

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

Immingham Eastern RoRo Terminal DCO Application

Responses to the Examining Authority's First Written Questions

and

Action Points arising from Issue Specific Hearing 1 (ISH1) and Issue Specific Hearing 2 (ISH2)

on behalf of

CLdN Ports Killingholme Limited

1. **INTRODUCTION**

1.1 This document comprises the responses by CLdN Ports Killingholme Limited (“**CLdN**”) to:

1.1.1 the Examining Authority’s written questions and requests for information (“**ExQ1**”) issued on 7 August 2023 [**PD-010**];

1.1.2 Hearing Action Points arising from Issue Specific Hearing 1 (“**ISH1**”) dealing with matters relating to the draft Development Consent Order held on Monday 25 July 2023 [**EV2-004**]; and

1.1.3 Hearing Action Points arising from Issue Specific Hearing 2 (“**ISH2**”) dealing with matters relating to the Need Case and Environmental Statement held on Thursday 27 July 2023 [**EV2-004**].

1.2 With respect to the responses to Hearing Action Points arising from ISH1 and ISH2, this document comprises the responses to the actions due at Deadline 2 (5 September 2023). CLdN’s responses to the Hearing Action Points arising from ISH1 and ISH2 due at Deadline 1 were included as “post-hearing notes” in the following respective documents:

1.2.1 ISH1 Post Hearing Submissions (including written submissions of oral case) [**REP1-024**]; and

1.2.2 ISH2 Post Hearing Submissions (including written submissions of oral case) [**REP1-025**].

2. RESPONSES TO THE EXAMINING AUTHORITY'S FIRST WRITTEN QUESTIONS

Question Ref	Question	CLdN Response
BGC.1.6	<p>Evidence for suitability of an alternative to the Proposed Development</p> <p>Comment on the case made by the Applicant that the National Policy Statement for Ports places the onus for producing evidence about the suitability of an alternative on the person promoting an alternative [paragraph 4.3.5 in APP-040]?</p>	<p>CLdN understands that Question BGC.1.6 relates to Row 7 of Table 4.1 at paragraph 4.3.5 of Chapter 4 (Need and Alternatives) [APP-040]:</p> <p><i>“Potential alternatives to a proposed development should, wherever possible, be identified before an application is made in respect of it. Where, therefore, an alternative is first put forward by a third party after an application has been made, the person considering that application may place the onus on the person proposing the alternative to provide the evidence for its suitability as such, and the applicant should not necessarily be expected to have assessed it.”</i></p> <p>The content of Table 4.1 appears to have been copied verbatim as an extract from paragraph 4.9.3 of the National Policy Statement for Ports (NPSP). In this regard CLdN does not dispute what the extract says and its relevance with respect to the consideration of alternatives. However, specifically with respect to Row 7 of Table 4.1 above, it is clear that this relates to how <i>new</i> alternatives proposed by third parties should be considered <i>following</i> the submission of an application. In the context of CLdN's objection, this guidance is therefore of no real assistance since:</p> <ol style="list-style-type: none"> 1. the Port of Killingholme is not a new proposal that was “first put forward” after an application was made. On the contrary the Applicant is well aware of the Port of Killingholme and has, in general terms, considered it in Chapter 4 (Need and Alternatives) [APP-040]; and 2. in any case, CLdN is not seeking to “put forward” the Port of Killingholme as an “alternative” to the proposed development. Rather the basis for CLdN's objection is that there is <i>no need</i> for the proposed development taking into account the availability of existing capacity / facilities (including but not limited to the Port of Killingholme) and plausible projections for market growth. It is the Applicant's decision to discount the ‘do nothing/do minimum’ and therefore these matters, and in doing so to assert that there are constraints on capacity that the proposed development is stated by the Applicant to address, that form the primary basis for CLdN's objection. <p>CLdN has no further comments to make with respect Row 7 of Table 4.1 other than to emphasise that this policy extract is not relevant in the context of its objection.</p> <p>CLdN would refer the Examining Authority (ExA) to Part 2 of its Written Representation for a fuller summary of its position with respect to the need for, and alternatives to, the proposed development.</p>
NS.1.2	<p>Need for Protective Provisions</p> <p>Expand on the point made at ISH2 that Protective Provisions for Port of Killingholme are needed to cover the eventuality that restrictions on use of the river following a marine accident or incident would affect operations at the Port of Killingholme. (If not already included in written note following representations made at ISH).</p>	<p>CLdN has provided full details of the need for, and scope of, protective provisions at Part 4 of its Written Representation submitted at Deadline 2. This expands on the submissions included as a post-hearing note at pages 5 to 7 of the Post Hearing Submissions (including written submissions of oral case) for Issue Specific Hearing 1 [REP1-024].</p>
NS.1.4	<p>Safety Case and Duty Holder at Port of Killingholme</p> <p>Is there a specific MSMS for the Port of Killingholme and if so, who is the Duty Holder, who is the Designated Person and how does the production and maintenance of that MSMS relate to the duties exercised by the Humber Harbour Master?</p>	<p>There is no specific MSMS for the Port of Killingholme. Where relevant, operations at the Port of Killingholme must comply with the Humber MSMS. CLdN is not involved in discussions with ABP about the MSMS for the Humber and as explained at ISH2, ABP does not publish this (a position that is different to many other harbour authorities). To the extent that matters fall within CLdN's remit, CLdN complies with the Port Marine Safety Code guidance published by the Department for Transport and the Maritime and Coastguard Agency (November 2016): https://www.gov.uk/government/publications/port-marine-safety-code.</p>
SE.1.1	<p>Socio-Economic indirect effects and potential displacement</p> <p>Consultation Report Appendices [APP-034, page 209] responds to comment PI41 made by C.Ro Ports Killingholme (now CLdN) by referring to paragraph 16.8.5 onwards and Table 16.9 of “this ES chapter”, taken to mean [APP-052, ES Chapter 16). Does CLdN accept that relevant indirect affects have been assessed? If not, please clarify the point being made.</p>	<p>CLdN previously commented on the socio-economic effects of the Proposed Development that “there is potential displacement between port areas and employment and economic multipliers, in relation to consideration and assessment on neighbouring port uses e.g., C.RO.”, referring to paragraph 16.8.5 onwards of ES Volume 1 Chapter 16 Socio-Economics. The Applicant's response was that “the assessment includes an allowance for the displacement of employment and wider multiplier effects – see paragraph 16.8.5 onwards of this ES chapter”.</p>

Question Ref	Question	CLdN Response
		<p>CLdN has commissioned economic consultancy Volterra Partners LLP (Volterra) in relation to this Application. Volterra has prepared a report on behalf of CLdN on the need case and economic impacts of the Proposed Development which is included at Appendix 1 to CLdN's Written Representation submitted at Deadline 2 (the Volterra Report). Alongside this report, Volterra has considered the assessments in the sections of ES Chapter 16 [APP-052] indicated in this question and provided the following comments.</p> <p>Volterra notes that the HCA Additionality Guide is used to justify assumptions on displacement, leakage and multipliers. Whilst this guidance has now been withdrawn and replaced by DLUHC's Appraisal Guide, Volterra still considers it reasonable to use the HCA Additionality Guide in places given that it provides more detail on specific assumptions that the DLUHC Guide does not.</p> <p>Broadly, the Applicant argues the following assumptions for both stages of the Proposed Development:</p> <ul style="list-style-type: none"> • Leakage: A factor of 25% leakage is applied to the Grimsby Travel to Work Area ("TTWA") using a suggested assumption in the HCA Additionality Guide. Whilst a more accurate way of assessing leakage would be to analyse Census commuting patterns data, 25% is considered reasonable given that the aim of TTWAs is to define areas where "of the resident economically active population, at least 75% actually work in the area". • Multiplier: A medium multiplier (1.5) is applied to a sub-regional geography (Grimsby TTWA) for both phases of the Proposed Development. This is reasonable and in line with industry standard practice. • Displacement: The Applicant applies a low level of displacement (25%) during both the construction and operational phase employment assessments. This is bullish (i.e., an unusually low and not conservative rate). <ul style="list-style-type: none"> • Construction – the UK construction workforce is currently constrained, meaning that workers utilised for this project might have otherwise been utilised elsewhere. When considering this alongside the fact that workers might be displaced from potential expansion opportunities at Killingholme to the Proposed Development (if permitted), the displacement factor used by the Applicant is likely on the low side. • Operation – similarly, the Volterra Report has shown that if the Proposed Development is consented, it is likely that a lot of throughput at the Proposed Development would be accounted for by Stena's existing two services that have historically been located at Killingholme. There is no acknowledgement of the likelihood that jobs could be displaced from existing port operations in the Humber and relocate to the Proposed Development within the socio-economics chapter. <p>Whilst the Applicant's displacement assumptions are bullish, particularly in the operational phase, they broadly align with industry practice and Volterra would not expect any minor adjustment to these assumptions to fundamentally alter the employment estimates in the socio-economics assessment presented by the Applicant. However, the high magnitude of impact placed on operational phase employment increases at the Grimsby TTWA geography. First, paragraph 16.8.92 appears to still refer to construction phase employment impacts when concluding on the operational phase employment effect. It also states that the creation of 176 net additional jobs created in the Grimsby TTWA would have a high magnitude of impact (and hence moderate beneficial and significant effect). For context, the Grimsby TTWA currently supports 82,000 jobs (Office of National Statistics, 2022. Business Register and Employment Survey 2021), meaning that these 176 jobs would be equivalent to an uplift of 0.2%. This is clearly not a high magnitude of impact, and as a result it is a stretch to say that this operational employment effect is significant. The more pressing issue for the Examining Authority to consider is whether there is an overall economic need for additional freight capacity in the Humber, which is a more important consideration than the relatively low level of any additional jobs created by the Proposed Development.</p>
BGC.1.4	<p>Central Government Policy and Guidance</p> <p>Are you aware of any updates or changes to Government Policy or Guidance relevant to the consideration of this application that have been made since it was submitted? If yes, what are those changes and what implications, if any, would they have for the consideration of the Proposed Development?</p>	<p>The Secretary of State for Transport announced on 14 March 2023 that the NPSP was to be reviewed: Review of the national policy statement for ports - GOV.UK (www.gov.uk). The review is to include "...a thorough examination of the modelling and forecasts that support the statement of need for development, and the environmental, safety, resilience, and local community considerations that planning decisions must take into account".</p> <p>In confirming the review, the Secretary of State for Transport confirmed that "...the existing national policy statement for ports will remain in full effect during the period of the review. Any current or upcoming applications for development consent will be assessed under the current national policy statement for ports."</p> <p>Taken together, and in line with transitional arrangements in other draft national policy statements (for example the draft NPS-EN1 published on 3 April 2023) the national policy statement that will have effect for the purposes of determining the IERRT DCO application is likely to be the NPSP designated in 2012. However, if a draft version of the new NPSP is published prior to the determination of the IERRT DCO Application (as appears likely) CLdN considers that this must be a matter that is "...important and relevant to the Secretary of State's decision" (s104(2)(d) of the Planning Act 2008). The weight to be applied to the draft NPSP would be a matter for the Secretary of State but, taking into consideration the passage of time since the designation of the current NPSP, as well as recent DCO decision-making where a draft NPS has been published, the weight that may be attached to the new NPSP could be significant.</p> <p>The UK Government published the <i>Future of Freight: a long-term plan</i> in June 2022 which identified the actions that need to be taken in five priority areas in the freight and logistics sector: the national freight network; the transition to net-zero; planning; people and skills; and data and technology. The Government identified a vision for "A freight and logistics sector that is cost-efficient, reliable resilient, environmentally sustainable and valued by society." The Planning Statement (incorporating Harbour Statement) [APP-019] submitted in</p>

Question Ref	Question	CLdN Response
		February 2023 does not reference the <i>Future of Freight: a long-term plan</i> . As with the publication of a revised draft NPSP, CLdN considers that the <i>Future of Freight: a long-term plan</i> must be a matter that is "...important and relevant to the Secretary of State's decision" (s104(2)(d) of the Planning Act 2008) with the weight to be attached to the Plan in the planning balance being a matter for the Secretary of State.
CC.1.1	Green House Gas (GHG) emission sources considered Are you content with the Greenhouse Gas (GHG) emissions sources considered by the Applicant in the lifecycle GHG Impact Assessment? If not, why not?	CLdN notes that there are no detailed workings which demonstrate how the Applicant has reached the total amount of emissions in Table 19.13 (Construction phase GHG emissions (2024 to 2025)) and Table 19.14 (Operational phase GHG emissions (2025 to 2075)) of Chapter 19 of the ES [APP-055]. Without this information it is not possible to identify if there are any gaps within the generic emission sources stated in Table 19.1 (Potential GHG emissions sources considered for the lifecycle GHG impact assessment). As an example, it is not clear how the Applicant has taken account of movements associated with the loading and unloading of non-accompanied freight within the Terminal itself.
CC.1.2	Climate parameters considered for Climate Change Review (CCR) Are you content with the climate parameters considered by the Applicant in the CCR? If not, why not?	CLdN notes that the Planning Inspectorate on behalf of the Secretary of State recommended that 'Impacts of precipitation and wind from Climate Change Risk review' be scoped into the Environmental Statement, in its scoping opinion dated October 2021 [APP-081]. However, the Applicant has not considered wind speeds as one of the climate parameters for the Climate Change Review. CLdN considers this to be a key point as navigational safety was an issue that was raised at ISH2 and, if storms are increasing in terms of regularity or severity, then this could impact on the safe navigation of vessels.
CC.1.3	Determination of current baseline for climate change Do you consider the desk-based review of information as set out in Chapter 19 of the ES [APP-055] is adequate to determine the current baseline conditions? If not, why not?	CLdN notes that Table 19.10 (Historical climate data for climate station: Cleethorpes, 1981-2010 (Met Office, 2021)) provides some historical climate data recorded by the closest meteorological station to the Proposed Development, however there is no other data provided on existing conditions. The IEMA guidance 'Environmental Impact Assessment Guide to: Climate Change Resilience & Adaptation' identifies that ' <i>...it is not uncommon to describe the existing baseline using historical trends which may not properly account for climate changes which have already occurred</i> '. The guidance outlines that the current baseline should be defined by historic climate conditions and the prevailing conditions at the time of the assessment. This should include looking at recent weather patterns to identify extreme events (e.g. short-term events such as cold snaps, torrential downpours or moderately lengthy events such as drought). It is not clear from Chapter 19 of the ES [APP-055] if and how the Applicant has considered recent weather patterns, including the identification of extreme events.
CC.1.4	GHG emission calculations Do you consider that GHG emissions have been calculated in line with the most up to date available guidance?	According to section 19.2 (references) of Chapter 19 of the ES [APP-055], the GHG emissions have been calculated in line with Publicly Available Specification (PAS) 2080 (British Standards Institute (BSI), 2016) and the GHG protocol methodology. However, there is now a revised PAS 2080 (PAS 2080:2023) published in April 2023 which has an expanded scope, new emphasis on whole life carbon and a stronger alignment with the transition to net-zero by 2050. The GHG emissions have not therefore been calculated or updated in accordance with this most up to date available guidance.

3. RESPONSES TO ACTION POINTS ARISING FROM ISH1

Number	Action	CLdN Response
29	CLdN to provide to the Examination information on train paths in relation to their oral submission at ISH1.	CLdN provided details of its legal rights in respect of connecting rail sidings within CLdN's estate to the national network at Post-Hearing Note 6 on pages 10 and 11 of CLdN's Post Hearing Submissions (including written submissions of oral case) for Issue Specific Hearing 2 [REP1-025]. As set out therein, CLdN has the right to 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. However, 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. Accordingly, CLdN has no further information on train paths to submit to the Examination but seeks to maintain its rail access and related rights, which is set out in more detail in its Written Representation.
30	DFDS and CLdN and Applicant to each to continue their dialogue concerning Protective Provisions outside the Examination.	CLdN wrote to the Applicant on 31 August 2023 with full details of the justification for, and scope of, protective provisions that it requires to be included in the final DCO (should the Secretary of State decide to grant the DCO application). A response is awaited at the time of writing.

4. RESPONSES TO ACTION POINTS ARISING FROM ISH2

Number	Action	CLdN Response
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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].	The report that CLdN has commissioned from Volterra Partners LLP provides an independent assessment of future demand on the Humber for Ro-Ro capacity through to 2050 including the anticipated distribution between accompanied and unaccompanied RoRo freight. Volterra's Report is included at Appendix 1 to CLdN's Written Representation submitted at Deadline 2. CLdN's submissions on the need for the Proposed Development, taking into consideration the findings of Volterra with respect to market demand, are included at Part 2 of its Written Representation.
8	Provide for the Port of Killingholme historic data for Ro-Ro freight volumes for at least the last 10 years with explanatory note.	CLdN's data on RoRo freight volumes for the last 10 years and associated comments are presented in Table 5.1 of the Volterra Report included at Appendix 1 to CLdN's Written Representation submitted at Deadline 2.
37	Provide a commentary on any significance the Proposed Development would have for the delivery of the proposed Humber Freeport.	In CLdN's view the Humber Freeport does not have a significant bearing on the Proposed Development. CLdN agrees with the Applicant's response to this action in its Written Summary of Oral Case at Issue Specific Hearing 2 [REP1-009], and adds that the "knock-on" benefits that the Freeport area may have in terms of attracting new facilities that may require port services would equally apply to existing facilities on the Humber, such as the Port of Killingholme.