been scoped in or out for consideration, as the long list table provided does not go into detail.</i></p> <p><i>Within ES Chapter 9 [APP-045], it also appears that the effects on various topic receptors have not been considered alone and in-combination (in-line with the HRA process) with other projects. Rather, only individual project interactions with the proposed development have been considered. A number of insignificant interactions between other projects and the proposed development may amount to a significant impact when considered cumulatively. This is recognised at paragraph 3.4.1 of PINS Advice Note 17. The Overarching NPS for Energy (EN-1) paragraph 4.7.3 states that “When considering cumulative effects, the ES should provide information on how the effects of the Applicant’s proposal would combine and interact with the effects of other development (including projects for which consent has been sought or granted, as well as those already in existence)”.</i></p> <p><i>Therefore, it is not clear whether the cumulative and in-combination consideration of habitat loss from all projects when considered as a whole would be significant or not.</i></p> <p><i>Natural England has raised similar concerns in their detailed Additional Submission [AS-015] regarding consideration and assessment of in-combination and cumulative impacts on traffic & transport, designated sites and marine mammals, under key issue references 1, 11, 25, 30 and 31 in [AS-015]. CLdN notes that a satisfactory response to them from the Applicant has yet to be received by Natural England.</i></p> <p><i>CLdN notes that Natural England further submitted a Log of Key Issues shortly before ISH2 [AS-016] in response to an additional signposting document provided to them by the Applicant which is not submitted to the examination at present. For clarity, CLdN would emphasise that certain specific points within a number of Key Issues were marked ‘green’ for resolved. However, the majority of the overarching Key Issues within which those specific points rest remains ‘amber’, i.e. further information is required to enable the Examining Authority to properly undertake its task or provide a sufficient degree of confidence as to their efficacy (as per paragraph 1.4 of Natural England’s Additional Submission [AS-015]). Moreover, the Log of Key Issues does not relate to Natural England’s Key Issues 1, 11, 25, 30 and 31 in [AS-015], which remain ‘amber’.</i></p> <p><i>CLdN recognises that it is principally the role of Natural England (as the Secretary of State’s statutory adviser on conservation matters) to comment on compliance with the tests under the Conservation (Natural Habitats, &c.) Regulations 2010. CLdN is aware that discussions are continuing between the Applicant and Natural England as to the provision of information in order to seek to demonstrate compliance with the statutory tests. It is also noted that the Examining Authority has asked questions of the Applicant and Natural England in</i></p>
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	<p><i>respect of these matters in the Examining Authority's written questions and requests for information (ExQ1) issued on 7 August 2023 [PD-010].</i></p> <p><i>CLdN makes no further comment at this time beyond highlighting that it seeks assurance that the above-noted matters raised by Natural England relating to overall impacts and interactions will be further considered and fully addressed.</i></p>
<p>Item 5</p>	
<p>Navigation and Shipping effects</p> <p>Applicant to give a <u>ten minute</u> summary of its case with regard to navigation and shipping effects, including:</p> <p>a) How the Navigation Risk Assessment (NRA) for the Proposed Development complies with Maritime and Coastguard Agency (MCA) published guidance, in regard to the Port Marine Safety Code and the MGN654 Annex 1 'Methodology for Assessing Marine Navigational Safety etc.'</p> <p>b) The berthing simulation exercises conducted to support the NRA.</p> <p>c) The governance approach taken to judgements concerning the acceptable level of 'tolerability' in the NRA; and the additional risk controls that it proposes to implement.</p> <p>d) Its understanding of obligations regarding assessment of 'Tolerability of Societal Concerns' under the guidance of paragraph 6.2 of the MGN 654 Annex 1 Methodology.</p>	<p>Rose Grogan, for CLdN, summarised that CLdN's concerns were based on the fact that their facility, the Port of Killingholme, is up river from the Proposed Development. Accordingly, construction activity or a safety incident that results in traffic restrictions on the river or, in the worst case scenario, closure of the river, would evidently impact CLdN's operations. Ms Grogan highlighted that there is precedent for the materiality of navigational safety in other DCOs, particularly the Thanet Offshore Windfarm Extension DCO in 2020. On this basis, CLdN has a keen interest in ensuring that the NRA [APP-089] is robust and that risks to navigational safety are tolerable. These concerns also provide context to CLdN's request for Protective Provisions at Issue Specific Hearing 1, for which precedents include the Protective Provisions afforded to ABP, the Applicant, in the Able Marine Energy Park DCO.</p> <p>Post-Hearing Note 8: <i>CLdN has provided justification and precedent for the inclusion of protective provisions for its benefit in the Written Summary of Oral Case at ISH1.</i></p>

e) When and how the Applicant intends to determine whether or not the impact protection measures for the Immingham Oil Terminal would be installed and how the timing of the construction of those measures have been taken into account in assessment of cumulative and in-combination effects in the ES and HRA.

f) Its intentions regarding the provision of shore-to-ship power for the Proposed Development and the power technology for future marine tugs.

IPs participating in the agenda item to briefly summarise their cases, with particular regard to:

a) Any implications the Proposed Development would be likely to have on shipping services and navigation to and from the Humber ports.

b) Matters of concern raised in their Relevant Representations about the NRA. Page 6 of 6

c) Any observations they may have on the data used by the Applicant to inform the ES and NRA.

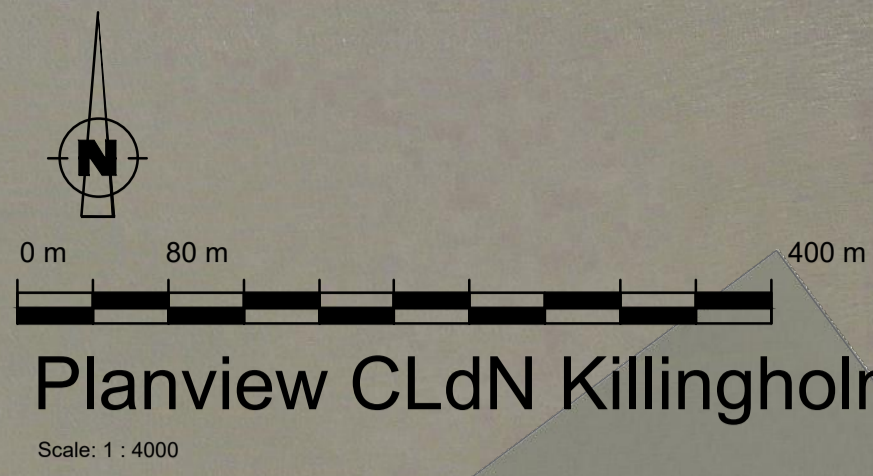
d) Whether they consider that the Proposed Development could in principle be made acceptable by additional mitigation over and above that intended by the Applicant.

e) Any other matters of concern relating to likely effects of the Proposed Development on existing

<p>port infrastructure and shipping operations.</p> <p>The ExA will then ask any questions it may have in respect to the oral and written cases made by the Applicant and other IPs.</p>	
Item 6 - AOB	
<p>Any other Business</p> <p>The ExA may extend an opportunity for the Applicant and IPs to raise matters relevant to topics raised ISH2 that they consider should be examined.</p>	<p>Rose Grogan, for CLdN, did not make any submissions in relation to this agenda item.</p>
Item 7 – Subsequent Procedure	
<p>Review of matters and actions arising</p> <p>The ExA will discuss how any actions arising from the discussion during ISH2 are to be addressed by the Applicant and IPs following the hearing. A written action list will be published if required</p>	<p>Rose Grogan, for CLdN, did not make any submissions in relation to this agenda item.</p>
Close	

Appendix

Berth Numbers Plan



Planview CLdN Killingholme Terminal



CLdN Ports Killingholme Terminal

Legend:
Dimensions in m.
Coordinates in UK OS National Grid Coordinates.
- - - - - C.RO Ports property Line

Title: Planview Terminal Aerial picture			CLdN Ports Killingholme Ltd. Clough Lane, North Killingholme North Lincolnshire, DN40 3JP Phone: +44 1 469 540 381 www.cldn.com
Drawn	RF	Scale	
Checked	BDS	Date	01-08-2023
Status	Application	Dr. No.	FDKG-2023-P-001-0

