KEEPING BRITAIN TRADING

IMMINGHAM EASTERN RO-RO TERMINAL

The Port of Immingham and River Humber – Management, Control and Regulation

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Introduction

During ISH 1, held on Tuesday 25th July -

"Mr Greenwood on behalf of the Applicant stated that the definition of 'Harbour Master' was a potential point for confusion and the ExA asked that a note be provided clarifying the jurisdiction of the Harbour Master and the Dock Master, as well as their relationship to the Applicant, for Deadline 1.

Mr Greenwood confirmed that the Note would also incorporate:

- *a discussion of the 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;*
- *a plan of the Port of Immingham Statutory Harbour Authority area; and*
- *a plan of the administrative boundaries of the relevant local authorities."*

1. Summary

1.1. ***The Applicant*** - Associated British Ports (ABP), as the owner and operator of the Port of Immingham, is the Applicant.

1.1. ***Statutory Harbour Authority (SHA) for the Port of Immingham –*** ABP as the owner and operator of the Port of Immingham is also the SHA for the Port of Immingham, led by ABP's Dock Master.

1.2. ***Statutory Harbour Authority for the Humber Estuary – (Statutory Conservancy and Navigation Authority) -*** Associated British Ports also, by virtue of a different set of statutory powers to those which created ABP as owner and operator of the Port of Immingham, is the Statutory Conservancy and Navigation Authority for the River Humber and as a consequence, the SHA for the River Humber – albeit excluding the jurisdictional area of the Port of Immingham itself. The Authority is sometimes known as Humber Estuary Services (HES) and is led by the Humber Harbour Master.

1.3. ***Competent Harbour Authority -*** In addition, however, ABP, also has separate powers and obligations in relation to pilotage of vessels in the Humber which

are exercised by ABP in its capacity as Competent Harbour Authority (CHA), which is led by the Humber Harbour Master.

1.4. These independent entities – with separate powers, duties and responsibilities – all, however, form part of the single corporate body that is Associated British Ports.

1.5. ***ABP Governance -*** In terms of governance, ABP has created a vehicle known as the *Harbour Authority and Safety Board (HASB)* which is designed to ensure that all marine risks that may potentially arise with regard to a given project will be thoroughly assessed and considered.

1.6. Part of the HASB's remit, as discussed below, is to review the degree to which potential adverse effects arising from a given marine operation or development can be tolerated – during both construction and consequent operation. In this context, the HASB will review and consider issues of: (i) health and safety and (ii) safety of marine operations with the assistance of expert advisors. It is the HASB which is the "Duty Holder" under the Port Marine Safety Code – thus ensuring continuity of responsibility regardless of change in personnel.

2. Legislative Framework to the creation of ABP

2.1. The legislative background to the creation of ABP as SHA for the Port of Immingham and ABP as the SGA for the Humber and the Statutory Conservancy and Navigation Authority for the River Humber (SCNA) - two SHAs – as well as a Competent Harbour Authority (CHA) is complex – and occasionally confusing. In brief, however, the position is as follows:

2.2. Statutory Harbour Authorities Statutory Harbour Authorities are created by legislation. Statutory authority is required for interference with public rights of navigation in tidal waters and for the exercise of other powers, such as powers of compulsory acquisition and use of third party land for the provision of docks and other infrastructure. The powers and duties of each statutory harbour authority derive from its original enabling legislation and subsequent applicable legislation. Enabling legislation will often incorporate provisions from the *Harbours Docks and Piers Clauses Act 1847* ("the 1847 Act") to confer powers and duties on the harbour authority concerned.

2.3. Section 52 of the 1847 Act (powers of harbour, dock, or pier master), where applied, confers powers on the Harbour Master of the SHA concerned to exercise powers of direction i.e., the direct power to order vessels within the SHA area to comply with the Harbour Master's instructions.

2.4. Although the legislative framework has been substantially amended, extended and revised since the 1847 Act, the powers granted by statute to SHAs remain similar to this day, and the Humber is no exception.

2.5. The Humber does, however, differ in one particular respect from many other waterways in that it does not just support a single coastal harbour, but a number of major harbour facilities. This of itself raises issues of regulation and

control bearing in mind the Humber's commercial history as an important – and busy - trading conduit.

2.6. In order to secure and ensure proper and transparent management and regulation, therefore, separate statutory bodies have been created over the years with a view to exercising impartial control over different geographical and legislative areas, although for many ports the originating legislation derived from development by railway companies, as was the case for the Port of Immingham.

2.7. During the Victorian era a separate and independent body was set up by an Act of Parliament to control and manage the safety of navigation within the Humber Estuary and River Humber as a whole. The *River Humber Conservancy Act 1852* was the first of a series of Humber Conservancy Acts and created a formal body known as the *River Humber Conservancy Commissioners*. It also provided powers to those Commissioners to maintain and improve the channel and navigation of the River Humber.

2.8. The *Humber Conservancy Act 1868* then provided for the incorporation of the Commissioners under the name of the *Humber Conservancy Commissioners*.

2.9. *Crown Estate Lease* **-** That Act also, amongst other things, granted the Commissioners a 999 year lease over those parts of the foreshore and bed of the River Humber that were previously under the management of the then *Board of Trade.* The extent of the lease area was later extended to the Rivers Ouse and Trent.

2.10. The *Humber Conservancy Commissioners* were given the task of maintaining, improving and managing navigation within the "Humber", the definition of which encompasses a range of activities spread over some 145 square miles of tidal estuary stretching from the seaward approaches to the Humber in the North Sea to the Trent and the Ouse in the west, as discussed in section 3 below.

2.11. In 1907 the Humber Conservancy Commissioners were dissolved and the *Humber Conservancy Board* was created in its place. The Humber Conservancy Board also replaced the former pilotage commissioners for the river and was made Local Lighthouse Authority.

2.12. A further marked change in management and control of ports came when those Ports, many of which had the historic origins in railway and canal companies, were nationalised in 1947 by Clement Attlee's post Second World War Labour government. In terms of the Port of Immingham, under the provisions of the *Transport Act 1947*, the London and North Eastern and London Midland and Scottish railway companies and the Aire and Calder Canal Company were vested in the *British Transport Commission*.

2.13. The Commission was later split up in 1962 by the *Transport Act 1962* with the creation of the *British Transport Docks Board (BTDB)* which was formed as a government-owned body tasked with the management of various ports throughout Great Britain. In due course, the *Humber Harbour Reorganisation*

Scheme 1966 transferred all powers and duties of the Humber Conservancy Board to *BTDB*.

2.14. Some fifteen years later, in 1981 the Conservative Government of Margaret Thatcher promoted the *Transport Act 1981*. This Act, amongst other things, provided for the privatisation of *BTDB*.

2.15. By reason of *BTDB's* statutory powers as a harbour operator, however, a straightforward conversion to limited company status was impractical. Instead, *BTDB* was renamed *Associated British Ports (ABP),* remaining a statutory corporation and a limited company, Associated British Ports Holdings Ltd (ABPH) was brought into being to exercise the powers of a holding company over ABP.

2.16. *ABPH* today has the same powers in law over *ABP* as a holding company has over a subsidiary. As such, ABPH has no power to give directions to the directors of ABP as respects the exercise of their powers as SHA. The management and control exercised by *ABP* and *ABPH* is discussed further in section 10 below.

2.17. In 1983 the British Government decided that *ABP* should become a public limited company quoted on the London Stock Exchange. The company was taken over by a consortium of companies in 2006 and, in August of that year, the company was de-listed from the London Stock Exchange.

2.18. As a body corporate, therefore, ABP is not only the SHA for its four Humber ports and immediate marine environs as discussed below but it is also, as a result of an entirely separate set of statutory powers, the SHA for the wider Humber Estuary and at the same time, fulfils its obligations as the Competent Harbour Authority (CHA).

3. Geographical Limits of the 'Humber Estuary'

3.1. The definition of the extent of the 'Humber Estuary' has evolved over the years through essentially, the mechanism of a number of local Acts.

3.2. For example, the Humber Conservancy Act 1951 included the following definition for the "Humber", (originally in earlier legislation) being -

> "*the River Trent below the south side of the stone bridge at Gainsborough and the River Humber and the Estuary thereof from the confluence of the Rivers Ouse and Trent to the sea and all navigable havens and creeks of the River Trent below the south side of the said stone bridge and of the River Humber or of the estuary thereof wherein the tide flows and reflows but shall not include any part of the old harbour or haven at Hull*".

- although this was later extended to incorporate the stretch of the –

> "*River Trent between Trent falls and the south side of the stone bridge at Gainsborough*".

3.3. The *Associated British Ports Act 1987*, whilst reflecting the definition in the Humber Conservancy legislation adopts a rather more precise definition for the eastern extent of the Humber Estuary, preferring instead of the somewhat prosaic "*to the sea"* as included in the 1951 Act, the following -

> "*(a) a straight line drawn from Easington Church (latitude 53º 39-00´ North longitude 0° 07-00´ East in a direction 136° true until it intersects the line mentioned below".*
>
> *"(b) a straight line drawn from the site of the former Donna Nook Beacon (latitude 53° 28-38´ North, longitude 0° 09-33´ East) in a direction 029° true".*

3.4. In terms of practicalities, however, for the purposes of the proposed development of the Immingham Eastern Ro-Ro Terminal, the Humber Estuary extends from the seaward mouth of the Estuary in the east to the Rivers Trent and Ouse in the west.

4. The Principal Bodies - *clarification of the relationship between, and roles of Humber Estuary Services, the Port of Immingham Statutory Harbour Authority and the Applicant*

4.1. Before allocating specific geographical limits within the Humber Estuary and the River Humber to specific bodies, it is necessary first to identify the separate and legally distinct bodies which actually have a role in ensuring the safe management and control of vessel movements in the River – impartially and transparently. These comprise the following -

a) ***Port of Immingham* – As SHA for the port,** responsibility for regulatory control and management of the Port of Immingham and its marine environs – including responsibility for the safety of navigation - falls to ABP in its capacity as owner and operator of the Port of Immingham.

b) ***River Humber* -** The regulatory control, including safety of navigation, within the River Humber and the Estuary falls to ABP in its capacity as the SHA for the River Humber i.e., the **SCNA,** also sometimes known as Humber Estuary Services (HES); and

c) ***Pilotage* -** The management and control of pilotage within the Humber Estuary is the responsibility of ABP in its capacity as the ***Competent Harbour Authority***.

4.2. These three bodies, which whilst in a number of areas sharing overlapping roles and functions, are distinct and independent bodies with specific legal duties and obligations, as discussed below. Taking each in turn -

5. ABP and the Port of Immingham

5.1. ABP is the owner and operator of the Port of Immingham – and indeed, the owner and operator of three other ports in the River Humber, namely the Ports

of Goole, Hull and Grimsby. As such, ABP is the applicant for the proposed Immingham Eastern Ro-Ro terminal (IERRT).

5.2. ABP is a "Statutory Harbour Authority". It is so classified because -

a) It is a harbour authority as defined in the Harbours Act 1964, namely "*a person engaged (whether or not in the exercise and performance of statutory powers and duties) in improving, maintaining or managing a harbour.*"

b) It has statutory powers with regard to the safety of navigation and control of vessel movement which derive from local Acts of Parliament as summarised above.

5.3. ABP is, therefore, essentially a "creature of statute", brought into existence by virtue of the provisions of the Transport Act 1981 and thus having effectively inherited the status of SHA for individual ports, via predecessor organisations/owner/operators going back to the original enabling legislation for each given port.

5.4. As such, ABP is the Statutory Harbour Authority (SHA) for the Port of Immingham – but only within the jurisdictional limits of the Port of Immingham in that, as noted below, confusingly ABP is also the SHA for the Humber, as led by the Humber Harbour Master, but the Humber SHA's regulatory control extends only over that part of the River which does not extend into the jurisdiction of the Port of Immingham's "Dock Master".

5.5. ***Port of Immingham Dock Master*** – appointed by ABP, the Port of Immingham Dock Master has, in summary, responsibility for the safety of navigation – including the berthing, embarkation, disembarkation and departure of a given vessel. As far as the Port of Immingham is concerned, however, the Dock Master's powers apply only within the Port of Immingham's jurisdictional limits.

5.6. Section 5 (*Harbour Directions*) of the Marine Navigation Act 2013 (amending section 40 of the Harbours Act 1964) enables designated harbour authorities to give harbour directions relating to the movement of ships, mooring or unmooring, equipment (including nature and use) and the manning of ships. A harbour direction may also require the master of a ship to provide information to a specified person in a specified manner. The Port of Immingham is a designated harbour authority for this purpose.

5.7. The Dock Master exercises regulatory control over the Port's marine environment although, as noted below in the section dealing with operational practicalities (section 8), the exercise by the Dock Master of his powers and obligations is very much a collaborative effort with the Humber Harbour Master, as the needs and requirements of marine users within the Port's marine environs need to be factored into the overarching need to respect the safe and efficient working of the Humber Estuary SHA.

5.8. The question then arises as to the jurisdictional limits of the Dock Master. These are themselves a somewhat evolving concept. Section 47 of the

Humber Commercial Railway and Dock Act 1904 – the original enabling Act which created the powers to build and manage the port of Immingham - provides as follows –

> "*For the purposes of all enactments relating to the exercise of powers by the Company or by the dock-master or his deputy the limits of the dock by this Act authorised shall include the works and conveniences constructed under this Act and a distance two hundred yards riverwards from every or any part thereof respectively but the jurisdiction of the dock-master or his deputy shall not be exercised so as to affect vessels navigating the channels of the River Humber unless such vessels shall obstruct the entrance or approach to the dock by this Act authorised".*

5.9. Later statutory instruments which included powers to extend the harbour infrastructure and thereby the statutory undertaking, simply incorporate a provision whereby the Dock Master's jurisdiction is extended beyond the existing limit as authorised by the 1904 Act above – should that be necessary in terms of the marine infrastructure being constructed.

5.10. A relevant case in point in this regard is the Statutory Instrument that authorised the construction of Immingham Oil Terminal (IOT), namely the *Immingham Dock Revision Order 1966*. That Order authorised the construction of a jetty approach, 1,000 yards in length and a jetty head of 1,180 yards together with the power to construct subsidiary works such as piers, berthing heads, mooring dolphins etc.

5.11. Article 19 of the Order provides as follows –

> *" (1) Subject to the provisions of paragraph (2) of this article, the limits within which the powers of the dock master of the Board* [i.e., the then British Transport Docks Board] *may be exercised under and subject to the provisions of the Act of 1847, as incorporated with this Order, shall extend to a distance of two hundred yards in every direction from the works.*
>
> *(2) The powers conferred by this article shall be limited to vessels going to, moored at or departing from the works and shall not be exercised so as to affect vessels navigating or at anchor in the channels of the river unless such vessels shall obstruct the access to the works".*

5.12. As can be seen from the plan provided at Appendix 1 below, the Port of Immingham Dock Master's jurisdiction (delineated by the blue line) was extended further into the River as a result of the construction of the IOT.

5.13. Over the years, the development and construction of new and additional riverside infrastructure has followed the same pattern, hence the somewhat irregular appearance of the Dock Master's jurisdictional area which roughly incorporates those additional riverside berths and immediate marine environs.

5.14. The net result of this iterative approach, therefore, is that the original 'bubble' of the Dock Master's jurisdiction has steadily crept out into the Estuary to

accommodate extensions to the port's infrastructure. No formal plan exists to denote this process, but calculating the relevant distances and amalgamating overlapping radii, the plan at Appendix 1 presents the current true extent of the Dock Master's jurisdiction at Immingham.

6. The Statutory and Navigation Authority for the Humber (HES)

6.1. As noted above, as a body corporate, ABP is not only the SHA for the Port of Immingham but also, by virtue of an entirely separate set of statutory powers, the SHA for the wider Humber, as defined above.

6.2. ***Humber Harbour Master –*** Section 5 of Part 2 of the *British Transport Docks Act 1972* provided for the appointment of the Harbour Master for the Humber.

6.3. With a view to maintaining a transparent separation of powers, duties and obligations, ABP in its overall role as SHA for the Humber, established with a view to ensuring both transparency and impartiality in terms of regulation of the Humber, separated the role of SHA for the Port of Immingham from that of the role of SHA for the Humber – which has the trading name of Humber Estuary Services (HES). In previous years, these same duties and responsibilities had been exercised by the Humber Conservancy Commissioners.

6.4. The name 'Humber Estuary Services', therefore, has no standing in law but reflects the separation of powers between ABP as SHA for the Port of Immingham (and indeed its other Humber Ports) and ABP as SHA for the Humber. In terms of legal standing, HES is in essence and fact ABP albeit acting in its capacity as "Statutory Harbour Authority or SNCA for the Humber".

6.5. All management processes and operational oversight are, as a consequence, the separate responsibility of and are carried out by HES although a number of 'back-office' functions, such as financial management and property management are shared between HES and ABP's core operations in the Humber Ports so as to assist efficiency and to avoid duplication.

6.6. ***HES key function -*** These are numerous, but in brief -

6.7. The *Harbour Control Manager*, who forms part of HES, is responsible for the Vessel Traffic Services (VTS) and the VTS Coordination teams focusing on planning, execution and optimisation of the dynamic and complex Humber marine vessel movement schedule.

6.8. The *Conservancy Manager,* (formerly the *Harbour Services Manager*) is responsible for Conservancy (including Harbour works consents, buoyage works management, and navigational marks management).

6.9. The *Hydrographic Manager* ensures that the Humber Estuary is surveyed, buoyed and marked to the standards set within ABPs Humber compliance with the Port Marine Safety Code (and in accordance with the best practice as laid out in the Hydrographic Code of Practice), and to produce navigational charts which comply with international standards.

6.10. The *Marine Services Manager* oversees the operational and manning requirements of the marine support craft of HES, including the Pilot Launches. The maintenance of such craft is undertaken in house by the Marine Engineering Support Unit (MESU). The Assistant Harbour Master is the Harbour Master's representative within VTS, and as such has delegated Harbour Master powers.

6.11. The *Assistant Harbour Master* is effectively the watch manager at VTS Humber. There is a list of those people in the Harbour Master, Humber's team who have delegated power of authority to issue directions and there will always be one such person on duty at VTS Humber at any given time.

6.12. The *Pilotage Operations Manager* is responsible for the delivery of the pilot service, training and/or authorisation of pilots and PECs.

6.13. All of the above are members of the Humber Harbour Master's "team" in its broadest sense.

6.14. **Vessel Traffic Services –** In order to monitor and regulate the safety of navigation in the Humber Estuary, a Vessel Traffic Services (VTS) has been established by HES to improve the safety and efficiency of vessel traffic and to protect the environment.

6.15. The principal function of VTS Humber is to monitor and regulate navigation of those parts of the Humber within the jurisdiction of the Harbour Master Humber. VTS Humber provides oversight of the movements of vessels over 12 metres in length in the entire Humber Estuary. Up to the Humber bridge, the river is covered by radar. Thereafter, the service uses Automatic Identification System (AIS), which is an automated vessel tracking system for those vessels that participate. In addition, vessels over 12 metres long must maintain VHF radio contact with VTS Humber and, within the limits of the Port of Immingham, the Dock Master with handover to the Dock Master upon berthing.

6.16. The need for a Vessel Traffic Service has been established by risk assessment in accordance with national guidance. Full guidance on the process required is provided in the MCA Guidance Notice MGN 401, and the referenced documents produced by IALA (The International Association of Marine Aids to Navigation).

6.17. The system is compulsory for specified sea-going vessels and craft specified in the byelaws or relevant Standing Notices to Mariners when entering the Humber VTS area.

6.18. Local procedures and guidelines have been set in place to ensure adequate staff training to internationally agreed standards and to control the proper operation and maintenance of the VTS facility and service.

6.18. The continued requirement for VTS is determined through Risk Assessment. VTS Humber operates 24 hours a day, 365 days a year based in the Humber Marine Control Centre, at the Port of Grimsby. The station is manned by one

Assistant Harbour Master with the delegated power of authority, and two Vessel Traffic Service Operators, all of whom are trained to at least IALA V-103 standard, with comprehensive on the job training requirements to support local knowledge.

6.19. ***The Harbour Master's powers*** – which are authorised either by Act or Order include the power to:

a) Make General and Special Directions to vessels in the Humber. General Directions are subject to publicity requirements, but a Special Direction may be given in any reasonable manner considered appropriate.

b) Remove from or prevent entering into the harbour any vessel if that vessel might involve grave and imminent danger to any person or property or put the functioning of the harbour at risk.

c) Prohibit the entry, require the removal or regulate the movement, handling and position of any vessel which in the Harbour Master's opinion carries a dangerous substance so as to create a risk to any person or property.

d) Detain, subject to certain conditions, any ship where the Harbour Master has reason to believe that the master or owner of the ship has committed an offence under section 131 (*Discharge of oil from ships into certain United Kingdom waters*).

e) Under the Merchant Shipping Act 1995 to board and inspect vessels for the purpose of investigating oil pollution.

6.20. *General Directions* - The Harbour Master's staff set out how this is achieved by issuing what are known as General Directions in the form of Standing Notices to Mariners *(SNtMs)*.

6.21. These *SNtMs* are a means whereby the Humber Harbour Master can control and manage the safe navigation of vessels in the River and they inevitably evolve.

6.22. *SNtMs* are permanent notices that are issued, cancelled or amended from time to time as operational procedures and legislation dictates. Any proposed new SNtMs will be subject to consultation with stakeholders prior to implementation.

6.23. *Humber Notices to Mariners (HNtMs)* are published from time to time, advising mariners operating within the area of jurisdiction of the harbour to changes that have taken, or are likely to take place and which may affect the safety of navigation (i.e., buoyage, amendments to advertised depths, wrecks, obstructions and implementation of new guidelines, etc.)

6.24. *Special Directions* – These are not for setting general rules but relate to specific vessels in specific circumstances – or in an emergency, to a class of vessel. For example, a special direction was issued in respect of a vessel that had grounded but refused to accept a tug line.

6.25. An extant example of a General Direction is Standing Notice to Mariners S.H.1, 'GENERAL DIRECTIONS FOR NAVIGATION IN THE HUMBER,' which acts effectively as the starting point for mariners entering the Estuary, covering matters such as the Duty of Masters, Prohibited Waiting in the River, Navigation in Poor Visibility. It was issued in January 2001. A copy of this Direction is attached to this note as Appendix 2.

6.26. The most recent example of a temporary notice (a Humber Notice to Mariners) is H.98

6.27. /2023 'SUNK DREDGED CHANNEL – LEAST AVAILABLE DEPTH, SHOAL WATER AND RULING DEPTH' which advises mariners – "*that 8.8 metres below Chart Datum is the Ruling Depth for the Sunk Dredged Channel and as such this figure should be used for passage planning purposes*". The Notice was issued in August 2023 and is attached as Appendix 3, although it should be noted that it has no specific relevance for the IERRT project other than to simply demonstrate the timeous nature of these notices.

6.28. ***Charges –*** HES also levies the following charges on users of the River and the Docks, albeit with certain exceptions –

a) *Principal Rates and Charges* – which encompass Ships Dues, Dock Rent, Mandatory Waste Charges, Fresh Water Tariff, Berthing and Mooring Charges etc., and

b) *Conservancy and Pilots Charges* – which deals with charges for the hire of GPS equipment, for charts, for parking rigs on the Humber etc.

7. Competent Harbour Authority (CHA)

7.1. *The Pilotage Act 1987* came into force on 1 October 1987. This Act swept away a host of sometimes conflicting historic cases on master/pilotage regulation and liability and codified the way in which CHAs are now identified.

7.2. In fact, in the case of the Humber the specific recognition of the CHA as a distinct entity was essentially a 'rubber stamping' exercise as a pilotage service, under different guises, had been a historic constant within the estuary for many decades.

7.3. ABP in its capacity as SCNA is the Competent Harbour Authority for the purposes of the Pilotage Act and these services are provided using the Humber Estuary Services name.

7.4. In practice, therefore, the Humber Harbour Master through HES operates in two distinct capacities, on the one hand operating the Conservancy function which includes VTS for the Humber – whilst on the other hand – operating a pilotage service which covers, for all practical intents and purposes, all pilotage movements anywhere within the River Humber and the Estuary – albeit with the caveat sounded above as to the separation of responsibility between the SHA for the Humber and the SHAs for the different Humber Ports.

7.5. In certain circumstances, the use of a pilot will be compulsory – subject to prescribed criteria and exemptions. Even where pilotage is compulsory, however, the master of the vessel retains responsibility for the safety of the vessel and its crew, notwithstanding that the pilot may have conduct of navigation.

7.6. Pilots are highly trained mariners who normally have seagoing experience in their own right. A rigorous training programme ensures that they are well-versed in the hydrodynamic vagaries of the Humber and are familiar with the marine infrastructure in the River. In broad terms, a process of training and experience ensures that they proceed in seniority during their careers to move from smaller more agile vessels to much more difficult manoeuvres completed by larger vessels.

7.7. The Pilotage Operations Manager oversees the operational management of the pilotage service within the limits of the Humber Pilotage Area, as defined in the appropriate regulating legislation and undertakes the supervision of all authorised pilots and holders of Pilot Exemption Certificates (PECs) for the Humber Pilotage Area and ensures that all such pilots/PECs abide by the terms and conditions of their authorisation.

7.8. *Directions* - In terms of Directions to pilots and other mariners, whilst as noted below the role of the CHA unavoidably and inevitably overlaps the role of the Dock Master and the Humber Harbour Master, Dock Masters of individual ports on the Humber do not routinely issue Notices to Mariners.

7.9. For purely practical operational purposes, the Humber Harbour Master issues all NtMs on the Humber including for the individual port SHA areas. Most of them relate to navigation which directly affects pilots and PECs (i.e., Pilotage Exemption Certificates which are granted to a master or mate of a vessel once certain criteria have been fulfilled)– i.e., holders of approved certification as a pilot of a vessel able to transit, enter and exit, a Port in the Humber. As a consequence, this function for all practical intents and purposes and, indeed logically, falls squarely within the remit of HES – entirely separate from the Dock Master's marine operational considerations as the operator of the Port of Immingham.

7.10. That Humber Pilotage Directions 2016 provide information to the harbour's stakeholders on the area for which compulsory pilotage may be required and the vessels to which it may apply. In addition, they explain who may apply for a Pilotage Exemption Certificate (PEC) and what is involved in such an application.

8. The Operational Practicalities

8.1. Having summarised the separate roles of –

a) ABP as owner and operator of the Port of Immingham and the Port's SHA;

b) ABP as the Statutory Conservation and Navigation Authority and Humber SHA; and

c) ABP as the Competent Harbour Authority -

it would be somewhat disingenuous to suggest that each component, whilst falling under the corporate umbrella of ABP undertakes its obligations and carries out its functions separately and distinct from the other. Bearing in mind the underlying objectives and responsibilities of ABP, namely to manage and regulate a commercial port and ensure the safe navigation in the marine environs, inflexible operational separation would not be a practical reality and indeed would act to the overall detriment of port operations and navigational safety.

8.2. Inevitably, therefore, cross-over responsibilities do exist, which have arisen out of operational necessity.

8.3. For example, VTS which, as noted above is operated by the Harbour Control Manager's staff i.e., HES, will have control over the movements of all vessels within the estuary. VTS cannot undertake this role efficiently and safely, however, unless there is close liaison with the local port i.e., the relevant Dock Master in that VTS will require information as to when vessels have requested sailing and arrival times, either for riverside berths or in the case of the port of Immingham, entry or exit from the lock.

8.4. If the separation and division of powers and duties summarised above, was taken to its logical conclusion, that would mean that when a vessel, on passage inbound to the Port of Immingham, crosses the demarcation boundary line between the Humber Harbour Master's area of jurisdiction i.e., the River Humber and enters the Port of Immingham SHA area of jurisdiction, control of that vessel in terms of pilotage would pass from the Humber Harbour Master to the Port of Immingham Dock Master – save that the Port of Immingham SHA/Dock Master does not have control of pilotage, which falls to the CHA.

8.5. In a busy navigational environment such a division of operational responsibilities would create the potential for confusion and misdirection – possibly with serious consequences. In reality, such a scenario would be operationally unworkable.

8.6. As a consequence, VTS (the Harbour Control Manager) maintain control of vessels until the point that they are moored on, in this case, the Port of Immingham's riverside jetties or are entering the Port's lock.

8.7. Similarly on departure a vessel would need to seek clearance from VTS – as well as the Dock Master's staff – when departing a riverside berth or entering the estuary from the lock.

8.8. That is not to say that the Dock Master's staff do not retain control over vessel scheduling at the port – that remains one of their principal responsibilities but the entire navigational and marine operation from entering the Humber, berthing at a Port, disembarking and embarking and then departure has

necessarily become a collaborative effort so as to ensure the smooth functioning of the entire estuary for all navigational users.

8.9. Every day, the Humber port's Dock Master and Harbour Master have to make reasoned judgement calls as to the safe movements of vessels which take in to account numerous criteria, including -

a) The need to act reasonably and transparently.

b) Whether the vessel is a liner service i.e., running to a scheduled timetable.
b) Whether the vessel is late and services such as stevedoring have already been booked and are waiting.

c) Whether the vessel is to commence embarkation or disembarkation on arrival at the port or is scheduled to delay such operations until the next day.

d) Whether a berth is available.

e) Whether the vessel is tidally restricted and therefore has limited 'windows' for passage.

f) Whether the vessel is prepared to proceed in adverse weather conditions; or

g) Whether the vessel has no orders and should proceed to anchorage.

8.10. The Harbour Master's duty is to all mariners and ports, not just ABP's Humber ports, which underlines the rationale for the creation of "Humber Estuary Services" so that in organisational terms, the Humber Harbour Master can fulfil its various duties and responsibilities as an entirely separate management function – and be seen to be so doing - albeit still within the ABP corporate body structure.

9. The relationship of the relevant jurisdictions with that of the Health and Safety Executive, particularly in relation to the Immingham Oil Terminal COMAH designation

9.1. Before considering the topic of ABP governance in the context of the proposed IERRT development, it is also necessary to clarify the position of one of the principal regulators within the Port, namely the Health and Safety Executive.

9.2. The Health and Safety Executive (HSE) is the UK regulator for health and safety. One of the HSE's responsibilities is to act as a statutory consultee providing advice to planning authorities in relation to applications for proposed developments in the vicinity of existing major hazard sites or major accident hazard pipelines. This is to help ensure that the major accident risks to people are controlled to an acceptable level.

9.3. For Nationally Significant Infrastructure Projects (NSIPs) in England (such as the IERRT) covered by a Development Consent Order (DCO) the HSE must

be consulted by the applicant and provides advice to the Planning Inspectorate.

9.4. In particular, when an applicant requests an Environmental Impact Assessment (EIA) Scoping Opinion from the Planning Inspectorate in relation to a proposed EIA development, the HSE will be consulted and will provide useful information supporting the Planning Inspectorate in compiling a robust scoping opinion which can be used by the applicant to prepare their Environmental Statement.

9.5. The HSE has a well-established and structured approach for proving land use planning advice in the vicinity of major hazard sites and pipelines.

9.6. The HSE defines safety zones around major hazard sites and pipelines, depending on the scale and nature of the hazards, and categorises proposed developments in their vicinity in terms of a Sensitivity Level, which takes account of the precise type and size of the development.

9.7. The HSE's advice for a proposed development takes account of both the zone where it is located and its sensitivity level, so that progressively stricter advice is provided closer to the hazard or for more sensitive proposed developments. This HSE approach is based on a cautious methodology which has been in use for over 40 years, enabling the HSE to provide consistent and robust advice to decision makers. It is noted that the HSE's role is simply to provide advice, which decision makers may choose not to adopt, although in view of the HSE's expertise in this area it is very unusual for developments to be granted planning permission if the HSE has advised against.

9.8. ABP recognised that the IERRT is located in the vicinity of several major hazard sites and pipelines, and therefore consulted the HSE at an early stage to check that the proposed layout and operation of the IERRT would not result in the HSE advising against the development.

9.9. The two key requirements highlighted by the HSE were:

Firstly, to ensure that the areas of the IERRT at highest risk from neighbouring sites should only be used by a relatively small number of IERRT workers; and

Secondly that the waiting area for members of the public at the IERRT should be in an area of low risk, with no more than 100 members of the public waiting to board at any one time.

9.10. These requirements have been incorporated in the design and operation of the IERRT.

9.11. The HSE also required confirmation that the operations at the IERRT itself would not cause any major accidents, potentially involving the nearby major hazard sites. ABP has confirmed that there will be no long-term storage or operations (such as transfers) for any dangerous substances passing through the IERRT, and so there are no significant risks.

9.12. In summary, the HSE has been consulted and is satisfied that there is no reason for the IERRT to be advised against on the grounds of safety.

9.13. ***The COMAH Regulations*** - requires operators of upper tier establishments to submit a safety report to the HSE to demonstrate that they have taken all measures necessary to prevent major accidents and to limit the consequences to people and the environment of any that do occur.

9.14. In particular site operators are required to review their safety reports at least every five years. This five-year review places a requirement on operators to undertake a formal assessment of their safety report particularly in response to new facts or to take account of new technical knowledge about safety or environmental matters.

9.15. Stakeholders who operate nearby COMAH sites have previously mentioned that they would need to be kept informed of the IERRT project's progress as one of the aspects of a Safety Report is that it should always take into account how surrounding land is used, and any significant changes to the distribution of workers or type of work that is undertaken.

9.16. APT who operated the IOT have noted that their COMAH Safety report will need to be updated based upon their obligations as a COMAH operator under the COMAH regulations.

9.17. In practice the use of the land will not change in the sense that the IERRT site is currently port operational land and areas near to APT are currently in use for the handling and storage of cargo in transit so workers are already in those locations.

10. The Port Marine Safety Code and ABP Governance

10.1. ***The Port Marine Safety Code (Document 10.2.14) -*** The starting point for consideration of the 'governance' of any port/harbour authority, is the Port Marine Safety Code (PMSC) and the Guide to Good Practice on Port Marine Operations (GtGP). These are documents published by the Department for Transport and apply to all harbour authorities. They represent good practice and establish the principle of a national standard for every aspect of port marine safety.

10.2. That said, it should be noted that whilst ABP has committed to full compliance with the standards set out in the PMSC and meets the stated requirements – the PMSC provides only an advisory Code and as such, does not impose mandatory obligations. This means that, as a consequence, strict adherence to the Code is not always universally followed by all harbour authorities.

10.3. ***What is the Port Marine Safety Code? -***

10.4. "The Port Marine Safety Code ("the Code") –

> *"sets out a national standard for every aspect of port marine safety. Its aim is to enhance safety for everyone who uses or works in the UK marine environment. It is endorsed by the UK Government, the*

devolved administrations and representatives from across the maritime sector and, while the Code is not mandatory, these bodies have a strong expectation that all harbour authorities will comply. The Code is intended to be flexible enough that any size or type of harbour will be able to apply its principles in a way that is appropriate and proportionate to local requirements." (PMSC para. - DfT 2016).

10.5. In essence, the PMSC (and the related Guide to Good Practice, noted below) represent good practice and establish the principle of a national standard for every aspect of port marine safety.

What is the Code for? –

10.6. "*The Code is applicable both to statutory harbour authorities and to other marine facilities which may not have statutory powers and duties. These …. include … the following:*

a) *Competent Harbour Authorities – (authorities with statutory pilotage duties)*

b) *Municipal Ports or Harbour Authorities ….*

10.7. ***What does the Code cover? –***

10.8. *"The Code has been developed to improve safety in the port marine environment and to enable organisations to manage their marine operations to nationally agreed standards. It provides a measure by which organisations can be accountable for discharging their statutory powers and duties to run harbours or facilities safely and effectively. It also provides a standard against which the policies, procedures and performance of organisations can be measured. The Code describes the role of board members, officers and key personnel in relation to safety of navigation and summarises the main statutory duties and powers of harbour authorities. The Code is designed to reduce the risk of incidents occurring within the port marine environment and to clarify the responsibilities of organisations within its scope." (PMSC para. 6).*

10.9. *"The Code should be read in conjunction with its companion Guide to Good Practice on Port Marine Operations (the Guide). The Guide underpins the ethos of the Code by providing additional guidance and practical examples and has been written and approved by maritime professionals to assist organisations in promoting and executing safe, efficient and accountable port marine operations based on industry best practice". (PMSC para. 7)*

10.10. The PMSC references the use of formal risk assessment (FRA) to manage the risks associated with marine operations, the need for assessment, and the means of controlling risk. It states that the aim of the process is to eliminate the risk or, failing that, to reduce risks to as low as reasonably practicable (ALARP). Formal risk assessments should be used to:

"*identify hazards and analyse risks; assessing those risks against an appropriate standard of acceptability and where appropriate consider a cost-benefit assessment of risk-reduction measures*" (PMSC -

10.11. ***Guide to Good Practice on Part Marine Operations (GtGP) -*** A supplement to the PMSC is the Guide to Good Practice. This sets down best practice which should be adopted by a Harbour Authority and covers every aspect of a harbour operation.

10.12. Section 4 of the GtGP provides risk assessment guidance in the context of supporting a port's *Marine Safety Management System (MSMS)*.

10.13. The GtGP suggests the use of staged risk assessment and provides an example of a five-stage risk assessment, similar to, but not completely the same as, the five-step process outlined in the International Maritime Organisation (IMO) Revised Guidelines for Formal Safety Assessment (FSA).

10.14. The GtGP states –

'*Risk assessment techniques are fundamentally the same for large and small ports, but the execution and detail will differ considerably'.*

10.15. The GtGP does not, however, prescribe a fixed methodology to be used for undertaking an NRA.

10.16. With regard to governance for marine compliance specifically, ABP in compliance with the Port Marine Safety Code has established the following -

i) ***Duty Holder*** – The PMSC requires a Harbour Authority to – *"formally identify the duty holder, whose members are individually and collectively accountable for compliance with the Code and their performance in ensuring safe marine operations in the harbour and its approaches"*.

ii) ***Designated Person –*** The PMSC also requires a Harbour Authority to appoint a Designated Person – "*to provide independent assurance about the operation of the marine safety management system. The designated person must have direct access to the Duty Holder".*

iii) ***Marine Safety Management System –*** A Harbour Authority is required to – "*operate an effective MSMS which has been developed after consultation, is based on formal risk assessment and refers to an appropriate approach to incident investigation".*

iv) ***Review and Audit processes –*** A Harbour Authority is required to – *"Monitor, review and audit the risk assessment and MSMS on a regular basis – the independent designated person has a key role in providing assurance for the duty holder.*

10.17. The following paragraphs place the provisions of the PMSC in context with ABP's governance and in particular, the proposed Immingham Eastern Ro-Ro Terminal.

10.18. ***ABP Governance and Navigational Safety***

10.19. Broadly, ABP, in its three separate capacities, is –

a) Responsible for the provision of port facilities at ABP's ports and as such, is required to have due regard to efficiency, economy and safety of operation in respect of the services and facilities provided by ABP.

b) In its capacity as SCNA/SHA for the Humber, responsible for the safety of navigation in the River Humber; and in addition, is -

c) Responsible for pilotage within the River Humber as Competent Harbour Authority for pilotage.

10.20. These powers and responsibilities, as summarised above, derive from myriad local and national – sometimes historic - legislation and regulation, including, but not limited to, the Harbour Docks and Piers Clauses Act 1847, the Harbours Act 1964 (as amended), the Transport Act 1981, the Merchant Shipping Act 1995 and the Pilotage Act 1987.

10.21. *The ABP Board* - As a statutory body corporate, ABP is managed by the 'ABP Board' which comprises the Executive Team, essentially the Chief Executive Officer, the ABP directors supported by its principal officers.

10.22. *Associated British Ports Holdings Board* - In addition, ABP also has as its controlling company, the Associated British Ports Holdings Limited (ABPH). The Board of ABPH includes all non-executive directors in addition to the Chief Executive Officer and the Chief Finance Officer.

10.23. *The ABP Harbour Authority Safety Board* – As a consequence of the advice provided by the PMSC and the GtGP, ABP decided to establish a separate board known as the *Harbour Authority Safety Board (HASB),* the purpose of which is to:

a) Enable ABP, acting in its capacity as SHA for the Port of Immingham (as well as all of its other ports), to take decisions independently from ABP's consideration as a commercial port operator.

b) Provide a forum for the Board to consider detailed group health and safety matters; and

c) Oversee ABP's compliance with its obligations under the PMSC.

10.24. The HASB meets regularly and separately from the main ABP Board and as noted above, has its own remit. The HASB has the same membership as the main ABP Board (i.e., the Executive Team), which it should be noted includes ABP's Director of Safety, Engineering and Marine who also acts as "marine advisor". There are in addition a number of standing attendees who are referenced below.

10.25. Applying the Code's principles as summarised above to ABP governance in the context of the proposed Immingham Eastern Ro-Ro Terminal development, the principal points to take into consideration are:

10.26. The ***'Duty Holder'*** is a composite term and comprises the membership of the HASB in that ABP is of the view that overall accountability for Health & Safety should sit with the ABP Board. It is noted that the PMSC advises that the Duty Holder should – "*make a clear published commitment to comply with the standards laid down in this Code*". In particular, the PMSC prescribes that - "*The duty holder is accountable for safe and efficient marine operations*". (PMSC, section 1, para. 1).

10.27. In addition, at paragraph 1.6, the PMSC acknowledges that – "*For most organisations, the role of duty holder is undertaken by members of the management team or board who are (both collectively and individually) publicly accountable for marine safety under the Code."*

10.28. Of note in this context, is that ABP, as required by the PMSC, does report formally to the Chief Executive, Navigation Safety at the Maritime and Coastguard Agency by issuing a Statement of Compliance with the PMSC. The last such statement was dated 21 October 2020 and provides that in "*reviewing risk assessments and safety management systems*" ABP certifies that its ports *"meet the standards required by the Port Marine Safety Code*". A further certification, following the required procedures and review and which is externally audited, will be issued later this year.

10.29. Organisations which include statutory ports and marine facilities with non-statutory functions, such as jetty and berth operators, are under a strong compulsion in light of the PMSC to submit their statement of compliance. In this context it should be noted that the PMSC also extends this strong recommendation to other marine facilities which are not SHAs in their own right but do nevertheless have safety responsibilities in a harbour area. As far as ABP is aware, ABP as SHA for Immingham is the only body within that harbour area to report on its compliance to the MCA.

10.30. The '***Designated Person'*** is the ABP Group Technical Authority Marine. This is an entirely 'independent' role, as it is a group role and not a role associated with any particular operational or commercial part of the business. The role is focussed on ensuring ABP's compliance with the PMSC (e.g., by way or carrying out audits etc) and reporting to the HASB at its meetings on progress against actions/outcomes of audits/marine incidents etc. The designated person monitors and reports on the effectiveness of the MSMS and provides independent advice on matters of marine safety. In particular, the PMSC provides that –

"*The "designated person" must be appointed to provide independent assurance about the operation of an organisation's MSMS. The designated person must have direct access to the duty holder". (PMSC, section, para. 1.1)*

10.31. The '***Marine Safety Plan'*** – the PMSC advises that –

"*To demonstrate the organisation's commitment to marine safety and to ensure the involvement of harbour users, a safety plan for marine operations should be published at least once every three years. The plan should illustrate how the policies and procedures will be developed to satisfy the requirements under the Code. It should commit the organisation to undertake and regulate marine operations in a way that safeguards the harbour/facility, its users, the public and the environment. It should refer to commercial activities; the efficient provision of specified services and the effective regulation of vessels including near miss reporting. It should also explain how commercial pressures would be manged without undermining the safe provision of services and the efficient discharge of its duties". (PMSC, para. 2.26)*.

10.32. ABP publishes its Marine Safety Plan every three years. The attached Plan, (Appendix 4) covers the period March 2020 to 2023. It functions as a framework document explaining how the SHA will put processes in place to comply with the PMSC. The next Plan, 2023 to 2026, will be published later this year – 2023.

10.33. The published ABP Marine Policy (October 2019) which encompasses all of ABP's 21 ports, states that -

> "*ABP (the Harbour Authority) has developed policies and plans in accordance with the standard as set out in the Port Marine Safety Code (PMSC). This document details the policies adopted to achieve the Code's required standard. The policies and plans are based upon a full assessment pf the requirements of the Port Marine Safety Code and the hazard that have to be managed to provide for the safety of ABP's ports and harbours and their users. (para. 1).*

10.34. The '***Marine Safety Management System' (MSMS)*** - As far as the MSMS is concerned, it is of note that whilst the PMSC requires Harbour Authorities to publish its Marine Safety Plan - an obligation with which, as noted, ABP complies, there is no such obligation lying upon ABP to publish the MSMS.

10.35. Indeed, it is the general practice for Harbour Authorities not to publish the core of their MSMS's for reasons of security – which can extend to national not just local security - commercial confidentiality and the practical reality that a Harbour Authority cannot, in any case on a given day, publish what is in fact an evolving "exercise".

10.36. The MSMS is a "system" not a single static document.

10.37. That said, the PMSC does require a Harbour Authority to –

> "*Implement a marine management safety plan: An MSMS should be in place to ensure that all risks are identified and controlled – the more severe ones must either be eliminated or reduced to the lowest possible level, so far as is reasonable (that is, such risks must be kept as low as reasonably practicable or "ALARP"). Organisations should consult, as appropriate, those likely to be involved in, or affected by, the MSMS they*

adopt. The opportunity should be taken to develop a consensus about safe navigation. The MSMS should refer to the use of formal risk assessment which should be reviewed periodically as well as part of post incident/accident investigation activity".

10.38. As far as the MSMS is concerned, at section 3 of ABP's published Marine Policy, it is stated that –

> "*The Harbour authority will implement a Marine Safety Management system in order to manage marine hazards, risks and emergency preparedness. The Marine Safety Management System will be prepared at Harbour Authority level and supplemented by local MSMS documents for each of the Harbour Authority's ports and harbours.*"

10.39. It will be understood from the above that the exercise of assembling and preparing the MSMS is an evolving process – it is not a single document. Its purpose is to manage the hazards and risks and set in place required preparations for emergencies. It is developed, implemented, maintained and operated effectively and revised periodically. The MSMS will also document and capture any custom and practices which may have become the standard approach to various port marine operations.

10.40. ***Publication of the MSMS -*** It should be emphasised, however, as already noted, that there is <u>no</u> requirement in the PMSC or the GtGP for the Duty Holder to publish the MSMS. The only obligation is to ensure that stakeholders are involved and consulted on those parts of the MSMS that impact or interact with their operations within the SHA – which is the case with the Port of Immingham and indeed ABP's other ports.

10.41. This is because the core of the MSMS (as opposed to its subsidiary explanatory documentation supporting the underlying MSMS exercise which have on occasion been released) contains commercial information in relation to port operations and port users as well as dealing with marine movements and underlying security measures – which in the current political climate can certainly not be disclosed and made public.

10.42. The MSMS comprises several distinct components – policy, procedure, risk assessments, internal and external guidance, regulatory referencing, performance indicators, standards etc. The important point to note is that the MSMS is not a fixed in time document.

10.43. The PMSC, in requiring Harbour Authorities to implement the MSMS, provides as follows –

> "*An MSMS – which manages the hazards and risks along with any preparations for emergencies – must be developed, implemented and maintained. This should be operated effectively and revised periodically. The MSMS should also capture any custom and practices which may have become the standard approach to various port marine operations. ……"*

"The MSMS should incorporate safety policies and procedures to:

- *Ensure there is proper control of vessel movements by regulating the safe arrival, departure and movement within the harbour of all vessels;*
- *Protect the general public from dangers arising from marine activities within the harbour;*
- *Allow functions to be carried out with regard to the possible environmental impact; and*
- *Prevent acts or omissions that may cause personal injury to employees or others. (*PMSC para. 2.13*)*

10.44. The MSMS comprises several distinct components – policy, procedure, risk assessments, internal and external guidance, regulatory referencing, performance indicators, standards etc. The important point to note is that the MSMS is not a fixed static single document.

11. The proposed Immingham Eastern Ro-Ro Terminal

11.1. Applying the above to ABP governance in the context of the Immingham Eastern Ro-Ro Terminal and as has been explained in the submitted Navigational Risk Assessment (APP 089), as part of the formulation of the project in terms of the scheme, its design and its potential impact, ABP –

a) Convened three hazard identification workshops with a variety of stakeholders on 29 October 2021, 7 April 2022 and 16/17 August 2022, (NRA section 7, pages 63 to 66);

b) Undertook a number of navigational simulations co-ordinated by HR Wallingford;

c) Held various internal assessment meetings including:

i) A risk assessment workshop on 4 October 2022 to consider stakeholder correspondence;

ii) A cost benefit Analysis and Tolerability Workshop on 6 October 2022, the purpose of which was to discuss potential mechanisms by which this should be determined; and

iii) On 7 October 2022 ABP's Project Manager presented the findings of the previous day's meetings to ABP Steering Committee, the purpose of which was:

- To consider ABP's position on risk tolerability with respect to the four assessment receptors (people, planet, property, port); and

- To consider if the identified 'further applicable (risk) controls' had reduced the hazard scenario to a level considered to be ALARP.

iv) On 12 December 2022, representatives of the project team presented the Likelihood and Consequence Tables, the Tolerability Limits, the draft NRA including the NRA methodology and the Hazard Logs to the ABP Harbour Authority Safety Board, (HASB).

11.2. Present at that meeting of the HASB were ABP's Chief Executive, ABP Directors for the Humber and Southampton, ABP's Chief Financial Officer, ABP's Chief Commercial Officer and ABP's Director, Safety, Engineering & Marine – all of whom together constitute the "Duty Holder".

11.3. In addition, in attendance were ABP's General Counsel and Company Secretary, the Head of Marine, Humber, ABP's Group Head of Projects and ABPs Technical Authority Marine – ABP's "Designated Person".

11.4. Following presentations, discussion and consideration, the HASB confirmed that –

"*On the basis of the information provided:*

- *It was satisfied with the approach taken to the marine navigational risk in relation to the future development of the Immingham Eastern Ro-Ro Terminal; and*

- *It with and approved the conclusion that the risks identified were as low as reasonably practicable (ALARP) and tolerable."*

11.5. **Stakeholder Criticism** - Certain criticisms have been levelled against ABP in terms of its governance in connection with the proposed development. ABP has responded to these criticisms as appropriate, but as an example, in answer to a letter dated 29 August 2022 from DFDS, extracts from ABP's response below, both deals with the criticisms raised on given subjects relevant to the Note, but also underlines the objectivity of ABP's governance, as has been described above –

Simulations –

11.6. *"You are correct to identify that the ship manoeuvring model represented a relatively manoeuvrable and powerful type of modern RoRo vessel. The simulations were chosen based on advice from HES and because they fulfilled ABP's clients' aspirations in terms of operating large modern RoRo vessels with similar characteristics at the Terminal. It would not be appropriate to use the CLdN ship mentioned as that was designed with specific requirements to suit the terminals from which it operates. It is acknowledged that other types of vessels may have different operating limitations, depending on their size and installed power. The IERRT berths are being designed for a 50 year lifespan and the vessels selected to operate on them during that time will be carefully*

selected and subject to further detailed operating procedures following in depth navigational simulations and approval of plans prior to operation.

Methodology –

11.7. *"The PMSC and its accompanying GtGP have been used as the primary guidance to inform the approach to the NRA as the IERRT development will be located within a port environment. We have also, however, as you acknowledge, used relevant supporting processes from the Maritime and Coastguard Agency (MCA), Marine Guidance Note (MGN) 654 (M+F) Offshore Renewable Energy Installations (OREI) Safety Response in addition to its underpinning technical reference, the 'International Maritime Organization (IMO) Formal Safety Assessment'. This is the process that was set out in the PEIR submission for IERRT in January and agreed formally by the MCA when they responded to the IERRT scoping report last year. This was also subsequently discussed at length and presented at the start of the HAZID workshops and we are, therefore, surprised that you state that you are not clear on the methodology being used.*

11.8. *"The HAZID workshop was structured to gather information on marine and navigational through the collection of data that informs risk ranking through application of severity. In the Workshop it was explained how risks in the HazLog would be ranked following the workshop based on all information received; this was also followed up with explanation through other correspondence. As requested within the workshop, the 5x5 matrix which displays risk severity categories was presented. This is a widely accepted and well-tested methodology for conducting HAZID workshops and is in full accordance with the PMSC and the GtGP. The process of a HAZID workshop using Subject Matter Expert input to derive risk-based outcomes, followed by Navigational Risk Assessments and future risk controls has been used on multiple port-based NRAs including the Wylfa Newydd Nuclear Power Station DCO. We strongly refute any suggestion that the methodology has been 'cherry picked'".*

Risk assessment tool –

11.9. *"We do not agree with the assertion that "ABPmer* [ABP's navigational risk consultant] *have chosen not to use any recognised marine assessment tool". There are a number of risk assessment methodologies in use today and ABPmer has chosen to use a transparent and fully open risk assessment tool which employs a process for risk assessment of marine navigation in a busy port environment. As mentioned above, ABPmer's methodology is based on the PSMC and its associated GtGP which together are the primary guidance for ports. In the context of a new port development, the methodology adopted must be entirely aligned to the UK national standard for running a safe port operation. This guidance is detailed in the PMSC and the GtGP.*

11.10. "*The methodology and Risk Assessment tools adopted for the IERRT project comply with all of the aforementioned guidance and policy."*

Duty holder and descriptors – no measure of ALARP? -

11.11. *“Your understanding of the role of the Duty Holder is incorrect and the role, far from being subjective as you suggest, is entirely one of objectivity. We apologise if this has resulted from an overly simplified explanation at the most recent HAZID workshop.*

11.12. “*The project is within Immingham Harbour's Statutory Harbour Authority (SHA) port environment and is subject to independent audit by an external body for port marine safety, with assurance provided by the Designated Person to the ABP Harbour Authority and Safety Board (HASB) as Duty Holder. The adjacent SHA (Humber Estuary Services) is an independent statutory entity and is also responsible under the PMSC for operating to the national standard. Additionally, HES has responsibility as a Competent Harbour Authority (CHA) for pilotage services within both SHAs. As stated in the PMSC the Duty holders are (accountable for safe and efficient marine operations" (DfT 2016) and therefore have ultimate responsibility for managing marine risk.*

11.13. *"The degree to which potential adverse effects arising from the any development can be tolerated – during both construction and consequent operation - will ultimately be defined by the HASB. The HASB is constituted specifically to review and consider issues of health and safety and marine compliance. It is the HASB which is the " Duty Holder" under the Port Marine Security Code – thus ensuring continuity of responsibility regardless of change in personnel. Further, in compliance with the PMSC it is the HASB which is accountable for ensuring that risk has been properly assessed.*

11.14. *"The HASB will be fully informed as to all of the potential hazards and risks identified and determined as part of the HAZID workshop exercise. The HASB will also be presented with such mitigation options as are considered relevant (as define din the HAZ logs), undertaking a Cost Benefit Analysis with a view to reducing the risk (for each hazard) to a tolerable level. The hazards will be assessed in terms of frequency and four consequence areas: property damage, environmental damage, business damage and casualties. The process of a Cost Benefit Analysis will meet the description of how 'ALARP' is met in the GtGP.*

11.15. *"As well as the Duty Holder's responsibilities which fall to the HASB, both the Harbour Master and the Dock Master will have to be satisfied with the outcome of the HAZID Workshop and consequent NRA if they are to perform their statutory duties and obligations, which include the safe navigation of vessels."*

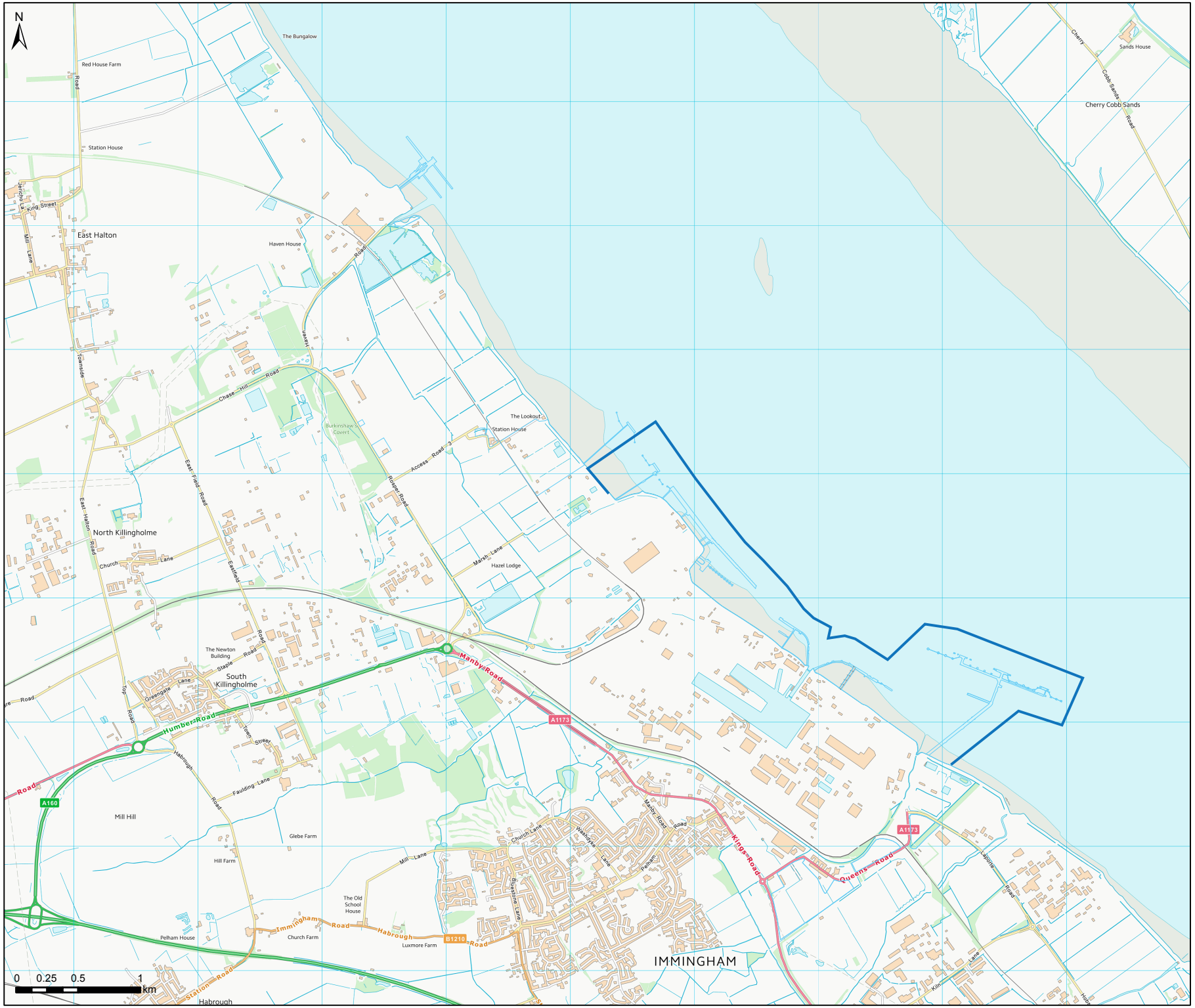
12. Conclusion

12.1. Whilst the separation of obligations, responsibilities and duties in the context of navigation in the wider River Humber and separately within the Humber ports may at first sight seem confusing, the practical reality is that ABP, in its various capacities on the Humber – and indeed as the UK’s leading port operator – does undeniably understand the complexities of port operations and navigational safety.

12.2. As explained above, ABP has taken care over the years to ensure that not only does it comply fully with both the legal regulatory navigational/marine but also

all regulatory guidance - a case in point being the PMSC – in relation to all 21 of its Ports and in the context of the Immingham Eastern Ro-Ro development, the Port of Immingham.

Appendix 1: Port of Immingham – Statutory Harbour Authority Boundary



Legend

Port of Immingham - Statutory Harbour Authority Boundary

Date	By	QA
21/12/2022	NM	PR
Projection	British National Grid	
Scale (A4)	1:40,000	
Project no.	17/G/66-8	
Fig3_17G66-8_Immingham_SHA_A4		

IMMINGHAM EASTERN RO-RO TERMINAL

STATUTORY HARBOUR AUTHORITY BOUNDARY

Figure 3

Appendix 2: General Directions for Navigation in the Humber

(No. S.H. 1)

GENERAL DIRECTIONS FOR NAVIGATION IN THE HUMBER

MARINERS ARE REMINDED of the existence of **GENERAL DIRECTIONS FOR NAVIGATION IN THE HUMBER (NO. 1)** issued as a Notice to Mariners, No. H.41/1974 which continues to remain in force. The contents of this notice are repeated below:-

"Except where the context otherwise requires, references in the following General Directions to the British Transport Docks Board should by virtue of the Transport Act, 1981, be read as references to Associated British Ports.

British Transport Docks Board ("the Board") in exercise of their powers under the British Transport Docks Act, 1972, and having carried out consultations required by the said Act and otherwise give the following directions to vessels in the Humber -

1. **Interpretation**

In these Directions -

"Harbour Master" means a person appointed by the Board in pursuance of Section 5 (Appointment of Harbour Master) of the British Transport Docks Act 1972 and includes the deputies and assistants of the person so appointed;

"the Humber" means and includes -

a) so much of the River Ouse as is within the limits of improvement as defined by Section 3 of the Ouse (Lower) Improvement Act 1884;

b) the River Trent below the south side of the stone bridge at Gainsborough;

c) the River Humber and estuary thereof from the confluence of the Rivers Ouse and Trent to the seaward limits of the Humber Pilotage District as prescribed by Article 1(c) of the Humber Pilotage Order 1922 as amended by the Humber Pilotage (Amendment) Order 1970; and

d) all navigable havens and creeks of the River Trent below the south side of the said stone bridge and the River Humber or of the estuary thereof wherein the tide flows and reflows;
but does not include any part of the Old Harbour or haven at Hull.

2. Duty of Masters of Vessels

It shall be the duty of the Master of a vessel to which any of these directions applies to comply with such directions.

3. Time of Arrival

a) Where a vessel to which this direction applies intends -

i) to enter and navigate the Humber from the sea, OR

ii) to navigate the Humber with the object of leaving the estuary or of moving from one dock or river berth to another dock or river berth the vessel shall give notice of this intention to the Board not less than 24 hours in advance or within 1 hour of departure from the last port of call where such port of call is not situate within the Humber whichever is the later.

b) This direction shall not apply to a vessel that does not ordinarily navigate seaward of the Humber, but shall apply to every other vessel having a gross registered tonnage of more than 50 tons.

4. Prohibited Waiting in the River

a) No vessel shall at any time wait in the Humber except in a designated anchorage area.

b) In this direction "designated anchorage area" means an area designated by the Harbour Master as an anchorage area, notice of such designation of which has been published by the Board in a Notice to Mariners.

5. **Prohibited Anchoring**

a) No vessel shall at any time anchor in a fairway, except -

i) in an emergency; OR

ii) for the purposes of manoeuvring; OR

iii) when anchoring in a designated anchorage area.

b) In this direction fairway means a navigable channel of the Humber which is a regular course or track of shipping.

c) Designated anchorage area has the meaning assigned to it in the foregoing direction.

6. **Navigation in Poor Visibility**

At a time of poor visibility due to the weather or the presence of dust or smoke any vessel which is directed by the Harbour Master not to move in the Humber shall not so move without the permission of the Harbour Master.

7. **Commencement**

These directions shall come into operation on the 1st June, 1974.

GENERAL NOTES

Responsibility of Owners of Vessel

1. The owner of a vessel to which a General Direction is given should take all reasonable steps to ensure that the Master of the vessel is informed of the Direction and understands its significance.

The following notes are based on the British Transport Docks Act, 1972 and apply to all General Directions for Navigation in the Humber.

Responsibility of Master of Vessel

2. The giving of a general or special direction shall not diminish or in any other way affect the responsibility of the Master of the vessel to which the direction is given in relation to his vessel, persons on board, its cargo or any other person or property. (British Transport Docks Act, 1972, Section 11).

Failure to Comply with Directions

3. The Master of a vessel who fails to comply with a general or special direction shall be guilty of an offence and liable to a fine not exceeding two hundred pounds.

It shall be a defence to the Master of a vessel charged with such an offence to prove that he had reasonable ground for the supposing that compliance with the direction in question would be likely to imperil his vessel or any person for whom he is responsible or that in the circumstances compliance was impracticable. (British Transport Docks Act, 1972, Section 12)".

CAPT. P.P. HAMES
HARBOUR MASTER, HUMBER

1st January 2001

Appendix 3: H.98/2023 Sunk Dredged Channel – Least Available Depth, Shoal Water and Ruling Depth

HUMBER ESTUARY SERVICES

NOTICE TO MARINERS

No. H. 98/2023

R I V E R H U M B E R

SUNK DREDGED CHANNEL – LEAST AVAILABLE DEPTH, SHOAL WATER AND RULING DEPTH

MARINERS ARE WARNED that a survey carried out on the 31st July 2023 indicates that a Least Available Depth (LAD) of 8.1 metres below Chart Datum exists in the Sunk Dredged Channel in the following area(s): -

Depths of less than 8.8 metres below Chart Datum have encroached up to 5 metres into the Southern edge of the channel from 440 metres upstream of the P7 Light Buoy to 510 metres downstream of the P9 Light Buoy.

MARINERS ARE ADVISED **that 8.8 metres below Chart Datum is the Ruling Depth for the Sunk Dredged Channel and as such this figure should be used for passage planning purposes.** In addition, Notice to Mariners No. H. 95/2023 is hereby cancelled.

CAPT. A. FIRMAN
HARBOUR MASTER, HUMBER

1st August 2023

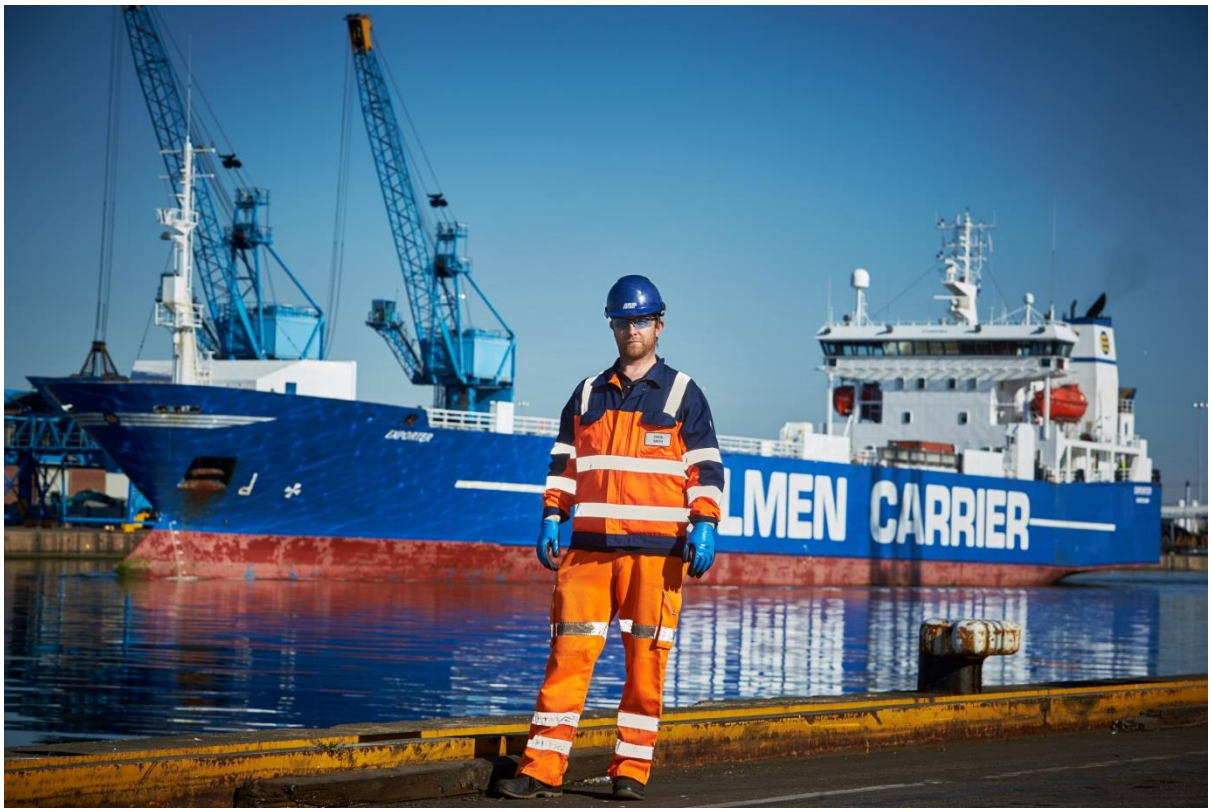
THE INTERNET

In order to widen communication between ABP Humber Estuary Services and those with an interest in the estuary, you are invited to visit our website which carries a wide range of information, including current live weather and Buoy positions, charts, tidal information and copies of this and other Notice to Mariners.
www.humber.com

Appendix 4: Marine Safety Plan 2020-2023

Port Marine Safety Code
Marine Safety Plan

2020 – 2023



Reviewed March 2020

Introduction

ABP has committed to comply with the requirements of the Port Marine Safety Code (PMSC), which includes the publication of a Marine Safety Plan.

This safety plan is one component of a comprehensive (strategic level) Marine Safety Management System (MSMS), and serves to support the continuing improvement of all aspects of ABP's marine safety performance, and ongoing compliance with the PMSC.

The plan is intended to cover a rolling three year period, but will be refreshed and checked for continuing relevance on an annual basis.

1 Marine Policy

ABP has published a Marine Policy, confirming the Duty Holder's commitment to compliance with the PMSC. The latest version of the policy can be downloaded from the corporate marine web site (www.abpmarine.co.uk). This policy is supported by additional marine policies covering training and VTS provision, as well as other corporate policies, particularly health and safety.

2 Continuous Improvement Plan

ABP has also published a continuous improvement plan, which outlines the *process* adopted to ensure that the Group continues to improve compliance with all aspects of the Port Marine Safety Code. The Continuous Improvement Plan supports this Marine Safety Plan (See Appendix)

3 Marine Procedures

Operational procedures within the ABP Marine function are described in the ABP Group Port Marine Operational Procedures Manual and supported at each port / marine location by local manuals detailing procedures which are specific to each site. All such manuals are reviewed on a regular basis by the respective marine managers.

Together, the policy and procedures outline those activities which have been identified as necessary to ensure the safe and efficient management of marine activities in all of our ports, and making best use of ABP's statutory powers and responsibilities.

Such activities may be divided into those that are established and ongoing (or routine) in their support of PMSC compliance, and those which are additional (or temporary) management targets seeking to ensure continuous improvement in Port Marine Safety.

4 Established Marine Activities

Marine safety activities are divided between those undertaken at group level, and those undertaken at the ports:

The following activities are the responsibility of the Marine Advisor, and are undertaken on behalf of the Duty Holder to cover all ports:

- Production and review of top level MSMS documentation. (Policy and manuals).
- Ownership and maintenance of the system (MarNIS) used for identifying hazards and assessing marine risks, and recording and analysing marine incidents.
- Providing training (via ABPmer), advice and guidance to ensure that all locations consistently proactively review risk assessments for all identified marine hazards and when required, identify control measures to mitigate those risks to an acceptable level of ALARP (As Low As Reasonably Practicable).
- Provision of guidance on consistent incident investigation.
- Sourcing supplies and services (such as safety equipment, oil spill response contractors, and training) which will contribute to consistent compliance with the PMSC, as well as deliver value for money.
- Providing, through regular internal and external audit, oversight of PMSC compliance on behalf of the Duty Holder, and identify improvement opportunities for all ABP locations through sharing of best practice.

Furthermore, the following activities will normally be ongoing at each port location and will be the responsibility of the local Marine Management Team (with appropriate support from the Marine Advisor):

- Regular marine management team meetings.
- Creation and review of marine risk assessments using MarNIS, and reporting of incidents / carrying out investigations.
- Regular consultation with harbour users ("Stakeholders") by means of Port User Group Forum meetings or similar.
- Training of marine staff in line with the Marine Training Matrix group standards.
- Production of, and exercising of emergency plans.

5 Management Targets for Continued Improvement ("Marine Safety Plan")

The targets on the following page support the ongoing improvement plan for the ABP Group of ports. This plan is owned by the Marine Advisor on behalf of the Duty Holder.

Ports may have additional improvement plans covering local issues, but this plan aims to address high level improvement targets which will benefit all locations, and fulfils the requirement of the PMSC for the Duty Holder to maintain a "Marine Safety Plan"

Target #	Description	Target	Time Scale
1	Keep KPIs under review and introduce new / relevant KPIs as appropriate	Monitor KPIs and review as required.	Annually
2	To ensure consistent application / implementation of the MSMS across all ports	Successful annual internal audit at each location	Annually
3	Review Marine Policy	Annual or as required by external factors	Annually
4	Review Marine Operations Manuals	Annual or as required by external factors	Ongoing throughout year (verified by audit)
5	Improve level of Potential Incident Reporting	To achieve a group wide ratio of two potential reports for every actual incident report made via MarNIS	End 2023
6	Harbour Directions	One port to have made and issued Harbour Directions	End of 2020 (cost benefit analysis, liaison with Heads of marine to determine any priority ports)
7	Consolidated Port Operational Procedures Manuals	All ports to evidence a working synergy between Group updates being received and local interpretation being documented in the Marine SMS	Ongoing throughout year (verified by audit)
8	To volunteer for at least one MCA Health check per year	Formally contact MCA Ports Liaison Lead annually	Annually
9	Continue to maintain a focus on mitigations around the use of Dangerously Weighted heaving Lines and defective pilot ladders	Ensure data around these incident categories are captured and reported through to MCA, engage with ships crew, and where possible support enforcement / penalty actions	Ongoing (to be reported to Harbour Board meetings four times a year)

Appendix – Continuous Improvement Plan

ABP as Harbour Authority for 22 separate Statutory Harbour Areas seeks to continuously improve the Authority's compliance with the requirements of the Port Marine Safety Code, and reduce all foreseeable risks associated with ABP's marine operations to the lowest practical level (ALARP).

This Continuous Improvement Plan outlines the *process* used to monitor ongoing compliance and facilitate continuous improvement towards best practice in marine operations across ABP group ports

The improvement plan will be cyclical in nature and follow the sequence below:

#	Task	Detail
1	Plan Audit Schedule	Draft and issue in early January (via a Marin Advisors Notice) the audit schedule / plan for the year, including any specific themes that will be a focus during during the year
2	Undertake Audits	Conduct audits at ports according to the above plan. Follow up previous action points, themes identified at other ports, or by external bodies (MCA / MAIB). Provide support and guidance as required.
3	Establish action points	As a result of the audit, establish action points and areas for improvement. Also identify areas of best practice for sharing with all other ABP Ports
4	Report	Produce a written report containing visit findings within a reasonable time period, and clearly summarise any actions that the port is recommended / required to take to ensure improvement.
5	Keep "Work Plan" and "Marine Safety Plan" up to date	Maintain a constantly updated database of actions / areas of best practice with due action dates and details of who is responsible for completing actions.
6	Promulgate outcomes	Ensure that all ports are made aware of key improvement points and areas of best practice by appropriate means (For example, MA Notices, Conference presentations, updates to Group MSMS, etc)
7	Regularly follow up action progress	Regularly review due dates of identified actions and prompt those responsible to feedback what has been achieved, closing out actions before due date. Proactively follow up any actions not complete by due date.
8	Repeat Cycle Annually	