

## CLdN PORTS KILLINGHOLME LIMITED

### WRITTEN REPRESENTATION IN RELATION TO THE PROPOSED IMMINGHAM EASTERN TERMINAL RORO DEVELOPMENT CONSENT ORDER

#### 1. INTRODUCTION

1.1 This Written Representation is submitted on behalf of CLdN Ports Killingholme Limited (Company Registration Number 00278815) of 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU (CLdN). It is further to CLdN's Relevant Representation [RR-007] which provides background to CLdN and its interest in the development consent order application (the **DCO Application**) for the Immingham Eastern Terminal RoRo (the **Proposed Development** or **IERRT**) and builds on oral hearing and written submissions made in accordance with the Examination timetable and Examining Authority procedural decisions to date.

#### *Summary*

1.2 For the reasons set out in this Written Representation and the supporting market analysis study and report prepared by CLdN's appointed economic consultants, Volterra Partners LLP included at Appendix 1 (the **Volterra Report**), CLdN maintains its in-principle objection to the Proposed Development.

1.3 On the issue of future market growth, CLdN broadly agrees that there will be growth in the freight market generally and on the Humber. However, it has not been possible to fully interrogate the Applicant's assessment of that growth due to a lack of transparency in its approach to modelling. However, despite the difficulties in understanding the model, it has been possible to carry out a high-level review of the methodologies and approaches taken by the Applicant to the assessment of future growth and the Proposed Development's contribution to meeting the stated growth. These can be found in the Volterra Report, particularly at paragraphs 5.8 to 5.25.

1.4 In light of that review, CLdN does not agree with several key aspects of the project need case presented by the Applicant, in particular:

1.4.1 the Applicant's assessment of existing and future capacity of CLdN's Killingholme terminal, and other terminals on the Humber;

1.4.2 the use of an unrealistic dwell-time metric of 2.25 days which distorts those capacity calculations;

1.4.3 the optimistic level of growth presented; and

1.4.4 the operating parameters assumed for IERRT and its ability to meet its stated maximum throughput of 660,000 units per annum, which CLdN contends is not practically possible.

1.5 CLdN's view is that its own analysis demonstrates that the character of the Proposed Development is simply the relocation of Stena's existing services to Immingham rather than responding to forecast growth in the market; and that the Applicant's need appraisals and other information cannot and do not support any alternative conclusion.

1.6 Accordingly, CLdN submits that, taking into account the relevant policy context, the potentially significant adverse environmental impacts of the IERRT and the availability of alternatives, it is evident the Proposed Development is not:

- 1.6.1 “sustainable” port development (as required by the National Policy Statement for Ports (26 January 2012) (**NPSP**), in particular paragraphs 1.2.4 and 3.3.1); or
- 1.6.2 “desirable” harbour development in the sense contemplated by Regulation 6(3) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (**the APFP Regulations**).

*Structure of this Written Representation*

- 1.7 This Written Representation comprises five parts further to this introduction (**Part 1**), followed by associated conclusions:
  - 1.7.1 **Part 2:** CLdN’s comments and analysis of the Applicant’s need case, particularly to substantiate CLdN’s introductory submissions at paragraph 1.2 to 1.6 of this Written Representation. Part 2 refers to the Volterra Report (see Appendix 1);
  - 1.7.2 **Part 3:** CLdN’s comments and analysis of the Applicant’s draft Development Consent Order (the **DCO** or the **Order**) submitted at Deadline 1 [**REP1-004**], the detail of which is set out at Appendix 2;
  - 1.7.3 **Part 4:** CLdN’s submissions on the inclusion of protective provisions for its benefit in the final DCO. Notwithstanding that CLdN maintains an in-principle objection to the Proposed Development, this information has been included to assist the Secretary of State in making the final DCO, should he decide to grant the DCO Application;
  - 1.7.4 **Part 5:** CLdN’s position with respect to its other grounds of objection raised in its Relevant Representation dated 19 April 2023 [**RR-007**]; and
  - 1.7.5 **Part 6:** CLdN’s analysis of the legal and policy framework that underpins the DCO Application.
- 1.8 In addition, the plan at Appendix 3 shows the layout of the Killingholme estate, with shaded areas represented as follows:
  - 1.8.1 grey shading – existing Killingholme terminal operating land;
  - 1.8.2 yellow shading – land with benefit of level storage consent (ref: PA2020/1483);
  - 1.8.3 blue shading – other land in the control of CLdN affiliated companies. This land does not currently have any specific consent, but could be made available for port storage;
  - 1.8.4 green shading – land allocated for the North Killingholme Power Project; and
  - 1.8.5 red line – the Killingholme Branch Line (Network Rail).

**2. PROJECT NEED**

- 2.1 At the outset, CLdN must make clear that its objection does not relate to the principle of market growth in the RoRo sector; or to the principle of providing additional RoRo freight capacity on the Humber estuary. It is not in dispute that the demand forecasts indicate that the demand for unutilised RoRo freight will increase between now and 2050 and that, in any event, the NPSP (the primary policy basis for the determination of the DCO

Application) makes clear “...that the provision of sufficient sea port capacity will remain an essential element in ensuring sustainable growth in the UK economy”<sup>1</sup>.

- 2.2 At Issue Specific Hearing 2 on 27<sup>th</sup> July 2023, and throughout the Environmental Statement: Volume 1, Chapter 4 (Need and Alternatives) [APP-040] (ES Chapter 4), the Applicant has asserted that there is “...an imperative need to provide additional appropriate Ro-Ro freight capacity within the Humber Estuary in order to meet the growing and changing nature of demand, and thereby strengthen the estuary’s contribution to an effective, efficient, competitive and resilient UK Ro-Ro freight sector”<sup>2</sup>. In addition, the Applicant reported in paragraph 4.2.67 of ES Chapter 4 that there is a “clear and urgent” need for the Proposed Development.
- 2.3 CLdN has therefore responded to the Applicant’s case on the need in this Written Representation. The primary basis for CLdN’s objection is that the need case as presented by the Applicant (in ES Chapter 4 and Environmental Statement: Volume 3, Appendix 4.1: Market Forecast Study Report [APP-079] (the **Market Study**)) is not substantiated and/or is not credible. In particular:
- 2.3.1 the Applicant has significantly understated the storage capacity of existing port infrastructure to address a perceived market demand by using inaccurate information about existing static capacity combined with inaccurate assumptions about average dwell time (2.25 days);
- 2.3.2 the Applicant has not explained the ability of IERRT to meet any of the identified growth, let alone achieve an annual throughput of 660,000 RoRo freight units that is proposed. The case presented by the Applicant is one of urgent need; however, even if such need were to exist, which is disputed, the Applicant has not explained how the Proposed Development is capable of meeting it; and
- 2.3.3 the future need for new RoRo capacity on the Humber (or elsewhere in the UK) has been conflated with the operational preference of one existing operation, which could comfortably be accommodated within existing facilities on the Humber both now and as the market grows in the future.
- 2.4 As a result, CLdN does not believe that the Applicant has shown that there is an imperative and urgent need for the Proposed Development; or that (even if there were) it represents an effective and efficient (and indeed the ‘only’) way of addressing that need.
- 2.5 CLdN fundamentally disagrees with the Applicant’s conclusion that “...the solution to meeting this need within the Humber Estuary can only be met via the provision of additional suitable berths and supporting landside storage capacity in a suitable location. Existing Ro-Ro facilities and capacity on the Humber Estuary cannot meet the need which has been identified” (paragraph 4.2.81 of ES Chapter 4) and that “...the only potential solution to meeting the need and objectives which have been identified is the provision of new Ro-Ro freight capacity within the eastern extent of the Port of Immingham” (paragraph 4.3.93 of ES Chapter 4).
- 2.6 CLdN seeks to show that these assertions are not correct, or at the very least that there is sufficient doubt surrounding them such that they should be afforded limited weight.
- 2.7 As a result, CLdN believes that it is reasonable for the Secretary of State to conclude that the Proposed Development is not needed and therefore fails to support the policy

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<sup>1</sup> NPSP, paragraph 3.1.4

<sup>2</sup> ES Chapter 4, paragraph 4.1.3

objectives in the NPSP. It must follow that limited or no weight should be applied to those elements of the Applicant's case for the Proposed Development.

- 2.8 The remainder of this Part comprises three sections:
- 2.8.1 **CLdN services:** a summary of CLdN's services including corrections to the information set out in ES Chapter 4 and the Market Study;
  - 2.8.2 **Capacity:** CLdN's comments and analysis as to the existing and available capacity to support RoRo freight movements in the Humber estuary; and
  - 2.8.3 **Market demand:** CLdN's comments and analysis as to the nature and extent of plausible market demand for additional RoRo freight capacity within the Humber estuary and the ability of the Proposed Development to contribute to a plausible market demand.

### **CLdN services**

- 2.9 Part of the CLdN Links group, a European integrated port, shipping and freight forwarding operator, CLdN is the owner and operator of the long-established RoRo terminal at Killingholme operating 24 hours a day and seven days a week, servicing an average of 5.5 scheduled RoRo ferry sailings a day from/to the continental ferry ports, including, but not limited to, lines operated by its affiliated shipping line, CLdN RoRo, and by Stena line.
- 2.10 Killingholme is one of the UK's major North Sea RoRo terminals and alongside the ABP facilities at Immingham and Hull, CLdN operates a significant portion of existing RoRo freight volumes on the river Humber.
- 2.11 Most RoRo services on the Humber (with the exception of some DFDS services) connect with ports in Belgium and the Netherlands. CLdN RoRo services using Killingholme connect to Rotterdam and Zeebrugge, as do DFDS' services. Stena line's services also originate from Rotterdam (Hoek van Holland and Europoort), as do P&O's services into Hull. As such, there is broad crossover between these services, which serve broadly the same market.
- 2.12 Paragraph 4.2.38 of ES Chapter 4 and Table 6.3 of the Market Study state that Killingholme handles shipping lines originating from Gothenburg, Esjberg, Leixoes and Santander (ports in the CLdN network). This is factually incorrect – there are no such services.
- 2.13 CLdN, as both a port operator and shipping line, is uniquely placed to provide accurate information about existing and future capacity and, specifically, the ability of that capacity to address an increase or change in market demand on the Humber.

### **Capacity**

- 2.14 This section of this Written Representation is to be read in conjunction with Section 4 of the Volterra Report, which provides further evidence and detail on and in support of the points raised below.
- 2.15 The cornerstone of the Applicant's need case is the lack of existing and future capacity to address a perceived market demand for unaccompanied RoRo freight. The Applicant's key conclusions with respect to capacity are set out below:

- 2.15.1 *“...the analysis demonstrates that the available capacity is highly utilised and the key facilities at Immingham and Killingholme are operating at or near their efficient capacity”<sup>3</sup>;*
  - 2.15.2 *“As explained further in Appendix 4.1, however, there is currently very little, if any, available spare capacity of the right type available on the Humber Estuary”<sup>4</sup>; and*
  - 2.15.3 *“Existing facilities and capacity on the Humber Estuary are unable to meet the need and objectives which have been identified”<sup>5</sup>.*
- 2.16 CLdN disagrees with these statements, which it contends are based on flawed assumptions and inaccurate information. In fact, CLdN considers that when these deficiencies are corrected, it becomes clear that the capacity constraints identified by the Applicant simply do not exist.

#### *Berths*

- 2.17 Paragraph 4.3.70 of ES Chapter 4 states that *“five of the six available berths at Killingholme are currently actively used”* and that *“From the analysis provided in Section 6.4 of Appendix 4.1, the active berths at the facility are, however, already heavily utilised by RoRo vessels...The analysis indicates that effectively three berths (increasing to four on occasion) at the facility are needed to ensure that the current Ro-Ro services operating from the facility can maintain their sailing schedules”*.
- 2.18 With reference to page 20 of the Volterra Report, these assumptions are incorrect and present a misleading impression as to available capacity today at Killingholme to support growth in the RoRo sector, based on the following:
- 2.18.1 there are six berths at Killingholme. Until cessation of the Stena Europoort service, a maximum of four berths were in use for regular sailings: two for CLdN (for the Rotterdam and Zeebrugge lines) and two for Stena (for their Hoek and Europoort lines);
  - 2.18.2 the allocation of berths is flexible (which is important for efficient operation), but the typical allocation now is Stena’s Hoek route on Berth 1, CLdN’s Zeebrugge route (the Delphine or Celine: 8000 lane metre vessels) on Berth 3, and smaller CLdN vessels on Berths 2 and 4;
  - 2.18.3 if Stena’s Hoek service leaves Killingholme, e.g. because of the Proposed Development, Killingholme will have four spare berths out of six; and
  - 2.18.4 it is correct that Berth 6 is not dredged at present. This is because it is not currently required. However, relevant MMO consents are in place to do so as part of CLdN’s ongoing maintenance dredging regime.
- 2.19 The Applicant states that *“...the nature of the vehicle import trade is such that vessel arrivals are more ad hoc and less predictable than the tightly scheduled nature of Ro-Ro services”<sup>6</sup>* and that Killingholme *“...accommodates vehicle carrier vessels around these RoRo sailings”<sup>7</sup>.*

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<sup>3</sup> ES Chapter 4, paragraph 4.2.43

<sup>4</sup> ES Chapter 4, paragraph 4.2.45

<sup>5</sup> ES Chapter 4, paragraph 4.3.24

<sup>6</sup> ES Chapter 4, paragraph 4.3.70

<sup>7</sup> ES Chapter 4, paragraph 4.3.70

- 2.20 There are no “*ad hoc*” vessel calls in operation at Killingholme for vehicle import and exports. All automotive imports and exports are handled by CLdN’s unaccompanied RoRo vessels which are capable of handling containers, tankers, trailers and automotive units. There are no additional car carriers.<sup>8</sup> The Applicant is also incorrect to state that there are only automotive imports at Killingholme. Exports are also handled.
- 2.21 It is incorrect for the Applicant to state that “*the active berths at the facility are extensively used with apparent limited ability for substantial additional use*”<sup>9</sup>, and that “*at [both Killingholme and Port of Immingham] there appear to be limited berthing windows available to accommodate a new service*”<sup>10</sup>.
- 2.22 Even if CLdN were to handle *ad hoc* car carriers or other additional services, there would still be sufficient berth capacity. In any case, regular scheduled services always take priority.

*Storage capacity*

- 2.23 Paragraph 4.3.73 of ES Chapter 4 states about Killingholme that “*...whilst there may be opportunities to provide an incremental increase in storage provision in some way within the current footprint of the facility, there does not appear to be any opportunities for substantial expansion within the footprint of the facility.*”
- 2.24 This is incorrect. Current operational land at Killingholme (for freight storage and operations) is 830,000 square metres, as shown in grey shading on the plan at Appendix 3. In addition, there are 323,000 square metres of expansion land, which includes the land in yellow and blue shading on the plan at Appendix 3. If all available land were used by the Terminal, total land area would be over 1,150,000 square metres (as set out in the summary table below).

<b>Port of Killingholme/CLdN Land Availability and Use</b>		
Existing Operations		830,000 m2 / 83 ha
Level Storage (extant planning permission)		221,000 m2 / 22.1 ha
Available (no express permission)		102,000 m2 / 10.2 ha
<b>Total Land available</b>		<b>1,153,000 m2 / 115.3 ha</b>

- 2.25 In addition, the Applicant has used a desk-based methodology, utilising Google Maps, that miscalculates the available number of trailer bays and container ground slots currently available at Killingholme, as shown in Table 4.1 of the Volterra Report.
- 2.26 To put this in context, the Applicant’s Environmental Statement: Volume 1, Chapter 2 Proposed Development [APP-038] (ES Chapter 2) indicates that the total land area of the Proposed Development is 38 hectares<sup>11</sup> and the allocated operational storage land is approximately 28 hectares<sup>12</sup>. This means that the majority of the storage facilities comprising part of the Proposed Development could be accommodated entirely within available expansion land at Killingholme – with land to spare and without impacting on existing storage.
- 2.27 As an overriding point, storage facilities at Killingholme are determined by what is required from a flexible port estate at the time, taking into account volumes and dwell

<sup>8</sup> This will be seen on the ASI. There are no additional car carriers. This information is available from the Harbour Master/VTS

<sup>9</sup> ES Chapter 4, paragraph 4.3.70

<sup>10</sup> Market Study, paragraph 120

<sup>11</sup> ES Chapter 2, paragraph 2.3.10

<sup>12</sup> ES Chapter 2, paragraphs 2.3.33 to 2.3.40

times. It is a commercial decision of the port operator. Part of the mix of cargo at Killingholme is automotive trade units. These are stored at the perimeter of the site in the compounds furthest from the berths because they are the most mobile cargo. However, it is not the case, as the Applicant contends, that container/trailer storage is limited to the blue hatched area in Market Study Figure 4.3<sup>13</sup>. In short, storage land at Killingholme is flexible, with significant, expansion areas that can be deployed as needed depending on the commercial priorities, demand and need.

- 2.28 The Applicant has assumed that the blue hatched<sup>14</sup> 32.9 hectares storage area it estimates to be available at Killingholme is limited to use for an estimated 950 to 1790 trailer slots<sup>15</sup>. However, if Killingholme expanded fully into available land under the control of CLdN group companies (115 ha), there would be capacity for up to a maximum of 6,500 trailer slots and 1,800 containers – see paragraph 4.6 of the Volterra Report.
- 2.29 ES Chapter 4 also states, with reference to Killingholme, that “*no RoRo storage currently takes place in the south/south-western part of the facility beyond the railway line. It is suspected that this may well be due to the distance to the berths and the inefficiencies that could be generated in moving such cargo to and from the berths*”<sup>16</sup>. This statement is correct to the extent that currently no RoRo cargo storage takes place in this area. This is because there is sufficient storage space in the areas to the north of the railway line. However, there is no operational reason why trailers, given their mobile nature, could not be stored on the other side of the railway line if that were required.
- 2.30 It is clear that proximity of storage and handling areas to the berths increases efficiency, but if demand requires more trailer and container storage, Killingholme can be adapted to handle that without a material impact on efficiency. In particular, there is significant available storage land around the blue hatched area on Market Study Figure 4-3 for RoRo trailer and container storage, which if used for additional cargo storage would not be materially less proximate to the berths. There are also operational solutions to handling additional storage land beyond the existing area, including deploying more tugs to handle cargos or using different container handling modes such as Rubber Tyred Gantry (**RTG**) or Rail Mounted Gantry (**RMG**) stacks.
- 2.31 In any case, storage compounds on the perimeter of Killingholme are all significantly closer to the berths at Killingholme than the southern compound at the Proposed Development.
- 2.32 Paragraph 4.3.74 of ES Chapter 4 states that “*...large parts of the Killingholme terminal form part of the site [of the North Killingholme Power Project]*”. That is not correct. The land allocated for the North Killingholme Power Project (**NKPP**), a Nationally Significant Infrastructure Project with the benefit of an approved Development Consent Order, is shaded green on the plan at Appendix 3. Whilst it is the case that the Order land for NKPP includes other land beyond the green shaded area, those parts of the development are not currently proposed to be progressed as they were for an Integrated Gasification Combined Cycle mode (essentially the land for the gasification facility) which is not proposed to be built out.

#### *Capacity assessment*

- 2.33 The basis for the Applicant’s assessment of capacity is a dwell time, relative to its assessment of available landside storage capacity. Although CLdN agrees that dwell time is a key factor in assessing capacity, CLdN considers that the values applied by the Applicant are not justified and lead to inaccurate under-assessments of available

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<sup>13</sup> Market Study, paragraph 96

<sup>14</sup> Market Study, Table 4-2

<sup>15</sup> Market Study, Table 8-2

<sup>16</sup> ES Chapter 4, paragraph 4.3.72

capacity. As shown in Section 4 (particularly paragraphs 4.7 – 4.14) of the Volterra Report, adjustments to the dwell time can make a significant difference to available capacity.

#### Dwell times

- 2.34 The Applicant's assessments are based on a 2.25 days' average dwell time<sup>17</sup>. It is not clear to CLdN why the Applicant has chosen this value because, in CLdN's experience, this is not typical for most RoRo cargo originating from the Belgian and Dutch ports; or for the type of cargo carried by Stena's Hoek van Holland service in particular. In CLdN's experience, dwell times are typically between 1 and 1.5 days for such cargo, which was endorsed by DFDS at Issue Specific Hearing 2 (ISH2)<sup>18</sup>. Moreover, the Applicant has suggested that dwell times on the Humber have been increasing and will continue to.<sup>19</sup> CLdN also does not recognise a generalised trend to increased dwell times either and there is no explanation in the Market Study to support those assertions.
- 2.35 In this regard, the sensitivity analysis of capacity utilisation at Table 8-3 of the Market Study is flawed in that it applies a range of 1.75 to 3.5 days dwell time for freight on the Humber. Sensitivity tests are then applied in Table 8.3 of the Market Study, yet a variation of only 0.5 days lower is tested against a variation of up to 1.25 days higher, biasing the results presented in Table 8-3 towards implying a higher dwell time and thus lower capacity for unaccompanied RoRo in the Humber ports, as explained in paragraph 4.5 of the Volterra Report. A minimum dwell time of 1.75 days is a high starting point for determining the average dwell time for time sensitive cargo.
- 2.36 The Market Study does not provide any explanation, by reference to the specific operations and cargo types at each terminal, for these averages. The average dwell time at Killingholme for all cargo is 1 to 1.5 days, as detailed in Table 4.1 of the Volterra Report. Moreover, these dwell times for CLdN and Stena are being achieved at established facilities on the Humber. If a new facility were to be developed, such as the Proposed Development, a minimum dwell time that is longer than those existing facilities for comparable services, and barely below the average for far-slower services, fails to provide any kind of useful response to any degree of increased market demand or limitation on capacity and would not support a productive and efficient economy.

#### Capacity relative to dwell time

- 2.37 The 2.25 day dwell time assumption noted above has been used to underpin the baseline capacity figures for all estimated assessments in the ES; and in particular for the assertion that there are capacity constraints, which will materialise imminently, meaning that the Humber (and specific ports) will not be able to accommodate extra growth in demand. CLdN's view is that this suggested constraint on capacity is not supported and is therefore not credible.
- 2.38 As a consequence of the dwell time metric applied by the Applicant, the Applicant's assertions on capacity are at odds with CLdN's data. For example, Table 4-4 'Summary of Ro-Ro Capacity on the Humber' of the Market Study shows an efficient capacity utilisation at the Port of Immingham of 68%, and the Port of Hull of 27%, i.e. under efficient operational conditions. These terminals are currently operating with significant spare capacity. Likewise, Table 4-5 'Sensitivity of the Estimated Capacity Utilisation Based on Increasing Dwell Times' shows that the Port of Immingham retains spare capacity at 74% using a 2.5 days' dwell time and 90% at 3 days' dwell time. The Port of Hull does not exceed 34%. The Market Study makes assumptions of capacity utilisation

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<sup>17</sup> Market Study, paragraph 115.

<sup>18</sup> See page 103 (recording time 01:31:30.080 to 01:32:05.360) of the Transcript of Recording of Issue Specific Hearing 2 (ISH2) Part 1 [EV3-004].

<sup>19</sup> Market Study, paragraph 183.b.



which are not clearly based on evidence and makes inconsistent assumptions about dwell time. CLdN instead refers to Table 4.1 of the Volterra Report, which shows the revised capacity for Killingholme and shows that the Applicant's assessment of capacity constraints at Killingholme is incorrect. As explained in the Volterra Report, these errors result in the current capacity at Killingholme being underestimated by the Applicant by between 64% and 164%. Once combined with capacity at the other Humber ports, this results in an underestimate of existing capacity of between 21% and 77%. Similarly, Table 4.2 shows the revised capacities for the Port of Immingham and the Port of Hull.

- 2.39 The assumptions are also illogical in the context of the figures applied by the Applicant in its market analysis. As demonstrated in Table 4.4 and paragraph 4.23 of the Volterra Report, if the Applicant is using a 2.25 day dwell time figure, it is estimated that the Applicant would only be able to accommodate around 195,000 unaccompanied RoRo units yearly. This is far below the 660,000 RoRo units claimed and proposed by the Applicant, which would in fact require a 0.92 day dwell time to accommodate its targeted 475,000 unaccompanied RoRo units yearly. This is covered in further detail in paragraphs 2.48 and 2.49 of this Written Representation below.
- 2.40 In short, dwell times impact the capacity of ports: port operators earn revenue from cargo throughput, not from storing cargo on the terminal for longer than is necessary. Cargo allowed to dwell inhibits capacity for additional throughput. It is a commercial decision to allow cargo to dwell for long periods, rather than being an operational necessity, but CLdN does not see any commercial or operational reason why the Applicant would choose deliberately to increase dwell times at this terminal to 2.25 days given the impact on operating revenue.
- 2.41 As shown above, the Applicant's assessment of the actual storage capacity at Killingholme is incorrect. CLdN contends that the use of a 2.25 dwell time is also inaccurate. Consequently, the Applicant's projections for storage capacity constraints on the Humber are not correct.
- 2.42 The paragraphs above, alongside Volterra's conclusions at page 10 of the Volterra Report, demonstrate the issues with the Applicant's assessment of the available existing capacity on the Humber. In CLdN's view the constraint on capacity suggested by the Applicant is simply not supported and therefore: (a) a correction to the study should be undertaken to reflect the facts and evidence; and then (b) all reliant assessments re-run and outcomes reconsidered and tested in the Examination.

#### *IERRT throughput*

- 2.43 IERRT is stated as having a throughput of 660,000 RoRo units per annum in the Applicant's Planning Statement (incorporating Harbour Statement) [APP-020] (the **Planning Statement**)<sup>20</sup>. According to the Applicant, that figure sits well within the anticipated growth in volumes on the Humber.
- 2.44 By subtracting current Stena volumes (220,000 units) from the 660,000 stated capacity of IERRT (leaving 440,000 units), the Applicant and Stena are indicating that, through IERRT, Stena will absorb approximately 52% of the projected growth on the Humber, i.e. 440,000 units.
- 2.45 The ability of IERRT to accommodate such growth depends on two factors:
- 2.45.1 the ability of Stena to capture such market growth; and
  - 2.45.2 the actual operating capacity of IERRT.

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<sup>20</sup> Planning Statement, paragraph 3.40

### The ability of Stena to capture such market growth

- 2.46 Dealing with paragraph 2.45.1, a change from Stena's existing average Humber volumes over the past 8 years (which CLdN notes is 170,000-200,000 per annum) compared to the new projection of 660,000 per annum is a very significant change in market share. The DCO Application does not contain any information to demonstrate how Stena might capture this growth, and its strategy for doing so. Likewise, it ignores any capacity constraints at the relevant EU ports (assumed to be Hoek and Europoort) – without being able to deliver the capacity at those ports, the capacity of IERRT is irrelevant if the EU ports serving IERRT cannot operate to deliver such an increase in capacity. This is an important omission by the Applicant.
- 2.47 It follows that if Stena does not capture additional market share, then the claimed capacity benefits of IERRT may not be realised. It is of material importance that IERRT will not (so far as CLdN understands) be an open port facility; rather, it will be for Stena's exclusive use<sup>21</sup>. The ability of IERRT to deliver additional capacity would therefore always be reliant on Stena capturing additional market share. In addition, and in accordance with paragraph 3.15 of the Volterra Report, the Applicant's expansion to control a larger market share as a port operator on the Humber estuary as a result of the Proposed Development does not align with or support the NPSP's explicit support for competition within the freight industry.
- 2.48 Turning to paragraph 2.45.2, on the operating capacity of IERRT, the DCO Application uses an average dwell time of 2.25 days in its calculations. Table 4.4 in the Volterra Report demonstrates two scenarios to examine the actual capacity at IERRT with a dwell time of 2.25 days and a dwell time of 0.92 days. The scenario of a 2.25 day dwell time shows an actual annual throughput of only 194,926 unaccompanied RoRo units, which is lower than Stena's current total volumes for its Europoort and Hoek services.
- 2.49 In order to achieve a throughput of 660,000 with the split of unaccompanied and accompanied cargo identified by the Applicant in its documentation (see paragraph 4.19 of the Volterra report), the dwell time would need to be reduced significantly – see Table 4.4 of the Volterra Report, where a figure of 0.92 days' dwell time is given as the figure required. In CLdN's experience, such a low dwell time is not achievable across all different types of freight, except in the short-term on specific services. Achieving such dwell times across the board and consistently over time would also be contrary to the Applicant's concern that dwell times are at risk of increasing<sup>22</sup>, rather than reducing.
- 2.50 In addition, achieving a 660,000 annual throughput would involve carrying a high proportion of accompanied units, which would be operationally challenging for the reasons set out later in this Written Representation and inconsistent with paragraph 28 of the Market Study, which states that accompanied volumes are set to decrease.
- 2.51 The assertions about the throughput are, therefore, not supported by the measures used by the Applicant to assess existing capacity, or the market trends it asserts will drive future growth and demand. There is a disconnect between the evidential basis for need and reality of the capacity of IERRT.

### The actual operating capacity of IERRT

- 2.52 In addition, the actual operating parameters (aside from dwell times) indicate that it would be challenging and novel to operate IERRT in such a way so as to achieve a throughput of 660,000 units.

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<sup>21</sup> See further discussion at paragraphs 15-18 of Appendix 2 (Applicant's comments on the draft DCO) to this Written Representation.

<sup>22</sup> Market Study, paragraphs 83.b.II and 183.b.

- 2.53 A throughput of 660,000 RoRo units per annum equates to 452 units per sailing, using 4 vessels and operating 365 days a year (including Christmas Day and other public holidays). To put this in context, in June 2023, the Stena Hoek service carried 183 units per vessel, which is consistent with average volumes referred to above.
- 2.54 The high throughput proposed is not achievable for the following reasons:
- 2.54.1 it relies on Stena operating all three berths for services without any contingency. It is a sensible assumption that the third berth would be for contingency, not for an additional service, otherwise if a berth is out of service because of maintenance, or a ship is laid up, there would be no availability for the displaced service;
  - 2.54.2 it also requires an additional fourth service to arrive at IERRT in the evening. Currently all services to the Humber arrive in the morning and leave in the afternoon. There are no afternoon arrivals because there is no demand for such a service and CLdN's view is that such demand is unlikely. Units arriving on an evening sailing would be likely to sit until the morning for collection, no different from units arriving on a morning service. Stena's Europort service at Killingholme was not daily;
  - 2.54.3 the market experience (including from CLdN) is that there are peaks and troughs in volumes throughout the year. These can be seasonal (e.g. the run-up to Christmas is a high volume period) or weekly, such as the weekend. Stena currently drops sailings at the weekend, so it makes more efficient use of less full vessels. CLdN does the same: at weekends, the largest vessels (Delphine and Celine) are switched onto the Zeebrugge-Dublin route. It is not cost-effective, and there is no market or commercial reason, to run a less-full ship during periods of low freight demand;
  - 2.54.4 vessels do not sail full. As shown at paragraph 4.33 of the Volterra Report, vessel utilisation can vary between 50% on quieter off peak sailings to up to 80% on peak time sailings. There is no reason to believe that vessels serving IERRT would operate differently from the rest of the market unless there was a major constraint in vessel capacity/availability. There is however significant over-capacity in shipping lines. This is why some operators (e.g. P&O for its Hull – Zeebrugge service) have removed lines;
  - 2.54.5 in order to carry 452 units on a ship (or more), Stena would need to operate only the largest RoRo vessels. The Market Study acknowledges the current maximum vessel size as being 8,000 lane metres<sup>23</sup>, as per the Delphine and Celine services operated by CLdN. As the Market Study explains, such vessels are considered to represent a "*realistic compromise*"<sup>24</sup> between economies of scale and flexibility and efficiency of deployment, and for this reason it is considered that it is unlikely that vessels will grow significantly beyond this size. More significantly, operators are unlikely to operate a fleet comprising only the largest vessels. This is borne out by the fact that operators have not moved their fleets to this model. CLdN itself is evidence here in that it operates a fleet of mixed vessel sizes that are sized to the appropriate demand and can also be reallocated to routes should demand change. Aside from being extremely expensive, such alternative one-dimensional fleets would have no flexibility, not be cost effective and would not be responsive to market demand; and

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<sup>23</sup> Market Study, paragraph 17.c.

<sup>24</sup> Market Study, paragraph 131.c.

- 2.54.6 it is also material that Stena's current vessels are not capable of carrying 452 units, in particular the RoPax vessels used on the Hoek service are not designed to carry any additional unaccompanied units, and their capacity is constrained by providing driver accommodation.
- 2.55 In conclusion, it is CLdN's view that the changes to operating parameters explained above in order to achieve 660,000 units per annum throughput are not feasible within the terms of the Application and assessment promoted by the Applicant.

### *Summary*

- 2.56 The Applicant's case is based on based on a very high dwell time of 2.25 days, compared to actual dwell times of 1.5 days, as discussed above at paragraphs 2.34 – 2.36 of this Written Representation. Stena cargo is typically fast moving, containing perishables, meaning this suggested dwell time is unrealistic, meaning that the capacity assessment set out by the Applicant is also flawed and an underestimate of existing capacity. CLdN refers to paragraph 4.8 of the Volterra Report for further detail on this point.
- 2.57 The stated annual throughput of 660,000 units is not achievable when utilising the Applicant's assumptions around dwell time, even if Stena grows its market share. In this respect, IERRT does not deliver material additional capacity and the Proposed Development should properly be seen as the relocation of existing capacity (with some room for growth) and not by itself a development that is imperatively and urgently needed to meet future projected freight demand.
- 2.58 Further, IERRT is proposed on the basis of unsustainable capacity, in terms of how it would, or would not, be possible to operate IERRT to achieve a 660,000 RoRo units per annum throughput.
- 2.59 Lastly, another key consideration in respect of realistic throughput is Stena itself. If Stena does not increase the size of its vessels or change its operations, then it cannot deliver more throughput. In addition, its operational flexibility to increase growth is constrained by the size of the other terminals it operates in, for example Hoek van Holland and Europoort, and there is no indication or evidence of an intention to operate out of other locations.

### **Market Demand**

- 2.60 This section of this Written Representation is to be read in conjunction with Section 5 (Demand for Freight) of the Volterra Report, which provides further evidence and detail on the points raised below.
- 2.61 In paragraph 4.2.67 of ES Chapter 4, the Applicant refers to a "*clear and urgent need for a new facility of the appropriate kind somewhere on the Humber Estuary*". The Applicant also contends that, by 2050, unaccompanied RoRo units handled on the Humber Estuary will double from 746,000 (in 2021) to 1,580,000<sup>25</sup>, which is an increase of 834,000.
- 2.62 As set out at the summary of Future Market Demand and Throughput on page 32 of the Volterra Report, whilst the Market Study's overarching approach to producing future freight forecasts is not fundamentally challenged by CLdN, the GDP forecasts used to underpin the study's forecasting model could be considered bullish when compared to other publicly available forecasts, and past trends of growth in GDP. This would have the impact of the Market Study having over-estimated future growth in freight in the

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<sup>25</sup> ES Chapter 4, paragraph 4.2.15

Humber. Analysis presented in the Volterra Report shows that forecasts might be overstated by in the region of around 20% over the longer term. In essence, the use of GDP represents only one tool for forecasting, which in itself is subject to sensitivities that can significantly alter growth projections. CLdN particularly refers to paragraphs 5.8 to 5.25 of the Volterra Report for further detail on this.

- 2.63 Projecting growth based on compound GDP is a limited tool – it does not include any assumption of low growth or recession, or reduced consumer spending, and it is not rooted in an analysis of the UK’s freight needs and consumption patterns.
- 2.64 As set out above, whilst CLdN expects there to be growth in the Humber, the Applicant’s assessments are unduly optimistic and therefore require further testing and explanation through the Examination – see paragraph 5.8 of the Volterra Report for CLdN’s requests for further transparency. In particular, no alternative growth scenarios have been presented taking into account other indicators of economic growth or activity.
- 2.65 Lastly, the Volterra Report at paragraph 4.13 provides three scenarios (low, medium and high) of revised storage capacity in the Humber, which are tested and compared to the Market Study’s estimate. These show that if a more realistic figure for capacity is used (i.e. in the ‘high’ scenario, deemed to be most likely by Volterra and CLdN), based on realistic dwell times, there is in fact capacity to meet the demand suggested by the Applicant. In any event (i.e. in the ‘medium’ or ‘low’ scenarios), any capacity problems would occur much later down the line (beyond 2030 and likely into the 2040s), and therefore there is certainly no “urgent need” for the Proposed Development, as suggested by the Applicant.

### 3. **COMMENTS ON THE DRAFT DCO SUBMITTED AT DEADLINE 1**

- 3.1 Further to its oral submissions at Issue Specific Hearing 1 on 25<sup>th</sup> July 2023, the Applicant submitted a revised draft Development Consent Order at Deadline 1 on 5<sup>th</sup> September [REP1-004]. CLdN has reviewed the revised DCO but retains serious concerns regarding the lack of precision in the drafting which prevents clear determination of the Proposed Development’s parameters, should the application be granted.
- 3.2 The Examining Authority is referred to Appendix 2 for further comment and analysis of the revised DCO.

### 4. **REQUIREMENT FOR DCO PROTECTIVE PROVISIONS**

#### *Navigational and road traffic related protections*

- 4.1 Due to navigational activity and controls on the Humber, the Proposed Development could (given the common usage of these transport corridors and in the event of an incident at the Proposed Development) have a significant adverse impact on CLdN’s operations and business continuity including its scheduled services. The Proposed Development may also have significant construction and operational stage impacts on the road network that could be detrimental to CLdN’s operations.
- 4.2 These impacts are either:
- 4.2.1 known and exist by virtue of the information contained in the Applicant’s Environmental Statement but are not the subject of any (or at least adequate) control measures that are secured in the DCO [REP1-005] to mitigate them; or

- 4.2.2 unknown by virtue of weaknesses in the Applicant's Environmental Statement including optimistic assumptions that downplay the conclusions in, amongst other documents, Environmental Statement Chapter 10 (Commercial and Recreational Navigation) [APP-046] and supporting Appendix 10.1 Navigational Risk Assessment [APP-089], Chapter 17 (Traffic and Transport) [APP-053], and the supporting Appendix 17.1 Transport Assessment [AS-008]. A consequence of the inadequacy of the assessments is that certain impacts on CLdN's operations, or at least the likelihood of such impacts, and how such impacts may be avoided or otherwise managed and mitigated, is not known (at least with sufficient certainty) at this stage.
- 4.3 As a result of these matters, CLdN must secure protective provisions to safeguard its interests, operations and established operational port capacity. CLdN would also draw the Examining Authority's attention to Part 6 of Schedule 9 to the Able Marine Energy Development Consent Order 2014<sup>26</sup> (the **Able Marine Energy DCO**) which included similar protections to those sought by CLdN in respect of the current DCO Application.
- 4.4 Copies of the North Killingholme Haven Harbour Empowerment Order 1994 and the Humber Sea Terminal (Phase III) Harbour Revision Order 2006 were appended to CLdN's Relevant Representation [RR-007]. The statutory basis that underpins CLdN's operations, and the potential for the Proposed Development to impede or obstruct access to CLdN's statutory undertaking, should be afforded special consideration in the Examination and determination of the DCO Application. That must include special consideration and weight to be given to CLdN's request for the inclusion of protective provisions in the DCO (this being the primary mechanism for the protection of interests held by statutory undertakers).
- 4.5 In seeking protective provisions in the draft DCO, CLdN wishes to ensure that its established and future operations are not adversely affected by the subsequent development of the IERRT facility and that assessed levels and assumptions are not different or exceeded in delivery and operation. That is not only fair and reasonable, but it is also consistent with the 'agent of change' principle embedded in National Planning Policy Framework (NPPF) at paragraph 187:
- "Planning policies and decisions should ensure that new development can be integrated effectively with existing businesses and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have unreasonable restrictions placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a significant adverse effect on new development (including changes of use) in its vicinity, the applicant (or 'agent of change') should be required to provide suitable mitigation before the development has been completed."*
- 4.6 In terms of the nature of the protective provisions that CLdN considers are required, CLdN has said to the Applicant that it will work with the Applicant in seeking to agree measures that CLdN considers are both adequate to robustly protect its interests and operations, and otherwise reasonable and proportionate in all respects (for both parties).
- 4.7 CLdN anticipates that this will include protective provisions related to:
- 4.7.1 notification, consultation and a right of approval by CLdN as to the nature and timing of works details (acting reasonably) and rights for CLdN to impose reasonable conditions related to such works;

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<sup>26</sup> S.I. 2014/2935.

- 4.7.2 a duty to have regard to the potential disruption, delay or congestion of traffic which may be caused to the affected highways or streets within the vicinity of CLdN's undertaking;
- 4.7.3 the submission to, and approval by, CLdN of a construction management protocol to manage construction traffic on the surrounding road network which may affect CLdN's operations;
- 4.7.4 obligations to remedy any accumulation or erosion in consequence of the construction, maintenance or operation of the Proposed Development that is having an adverse impact on CLdN's operations, if requested by CLdN acting reasonably;
- 4.7.5 co-operation provisions, including sharing of information upon request;
- 4.7.6 measures to cease works where there has been, or is likely to be, an adverse impact on CLdN's operations or infrastructure;
- 4.7.7 indemnification of losses or costs, which may reasonably be incurred by CLdN, and can reasonably be attributable to the Proposed Development, by reason or arising in connection with alterations CLdN will be obliged to make to navigational arrangements or the timing of services, or due to accumulation or erosion at CLdN's undertaking, or by virtue of changes CLdN may be obliged to make to dredging disposal arrangements, or any remedial works necessary as the result of contamination being disturbed in, or migrating to, CLdN's undertaking; and
- 4.7.8 clarity and confirmation that nothing in the Order affects or prejudices the exercise of CLdN's functions by virtue of, or under, the North Killingholme Haven Harbour Empowerment Order 1994 and the Humber Sea Terminal (Phase III) Harbour Revision Order 2006.

*Railway protections*

- 4.8 The Applicant has included within its draft DCO the power to carry out work to construct new railway and railway bridges (Work No. 7, Schedule 1 to the DCO [REP1-004]). Whilst it is correct that the section of rail through Immingham is controlled by the Applicant, it then reverts to Network Rail control to the west for the section that runs through the Able Marine Energy Park and then the CLdN site. CLdN has the benefit of legal rights in respect of connecting rail sidings within CLdN's estate to the national network pursuant to the Junctions, Sidings and Works Agreement dated 19th October 1926, Supplemental Agreement dated 11 September 1958 and Sidings Agreement dated 10th October 1967.
- 4.9 Although at present CLdN is not actively using the rail sidings on its estate and does not currently handle rail freight cargos, CLdN retains the option to handle these should this be required by a customer, by preserving its connection agreement and ensuring against any potential impediments to handling future rail freight traffic and maintaining a sustainable and multimodal port offering. Under the above agreements, CLdN can notify Network Rail that it wishes to handle freight trains and Network Rail is obliged to take steps to manage and maintain the rail infrastructure to enable the connections for and transit of freight trains serving the Port of Killingholme. Train paths themselves are not an issue for CLdN, only for the freight (train) operating company providing the rail freight service for the relevant customer. Currently CLdN has no indication that it would be an issue for a freight train operator company to access the Port of Killingholme; and is of the view that other parties using the line are not entitled to diminish CLdN's ability to operate rail freight services given that these are in the control only of Network Rail.

- 4.10 CLdN<sup>27</sup> has the benefit of protective provisions under Part 6 of Schedule 9 to the Able Marine Energy DCO in relation to its legal right to connect to the national rail network, in order to protect this connection right from interference from additional rail traffic potentially associated with that development. Under paragraphs 68 and 69 of those provisions:
- 4.10.1 the undertaker must not exercise its powers under the Order to unreasonably prevent access to the railway for the purposes of CLdN's undertaking; and
  - 4.10.2 the construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use of the railway in connection with CLdN's statutory undertaking.
- 4.11 CLdN considers that it is consistent, reasonable and proportionate to have its legal rights in respect of connecting to the rail network similarly protected with appropriate protective provisions in the DCO for the Proposed Development, should it be granted. CLdN and the Applicant have agreed to further discussion in relation to the principle of the inclusion of Protective Provisions for the benefit of CLdN in the DCO.
- 4.12 CLdN's justification for the inclusion of protective provisions, and details of the protections that CLdN requires, were included in a letter to the Applicant dated 31 August 2023. The Applicant's response is awaited at the time of writing.

## 5. OTHER MATTERS

- 5.1 With respect to the other matters raised in its Relevant Representation [RR-007], CLdN's position is as follows:

### *Traffic and transport, and navigational safety matters*

- 5.1.1 CLdN maintains its objection with respect to the adverse impacts of the Proposed Development on traffic and transport, and navigation and safety matters. CLdN will continue to engage with the Applicant in respect of traffic and transport and navigation and safety matters throughout the remainder of the Examination, with CLdN offering due diligence support. With respect specifically to traffic matters, CLdN will also continue to participate in discussions with the Applicant and DFDS with respect to agreeing the parameters and methodology of the Applicant's traffic assessment (with the most recent meeting on these matters held between the parties appointed traffic consultants on 30 August 2023).
- 5.1.2 CLdN considers that this approach will assist with the efficient management of the Examination by ensuring that multiple objections on the same issues, by parties with similar interests, are presented to the Examining Authority in a comprehensive and consistent manner. This approach will also allow CLdN to best utilise its resources to provide information to the Examination on existing capacity, operational and market matters (which, as set out above, CLdN is uniquely well placed to assist with).

### *Marine ecology, biodiversity and protected habitats*

- 5.1.3 CLdN also maintains its objection on the basis that the Proposed Development could cause significant and irreversible damage to marine ecological receptors, biodiversity and protected habitats. It recognises, however, that it is principally the role of Natural England (as the Secretary of

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<sup>27</sup> Under its former name: C.RO Ports (Killingholme) Limited.



State's statutory adviser on conservation matters) to comment and advise on compliance with the tests under the Conservation (Natural Habitats, &c.) Regulations 2010.

5.1.4 CLdN is aware that discussions are continuing between the Applicant and Natural England as to the provision of information in order to seek to demonstrate compliance with the statutory tests. CLdN notes from the Principal Areas of Disagreement Summary Statement submitted by Natural England at Deadline 1 [REP1-022] that a number of matters have yet to be resolved. CLdN makes no further comment at this time beyond highlighting that:

- (a) it is incumbent on the Applicant to demonstrate to the satisfaction of the Secretary of State (as "Competent Authority") that the Proposed Development will not have an adverse effect on the integrity of the Humber Estuary SPA, SAC and Ramsar Site; and
- (b) it seeks assurance that the above-noted matters raised by Natural England relating to overall impacts and interactions will be further considered and fully addressed.

## 6. LEGAL AND POLICY FRAMEWORK ANALYSIS

6.1 It is important that the legal and policy basis for determining the DCO Application is properly understood, and that CLdN's submissions with respect to need, and in particular its position that the Proposed Development fails to meaningfully address an identified need, are considered in the correct context and afforded appropriate (and CLdN would argue substantial) weight in the decision-making process.

6.2 There is a disagreement between the Applicant and CLdN as to whether and how issues around need should be considered in the Examination. The Applicant's position appears to be that it is not required to establish a need for the Proposed Development and that any interrogation of the Proposed Development's contribution to meeting that need is precluded in light of the decision in *R (ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy* [2020] EWHC 1303 and [2021] EWCA Civ 43 (the **ClientEarth cases**). It is suggested that CLdN's challenge to its need case is an impermissible attack on national policy<sup>28</sup>, but it is not clear from the Applicant's submissions whether its case is that all questions relating to need/contribution are precluded, although this appears to be the argument being made. CLdN's position is that this is an unjustifiably broad reading of the judgments in the ClientEarth cases, which do not stand for the proposition that there is a general prohibition on all questions of need/contribution in DCO examinations and that the way in which need should be dealt with turns on the proper interpretation of the NPSP.

6.3 A question of interpretation therefore arises as to what the NPSP requires in terms of assessing need.

6.4 For the avoidance of doubt, CLdN does not seek to challenge the policy position set out in the NPSP that there is a need for port development and that the starting point is a presumption in favour of granting sustainable port development which responds to the need as identified in the NPSP. To that extent, there is no disagreement between CLdN and the Applicant about the effect of the ClientEarth cases.

6.5 However, as set out in detail below, the starting point in the policy only applies to port development as described in the NPSP and in any event it can be departed from in certain circumstances. The question of the weight to be given to any particular

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<sup>28</sup> See Appendix 6 of the Written Summary of the Applicant's Oral Case at ISH2 [REP1-009].

development's contribution to that need is also left open to the decision-maker. Therefore, notwithstanding the fact that the general question of need has been settled by national policy, the Applicant's case that the Proposed Development is responding to a specific urgent need for port development in the Humber still needs to be understood and tested in order to ascertain whether it complies with the NPSP.

- 6.6 Further, as set out in oral submissions at ISH2, the question of whether there is an urgent need for more capacity in the Humber and whether the Proposed Development responds to the alleged need is relevant to other issues, particularly the question of whether the Proposed Development is "desirable" and whether alternatives are relevant and the weight to be attributed to alternatives.

#### *Need under the NPSP*

- 6.7 The starting point is the NPSP, which is the relevant national policy statement pursuant to s.104(3) Planning Act 2008. The NPSP sets the framework for decision-making and the Examining Authority must decide the application in accordance with the NPSP subject to the exceptions under s.104(4) to (8) of the Planning Act 2008.

- 6.8 The meaning of national policy is a matter for the Court (*Tesco Stores v Dundee City Council [2012] UKSC 13* and *ClientEarth* High Court judgment at 101-104).

- 6.9 Need is addressed in the NPSP in section 3. The Government's general position on need is as follows:

- (a) the NPSP is intended to:

*"...encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity;*

*allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment; and*

*ensure all proposed developments satisfy the relevant legal, environmental and social constraints and objectives, including those in the relevant European Directives and corresponding national regulations."* (NPSP, paragraph 3.3.1);

- (b) capacity must be in the right place if it is to effectively and efficiently serve the needs of import and export markets (paragraph 3.4.11 NPSP). However, the Government does not wish to dictate where port development should occur, and the market is the best mechanism for determining where port development should be. It is up to developers to bring forward applications for port developments where they consider them to be commercially viable. (NPSP, paragraph 3.4.12);
- (c) competition is encouraged (NPSP, paragraph 3.4.12); and
- (d) there is a compelling need for substantial additional port capacity over the next 20-30 years to be met by a combination of

development already consented and development for which applications are yet to be received. (NPSP, paragraph 3.4.16).

6.10 The Guidance to the decision-maker in section 3.5 NPSP provides that:

*“3.5.1 For the reasons set out above, when determining an application for an order granting development consent in relation to ports, the decision-maker should accept the need for future capacity to:*

- *cater for long-term forecast growth in volumes of imports and exports by sea for all commodities indicated by the demand forecast figures set out in the MDST forecasting report accepted by Government, taking into account capacity already consented. The Government expects that ultimately all of the demand forecast in the 2006 ports policy review is likely to arise, though, in the light of the recession that began in 2008, not necessarily by 2030;*
- *support the development of offshore sources of renewable energy;*
- *offer a sufficiently wide range of facilities at a variety of locations to match existing and expected trade, ship call and inland distribution patterns and to facilitate and encourage coastal shipping;*
- *ensure effective competition among ports and provide resilience in the national infrastructure; and*
- *take full account of both the potential contribution port developments might make to regional and local economies.*

*3.5.2 Given the level and urgency of need for infrastructure of the types covered as set out above, the IPC should start with a presumption in favour of granting consent to applications for ports development. That presumption applies unless any more specific and relevant policies set out in this or another NPS clearly indicate that consent should be refused. The presumption is also subject to the provisions of the Planning Act 2008.”.*

6.11 In summary, the framework set out in the NPSP is that:

- 6.11.1 the NPSP does not set out where port development should be brought forward. The Government has left it to developers to decide whether specific development is commercially viable;
- 6.11.2 there is a general need for additional port capacity that responds to the factors set out in 3.5.1 NPSP and the decision-maker should accept that compelling need. The NPSP does not set out a general presumption in favour of granting all port development. The proposed development must meet the description set out in 3.5.1 NPSP interpreted in light of the NPSP as a whole;
- 6.11.3 the starting point is that there is a presumption in favour of granting applications for port development, subject to other policies in the NPS which indicate when consent should be refused; and
- 6.11.4 there is no guidance as to the weight to be given to a particular development's contribution to the identified need.

6.12 Accordingly, properly construed, the NPSP does not preclude examination of (1) the commercial case for the Proposed Development; (2) whether the Proposed Development complies with the description of port development benefitting from the

presumption in 3.5.1 NPSP; (3) whether the presumption in favour of granting the Proposed Development should nonetheless be departed from; and (4) the weight to be given to the Proposed Development's contribution to meeting the established need for port development under the NPSP. It is on these matters that CLdN seeks to assist the Examination.

- 6.13 This analysis is consistent with the decision in *R (Scarsbick) v Secretary of State for Communities and Local Government* [2017] EWCA Civ 787 where the Court of Appeal held that the presumption in the Hazardous Waste NPS for granting consent was not “*automatically conclusive of the outcome of a particular application*” for a DCO (see the Judgment at paragraph 28) and that given the NPS did not prescribe the weight to be given to need, that weight remained to be assessed as a matter of planning judgment in the particular circumstances of each case (see Judgment at paragraph 31).
- 6.14 CLdN's position is that it is clear from reading the NPSP that support for new port development is conditional, and that it is incumbent on the Applicant to properly demonstrate that those conditions have been satisfied. It is only through undertaking that exercise that the decision-maker can determine whether the Proposed Development is “in accordance with” the NPSP, attach weight to the issue of project need and contribution made to that need, and balance that weight against the adverse effects of the Proposed Development.

#### *The ClientEarth cases*

- 6.15 During the course of ISH2, it appeared that the Applicant was suggesting that CLdN's challenge to its need case was impermissible. As set out above, CLdN's case is not an attack on national policy, but instead grounded in the requirements of the NPSP and the framework it sets for considering need. In its submissions at Deadline 1, the Applicant seeks to draw a general principle from the ClientEarth cases that the question of need and the Proposed Development's contribution to that need cannot be interrogated in this Examination. However, the decisions in the ClientEarth cases do not stand for any such general principle. The requirements of each NPS depend on the specific policies contained therein. The Court of Appeal made it clear in its judgment in the ClientEarth case that: “*One must be careful not to read across unjustifiably from the court's interpretation of a different policy in another national policy statement...*” (see paragraph 69). The decision-maker's focus should therefore be on the words of the NPSP and not any other NPS. As set out above, the NPSP permits consideration of issues relating to need in the context of the particular development under consideration.
- 6.16 Even the NPSs considered in the ClientEarth cases did not completely exclude considerations of need and the project's contribution to such need. NPS EN-1 provided that:

*“3.1.3 The IPC should therefore assess all applications for development consent for the types of infrastructure covered by the NPSs on the basis that the Government has demonstrated that there is a need for those types of infrastructure and that the scale and urgency of that need is as described for each of them in this Part.*

*3.1.4 The IPC should give substantial weight to the contribution which projects would make towards satisfying this need when considering applications for development consent under the Planning Act 2008.”*

and

*“3.2.3... The IPC should therefore give substantial weight to considerations of need. The weight which is attributed to considerations of need in any given case*

*should be proportionate to the anticipated extent of a project's actual contribution to satisfying the need for a particular type of infrastructure."*

- 6.17 The question for the High Court and Court of Appeal in those cases was whether the Secretary of State had properly interpreted the requirements of the Energy NPSs EN-1 and EN-2 when considering need. In particular, ClientEarth's argument was that a quantitative assessment of need was required for each individual project. That argument was rejected based on a proper analysis and application of the terms of EN-1 and EN-2. However, the Court of Appeal did not exclude all questions of need from consideration. It made clear that there was scope for the issue of need and a particular project's contribution to it to be considered and assessed. At paragraph 66 of the Judgment it held that:

*"It is with this point firmly established – "substantial weight" should be given to "considerations of need" – that one comes to the final sentence of the paragraph, which concerns decision-making "in any given case". From the sentence itself three things are clear. First, while the starting point is that "substantial weight" is to be given to "considerations of need", the weight due to those considerations in a particular case is not immutably fixed. It should be "proportionate to the anticipated extent of [the] project's actual contribution to satisfying the need" for the relevant "type of infrastructure". To this extent, the decisionmaker – formerly the IPC and now the Secretary of State – may determine whether there are reasons in the particular case for departing from the fundamental policy that "substantial weight" is accorded to "considerations of need". Secondly, the decision-maker must consider this question by judging what weight would be "proportionate" to the "anticipated extent" of the development's "actual contribution" to satisfying the need for infrastructure of that type. These are matters of planning judgment, which involve looking into the future. Thirdly, beyond the description of the decision-maker's task in those terms, there is no single, prescribed way of performing that task, and there are no specified considerations to be taken into account, or excluded. It is not stated that the issue of what is "proportionate" to the proposal's "actual contribution" must, or should normally, be approached on a "quantitative" rather than a "qualitative" basis."*

- 6.18 Therefore, under the Energy NPSs, there was a requirement for the decision-maker to consider the actual contribution of the proposed development to meeting the need established by the NPS. The issue for the Court was whether that assessment had to be carried out quantitatively and the Court held that there was no such requirement in the policy and the way in which the assessment was to be carried out was a matter for the discretion of the decision-maker.
- 6.19 The Court of Appeal then went on to consider the approach taken by the Secretary of State in that case, which was to start with the presumption that substantial weight should be given to the project's contribution to meeting the need for energy infrastructure but to then consider whether the weight should be reduced on the basis of the development's actual contribution (see paragraph 72 of the Court of Appeal Judgment). The Court of Appeal endorsed this approach and rejected ClientEarth's argument that as a matter of law, the exercise had to include a quantitative assessment.
- 6.20 The correct position in law is therefore that it is up to the decision-maker to assess how a project contributes to need in any given case and, subject to any guidance in a particular NPS, it is for the decision-maker to decide what weight to attach to that factor. There is no legal requirement to carry out that assessment in a particular way: in some cases a qualitative assessment will suffice, in others a quantitative assessment may be justified.

- 6.21 Therefore, to the extent that the Applicant appears to suggest that all questions of need are not for this Examination, that is based on an inaccurate reading of the judgments in the ClientEarth cases and the NPSP.

#### *Other Matters*

#### Compliance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (APFP Regulations)

- 6.22 Regulation 6(3) of the APFP Regulations specifies that:

*If the application is for the construction or alteration of harbour facilities, it must be accompanied by a statement setting out why the making of the order is desirable in the interests of—*

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

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

- 6.23 The question of whether the application is “desirable” must therefore be an important and relevant matter pursuant to s.104(2)(d) Planning Act 2008. This requires consideration of the economic case for the Proposed Development and whether it is “efficient and economic”. If, as CLdN argues, the case that capacity is currently constrained on the Humber is overstated, the proposal to build significant additional development which gives rise to the adverse environmental effects that will be considered further in the Examination cannot be “efficient” or “economic”.

#### Alternatives

- 6.24 The NPSP provides that in any case the question of whether alternatives are relevant is a matter of law and detailed guidance falls outside the scope of the NPSP (see paragraph 4.9.1). The position at common law is that, where there are clear planning objections to development upon a particular site it may be relevant and necessary to consider whether there is a more appropriate site elsewhere. This is particularly so where the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need outweighs the planning disadvantages (see *R (on the application of Save Stonehenge World Heritage Site Ltd v Secretary of State for Transport* [2021] EWHC 2161 at 269, citing *Trusthouse Forte v Secretary of State for the Environment* (1987) 53 P& CR 293 at 299-300).
- 6.25 CLdN’s position is that these principles apply to the Proposed Development. As set out elsewhere in this Written Representation and in the representations of other Interested Parties, there are significant planning objections to the Proposed Development. The Applicant’s case is that the compelling need for development of the scale proposed and in the location proposed means that there is no reasonable alternative<sup>29</sup>. The need case advanced by the Applicant is therefore relevant to this issue quite apart from the approach to considerations of need as set out in the NPSP. If, as CLdN argues, the compelling need is not made out due to undue optimism and errors in the Applicant’s assessments, the justification for ruling out reasonable alternatives such as making best use of existing capacity falls away. Therefore, even if the Applicant is successful in its argument that the question of need should not be considered under the NPSP, there remains a requirement to test the Applicant’s case on need when it comes to

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<sup>29</sup> ES Chapter 4, paragraph 4.1.5.

alternatives, at common law and under the Habitats Regulations should it be the case that an adverse effect on integrity of any protected site cannot be ruled out.

## 7. CONCLUSION

7.1 For the reasons set out at Part 2 of this submission, CLdN considers that when the need case is properly examined and tested against the policy in the NPSP, it becomes apparent that it is substantially overstated relative to “real world” capacity assumptions. There is a fundamental (and CLdN would argue, fatal) disconnect between the “imperative need” that the Applicant has asserted<sup>30</sup>, and the proposition put forward that the Proposed Development represents an effective and efficient (and indeed the only) way of addressing that perceived need. The Proposed Development also weakens competition and resilience rather than supporting it. Put another way, the Proposed Development does not meaningfully address the need that is identified in the NPSP. The consequence is that very limited weight can be attached to those aspects of the policy and the related benefits and, when weighed against the adverse effects (particularly, but not exclusively, with respect to navigation and safety risk, traffic and transport impacts, and marine ecology) the Proposed Development is not sustainable port development. Accordingly, it fails to comply with the “fundamental policy” of government under paragraph 3.3.1 of the NPSP, namely to:

*“...encourage **sustainable port development** to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity”.*

7.2 As explained above and in the Volterra Report, the Applicant’s conclusions on capacity cannot be relied upon. The calculations made in the Volterra Report based on realistic dwell time and capacity show that if realistic operational parameters are applied there is no current capacity constraint on the Humber. The same analysis shows that the realistic capacity of IERRT itself is in doubt. Both of these factors seriously undermine the justification that has been put forward for the Proposed Development (that there is a present urgent need for additional capacity which can only be met by consenting the IERRT) and, specifically, the weight that can be afforded to those conclusions in the consideration of conformity with the NPSP and in carrying out the overall planning balance.

7.3 The Proposed Development also fails the test of constituting “desirable” harbour development for the purposes of Regulation 6(3) of the APFP, in that it neither: a) secures the improvement, maintenance or management of the harbour in an efficient and economical manner; nor b) facilitates the efficient and economic transport of goods or passengers by sea.

7.4 For the foregoing reasons, CLdN maintains its in-principle objection to the Proposed Development.

7.5 The DCO Application should be refused.

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<sup>30</sup> See discussion at paragraphs 2.3 – 2.4 of this Written Representation.

**APPENDIX 1**

**MARKET STUDY BY VOLTERRA LLP**



# Needs Case Review

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Market demand and storage capacity on  
the Humber

September 2023

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# 1. Executive summary

- 1.1 Volterra Partners LLP has been instructed by CLdN Ports Killingholme Limited (“CLdN”) to provide an independent study of the market demand and capacity for freight in the Humber. This report provides a critique of ABP’s **market study (ES Volume 3 Appendix 4.1: Market Forecast Study Report)**, which was produced as evidence to demonstrate an ‘identified economic need’ justifying the DCO proposed for the construction of a commercial Ro-Ro facility at the Port of Immingham, to be operated by Stena.
- 1.2 This report focuses on the fundamental issues outlined in the **market study’s** approach to assessing both capacity and demand for freight on the Humber. In our opinion the **market study** underestimates current capacity and overstates likely future demand, to the extent that there is unlikely to be a need for the Proposed Development, especially in the short term. Sensitivity tests are presented and explained in this report to highlight how sensitive capacity and demand scenarios are to a small set of key assumptions. The conclusion that can be drawn from our analysis is that there is conflation of identified economic need for more freight capacity on the Humber with the commercial preferences of both ABP and Stena.
- Capacity on the Humber**
- 1.3 There are three fundamental issues identified in this report with respect to capacity. Firstly, the calculated current static storage capacity at Killingholme outlined in the **market study** is incorrect, particularly for container ground slots where they are significantly underestimated. Secondly, the **market study** does not allow for any expansion in storage capacity at Killingholme in the future, which is something that CLdN intend to bring forward (on their existing available land), providing a potentially more economically efficient solution to meet growing demand. Thirdly, there is a clear inconsistency in the **market study** which results in substantial doubt about the actual potential capacity of the Proposed Development itself.
- 1.4 There are various errors in the **market study’s** estimate of existing capacity which are explained in this report. The assumed length of time that a unit of freight remains landside at the port before being moved elsewhere – the dwell time – is most fundamental. The **market study** uses a claimed ‘industry standard’ average dwell time of 2.25 days. However, no evidence to support this assumption is provided. Freight does not make money when it is not moving. Catering for longer dwell times is a commercial decision rather than a logistical requirement of a port. It is economically efficient to keep dwell times low. Killingholme’s current dwell time ranges from 1 to 1.5 days, depending on the type of freight and the operator. This report tests scenarios for more realistic dwell times and the impact this has upon existing capacity. The conclusion is that existing capacity on the Humber is understated by the Applicant by between 21% and 77%.
- 1.5 The implausibility of the 2.25 day dwell time assumption used in the **market study** is further evident when considering the implication of this lengthy dwell time for storage capacity at the Proposed Development itself. Analysis presented in this report shows that, given the number of trailer bays and container slots allocated at the Proposed Development, an average dwell time of 0.9 days would need to be achieved to accommodate the 475,000 unaccompanied Ro-Ro units that the Applicant states will be the expected throughput (72% of the 660,000 Ro-Ro unit maximum cap, with the remainder assumed to be accompanied Ro-Ro with no dwell time). This is clearly significantly below the 2.25 days used to understate existing capacity, casting substantial doubt on the credibility of this key assumption. With a 2.25 day dwell time, it is estimated that the Applicant would only be able to accommodate around 195,000 unaccompanied Ro-Ro units yearly. If the actual capacity is in fact so much lower than presented this poses further questions for whether the development is actually required to make any substantial contribution towards future need or is instead just a relocation of existing operations from one port to another.
- 1.6 The assertion that there is no further expansion potential at Killingholme is also incorrect. In fact, there is substantial space available for storage capacity to be expanded to meet freight demand at Killingholme in the future. Illustrative scenarios presented in our analysis demonstrate that storage capacity can be

incrementally increased at Killingholme to meet future demand as is required over time. These scenarios allow for Killingholme's capacity to rise to between 1.1m and 1.3m units by 2050.

- 1.7 Furthermore, the Applicant's assertion that there is no spare berth capacity at Killingholme is also incorrect. There is sufficient berth capacity at Killingholme to accommodate existing and future demand, as well as provide resilience. In contrast, the Proposed Development would result in up to four spare berths at Killingholme.

#### **Demand on the Humber**

- 1.8 The **market study** does not transparently set out the model used for estimating future demand for freight. At the national level it refers to a relationship with GDP growth, and at the Humber level it states that future growth is likely above this due to additional factors such as levelling up. However, the level of detail provided does not enable us to formally test alternative scenarios nor critique the parameters or input assumptions.
- 1.9 Due to the lack of detail available to us, the **market study's** overarching approach to producing future freight forecasts is not fundamentally challenged at this stage. The shift away from a goods-based economy as a significant contributor to the UK's GDP does however underscore the need to reassess the factors influencing demand for freight in the UK. A comprehensive forecasting approach should have extended beyond simply GDP to consider relationships with other economic indicators, such as trends in consumer spending, when forecasting future demand for freight in the Humber, at least as a sensitivity analysis.
- 1.10 The GDP forecasts used in the **market study** to underpin the study's forecasting model are bullish when compared to other publicly available forecasts, and past trends of growth in GDP. In our view, forecasts produced by the OBR and the use of historic growth rates for GDP are more reliable metrics to use than Oxford Economics forecasts, which generally tend to be more positive about the economy's future outlook. Whilst the GDP forecasts used are themselves only slightly overstated, this has a significant impact on the demand for freight over the forecast horizon. Future demand 20+ years from now builds up gradually over time and the result is that even relatively modest overestimates of GDP growth each year result in significant impacts over time. Analysis presented in this report shows that forecasts for future growth in freight in the Humber have likely been overstated by around 20% over the longer term.

#### **Is there an identified economic need for more freight capacity on the Humber?**

- 1.11 Even taking the Applicant's demand forecasts for unaccompanied Ro-Ro, combined with the corrected estimates of existing capacity, this report shows that in the worst case capacity is breached much later than the stated 2026 in the **market study** (2031-2044), whilst in the most likely scenario, capacity is in fact not breached at all in the period to 2050.
- 1.12 When comparing the adjusted storage capacity on the Humber following the build out of the Proposed Development with more realistic demand scenarios, it is clear that there is likely to be significant spare storage capacity in the Humber in future years. This is not economically efficient, and casts doubt on whether the Proposed Development actually caters for long term growth or if in fact it just serves to displace freight from Killingholme and create idle capacity.
- 1.13 Our analysis makes it clear that there is available expansion land at Killingholme, which would allow for a more efficient and responsive reaction to future levels of market demand, which are currently uncertain.
- 1.14 The findings presented in this report cast substantial doubt on whether there is in fact an identified economic (not commercial preference) need to deliver more capacity for freight in the Humber region. As well as challenging the fundamental estimates of both capacity and demand as presented in the **market study**, the report also draws attention to the fact that there are likely alternative options for delivering future capacity (if needed) which would be more economically efficient.

## 2. Introduction

### Purpose of this document

- 2.1 Volterra Partners LLP (“Volterra”) has been instructed by CLdN Ports Killingholme Limited (“CLdN”) to provide an independent study of the market demand and capacity for port freight in the Humber region. This independent study is intended to be used as evidence for the Planning Inspectorate to consider in the examination of the Development Consent Order (“DCO”) made by Associated British Ports (“ABP”, otherwise referred to as “The Applicant”) to construct a new in-river three berth commercial roll on / roll off (“Ro-Ro”) cargo and passenger facility with landside storage within the Port of Immingham (“the Proposed Development”).
- 2.2 Volterra is an economic consultancy specialising in the economic impact of major infrastructure and development. We specialise in economic modelling and strategy. We work for both public and private sector clients in understanding the potential effects of proposed developments, infrastructure (mainly transport), specific sectors, and individual policy proposals on the local, regional, and national economy.
- 2.3 This summary report focuses primarily on the economic need for additional freight capacity in the Humber region specifically. Whilst national and regional forecasts are discussed briefly, we reserve the right to provide further comment on the national and regional projections put forward by the Applicant’s team at a later date, should the Inspectors leading the examination require this. The DCO application document that is considered most relevant to this report is the **Environmental Statement: Volume 3: Appendix 4.1: Market Forecast Study Report (hereafter the “market study”)**.
- 2.4 CLdN is providing its own submissions as to whether the Proposed Development aligns with national policy and legal tests. The analysis presented in this report serves as an evidence base to allow CLdN to assess and comment on whether they believe the Proposed Development meets policy tests in the National Policy Statement for Ports (“NPSP”), specifically whether it constitutes “sustainable” port development in terms of being the right development in the right place and responding to a need.
- 2.5 Testing whether there is a need for the Proposed Development to cater for long term growth within this report also responds to Item 5 of the Action List from Issue Specific Hearing (“ISH”) 2, in which the inspectors requested that CLdN provide their expectation for future demand on the Humber for Ro-Ro capacity through to 2050 including the anticipated distribution between accompanied and unaccompanied Ro-Ro freight.
- 2.6 This report uses a series of technical terms specific to the freight industry. A glossary of technical terms is provided for clarity as an appendix to this report – refer to **Appendix – glossary of terms**.

## 3. Background and context

### The economics of freight

#### Relationship of freight with the wider economy

- 3.1 Freight volumes over time have been broadly shown to correlate to some extent with GDP growth and the wider economic performance of a country. Research has shown that higher GDP growth rates are often accompanied by increased trade volumes, indicating a positive correlation between economic prosperity and the movement of goods through ports.<sup>1</sup> With an increase in a nation's GDP comes a rise in consumerism. This surge in demand has a subsequent effect on port freight economics. It necessitates the efficient handling of larger quantities of cargo, lesser dwell times, and enhanced infrastructure capacity. There is a need for ports to adapt to these shifts in trade patterns to ensure seamless freight movement and to capitalise on economic opportunities.
- 3.2 This relationship also works the other way. A report by the World Bank emphasises that an increase in port efficiency within a nation will contribute to higher GDP growth rates as streamlined trade processes and improved logistics performance enhances a country's overall economic competitiveness.<sup>2</sup>
- 3.3 As a result, the rationale for an assumed symbiotic relationship between the indicators of freight volume and GDP is reasonable. Proof of this presents itself in freight elasticity relative to GDP. In developed countries freight elasticity relative to GDP is often around 1.0. This means that a 1% increase in GDP could approximately lead to a 1% increase in freight volumes.<sup>3</sup> In this regard Volterra broadly agrees with the statements made on behalf of the Applicant in the **market study** with respect to drivers of future growth in freight at a national level (refer to the section **Future market demand and throughput** for more detail on this topic). It is, however, noted in this section that the **market study** could have increased the robustness of its forecasting methodologies by testing freight volumes' relationship with other key economic indicators, such as consumer expenditure. This is discussed in more detail later, in the same section of the report.

#### The importance of dwell times

- 3.4 Shorter dwell times for unaccompanied Ro-Ro trailers and Lo-Lo containers means that the operator can be more profitable. Whilst there is a need to accommodate some dwell time to keep landside freight operators (e.g. hauliers) satisfied with a port freight operator's service, there is a financial incentive for ports and their operators to minimise dwell times wherever possible.
- 3.5 Dwell times differ for each type of cargo, for example container, dry bulk, liquid bulk, and Ro-Ro. The dwell times for these types of cargo are influenced by a range of factors. Viewing freight dwell times through the lens of just in time logistics ("JIT") exemplifies the importance of short dwell times. JIT is an idealistic inventory management system that aims to deliver goods immediately before they're needed for the next stage in the logistics process to improve efficiencies.<sup>4</sup> To reach maximum efficiency through the lens of JIT, ports must receive, process, and dispatch cargo effectively. If dwell times are prolonged the synchronisation of the JIT process is disrupted and cost-saving benefits are lost.

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<sup>1</sup> Helpman et al, 2008. Estimating Trade Flows: Trading Partners and Trading Volumes

<sup>2</sup> World Bank, 2019. Connecting to Compete 2018: Trade Logistics in the Global Economy

<sup>3</sup> Dunkerley et al, 2014. Road traffic demand elasticities: A rapid evidence assessment

<sup>4</sup> Vector, 2023. Just in Time (JIT) Logistics, Explained in Detail

- 3.6 Assumptions regarding dwell times are a fundamental input into the Applicant's conclusions about existing capacity. These are challenged in Section **Existing capacity and short term planned growth** of this report.

## Increasing freight demand and port operating models

- 3.7 Historically, an increase in freight demand prompts a shift in port operating models. Ports face the challenge of efficiently handling larger quantities of diverse cargo types. The Ro-Ro operating model is extremely efficient for handling wheeled cargo as it reduces handling time and risk of damage.
- 3.8 The growth in e-commerce and JIT requires ports to be more agile in their operations. Ro-Ro freight results in faster loading and unloading, meeting the time-sensitive demands of certain goods and requirements of modern supply chains.
- 3.9 There are also economic incentives behind a paradigm shift towards the Ro-Ro operating model. For example, if dedicated facilities for wheeled cargo are provided, then a competitive advantage can be created that will attract companies seeking the most efficient solutions for transporting specialised cargo types.
- 3.10 Commercial preferences between unaccompanied Ro-Ro and accompanied Ro-Ro are more nuanced, with many factors underpinning preferences outlined in detail in the Applicant's **market study**. Yet history does show that when ports tend to become capacity constrained from a storage (land) perspective, they are able (in time, noting this is not possible immediately due to vessel types) to shift to a higher proportion of accompanied Ro-Ro freight rather than choose to refuse unaccompanied Ro-Ro freight through the port. It is CLdN's view that broadly there isn't a demonstrated storage capacity issue at this moment in time.

## Uncertainties in forecasting

- 3.11 Whilst economic models are useful tools for forecasting future demand, it is important to note that they are still only models. They rely on key assumptions which will always contain a degree of uncertainty and can therefore not necessarily be considered to accurately represent a future scenario. Such scenarios will change as inputs are revised over time; the likelihood of outcomes changing is increasingly likely when forecasting over longer periods. This uncertainty in all economic modelling highlights the importance of sensitivity testing, to understand how specific inputs (assumptions) to economic models impact the results. Throughout this report we highlight the significant impact that realistic changes in input assumptions have upon the conclusions. This demonstrates that there is considerably more uncertainty that the Proposed Development is required to meet a future need than is implied in the Applicant's **market study**, which presents conclusions on an identified need for the Proposed Development with a certainty that simply does not exist.

## Competition in the Humber's freight market

- 3.12 The shortsea sector is highly competitive with multiple shipping lines and port operators serving broadly the same shipping routes. There are two types of competition that occur in this market:
- Competition between port owners, such as CLdN (Killingholme) and ABP (Hull and Immingham).
  - Competition between shipping lines (operators), such as Stena, DFDS, Cobelfret (linked to CLdN), P&O and Finnlines.
- 3.13 Stena are the proposed occupier and operator of the Proposed Development. Stena have stated that there is an urgent need to relocate their existing services to the Proposed Development. However, there is a difference between the commercial preference of Stena relocating to a port that they solely occupy and operate and the overall economic 'need' to do so. Given the analysis presented throughout this report

detailing the existing capacity at Killingholme and across the Humber, the case for the development appears to rest upon the commercial preference of Stena, rather than the need to meet an overall demand which could supposedly not be accommodated elsewhere. In fact, there is storage capacity in the Humber.

- 3.14 There appears to be substantially less competition between the port owners on the Humber than shipping lines, given that port ownership is competition between two parties – CLdN and ABP – compared to a larger number of shipping lines operators being present in the region. As a competing port owner (and owner of 2 out of 3 existing ports), ABP already controls the majority of freight throughput in the Humber. The Proposed Development will likely result in ABP controlling a greater majority of the market share on the Humber estuary.
- 3.15 As noted in ABP’s **Environmental Statement Volume 1 Chapter 4: Needs and Alternatives**, the NPSP makes clear that the need for port infrastructure relies upon ‘the need to ensure effective competition and resilience in port operations’. This is important because ‘competition drives efficiency and lowers costs for industry and consumers, so contributing to the competitiveness of the UK economy’.<sup>5</sup> Yet there is little reference to the restriction of competition from a port ownership and operation basis, rather than competition between shipping lines. ABP’s expansion to control a larger market share on the Humber estuary as a result of the Proposed Development contradicts with targeted competition within the freight industry. In our opinion the Applicant has not demonstrated robustly enough how the Proposed Development as a whole (when considering both port ownership and the proposed operator) promotes a competitive position on the Humber.

## What types of freight does this report consider?

- 3.16 Paragraph 59 of the **market study** states that Department for Transport (“DfT”) offers detailed trade statistics of UK maritime freight transport; this data is utilised in the **market study**. This study then sets out the three main types of cargo that are considered in the study:
1. All container traffic representing both shortsea and feeder Lo-Lo volumes.<sup>6</sup>
  2. Roads goods vehicles and trailers representing accompanied Ro-Ro traffic.
  3. Unaccompanied roads goods vehicle trailers representing unaccompanied Ro-Ro traffic.
- 3.17 As part of our analysis in this report, historic DfT statistics have been analysed and compared to the **market study**’s historic figures that are set out in the report (noting that Ireland needs to be removed from shortsea data). Whilst 2022 DfT data is now available, for the purposes of trying to replicate the **market study**’s analysis historic data is only carried forward to 2021 in this report. This comparison exercise allows for a clear establishment of the exact DfT freight categories that have been used to define the three types of freight outlined in the **market study**, as well as ensure that any adjusted forecasts begin with the same starting point as those set out in the **market study**.
- 3.18 The exact DfT category (by code) definitions for the three types of freight considered in the **market study** are transparently set out below. Utilising these definitions matches with the Applicant’s historic data presented in the **market study**:

<sup>5</sup> Department for Transport, 2012. National policy statement for ports

<sup>6</sup> Paragraph 61 of the **market study** notes that within the DfT statistics, UK port traffic is classified geographically according to where the goods were last loaded or next unloaded at the other end of the sea journey. As a result, the real origin / destination of cargo is not properly recorded in the DfT data set and European feeder volumes are aggregated with pure European shortsea volumes. From analysis carried out for this report, it appears that the market study excludes feeder volumes from the Lo-Lo statistics when analysing freight at the UK and East of England geographies, but then does include feeder volumes when analysing freight volumes at the Humber region level. This approach is replicated in this report.



- Accompanied Ro-Ro – DfT code 51;
- Unaccompanied Ro-Ro – DfT code 61; and
- Lo-Lo – DfT codes 31 to 34.

3.19

Finally, as indicated in paragraph 80 of the **market study**, the DfT classifies 'Immingham & Grimsby' as one statistical geography for the purposes of their reporting, which combines Immingham and Killingholme. When the **market study** refers to the Humber region as a whole, there are three major ports on the Humber Estuary – Immingham, Killingholme and Hull. These three ports (refer to table 8-2 in Appendix 7 of the **market study**) are used to calculate the Humber's capacity. This approach is considered appropriate and is replicated in this report.

## 4. Capacity on the Humber

### Existing capacity and short term planned growth

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Key challenges:

- The calculated current static storage capacity at Killingholme outlined in the **market study** is wrong, particularly for container ground slots where they are significantly underestimated. In reality the number of slots is over four times higher than what is assumed. The **market study** also does not allow for any planned expansion in storage capacity at Killingholme in the future.
  - The average dwell time of 2.25 days utilised in the **market study** is considered to be far too high, particularly for operations at Killingholme where average dwell times across the whole port are typically in the magnitude of 1 to 1.5 days maximum.
  - Real time operational data collected and provided by CLdN suggests that stack efficiency is planned in the long term to be 0.8 at Killingholme, rather than 0.6 as suggested in the **market study**.
  - Together these errors result in current capacity at Killingholme being underestimated by the Applicant by between 64% and 164%. Once combined with capacity at the other Humber ports, this results in an underestimate of existing capacity of between 21% and 77%. This is a very significant limitation of the Applicant's evidence, undermining the need for the proposed development.
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4.1 In terms of existing capacity on the Humber, the Applicant asserts that the Proposed Development is needed now because capacity on the Humber is constrained. In particular, the Applicant asserts that storage capacity at Killingholme is especially constrained. This section demonstrates why both of these assertions are in fact incorrect.

#### Killingholme

4.2 The port of Killingholme's capacity has been estimated by the Applicant using a methodology that utilises google maps to estimate trailer parking bays and ground slots that are used for stacking conventional containers that are shipped on Ro-Ro vessels (refer to paragraphs 202 to 204 of the **market study**). The estimated container storage capacity is determined by multiplying the number of ground slots by the estimated stacking height (assumed to be 3), which is considered reasonable and reflective of normal operations by CLdN), and the stack efficiency, which is assumed to be 0.6 in the **market study**.

- 4.3 In reality, CLdN (across all of their ports) plan for a stack efficiency of 0.8, higher than what is assumed in the **market study**. CLdN also currently has the ability at Killingholme to operate a stacking height of between 2 to 4 containers. The current average stacking height at Killingholme is just over 2; this is assumed in the capacity calculations at Killingholme to be conservative. Capacity at Killingholme could be even higher than what is stated in this report if this average stacking height was optimised in the future to respond to market demand.
- 4.4 The storage capacity is then estimated through multiplying the static capacity by the number of operational days (365) and then dividing this by the dwell time, which is the number of days a unit will on average occupy a trailer parking bay or container ground slot prior to it being collected or loaded. This is then multiplied by a peak factor of 1.25 (considered reasonable by CLdN), to account for the fact that the efficiency capacity of a terminal is somewhat lower than the peak capacity of a terminal. Refer to **Appendix – glossary of terms** for more detailed definitions of these factors.
- 4.5 The **market study** refers to using an 'industry standard dwell time'. In fact, it appears in paragraph 206 of the **market study** that this average dwell time (2.25 days – which is applied across all capacity calculations) is simply an average of four numbers that are stated in this paragraph – 1.5 days, 2.5 days, 2 days and 3 days. Very little basis or justification is given for the justification of dwell time in the **market study**. Sensitivity tests are then applied in Table 8-3 of the **market study**, yet a variation of only 0.5 days lower is tested against a variation of up to 1.25 days higher (dwell time is varied from 1.75 days to 3.5 days in Table 8-3), biasing the results presented in the table towards implying a higher dwell time and thus lower capacity for unaccompanied Ro-Ro in the Humber ports. Information provided by CLdN suggests that this average dwell time is fundamentally incorrect, at least for the port of Killingholme.
- 4.6 In this report we outline the corrected capacity for unaccompanied freight at Killingholme, based on information provided by CLdN. Table 4-2 of the **market study** assumes 32.9 hectares ("ha") of land is available for trailers and containers storage at Killingholme, allowing for a current figure of 950 trailer bays with a potential to rise to 1,790 in the future. Yet this does not accurately represent the total land available at Killingholme – there is a maximum size available of 115ha, which includes 19ha owned by a CLdN affiliated company (on part of which CLdN has consent to develop additional storage). CLdN have confirmed with Volterra that all of this land can be made available for expansion of the existing port to accommodate growth in demand (under existing consents or via permitted development rights), if this materialises and is required. For context, CLdN estimates that if all of this 115ha of land was converted to be able to accommodate unaccompanied trailers and containers, there would be capacity for up to a maximum of 6,500 trailer bays and 1,800 containers. In this hypothetical maximum scenario there would not be any storage capacity left to hold automobiles, which are currently brought through the port of Killingholme, but could likely be stored elsewhere relatively easily should this be required. Information provided by CLdN suggests that constructing and enabling allocated expansion land to be able to store containers and trailers requires relatively short lead times of around 12 to 18 months to deliver, showing that additional capacity at Killingholme can be responsive to future growth in demand.
- 4.7 Estimated storage capacity in the Humber is incredibly sensitive to the assumed dwell time. As demonstrated in **paragraph 3.4**, freight does not make money when it is not moving. In CLdN's opinion, allowing or catering for longer dwell times represents a commercial decision. CLdN's view (provided to Volterra) is that it does not consider it normal market practice to let freight units sit around on the port's land utilising storage capacity for the lengths of time that are quoted in the **market study**.
- 4.8 The assumed 2.25 day dwell time is a long way off the reality at Killingholme, where average dwell times across the whole port are typically in the magnitude of 1 to 1.5 days maximum. CLdN monitors dwell time for different types of freight and different operators that move through Killingholme Port and therefore has an accurate handle on what dwell times are through the port.
- 4.9 The table below clearly sets out the revised key assumptions that provides an updated and more accurate estimate of storage capacity available at Killingholme. A minimum and maximum capacity at Killingholme is

provided for each year, that varies the overall storage capacity estimate dependent on a dwell time ranging from 1.25 to 1.5 days. The 1.25 day dwell time in the 'maximum' scenario is conservative, given that average dwell times at Killingholme vary from between 1 day to 1.5 days. This revised estimate of 521,551 to 625,861 units in 2023, growing to 623,556 to 748,268 units by 2025,<sup>7</sup> is carried forward for the remainder of this report.

**Table 4.1 Revised storage capacity calculations for Killingholme (total units)**

Factor	Applicant All years	Correct figures provided by CLdN							
		2021		2023		2024		2025	
		Min	Max	Min	Max	Min	Max	Min	Max
Trailer bays	1,790	940	950	1,176	1,176	1,481	1,481	1,700	1,700
Container ground slots	220	602	602	893	893	893	893	893	893
Container unit slots	660	1,805 <sup>8</sup>	1,805	1,879	1,879	1,879	1,879	1,879	1,879
Stack efficiency	0.6	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
Total container units static capacity	396	1,444	1,444	1,503	1,503	1,503	1,503	1,503	1,503
Total static capacity <sup>9</sup>	2,186	2,394	2,394	2,679	2,679	2,984	2,984	3,203	3,203
Multiply by days per annum	797,890	873,810	873,810	977,908	977,908	1,089,233	1,089,233	1,169,168	1,169,168
Average dwell days	2.25	1.5	1.25	1.5	1.25	1.5	1.25	1.5	1.25
Peak multiplier	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25	1.25
<b>Total storage capacity</b>	<b>283,694</b>	<b>466,032</b>	<b>559,238</b>	<b>521,551</b>	<b>625,861</b>	<b>580,924</b>	<b>697,109</b>	<b>623,556</b>	<b>748,268</b>

Source: Information provided by CLdN and applying the same methodology as is used in the **market study**. Note figures are not rounded.

<sup>7</sup> Note that this 2025 storage capacity figure is held constant between the years 2025-2050 in the baseline capacity estimates, i.e. the 'do nothing' scenario analysis. Some growth to 2025 is included in the 'do nothing' analysis given that it is already planned and being brought forward.

<sup>8</sup> Note that a stacking height average was not able to be provided for 2021 by CLdN due to a lack of historic data being readily available. Therefore, for the purposes of 2021 only, a stacking height of 3 is assumed in line with the Applicant's **market study** assumption.

<sup>9</sup> Total static capacity = container units capacity plus trailer bays capacity

## The Humber as a whole

- 4.10 This report re-calculates storage capacity in the Humber region as a whole, to account for the updated and accurate storage capacity available at Killingholme, but also to test some simple scenarios where key dwell time assumptions are varied at Immingham. At Immingham, it is estimated that the dwell time varies from between 1.5 days to 3 days. Both 1.5 and 3 days are tested for completeness. This 1.5 day to 3 day range is based on information provided explicitly by the Managing Director of DFDS during ISH2, where the transcript states the dwell time vary as such.<sup>10</sup>
- 4.11 There is no information publicly available for what the average dwell time is at Hull. Ro-Ro at Hull is moved by both P&O and Finnlines. Conservatively assuming a dwell time equivalent to the Applicant's assumption of 2.25 days (above Killingholme and in the middle of Immingham's range) is therefore considered reasonable for Hull.
- 4.12 The table below outlines what the storage capacities would be as a result of these assumed dwell times. This compares to stated storage capacities of 130,000<sup>11</sup> at Hull and 570,000 at Immingham in the **market study** (refer to Table 8-2).

**Table 4.2 Revised storage capacity calculations at Immingham and Hull**

Assumption	Immingham – minimum	Immingham – maximum	Hull
Trailer bays	3,660	3,660	220
Container ground slots	370	370	380
Container unit slots (multiply by three)	1,110	1,110	1,140
Stack efficiency	0.6	0.6	0.6
Total container units static capacity (3 * slots * efficiency)	666	666	684
Total static capacity	4,326	4,326	904
Multiply by days per annum	1,578,990	1,578,900	329,960
Average dwell days	<b>3.0</b>	<b>1.5</b>	<b>2.25</b>
Peak multiplier	1.25	1.25	1.25
<b>Total storage capacity</b>	<b>421,064</b>	<b>842,128</b>	<b>117,319</b>

Source: **Market study**, plus information provided by CLdN and information provided by DFDS at previous hearings.

- 4.13 Three scenarios of revised storage capacity in the Humber are then tested in this report and compared to the **market study**'s estimate. These are:

<sup>10</sup> [TR030007-000546-Issue Specific Hearing 2 PT1.pdf \(planninginspectorate.gov.uk\)](#)

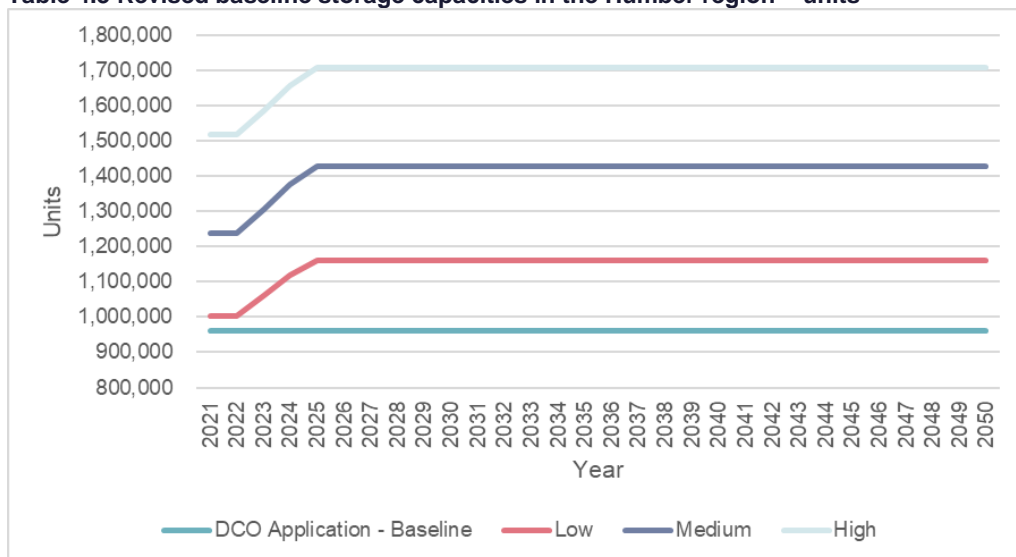
<sup>11</sup> Note that Volterra has been unable to match this calculation of 130,000 unit storage capacity at Hull. Following the **market study**'s assumption and methodology suggests the estimated capacity should be 117,000 units. This serves to reduce assumed capacity at Hull in the report (compared to the **market study**), providing further evidence that we have been conservative in our assessment.

- **Low:** Killingholme’s revised minimum capacity (624,000 units from 2025) is utilised, and combined with the minimum capacity at Immingham (422,000 units) and the capacity at Hull (assumed to be 117,000 units; refer to **footnote 11**). This results in a conclusion that the Applicant has underestimated capacity by around 21%.
- **Medium:** Killingholme’s revised maximum capacity is utilised (748,000 units from 2025), and combined with the **market study**’s estimated capacity at Immingham (561,000 units)<sup>12</sup> and the estimated capacity at Hull (117,000 units). This results in a conclusion that the Applicant has underestimated capacity by around 48%.
- **High:** Killingholme’s revised maximum capacity is utilised (748,000 units from 2025), and combined with this report’s estimated maximum capacities at both Immingham (842,000 units) and the capacity at Hull (117,000 units). This results in a conclusion that the Applicant has underestimated capacity by over 77%.

4.14

These revised capacity scenarios are outlined and compared to the **market study**’s estimate in **Table 4.3**. These very simple variations in just a few key assumptions highlight the sensitivity of the capacity modelling.

**Table 4.3 Revised baseline storage capacities in the Humber region – units**



Source: Volterra calculations, 2023.

## Capacity at the Proposed Development

Key challenges:

- The Applicant estimates that 72% of the 660,000 Ro-Ro cargo units per year will be unaccompanied cargo. This equates to 475,000 unaccompanied Ro-Ro units at the Proposed Development per year.

<sup>12</sup> Similar to Hull, applying the **market study**’s assumptions and methodology suggests that Immingham’s estimated capacity under these assumptions should be 561,000 units. This figure is carried forward in this report.

- Yet assuming dwell times in line with the **market study** (2.25 days) when calculating storage capacity at the Proposed Development would only allow for just 41% (195,000) of the estimated 475,000 unaccompanied Ro-Ro units per year at the Proposed Development to be accommodated.
- A dwell time of 0.9 days on average needs to be achieved at the Proposed Development to be able to accommodate its estimated 475,000 unaccompanied Ro-Ro units per year.
- This highlights a major inconsistency in the Applicant's work. The identified need for the Proposed Development is premised on the assumption of an average 2.25 day dwell time for unaccompanied cargo. Yet with a 2.25 day dwell time the Proposed Development is not able to meet the identified need based on future forecast demand. Meeting this need can only be achieved through a very low assumed dwell time of 0.9 days at the Proposed Development, which then serves to contradict the methodology that identifies the need for the Proposed Development in the first place.

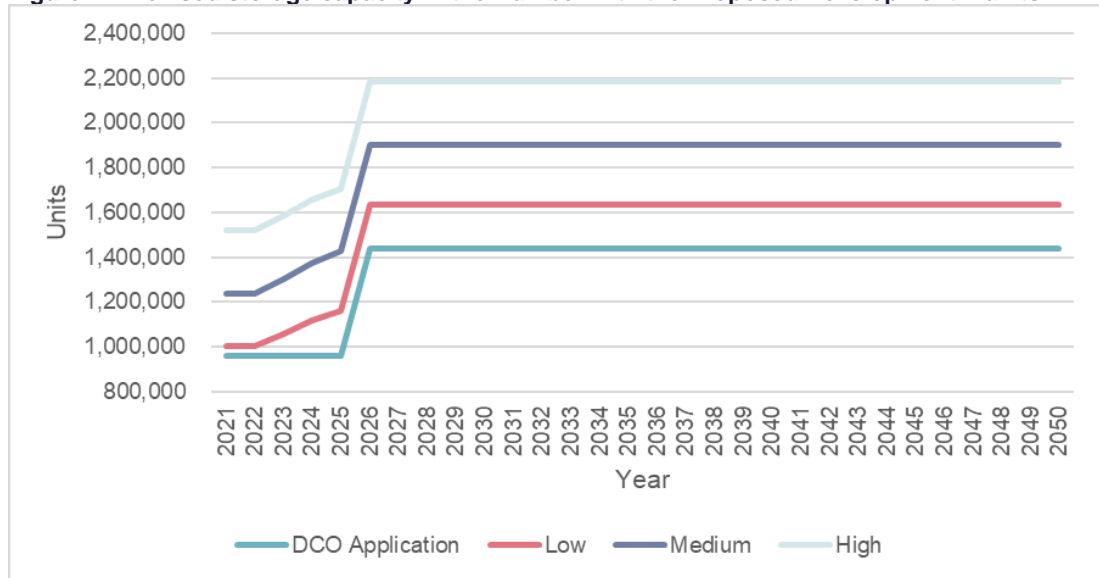
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- 4.15 Within **Part 4 Article 21(1) of the draft DCO**, the Applicant proposed to include a maximum cap of 660,000 Ro-Ro units per annum:
- “The Company may operate and use the authorised development as harbour facilities in connection with the import and export of ro-ro units to include all forms of accompanied and unaccompanied wheeled cargo units up to a maximum of 660,000 ro-ro units a year together with occasional use by passengers travelling by vehicle when space is available on a departing vessel.”*
- 4.16 The justification for this maximum provision is stated as follows: “with a view to mitigating the environmental impact of the authorised development, ABP has restricted the authorised development to a maximum throughput limit of 660,000 ro-ro units per year and the impact of the Proposed Development has been assessed on this basis” (refer to paragraph 8.3 of the **Explanatory Memorandum to Draft DCO Document Reference 3.2**).
- 4.17 For context, according to data provided by CLdN at Killingholme, Stena (the proposed sole operator of the Proposed Development) had a throughput of 144,000 unaccompanied Ro-Ro and 61,000 accompanied Ro-Ro units at Killingholme in 2021, falling to 55,000 unaccompanied Ro-Ro and 67,000 accompanied Ro-Ro units in 2022, once the Europoort line contract was not renewed at Killingholme. To meet this maximum cap of 660,000 units per year, Stena would therefore need to increase their 2021 Killingholme throughput more than threefold (from 205,000 units to 660,000 units).
- 4.18 **Environmental Statement Volume 1 Chapter 4: Needs and Alternatives** states in paragraph 4.2.80 that “the objectives which have been defined are to provide the Humber Estuary with the ability to ... (ii) provide for, at least, a proportion of future growth in demand for Ro-Ro freight capacity predicted within the estuary”.
- 4.19 **Environmental Statement Volume 1 Chapter 3: Details of Project Construction and Operation** then estimates in paragraph 3.2.6 that:
- “The annual throughput of the IERRT has been capped at 660,000 Ro-Ro cargo units per year. It is anticipated that of that number, approximately 72% of the embarking or disembarked units will be*

unaccompanied (cargo carried on the vessel without an accompanying heavy goods vehicle (HGV) and driver) with 28% of units will be accompanied (cargo which is accompanied by an HGV and driver on the crossing).”

4.20 Applying these proportional assumptions to the 660,000 units would imply that the Proposed Development has the capacity to accommodate throughput of 475,200 unaccompanied Ro-Ro units and 184,800 accompanied Ro-Ro units per year. This domination of unaccompanied Ro-Ro units at the Proposed Development aligns with assertions in the **market study** that unaccompanied Ro-Ro freight is by far the most important category in the Humber (refer to paragraph 11). This trend is only predicted to strengthen in the future, with accompanied Ro-Ro “set to further decline” (paragraph 28 of the **market study**).

4.21 Given that unaccompanied Ro-Ro units require storage capacity, this figure of 475,200 is assumed to equate to the maximum storage capacity available at the Proposed Development for the purposes of this assessment. The figure below outlines what the estimated storage capacity for unaccompanied Ro-Ro units would increase to in the Humber region under the four tested scenarios, after adding the Proposed Development’s assumed capacity. Capacity rises to 1.4m to 2.2m units a year with the Proposed Development, dependent on which scenario is to be believed.

**Figure 4.1 Revised storage capacity in the Humber with the Proposed Development – units**



Source: Volterra calculations, 2023

4.22 In addition to the 475,000 unaccompanied Ro-Ro units expected to result at the Proposed Development, the Applicant also states what their static storage capacity is expected to be within **Environmental Statement Volume 1 Chapter 2: Proposed Development**. In total, it is estimated that the Proposed Development has static storage capacity for a total of 1,430 trailer bays and 40 container ground slots.<sup>13</sup>

4.23 The table below tests two scenarios for what this allocated space would mean in terms of overall capacity for unaccompanied Ro-Ro units at the Proposed Development. The first scenario applies exactly the same assumptions that are utilised to calculate storage capacity at existing Humber ports in the **market study**. This results in an estimated annual capacity of just 195,000 unaccompanied Ro-Ro units at the Proposed

<sup>13</sup> This comprises of 240 trailer bays and 40 container slots in the Northern Storage Area (paragraph 2.3.33); 160 trailer bays in the Central Storage Area (paragraph 2.3.35); 400 trailer bays in the Southern Storage Area (paragraph 2.3.37); and 630 trailer bays in the Western Storage Area (paragraph 2.3.40).



Development, equivalent to just 41% of the 475,000 unaccompanied Ro-Ro units that is the estimated annual throughput in the Proposed Development (refer to **paragraph 4.20 above**). Clearly there is an inconsistency here in the Applicant's documents. Either the estimated throughput of unaccompanied Ro-Ro units at the Proposed Development is unable to be accommodated by the storage capacity available there, or the assumption on dwell time that underpins the **market study's** capacity methodology (in particular, the assumed dwell time) is inherently incorrect.

4.24

The second scenario in the table below therefore estimates capacity at the Proposed Development by calculating what dwell time would be required to be able to accommodate 475,000 unaccompanied Ro-Ro units per year. This shows that for this to be achieved within the allocated trailer bays and container slots, Stena would need to achieve an average dwell time of around 0.9 days. This is less than half of the assumed dwell time used to calculate existing capacity in the **market study**, for context, and provides further credibility to CLdN's assertion that existing dwell times at Killingholme (partly driven by Stena) are in fact substantially lower than 2.25 days.

**Table 4.4 Estimated storage capacity scenarios at the Proposed Development**

Assumption	DCO documentation assumptions	Achieving unaccompanied throughput
Trailer bays	1,430	1,430
Container ground slots	40	40
Container unit slots (multiply by three)	120	120
Stack efficiency	0.6	0.6
Total container units static capacity (3 * slots * efficiency)	72	72
Total static capacity	1,502	1,502
Multiply by days per annum	548,230	548,230
Average dwell days	2.25	<b>0.92</b>
Peak multiplier	1.25	1.25
<b>Total storage capacity</b>	<b>194,926</b>	<b>476,722</b>

Source: Volterra calculations, 2023.

## Long term capacity at Killingholme

### An alternative option for future storage capacity

Key challenges:

- The assertion that there is no further expansion potential at Killingholme is incorrect. In fact, there is substantial space available for capacity to be expanded to meet freight demand at Killingholme in the future.

- Illustrative scenarios presented in this report demonstrate that storage capacity can be incrementally increased at Killingholme to meet future demand as is required over time, rather than through the one off construction of a new port terminal based on a forecast ‘identified need’ in the future. The illustrative scenarios allow for Killingholme’s capacity to rise to between 1.1m and 1.3m units by 2050.

4.25 **Environmental Statement Volume 1 Chapter 4: Needs and Alternatives** states that:

*“4.3.23 From the preceding summary analysis, it is concluded that the only realistic broad option for meeting the need that has been identified is to provide further Ro-Ro freight capacity within the Humber Estuary.*

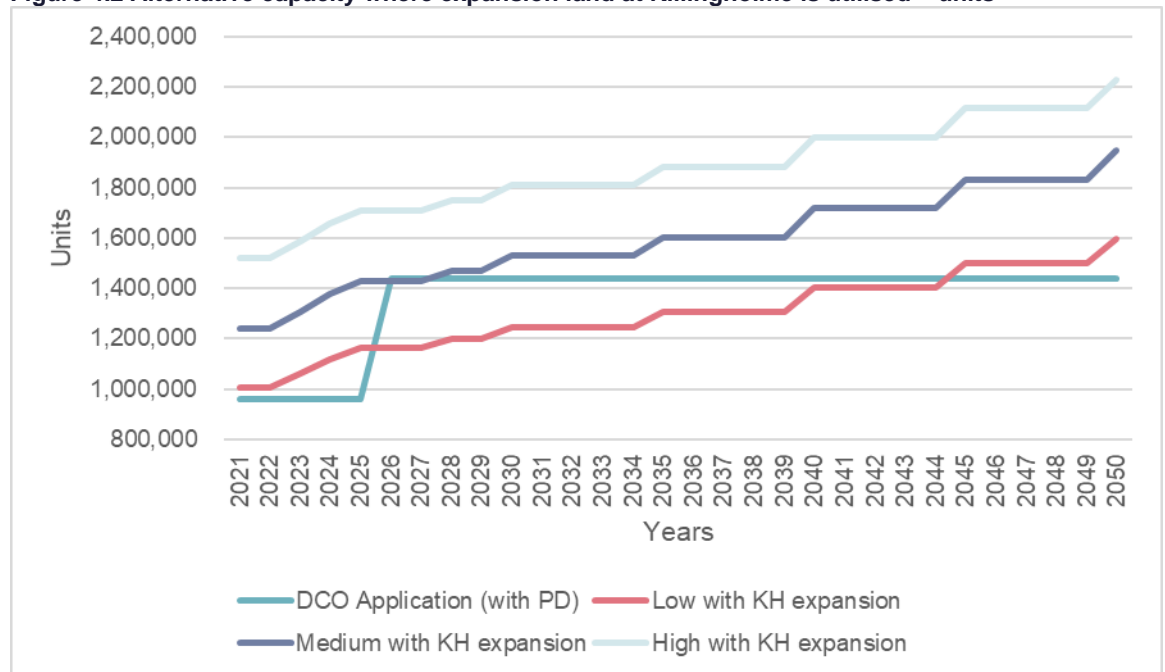
*4.3.24 As already concluded, such further capacity can only be provided via the provision of sufficient additional suitable Ro-Ro berths and related sufficient suitable landside storage capacity in a suitable location. Existing facilities and capacity on the Humber Estuary is unable to meet the need and objectives which have been identified.”*

4.26 CLdN agrees that there should be sufficient capacity within the Humber region to accommodate any potential future increases in freight demand. CLdN, like ABP, wants the Humber region to be a successful port region, ensuring it can accommodate for demand and not allow it to be displaced elsewhere in the UK. What CLdN does not agree on, is the assertion that existing facilities are unable to provide the capacity to meet the estimated need on the Humber.

4.27 Paragraph 4.3.73 of **Environmental Statement Volume 1 Chapter 4: Needs and Alternatives** states that “from publicly available information, it would appear that the available storage areas – both Ro-Ro cargo and trade car storage areas – are extensively utilised. Whilst there may be opportunities to provide an incremental increase in storage provision in some way within the current footprint of the facility, there does not appear to be any opportunities for substantial expansion within the footprint of the facility”. This is not the view of CLdN; as demonstrated in **paragraph 4.6**, CLdN believe they have expansion land available to accommodate up to 6,500 trailer bay and 1,800 ground container slots in the future. This would represent a substantial increase on current enabled capacity at Killingholme, which accommodate current demand. This assumed expansion potential provided by CLdN is carried forward in our analysis.

4.28 This report therefore builds on the three capacity scenarios defined earlier (refer to **paragraph 4.13**) by developing some illustrative expansion scenarios at Killingholme, whereby CLdN choose to incrementally increase trailer bay capacity over time if there is a need to respond to increased market demand. It is illustratively assumed that CLdN increase trailer bay numbers to 1,950 in 2028, 2,200 in 2030, 2,500 in 2035, 3,000 in 2040, 3,500 in 2045, reaching 4,000 total in 2050, for the purposes of this exercise. CLdN have confirmed that this landside storage would be deliverable in the future, should the market demand require it. This incremental increase reflects information provided by CLdN that it would take approximately 12-18 months to construct and enable further trailer bays across the Port’s site. It is noted that it would be unreasonable to assume a build out to maximum capacity of 6,500 trailer bays in these scenarios, as this would leave no space for automobiles to be stored anywhere on the expanded Killingholme site. Under these scenarios, capacity would rise in the long run to between 1.6m and 2.2m unaccompanied Ro-Ro units in the Humber, exceeding the Applicant’s estimate of capacity as set out in their DCO documentation.

**Figure 4.2 Alternative capacity where expansion land at Killingholme is utilised – units**



Source: Volterra calculations, 2023.

## Resilience and economic efficiency at Killingholme

### Key challenges:

- The Applicant's assertion that there is no spare berth capacity at Killingholme is incorrect. There is sufficient berth capacity at Killingholme to accommodate existing and future demand, as well as provide resilience for the Humber region. Information provided by CLdN shows that Killingholme only currently uses around a quarter of its available berthing hours (including Stena). Displacing the use of two berths (Stena's services) at Killingholme to the Proposed Development is not economically efficient, given that it would leave up to four spare berths at the existing port.
- The significance of having so many spare berths available in the Humber is that it demonstrates the incorrect assertion by the Applicant that the Proposed Development will serve additional freight demand, rather than simply displacing it from elsewhere in the Humber.

4.29

To date this report has focused primarily on storage capacity landside at the Humber ports and expected future demand for freight. Another factor that plays into whether the Humber ports are able to be both

resilient and accommodate additional demand is whether there is capacity for more or larger ships to be docked at the existing berths within the Humber. The **market study** (paragraph 93) states that Killingholme has six in river berths and currently accommodates the largest Ro-Ro vessels operating out of the Humber estuary, a statement which is correct. What CLdN consider to be incorrect, is the assertion in paragraph 4.3.70 in **ES Volume 1 Chapter 4 Needs and Alternatives** that:

*“From available information, it is understood that five of the six available berths at Killingholme are currently actively used, and that one berth is currently unused - but assumed to be able to be brought into active use relatively easily... The analysis indicates that effectively three berths (increasing to four on occasion) at the facility are needed to ensure that the current Ro-Ro services operating from the facility can maintain their sailing schedules. In addition, the facility also accommodates vehicle carrier vessels around these Ro-Ro vessel sailings. The nature of the vehicle import trade is such that vessel arrivals are more ad hoc and less predictable than the tightly scheduled nature of Ro-Ro services. The available evidence, therefore, suggests that the active berths at the facility are extensively used with apparent limited ability for substantial additional use.”*

- 4.30 This assertion that Killingholme is at full capacity in terms of its berth usage is then contradicted to an extent in another section of the **market study**, where paragraph 120 suggests that “the amount of throughput over each berth is much higher in Immingham than in Killingholme”. CLdN have provided information on the actual berth use at Killingholme, the detail for which is set out in CLdN’s main written representations (including in relation to how automobiles are not handled on car carriers). Essentially, there are six berths at Killingholme, with berth 6 not dredged at present because demand does not require it (although consents are in place). There are ambitions and possibilities to extend some of the berths in the future to accommodate more larger vessels and respond to market demand growth. Typically, a maximum of four berths have been in use for regular sailings: two for CLdN (Rotterdam and Zeebrugge) and two for Stena (Hoek and Europoort). If Stena were to move to the Proposed Development, then there would be up to four spare berths at Killingholme available for use. Clearly this is a significant amount of space capacity. Having this number of spare berths at an existing port development whilst the use of two existing berths moves to the Proposed Development is not economically efficient, with the Proposed Development simply accommodating the displaced services that could have been accommodated at Killingholme.
- 4.31 Paragraph 41 of the **market study** then goes on to caveat that “berthing windows for preferred timeslots at preferred facilities are limited. Operators have a strong preference for having a dedicated berth or berths to make sure they can offer the right service levels to remain competitive.” From this statement it is clear that there is the conflation of the commercial preference of an operator (Stena) with an actual economic need for more berth capacity on the Humber.
- 4.32 Stena’s commercial preference would clearly be to move to the Proposed Development. The economically efficient solution, however, would be to accommodate Stena’s existing two Humber services at Killingholme utilising the existing berth capacity. Even if doing this, there would still be additional capacity available for additional services that may be brought on to meet demand in the future.
- 4.33 Spare berthing capacity provides for resilience, and spare berthing capacity can be used. Capacity is not determined based solely on available berths, but also the nature of visiting vessels. Vessels move around all but one berth at the Port of Killingholme, depending on vessel type. Spare capacity enables both future expansion and ongoing resilience, which is also enabled by the availability of additional operational land at the terminal. Killingholme’s spare berthing capacity goes up when considering the number of hours that berths are in use, and the types of vessels that use them. Information provided by CLdN suggests that vessel utilisation can vary between 50% on quieter off peak sailings to up to 80% on peak time sailings. Vessels are currently utilising the berths at Killingholme for around only a quarter of available berthing hours in total. Given this spare capacity, it is clear that it would be optimal to accommodate larger or more frequent vessels to meet demand at an existing port, rather than bring an additional port into use on the Humber.

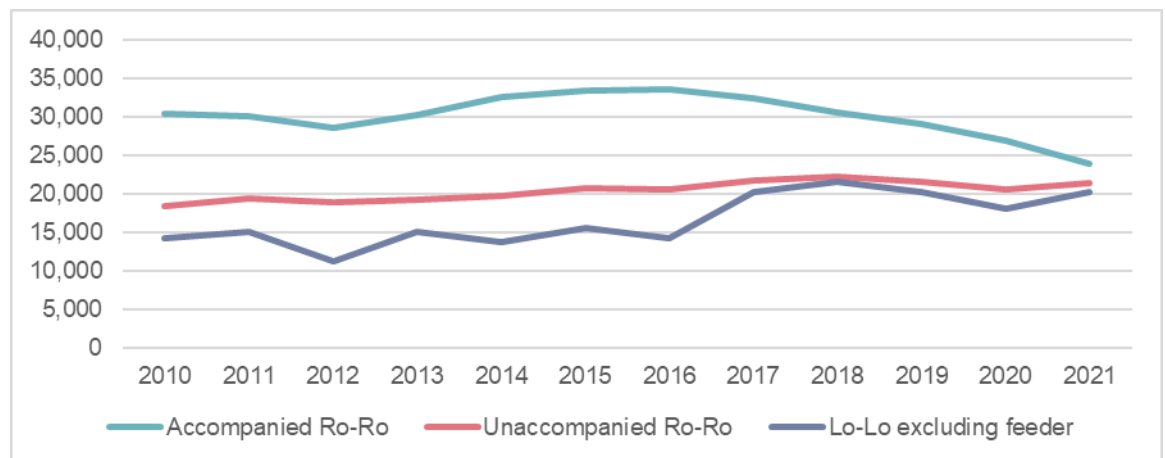
## 5. Demand for freight

### Current market demand and throughput

#### National level

- 5.1 Since 2010, in terms of tonnage, the UK shortsea freight market (excluding to/from Ireland) has seen mixed results across the different modalities. There has been a steady decline in the quantity of accompanied Ro-Ro from 2010 to 2021 (-22%) in contrast to a gradual rise in unaccompanied Ro-Ro (15%) and a notably sharper increase of Lo-Lo (less feeder) traffic (42%). It is only since around 2016 that growth rates of the three modalities have significantly diverged with accompanied Ro-Ro declining, unaccompanied plateauing and Lo-Lo (excluding feeder) continuing to increase.

**Figure 5.1: UK shortsea historic growth excluding to/from Ireland (tonnes, '000s)**



Source: Source: DfT, 2023 (download). Port and domestic waterborne freight statistics (table 0499). Weblink available here – <https://www.gov.uk/government/statistical-data-sets/port-and-domestic-waterborne-freight-statistics-port>

- 5.2 The historic data does, therefore, support the assertion that there has been a general shift away from accompanied Ro-Ro especially between 2016 and 2021. A broadly similar pattern is shown when considering the change in terms of units, where between 2010 and 2021 accompanied Ro-Ro fell by 7%, unaccompanied Ro-Ro rose by 29% and Lo-Lo increased by 49%.

#### Local level (Humber)

Key points to note: This section provides historic Ro-Ro data for Killingholme over the past decade, in line with the action identified following ISH2.

- 5.3 CLdN was asked following ISH2 to “provide for the Port of Killingholme historic data for Ro-Ro freight volumes for at least the last 10 years with an explanatory note”. **Table 5.1** provides this information. The

table demonstrates total units passing through Killingholme, aggregating three relevant cargo types – containers (Lo-Lo), unaccompanied Ro-Ro (trailers) and accompanied Ro-Ro (self-drives).

5.4 The compound annual growth rates (“CAGRs”) of volumes for different types of freight at Killingholme vary. Analysis of data provided to us by CLdN shows that, over the period 2013 to 2022, the following CAGRs were achieved in freight volumes at Killingholme:

- 1.8% in Lo-Lo unit volumes;
- 2.7% in unaccompanied Ro-Ro unit volumes; and
- 0.6% in accompanied Ro-Ro unit volumes.

5.5 These growth rates at Killingholme align with the **market study**'s wider assertion that unaccompanied Ro-Ro is the dominant type of freight in the Humber, with this trend only expected to strengthen in the future. Not only does it form the largest proportion of total units at Killingholme, but it has also recorded the fastest growth in recent years.

**Table 5.1 Killingholme Port volumes over the past decade**

Units in each direction, aggregated for the three main cargo types for 2013 to 2022

Year	Imports	Exports	Total
2013	225,071	223,851	448,922
2014	231,347	228,750	460,097
2015	243,234	235,700	478,934
2016	241,444	234,073	475,517
2017	241,561	239,082	480,643
2018	259,383	257,433	516,816
2019	269,118	263,660	532,778
2020	262,524	255,713	518,237
2021	299,727	297,487	597,214
2022	269,425	271,416	540,841

*Source: data provided by CLdN. Note that 2023 data is excluded as this only currently runs up to June 2023 and hence does not provide information on a full year. Note also that 'mobiles' (i.e. mainly automobiles) and 'high & heavy' types of freight are excluded from the data. It should be noted that these figures may appear slightly higher than what the Applicant believes comes through Killingholme, given a slight discrepancy in how data is counted – CLdN count containers as the total number of actual containers, whereas ABP are believed to count them as the trailers that containers are stacked on.*

5.6 As established earlier (refer to **paragraph 3.17** onwards), an exercise has been carried out to compare DfT statistics with the current levels of Humber freight that are outlined in the **market study**. The historic and current (2021 for the purposes of this report) data outlined in the **market study** are considered to be reliable for the purposes of this assessment, and are not challenged at this stage of the examination process.

5.7 The **market study** (paragraph 73) notes that “even though national shortsea volumes have declined since 2018, shortsea tonnage in the Humber region has stayed stable. Over the 2010-2018 period shortsea unitised demand in the Humber grew by around 39%, which corresponds to a CAGR of around 4.0%.” The next section of this report, focused on outlining future demand, presents graphs that demonstrate a baseline freight position in the Humber that is consistent with the graphs presented in section 8 of the **market study**.

## Future market demand and throughput

Key challenges:

- Whilst the **market study**'s overarching approach to producing future freight forecasts is not fundamentally challenged at this stage, we show that in our opinion, the GDP forecasts used to underpin the study's forecasting model are bullish when compared to other publicly available forecasts, and past trends of growth in GDP.
- This would have the impact of the **market study** having over-estimated future growth in freight in the Humber. Analysis presented here shows that forecasts might be overstated by in the region of around 20% over the longer term.

### A lack of transparency in the Applicant's demand forecasts

5.8 In our professional opinion, the forecasting methodology outlined in the market study and used to estimate future demand in the Humber lacks transparency, resulting in a black box model being presented. This makes it very difficult to assess whether the Applicant's future demand forecasts can be considered reasonable. Further transparency (through the form of more information) is requested on:

- The quantitative assumptions that link "relationships between UK GDP growth, macro-economic developments and shortsea trade";
- The quantitative assumptions / uplifts that are used to consider Humber-specific factors such as local transportation costs and the levelling up agenda;
- The demand forecasts for the Humber in the form of numbers (i.e., through spreadsheets), rather than just through graphs that are difficult to interpret and unpick;
- An explanation from the Applicant of why exports of accompanied Ro-Ro units in the Humber are forecast to more than double from 2021 to 2022, as shown in the **market study**; and
- A more detailed and robust explanation from the Applicant on why such high short term growth rates (2022 to 2027) are assumed for all types of cargo on the Humber.

5.9 In the absence of this information, the remainder of this section provides a high level critique and associated illustrative sensitivity scenarios of future forecast demand for freight.

### National level

5.10 In the **market study**, the Applicant states that "overall, UK shortsea trades are expected to grow in line with GDP developments in the years to come. The CAGR for UK's shortsea tonnage in the periods 2022- 2027, 2028-2032 and 2032-2050 are respectively 2.3%, 1.5% and 1.4%." In our opinion this is a plausible assumption, particularly when considering a longer time period. The suggestion that shortsea freight will continue to grow over this period is not disputed; other national forecast studies (and our own professional opinion) also support this view.<sup>14</sup>

<sup>14</sup> MDS Transmodal on behalf of the National Infrastructure Commission, 2019. Future of Freight Demand

- 5.11 However, the approach of the Applicant is queried in two respects. Firstly, the GDP assumptions which are said to form the basis of the model represent a bullish outlook for the economy. A range of GDP scenarios have been presented based on Oxford Economics forecasts but the assumptions within these which represent the more favourable or less favourable economic outlooks are not set out. Given this, in our opinion alternative scenarios based on long term historical GDP growth or one solely based on long-term forecasts produced by the Government would represent more conservative estimates of demand. In our view, forecasts produced by the OBR and the use of historic growth rates for GDP are more reliable metrics to use than Oxford Economics forecasts, which tend to be more positive about the economy's future outlook. Sensitivity scenarios that reflect this (for the Humber specifically) are discussed in more detailed below. Adjusted national freight scenarios have not been presented here due to the issues of replicating the existing study.
- 5.12 Another factor to consider when assessing the Applicant's reliance on GDP for freight forecasts is the evolving nature of the UK economy, which continues to transition towards a service-based economy. In light of this decreasing reliance on the goods-based economy for UK GDP, relationships with other economic indicators, such as trends in consumer spending, should have been explored when forecasting future demand for freight in the Humber, at least as a sensitivity analysis.
- 5.13 Finally, whilst the Applicant does set out some of their assumptions and methodology it is not clear how the GDP growth translates into the CAGRs stated above. It is stated that multipliers of roughly 1:1 for imports to GDP and 0.1:1 to 0.2:1 for exports to GDP have been used going forward yet these do not appear to be consistent across the different modalities when analysing historic DfT data, so it is not possible to accurately replicate their findings.

## Local level (Humber)

- 5.14 The Applicant states throughout their DCO documentation that there is a need to accommodate additional freight growth in the Humber in the future. This identified 'need' relies on the forecasting model produced for Freight in the Humber within Section 8 of the **market study**. Specifically, Table 8-1 of the **market study** states that the Humber region shortsea Ro-Ro demand forecast model is based on a variety of inputs / assumptions, which are:
- Transportation cost model;
  - Hinterland demand modelling;
  - Facilities competitive reviews;
  - Trends in the Ro-Ro demand segment;
  - Trends in Ro-Ro shipping; and
  - All of which come together to allow the preparation of the Humber region Ro-Ro accompanied and Ro-Ro unaccompanied forecast in tonnage and units.
- 5.15 Whilst the **market study** provides some limited explanation of this model in the main body of the report and its associated appendices, much greater transparency around the detailed approach and specific quantitative assumptions utilised in the Humber would allow for a fairer and more detailed critique of whether the uplifts applied to the capture estimated Humber freight growth are considered reasonable (refer to **paragraph 5.8**). From an initial review (reserving the right to comment further if the Applicant is willing to share more detailed information on the demand modelling for the Humber), the Humber forecasts do on the whole seem reasonable (i.e., they are not fundamentally challenged here), barring a few unexplained jumps in the data and a general opinion that they are on the bullish side of expected economic growth. Broadly, it is accepted that there has been historic growth in freight on the Humber and that it is also reasonable (given past growth and current policy priorities) to expect future growth in the future, with CLdN's sharing ABP's ambitions to ensure the Humber continues to be a successful port region.



- 5.16 The Applicant's shortsea freight forecasts for the Humber are outlined in Figures 8-13 (imports) and 8-14 (exports) of the **market study**. Whilst not all results are repeated here, the graphs appear to show that total units (exports and imports) on the Humber are expected to grow to approximately:
- More than 300,000 accompanied Ro-Ro units per year by 2050;
  - 1.58m unaccompanied Ro-Ro units per year by 2050; and
  - Over 750,000 Lo-Lo units per year by 2050.
- 5.17 It is noted that in the case of exported accompanied Ro-Ro units in particular, there is a large unexplained jump in forecast units per year from 63,000 in 2021, to around 140,000 units per year forecast in 2022. For context, data released since for 2022 shows that exports of accompanied Ro-Ro units in the Humber rose to only 65,585 units, less than half the forecast 140,000 in the Applicant's estimates.<sup>15</sup> This appears strange given that historically imported and exported units have been broadly similar, as empty units (which are typically exported given the UK's trade imbalance) are still counted in the data for these categories of freight (as per DfT definitions). More explanation is needed from the Applicant on why this jump is expected to occur in exports only, in a type of freight that has been historically declining on the Humber (-1.6% CAGR from 2012 to 2021, as stated in paragraph 177b of the **market study**).
- 5.18 Paragraph 165 of the **market study** states that there has been a historic and widely documented relationship between macro-economic activity and trade, a relationship which is used as the basis for the UK's shortsea trade forecast. It is implied from the methodology that the UK shortsea trade forecast then informs the **market study's** Humber specific forecasts. This means that all forecasts presented in the **market study** are in some way related to assumed GDP growth of the UK economy.
- 5.19 Without detailed knowledge of the specific inputs that have gone into the Humber freight forecasts, it is GDP growth assumptions that are simplest to critique and provide comment on within this report. Given that GDP growth appears to be inherent in the freight forecasting model, levels of GDP growth that are bullish compared to the UK's reality will likely overinflate freight forecasts at all geographies by some degree.
- 5.20 Paragraph 167 of the **market study** states that:
- "In this study we have used the UK government forecast for 2022 (3.7%) and 2023 (1.7%) and those of Oxford Economics for 2024 and beyond. In 2025, the GDP growth is expected to be 2.2% in the base scenario, 2.4% in the high scenario and 2.0% in the low scenario. By 2050 the GDP growth is expected to reach 1.5%, 1.7% and 1.4% for respectively the base, high and low scenarios."*
- 5.21 These GDP growth projections have been compared to both historic GDP data<sup>16</sup> and other publicly available forecasts, in particular short term forecasts released by the Treasury ("HMT")<sup>17</sup> and longer term GDP growth forecasts released by the Office for Budget Responsibility ("OBR") in June 2023.<sup>18</sup> We consider both of these sources to be more reliable and conservative than GDP forecasts produced by forecasting houses such as Oxford Economics. A comparison of the **market study's** outlined GDP growth projections with these sources suggests that the forecasts are bullish, particularly in the short term. For example, the **market**

<sup>15</sup> DfT, 2023. Table PORT0499: UK major port freight traffic, port level downloadable dataset: 2000 to 2022. Weblink available here - <https://www.gov.uk/government/statistical-data-sets/port-and-domestic-waterborne-freight-statistics-port>

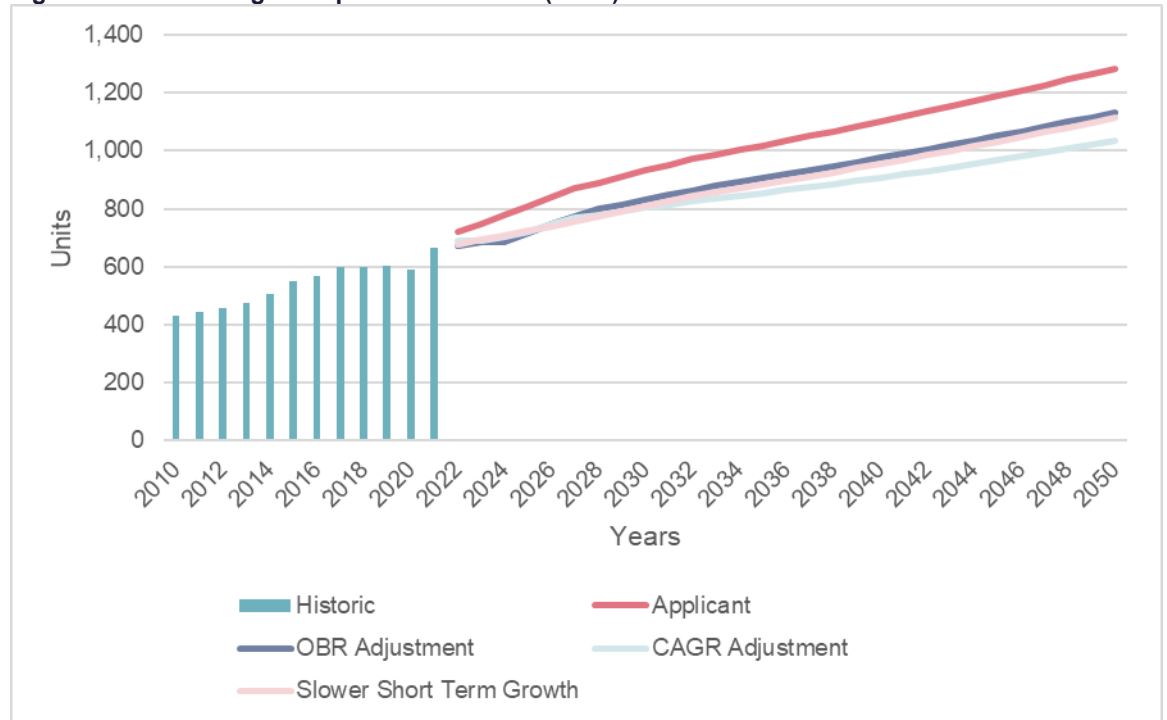
<sup>16</sup> [GDP – data tables - Office for National Statistics \(ons.gov.uk\)](https://www.ons.gov.uk/economy/gdp/gdp-data-tables) – dataset accessed titled "Quarter 2 (Apr to June) 2023, first estimate edition of this dataset"

<sup>17</sup> [forecomp\\_Aug1.pdf \(publishing.service.gov.uk\)](https://www.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/114844/forecomp_Aug1.pdf) – HM Treasury, August 2023. Forecasts for the UK economy: a comparison on independent forecasts.

<sup>18</sup> [Data - Office for Budget Responsibility \(obr.uk\)](https://www.obr.uk/economic-outlook/) – dataset accessed titled (dated June 1, 2023) "Long-term economic determinants – March 2023 Economic and fiscal outlook"

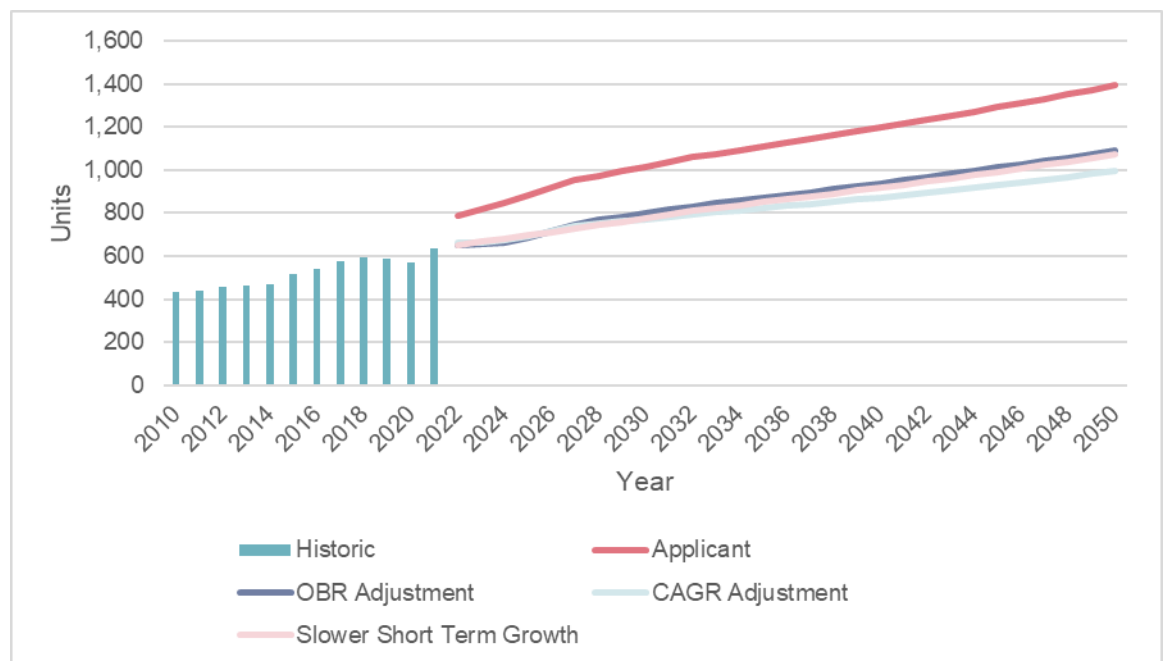
- study** outlines an expected GDP growth of 1.7% in 2023, when the OBR expects growth to be 0.2%, whilst the average of independent forecasts collated by HMT suggest expected growth of 0.1%.
- 5.22 Furthermore, the Humber level freight forecasts in the **market study** expect very substantial growth rates in freight to occur in the short term (2022-2027) – 2.8% in accompanied Ro-Ro (compared to a decline in the last decade, 4.5% in unaccompanied Ro-Ro and 3.1% in Lo-Lo – again which is largely unexplained.
- 5.23 Considering all of this, this report defines three illustrative scenarios to demonstrate how sensitive the Applicant’s Humber demand forecasts likely are to these relatively bullish assumptions:
- **“OBR Adjustment”**: This scenario factors down expected Humber-level yearly growth rates by type of freight (outlined in paragraph 77 of the **market study**, for the three freight types over different time periods to 2050) by the difference between the OBR long-run growth forecasts and the Applicant’s stated GDP growth assumptions (paragraph 167 of the **market study**) for each year to 2050.
  - **“CAGR Adjustment”**: This scenario first factors down expected Humber-level yearly growth rates by type of freight (outlined in paragraph 77 of the **market study**, for the three freight types over different time periods to 2050) for the years 2022 to 2027 by the difference between the HMT’s average of independent forecasts for GDP growth and the Applicant’s stated GDP growth assumptions (paragraph 167 of the **market study**) to 2027. From 2027 to 2050, a factor is applied to account for the difference between the Applicant’s stated GDP growth assumptions over this time period and the 20-year CAGR of GDP growth based on historic data, which is 1.4%.
  - **“Slower Short Term Growth”**: This simply amends the Applicant’s Humber forecasts to apply the 2028-2032 forecast growth rates by type of freight (paragraph 177 of the **market study**) to the period 2022-2027 as well, given that this substantial short term growth is not considered to be fully justified in the **market study**.
- 5.24 The impact that these simple amendments to growth rates have on forecast imported and exports units in Humber is profound, showing how sensitive the **market study**’s growth projections are to a number of non-transparent assumptions. **Figure 5.2** and **Figure 5.3** replicate Figures 8-13 and 8-14 of the **market study**, but only show all units rather than split out by type of freight (which is provided in **Table 5.2** instead).
- 5.25 It should be noted that the Applicant’s forecast figures outlined in Table 3.2 likely do not match perfectly with the figures produced by the Applicant in the **market study** themselves. The figures presented here represent our best attempt to replicate the Applicant’s forecasts as closely as possible, noting that exact year on year forecast unit numbers in the Humber have not been provided to the best of our knowledge.

**Figure 5.2 Humber region imports – total units ('000s)**



Source: Volterra calculations 2023, based on amendments to the forecasts presented in the **market study**.

**Figure 5.3 Humber region exports – total units ('000s)**



Source: Volterra calculations 2023, based on amendments to the forecasts presented in the **market study**.

Table 5.2 Adjusted Humber freight forecasts by year and type of unit ('000s)

	Applicant	OBR Adjustment	CAGR Adjustment	Slower Short Term Growth
<b>Accompanied Ro-Ro</b>				
2050 imports	102	95	89	95
Shortfall with Applicant scenario	N/A	6 (6%)	13 (13%)	6 (6%)
2050 exports	225	98	91	98
Shortfall with Applicant scenario	N/A	127 (56%)	134 (59%)	127 (56%)
<b>Unaccompanied Ro-Ro</b>				
2050 imports	775	677	615	650
Shortfall with Applicant scenario	N/A	99 (13%)	160 (21%)	125 (16%)
2050 exports	806	655	595	629
Shortfall with Applicant scenario	N/A	151 (19%)	211 (26%)	177 (22%)
<b>Lo-Lo</b>				
2050 imports	407	361	332	369
Shortfall with Applicant scenario	N/A	46 (11%)	75 (18%)	38 (9%)
2050 exports	363	337	309	344
Shortfall with Applicant scenario	N/A	26 (7%)	54 (15%)	19 (5%)
<b>Total</b>				
2050 imports	1,284	1,133	1,036	1,115
Shortfall with Applicant scenario	N/A	151 (12%)	248 (19%)	169 (13%)
2050 exports	1,394	1,089	995	1,071
Shortfall with Applicant scenario	N/A	305 (22%)	398 (29%)	322 (23%)

Source: Volterra calculations 2023, based on amendments to the forecasts presented in the **market study**. Figures rounded to the nearest 1,000 units.

## 6. Is there a need for more capacity to accommodate demand?

### The need for more capacity generally

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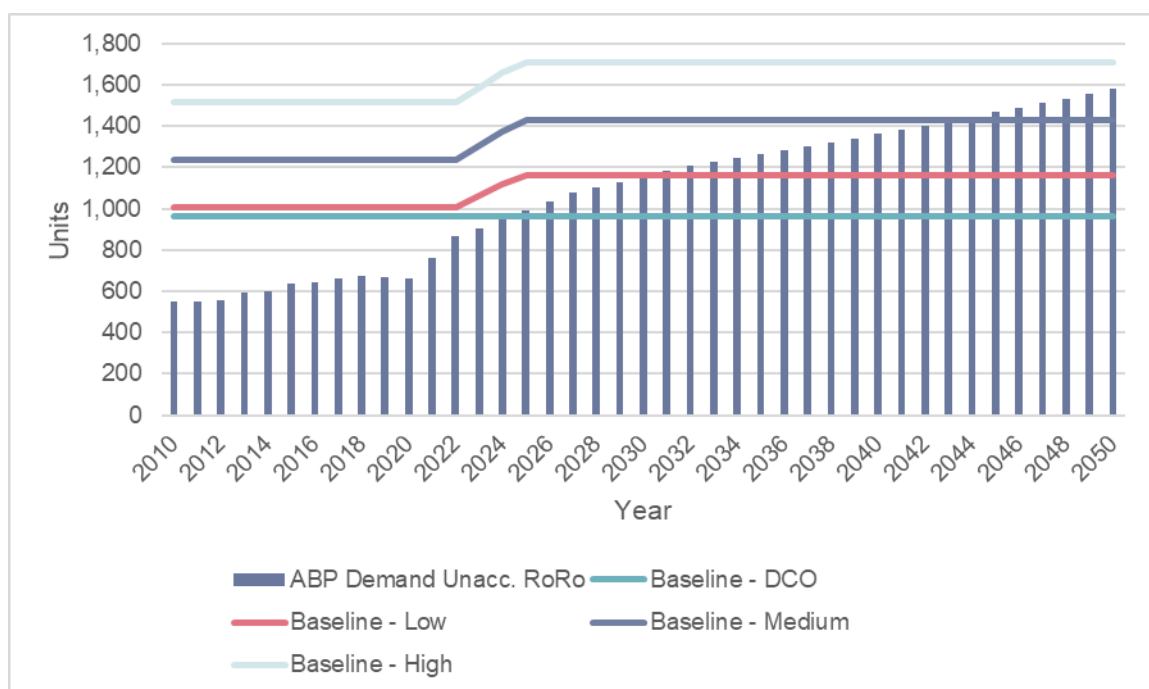
Key challenges:

- Comparing the amended storage capacity scenarios to the Applicant's demand forecasts for unaccompanied Ro-Ro shows that in the worst case capacity is breached much later than the stated 2026 in the **market study** (2031-2044), whilst in what we consider to be the most likely scenario of existing storage capacity (the 'high' scenario), capacity is in fact not breached at all in the period to 2050.
  - The need for additional storage capacity to meet future demand is even less certain when considering lower scenarios of forecast unaccompanied Ro-Ro demand, based on illustrative adjustments presented earlier in this report. In all adjusted demand scenarios, baseline capacity is only breached in the low capacity scenario, and even then no demand scenarios breach capacity before 2040. This is a significant finding, as it demonstrates clearly how unlikely it is that existing capacity on the Humber will be breached by future demand in the Humber, particularly in the short term.
- 

- 6.1 The previous sections of this report cast doubt on whether there is a pressing need for more freight capacity on the Humber. Not only has it been demonstrated that both storage and berth capacity are substantially higher than what is suggested in the **market study**, some simple adjustments to the Applicant's demand forecasts suggest that whilst the underlying expectation of future growth is not wrong in principle, these forecasts are sensitive to underlying assumptions and likely bullish.
- 6.2 The **market study** (page 94) concludes that there is a clear growth expected in the unaccompanied Ro-Ro segment within the Humber region to 2050. The concluding box then goes on to state that "the existing estimated storage capacity for unaccompanied Ro-Ro trailers is expected to be exceeded in 2026 using an industry average benchmark for dwell times". This dwell time has been shown in this report to be far too high for both the existing and proposed freight operations in the Humber. CLdN monitor their own dwell time and it is in fact much lower at around 1 to 1.5 days, whilst calculations on storage capacity at the Proposed Development demonstrated earlier showed that they would need to achieve a dwell time of around 0.9 days to be able to accommodate their targeted unaccompanied Ro-Ro units per year.
- 6.3 The **market study** confidently states that "in all scenarios analysed, additional Ro-Ro storage capacity would be required in the next five years". This creates that illusion that there is a clear and irrefutable economic need to provide more capacity in the Humber. This is in fact not the case. The figure below compares the Applicant's own demand forecast with the adjusted storage capacity scenarios that are presented in **Existing capacity and short term planned growth**.

6.4 This figure below shows that when considering more realistic scenarios of storage capacity in the Humber, there will not be an economic need in the short term, and in fact there may not be one at all in the period to 2050. Whilst the Applicant asserts that storage capacity is expected to be exceeded in 2026, the graph below shows that even in the very conservative estimates of storage capacity that capacity is not breached until much later in the do nothing scenario, at around 2031 to 2044. In the most realistic scenario of estimated capacity, where shorter dwell times are assumed at both Killingholme and Immingham (1.25 and 1.5 days respectively), capacity is never breached in the period to 2050. A small commercial commitment from operators to these types of dwell times could increase the speed with which freight is moved through existing ports and accommodate all of the Applicant’s forecast growth in unaccompanied Ro-Ro.

**Figure 6.1 Unaccompanied Ro-Ro demand supply balance – Applicant demand against baseline (do nothing) capacity, units ('000s)**

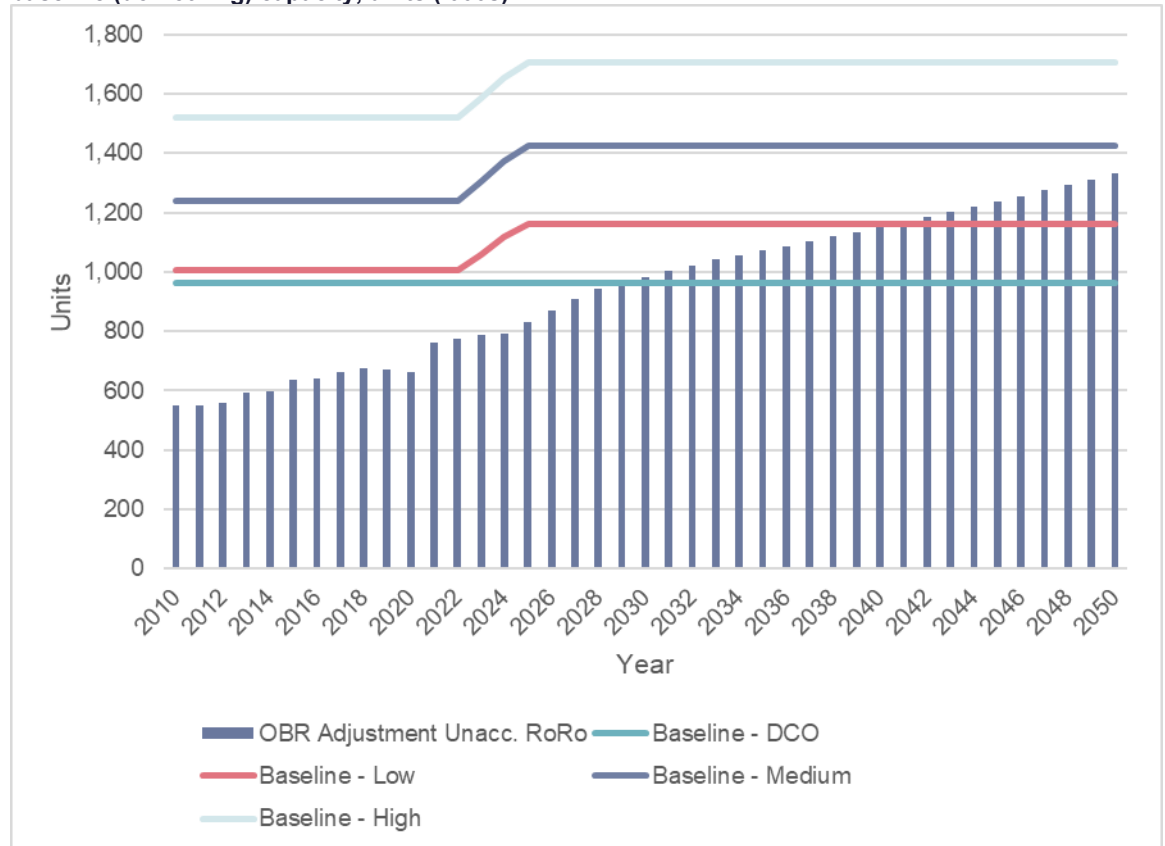


Source: Volterra calculations, 2023. Including a replication of the Applicant’s unaccompanied Ro-Ro forecasts for the Humber.

6.5 This report also tested some illustrative adjustments to the Applicant’s demand forecasts (refer to **Future market demand and throughput**). Whilst three illustrative scenarios were tested, the scenario forecasting the highest growth in freight was the OBR Adjustment scenario and hence is conservatively used here to test against baseline (do nothing) storage capacity.

6.6 **Figure 6.2** presents this adjusted demand scenario against baseline (do nothing) storage capacity. It shows that even under the Applicant’s assumptions (which are considered controversial), storage capacity would not be breached until 2030. When comparing to the more realistic storage capacity scenarios, capacity would only be breached in the lowest existing capacity scenario and even then not until 2041. This again casts significant doubt on whether there is a need for additional freight capacity on the Humber to accommodate growth in future demand.

**Figure 6.2 Unaccompanied Ro-Ro demand supply balance – OBR Adjustment demand against baseline (do nothing) capacity, units ('000s)**



Source: Volterra calculations, 2023.

## The need for more capacity through the Proposed Development specifically

Key challenges:

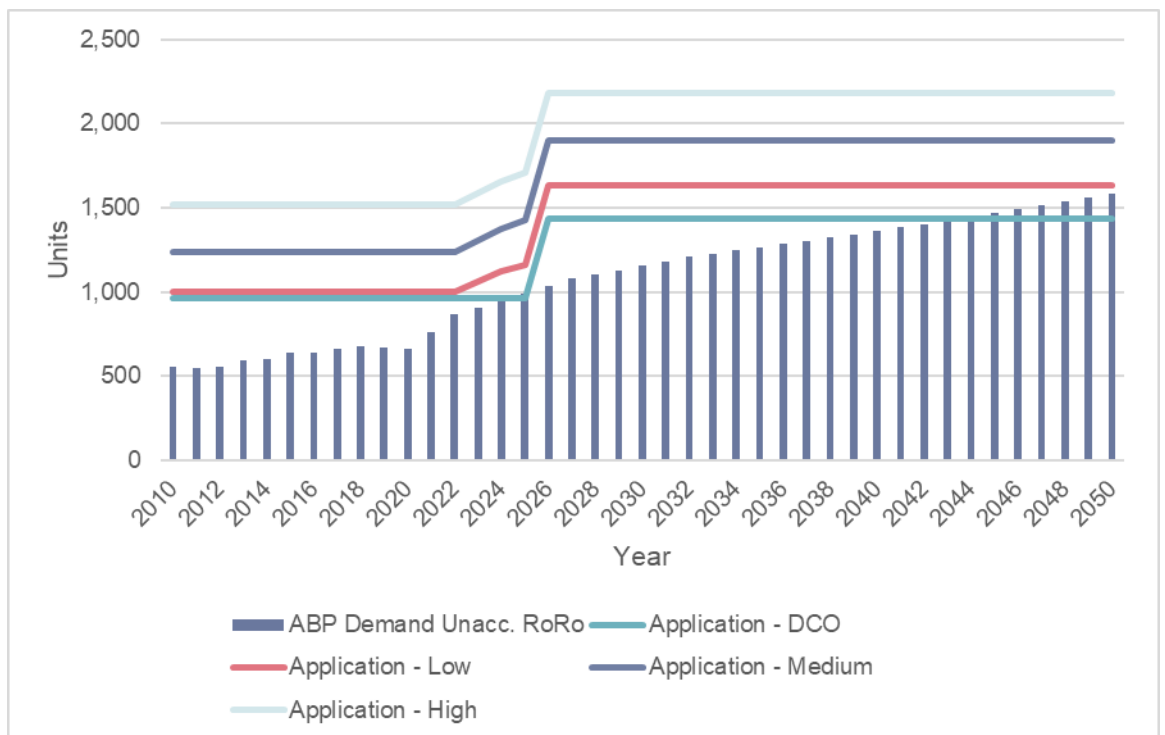
- When comparing the adjusted storage capacity on the Humber following the build out of the Proposed Development with demand scenarios, there is likely to be significant spare storage capacity in the Humber in future years. This is not economically efficient, and casts doubt on whether the Proposed Development does in fact constitute sustainable port development that caters for long term growth in freight volumes, or if in fact it just serves to displace freight from Killingholme and create idle capacity.

- It would be more efficient to cater for long-term forecast growth in freight volumes by incrementally increasing storage capacity on the expansion land available at Killingholme, allowing for a more responsive reaction to future levels of market demand, which are currently uncertain.

6.7 The estimated storage capacity at the Proposed Development is established in **Capacity at the Proposed Development**. **Table 4.4** estimates that the capacity could vary from 195,000 unaccompanied Ro-Ro units to approximately 475,000 unaccompanied Ro-Ro units per year at the Proposed Development, dependent on the chosen average dwell time of Stena (0.9 days or 2.25 days). The maximum capacity at the Proposed Development is added to the baseline capacity estimates and compared to the Applicant’s forecast future growth in unaccompanied Ro-Ro units in the figure below.

6.8 This figure shows that whilst there could be a very temporary breach in capacity around 2025/26 if taking the Applicant’s estimate of storage capacity at existing facilities (which is controversial, see **paragraph 4.9**), there would then be spare capacity until around 2044, when then in this scenario even the Proposed Development would be unable to accommodate the ‘identified need’ that it states it is addressing. Contrastingly, under more realistic scenarios of existing storage capacity, the below figure shows that when adding the Proposed Development there would be significant spare storage capacity, demonstrating that providing this additional capacity represents an economically inefficient use of land, with much of it expected to be sat idle.

**Figure 6.3 Unaccompanied Ro-Ro demand supply balance – Applicant demand against Proposed Development capacity, units ('000s)**



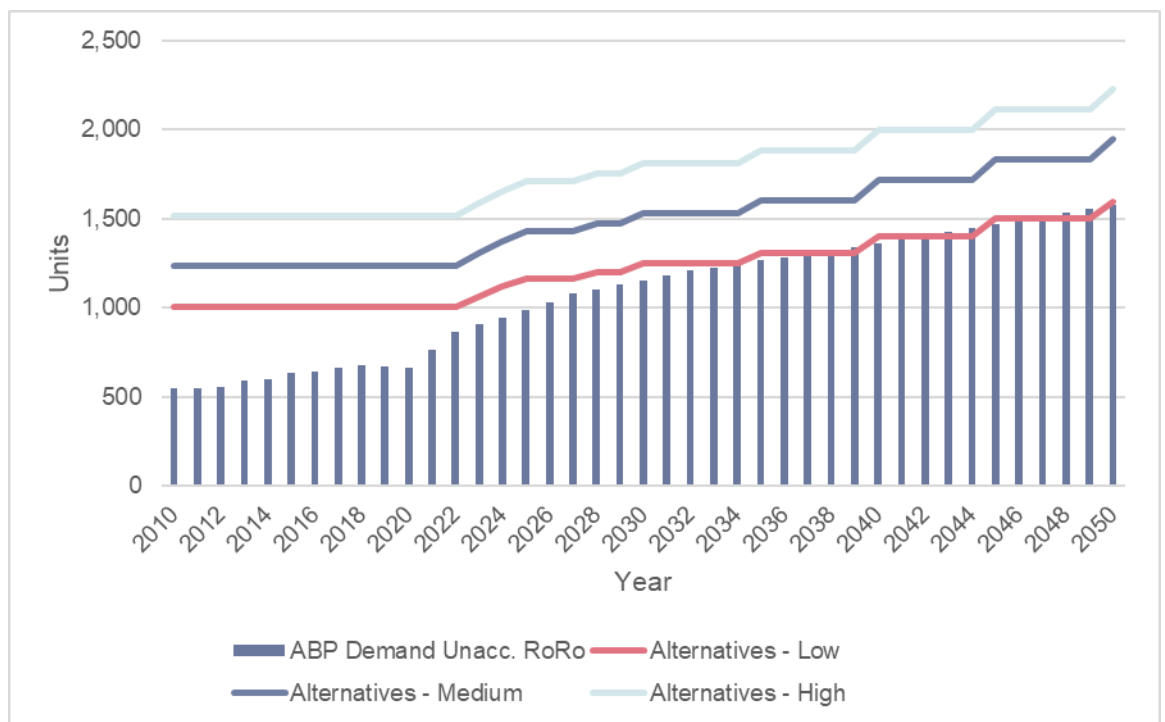
Source: Volterra calculations, 2023. Including a replication of the Applicant’s unaccompanied Ro-Ro forecasts for the Humber.



6.9 Given that an additional influx of storage capacity from the Proposed Development in 2026 would not be economically efficient, it is important to consider the earlier alternative scenarios for expansion at Killingholme instead.

6.10 **Figure 6.4** demonstrates how storage capacity at Killingholme could be incrementally built up over time to meet the Applicant’s forecast demand for unaccompanied Ro-Ro in the Humber. Killingholme is an existing facility with the ability to bring forward expansion land as and when market demand dictates. It is therefore likely more efficient to cater for long-term forecast growth in freight volumes by incrementally increasing storage capacity on the expansion land available at Killingholme, allowing for a more responsive reaction to future levels of market demand, which are currently uncertain.

**Figure 6.4 Unaccompanied Ro-Ro demand supply balance – Applicant demand against illustrative Killingholme expansion capacity, units ('000s)**



Source: Volterra calculations, 2023. Including a replication of the Applicant’s unaccompanied Ro-Ro forecasts for the Humber.

## 7. Conclusions

### Conclusions on the project's 'identified need'

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The findings presented in this report cast substantial doubt on whether there is in fact an identified economic (not commercial preference) need to deliver more capacity for freight in the Humber region. In our opinion, the case outlining the 'identified need' for the Proposed Development is not adequately made.

The Applicant's assertion of economic need is based on flawed assumptions when calculating landside storage capacity, such as dwell times that are too long for existing Humber operations. Together these errors result in current capacity at Killingholme being underestimated by the Applicant by between 64% and 164%. Once combined with capacity at the other Humber ports, this results in an underestimate of existing capacity of between 21% and 77%. This is a very significant limitation of the Applicant's evidence, undermining the need for the Proposed Development.

A further fundamental issue with the Applicant's evidence base is the major inconsistency between what they assume existing dwell times for unaccompanied Ro-Ro to be, and what the required dwell time at the Proposed Development needs to be. The identified need for the Proposed Development is premised on the assumption of an average 2.25 day dwell time for unaccompanied cargo. Yet with a 2.25 day dwell time the Proposed Development is not able to meet the identified need based on future forecast demand. Meeting this need can only be achieved through a very low assumed dwell time of 0.9 days at the Proposed Development, which then serves to contradict the methodology that identifies the need for the Proposed Development in the first place.

Furthermore, the overly bullish GDP growth forecasts lead to demand scenarios in the Humber that may not be realised in the future. Simple sensitivity scenarios clearly demonstrate how uncertain it is that this level of demand will be achieved. Analysis presented in this report shows that Humber freight forecasts might be overstated in the region of around 20% over the longer term.

In this sense, it is questionable whether the Proposed Development does in fact constitute sustainable port development that efficiently caters for long term growth in freight volumes. It is

our opinion that it is more economically efficient to allow existing port infrastructure (through expansion land, a reduction in dwell times and/or increased berth utilisation) to respond to changes in future market demand and continue to facilitate the efficient and economic transport of goods through the Humber region.

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## 8. Appendix – glossary of terms

Term	Definition
Accompanied Ro-Ro	Road goods vehicles carrying freight accompanied by the driver on the sea crossing.
Associated British Ports (ABP)	The Applicant, and the operator of 21 ports across the UK including Immingham and Hull.
Berth	A ship's allocated place at a wharf or dock.
CLdN Ports Killingholme Limited (CLdN)	The party for which this report has been prepared on behalf of. They are the owner and operator of the Port of Killingholme.
Compound annual growth rate (CAGR)	The annualised rate of growth in the value of a metric (such as GDP) in a given time period.
Department for Transport (DfT)	The department of the government responsible for the English transport network. They are responsible for providing policy, guidance, and funding to English local authorities to help them run and maintain their road networks, improve passenger and freight travel, and develop new major transport schemes.
Development Consent Order (DCO)	Under the Planning Act, a DCO is the means of obtaining permission for developments categorised as Nationally Significant Infrastructure Projects (NSIPs).
Dry bulk	Dry raw materials such as coal and agricultural products which are contained in the main cargo hold of bulk carrier vessels.
Dwell time	For the purposes of this report, dwell time is defined as the period of time (expressed in days) for which a unit of freight stays stored (landside) at the port awaiting to be transferred.
Feeder traffic	Freight volumes which are transhipped to the UK via a secondary port which is not the true port of origin.
Freight elasticity relative to GDP	The expected percentage change in freight arising from a 1% change in GDP.
Gross Domestic Product (GDP)	The total value of goods produced and services provided in a country during one year.
Ground slots	The area of a port where container units are stacked and stored.
Heavy goods vehicle (HGV)	Any commercial vehicle weighing over 3.5 tonnes.
HM Treasury (HMT)	The government's economic and finance ministry, who maintain control over public spending.
Humber ports	The ports of Goole, Grimsby & Immingham (inclusive of Killingholme), Hull and Rivers Hull & Humber.
Immingham Eastern Ro-Ro Terminal (IERRT)	The Proposed Development.

Term	Definition
Just in time (JIT)	A logistics management strategy which looks to align orders from suppliers directly with production schedules.
Lift on / lift off (Lo-Lo)	Containerised traffic which is loaded and unloaded by cranes or a reach stacker. <sup>19</sup>
Liquid bulk	Any liquid or liquid gas that is transported in a tank.
Market study	The Applicant's <b>ES Volume 3 Appendix 4.1: Market Forecast Study Report</b> .
National Policy Statement for Ports (NPSP)	A document that provides the framework for decisions regarding UK port development proposals. It also applies, where relevant, to associated road and rail links.
Office for Budget Responsibility (OBR)	A non-departmental public body funded by the UK's HM Treasury which provides independent economic forecasts and analysis of public finances.
Peak multiplier	A factor that accounts for the efficient capacity of a port being lower than its peak capacity.
Port operator	The port authority or company responsible for the day-to-day operations of the port.
Roll on / roll off (Ro-Ro)	Cargo that can be moved on to, or off, a vessel either by their own propulsion or with assistance.
Shipping line	A company who owns and operates ships transporting cargo between ports.
Shortsea	Maritime traffic that moves cargo along a coast without having to cross an ocean. This consists of traffic to and from the European Union (EU) and 'Other Europe and Mediterranean' (Extra-EU) countries.
Stack efficiency	The number of units in a given area relative to the maximum number of units that can occupy the same area.
Stacking height	The number of container units stacked per ground slot.
Static capacity	The maximum number of units that may be stored at a given time.
Storage capacity	The current number of units that may be stored (landside) at a port given its current operational environment.
The Applicant	The party proposing the Development Consent Order, in this case Associated British Ports (ABP).
The Proposed Development	The proposals as set out in the Applicant's <b>ES Volume 1 Chapter 2: Proposed Development</b> .
Throughput	The total amount of freight handled at a port in a given time period.
Trailer bay	The area of a port used to store roll on / roll off units.
Unaccompanied Ro-Ro	Road goods vehicles without the accompanied cab, rolled on and off the vessel by port operations and collected by a new driver at the destination port.

<sup>19</sup> A reach stacker is a vehicle used for handling intermodal cargo containers in small terminals or medium-sized ports. Reach stackers can transport a container short distances very quickly and pile them in various rows depending on their access.



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## APPENDIX 2

### APPLICANT'S COMMENTS ON THE REVISED DRAFT DCO, EXPLANATORY MEMORANDUM AND THE APPLICANT'S ACTION POINTS ARISING FROM ISH1

#### *Introduction*

1. This Appendix focuses on matters relating to the Applicant's draft DCO and follows a review by CLdN of the Applicant's Draft DCO Version 02 [REP1-004], Explanatory Memorandum Version 02 [REP1-006], the Summary of the Applicant's Oral Submissions at Issue Specific Hearing 1 [REP1-008] (in particular the Applicant's response to the Action Points arising from that hearing) and the Applicant's submission at Deadline 1 titled the 'Port of Immingham and River Humber – Management, Control and Regulation' [REP1-014], submitted at Deadline 1.
2. For brevity, this response focuses on the issues arising from those submissions but should be read in conjunction with CLdN's relevant representation [RR-007] and its Issue Specific Hearing 1 (ISH1) on the DCO – Post Hearing Submissions (including written submissions of oral case) [REP1-024].

#### *Article 6 (maintenance of the authorised development)*

3. While the definition of "maintain" contained in article 2(1) may be well precedented, it is not clear from the Applicant's Environmental Statement that it has assessed the full scope of the power to maintain that it seeks. For example, paragraphs 3.2.22 to 3.2.25 of ES Chapter 3 [APP-039] provide some interesting background on how renewal projects have extended the lifetime of infrastructure originally installed in the late 1960s and early 1970s, but it is not clear from this chapter how the Applicant has assessed the likely significant environmental effects arising from future renewal projects of the development for which it is now seeking development consent.

#### *Article 7 (limits of deviation)*

4. There is a lack of clarity in relation to vertical limits of deviation in article 7.
5. The reference point from which the power to deviate may be exercised is the levels shown on the Engineering sections, drawings and plans. However, these are marked as "indicative" and there is no clear labelling telling the reader the maximum height of the structures, or clarifying whether the levels are to be scaled from existing or proposed ground levels. Put simply, there is no firm point of reference to determine the starting point of the 2m upwards limit of deviation. Consequently, as drafted, there can be no confidence that the development that would be authorised by this draft Order will be within the parameters of its environmental assessment. The Applicant's response to Action Point 11 [REP1-008] does not address this concern.
6. On a minor drafting point, it also is not clear why the Applicant should be entitled to deviate upwards when merely "convenient" (per article 7(b)(i)) yet downwards where "necessary or convenient" (per article 7(b)(ii)).
7. The Applicant's Explanatory Memorandum does not assist with either of these concerns.

#### *Article 21 (operation and use of development)*

8. Article 21 would authorise the operation and use of the authorised development for the import and export of RoRo units up to a maximum of 660,000 units per year together with occasional use by passengers. The Explanatory Memorandum [REP1-006] at paragraph

8.3 confirms that this throughput volume is a parameter by which the environmental assessment has been fixed.

9. Paragraph (2) appears to be intended to limit the volume of occasional passengers, but it is subject to the tail-piece “unless otherwise agreed in writing with the relevant local authority and subject to obtaining all necessary approvals.”
10. The tail-piece causes significant concerns. The Planning Inspectorate’s Advice Note 15 at paragraphs 17.4 and 17.5 cautions against the use of tail-pieces:

“17.4 Therefore, adding a tailpiece (a tailpiece is a mechanism inserted into a condition (or by analogy a Requirement) providing for its own variation) such as the one below would not be acceptable because it might allow the discharging authority to approve a change to the scope of the Authorised Development applied for and examined, thus circumventing the statutory process:

*“The authorised development must be carried out in accordance with the principles set out in application document [x] [within the Order limits] unless otherwise approved in writing”.*

17.5 On the other hand, a Requirement might make the development consent conditional on the discharging authority approving detailed aspects of the development in advance (for example, the relevant planning authority approving details of a landscaping scheme). Where the discharging authority is given power to approve such details it will be acceptable to allow that body to approve a change to details that they had already approved. However, this process should not allow the discharging authority to approve details which are outside the parameters authorised within any granted DCO.”

11. This tailpiece falls squarely in the latter category, permitting the discharging authority to approve matters which are outside the parameters authorised by the DCO and assessed in the ES, thereby subverting the clear statutory process for applying to change a development consent order and the need for further environmental information and assessment. The fact that the provision appears in an article rather than in a requirement contained in a Schedule to the DCO makes no difference in terms of enforceability. This provision would still permit the relevant local authority to take a decision that goes beyond the scope of the development consent that would be granted by the Secretary of State if the Order is made.
12. Additionally, the tailpiece is subject to imprecise and uncertain drafting in connection with “obtaining all necessary consents and approvals”. It is unclear what these consents and approvals are, alongside who will be granting them. If the provision is to be subject to them, they ought to be clearly specified.
13. Finally, CLdN notes the new paragraph (3) which appears intended to limit the discretion of the relevant local authority to approve passenger movements in excess of the limit assessed and what would be consented if the Order is made, by reference to the subject matter of the approval sought not giving rise to “any significant adverse effects”. For the reasons noted above and with respect to the relevant local authority, it is not appropriate or necessary for a DCO to permit the relevant local authority to approve the exceedance of an assessed parameter of a DCO made by the Secretary of State. Even were that not the case, the benchmark by which it would be measured must be more certain and precise than “significant adverse effects”. It is unclear what is being adversely affected and what it is to be compared with.



14. In any event the tail-piece in this form is inherently flawed and no amount of additional gloss or assistance to the relevant local authority faced with the unenviable task of determining such a request, is capable of remedying it.

*Article 22 (power to appropriate)*

15. The Applicant has clarified that it seeks to incorporate the “open port” duty in section 33 of the Harbours, Docks and Piers Clauses Act 1847 via article 4 of the draft Order whilst also preserving the power under this article to disregard that duty and devote “any part” of the authorised development to a single operator. The Explanatory Memorandum merely explains that there “may be circumstances when the Applicant may which [sic] to appropriate the use of all or part of the proposed development for the benefit of a specific operator.”
16. The Applicant’s case for the need for the project set out in section 4 of the Planning Statement [APP-019] relies on the needs of one operator, Stena, to be serviced by its proposal. It would appear clear, by the Applicant’s own stated case, that the proposed development would in reality not be an “open port”. The Applicant has not explained why it is incorporating the “open port” duty contained in section 33 of the 1847 Act given the Applicant’s case that the Proposed Development is in fact intended to serve just a single operator.
17. As a result, doubt is cast on the nature of the development proposed by the Applicant. If it is intended serve just a single operator, as the Applicant says, then why incorporate the open port duty contained in section 33 of the 1847 Act at all?
18. The Applicant’s response to Action Point 12 in [REP1-008] and its updated Explanatory Memorandum does not assist with these concerns.

*Article 28 (agreements with highway authorities)*

19. The drafting in this article is relatively standard and is included in numerous DCOs. However, it is not clear why it has been included in this draft DCO. The only provision of this draft Order that contains powers in relation to streets is this article.
20. It is unclear what power is proposed to be exercised pursuant to an agreement under sub-paragraphs (1)(a) and (2)(a). The Explanatory Memorandum [REP1-006] does not assist with this question.
21. CLdN also notes that the Applicant’s Consents and Agreements Position Statement [APP-110] table 1, row 7 on page 12, makes reference to entering into agreements under the Highways Act 1980 with North East Lincolnshire Council “and / or” North East Lincolnshire Council” which are “required to allow any works to public highway”. CLdN presumes that this is a reference to works in the highway to mitigate the adverse transport effects of the proposed Scheme.
22. The fact is that such measures are not included within the Order, and so would potentially:
  - require planning permission under the TCPA 1990 and assessment of the environmental effects of such highway works;
  - require the relevant Highways Act 1980 agreements to be entered into; and
  - require the applicant to secure the interests in land necessary to carry out such works.
23. This calls into question the Applicant’s ability to deliver the mitigation necessary for the Scheme and the adequacy of the environmental information. Neither the Applicant’s

response to Action Point 13 [REP1-008] nor its updated Explanatory Memorandum [REP1-006] assist with these concerns.

*Article 29 (defence to proceedings in respect of statutory nuisance)*

24. The terms of article 29(3) would mean the local environmental health officers would not be able to take action to abate a statutory noise nuisance (the threshold for which under the Environmental Protection Act 1990 is effects being *prejudicial to health*) in relation to noise that is “a consequence of the construction, operation, maintenance or use of the authorised development” and which “cannot reasonably be avoided”.
25. The Applicant cites in its Explanatory Memorandum the precedents of the High Speed 2 Acts and a range of other rail Transport and Works Act Orders as precedents, but this is not a “standard” DCO provision as evidenced by the precedents the Applicant itself cites. The relevance and necessity of those precedents, given that they relate to significant railway projects in urban environments, is not clear.
26. CLdN urges the Examining Authority to carefully consider the inclusion of this provision in this Order. With it in place local environmental health officers will have their enforceable statutory powers to protect environmental health significantly curtailed. Such a provision should not be included in a DCO lightly and without careful scrutiny of the justification for its inclusion. Neither the Applicant’s response to Action Point 14 [REP1-008] nor its updated Explanatory Memorandum [REP1-006] assist with these concerns.

*Requirement 4 (construction hours – associated development)*

27. This requirement purports to control working hours. It contains significant flaws that undermine confidence in it being able to effectively serve that purpose.
28. In paragraph (1) it applies working hours to “associated development”. The term is not defined in either paragraph 1 of Schedule 2 to the draft DCO, nor is it defined in article 2(1). The reader is left to assume it is a reference to Work Nos. 4 to 13, plus any ancillary works. A definition is necessary for clarity and certainty, particularly as the term is used again in requirement 16.
29. While the lack of a definition for “associated development” is easily remedied, of greater concern to CLdN are the grounds listed in paragraph (2) on which the Company can disregard those working hours. Paragraph (2)(a) tells us that working hours restrictions can be ignored for “works that cannot be interrupted” with no corresponding duty on the Company to endeavour to plan such works so as to respect the working hours restrictions. Paragraph (2)(d) tells us that working hours restrictions can be disregarded where noise levels do not exceed “maximum permitted levels of noise at each agreed monitoring location to be determined with reference to the ABC Assessment Method...”. It is unclear who permits the “maximum permitted levels of noise”, nor with whom the “monitoring locations” are to be agreed. All that is provided, via another tail-piece, is that the relevant local authority may agree to the Company ignoring those permitted levels at those monitoring locations whilst disregarding the working hours.
30. The Applicant’s Explanatory Memorandum sheds no light on what is proposed with these exceptions and neither does it include any justification for them. The draft requirement is lacking in the precision and certainty necessary to give confidence to it acting as an appropriate control for construction noise. This is especially concerning when considered alongside the Applicant’s proposed protection from enforcement for statutory noise nuisance discussed above in relation to article 29.
31. A proportionate approach to any works outside of the defined working hours restrictions would be to define a scheme of noise control with necessary approvals and controls that

could be notified, monitored and enforced. That would at least afford the relevant local authority an appropriate degree of control and certainty, if none can be provided by the Applicant at this stage. This is particularly important in the light of CLdN's representations above in relation to article 29 of the draft DCO.

*Requirement 6 (piling and marine construction works restrictions)*

32. The Applicant has revised requirement 6 such that it wishes to be entitled to undertake capital dredging "without restriction as to timing or day" [REP1-005, requirement 6(3), Part 1 of Schedule 2]. It is not clear whether the Applicant has fully considered and assessed either the environmental impacts of such activities on migratory species within the Humber estuary (most notably the SAC river lamprey population and the various migratory birds supported by the SPA, as well as important breeding populations of bittern *Botaurus stellaris*, marsh harrier *Circus aeruginosus*, avocet *Recurvirostra avosetta* and little tern *Sterna albifrons* during the summer months), the terrestrial environment (noting that the marine works would fall to be regulated by the MMO under the DCO's deemed marine licence) or the impacts of such unrestricted works on navigational efficacy and safety.

*Requirement 8 (construction and environmental management plan)*

33. This requirement simply states that the authorised development must be constructed in accordance with the construction environmental management plan. That document is a mere outline and is lacking in the level of detail that is required to be enforceable in its current form, which would be the case were the Order made in these terms.
34. The Examining Authority can have no confidence in the mitigation recommended in the environmental statement being secured through this means.
35. As CLdN said during ISH 1, the normal approach where the details of mitigation remain to be developed is to require an outline construction environmental management plan to be developed into a full plan and submitted for the approval of the relevant local authority prior to works commencing. Consideration should also be given to whether a similar requirement is appropriate to adequately control the "permitted preliminary works", noting that the definition of that term includes substantial works such as utility diversions. This would enable the relevant local authority to have an appropriate degree of oversight of the Applicant's proposals and, where appropriate, consult other key statutory bodies such as Natural England and the Environment Agency. Instead, the Applicant has simply deleted reference to those statutory bodies that possess the relevant expertise to provide input to the development of a full Construction Environmental Management Plan.
36. As currently drafted, requirement 8 merely requires compliance with a high-level document, places no duty on the Applicant to develop that outline document into a full construction environmental management plan, contains no provision requiring the input of relevant statutory consultees and leaves it solely to the Applicant to comply with a high level and outline document. The Applicant's response to Action Point 22, wherein it explains that a single paragraph in the high-level CEMP document is sufficient to address concerns in relation to Materials Management Plan, needs to be seen in the context of a requirement that requires no local authority determination as to the effectiveness of such a plan. If there were issues during construction, and the relevant local authority wished to take action, all it would have to enforce against would be a very high-level outline construction environmental management plan. This is not acceptable.

*Requirement 10 (noise insultation), requirement 11 (environmental enhancement) and requirement 14 (lighting strategy)*

37. These provisions require things to be done prior to the operation of the authorised development. However, they use a different formulation - "first operational use" and

simply “operation” respectively. Indeed, even within the same requirement different formulations are used; see article 10(1) which uses “first operational use” and 10(2) which refers to “operations”. In the interests of necessity, clarity and certainty it would be beneficial to define what is meant by operations and to adopt consistent language.

*Requirement 15 (construction and operational plans)*

38. The drafting of this requirement is beset by the same issues as is referred to in relation to requirement 8, in that it lacks appropriate oversight by the relevant local authority. It is exacerbated by the standard of compliance required by this requirement, which is only “general accordance” rather than the “accordance” under requirement 8. It isn’t clear why the Applicant has chosen to require two different standards of compliance with its construction environmental management plan, nor why the important documents listed at sub-paragraphs (a) to (e) covering such key issues as navigation safety and flood risk merit only “general accordance”.

*Requirement 17 (materials management plan)*

39. As drafted this requirement is uncertain and unenforceable. It requires the materials management plan to be submitted to a Qualifying Person before the works to which that plan relates are commenced. If no plan is produced or submitted, how can the relevant local authority know whether or not the Applicant intended or ought to prepare such a plan? Furthermore, the requirement does not oblige the Company to actually comply with the material management plan.

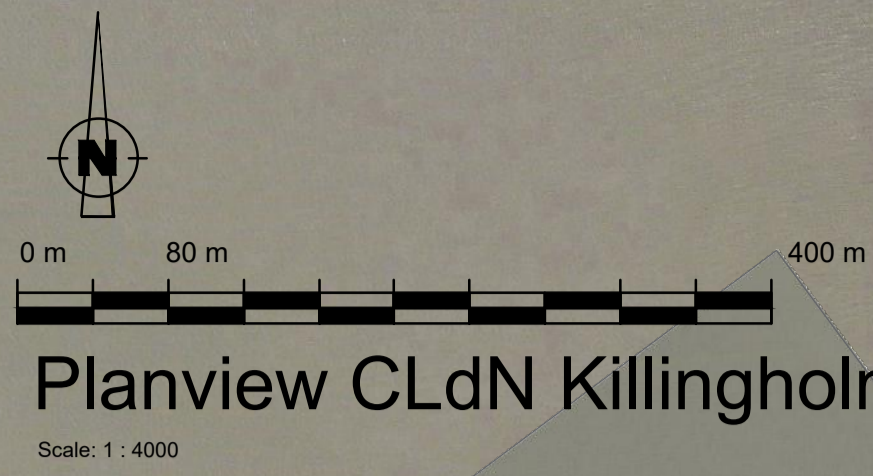
*Requirement 18 and Action Point 2 – Roles and responsibilities of the statutory harbour authorities*

40. The Applicant’s *The Port of Immingham and River Humber – Management, Control and Regulation* [REP1-014] submitted at Deadline 1 helpfully sets out the Applicant’s understanding of the navigation’s regulatory regime. The Applicant notes at paragraph 8.1, in relation to its functions as (i) owner and operator of the Port of Immingham and statutory harbour authority; (ii) the statutory conservation and navigation authority and Humber statutory harbour authority; and (iii) the competent harbour authority, that “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.”
41. The note also confirms at paragraphs 10.23 that the ABP Harbour Authority Safety Board, while being a separate board from the “main ABP Board”, comprises the same membership. That is to say, not only is it the same corporate body, it is the same natural persons that carry out these functions.
42. This is a very different set of circumstances than those that sometimes prevail where, for example, a local planning authority is determining whether or not to grant planning permission to itself. In those cases there are clear statutory procedures to ensure an appropriate degree of functional separation. The particular importance of such functional separation in cases subject to environmental impact assessment has been emphasised by the High Court in *London Historic Parks and Gardens Trust v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 2580 (Admin) where the Secretary of State’s handling arrangements for the Holocaust Memorial planning application were found to be inadequate.
43. Here the Applicant expressly makes a virtue of the absence of such handling arrangements and so the efficacy of this state of affairs must, CLdN suggests, be treated with a considerable degree of caution.

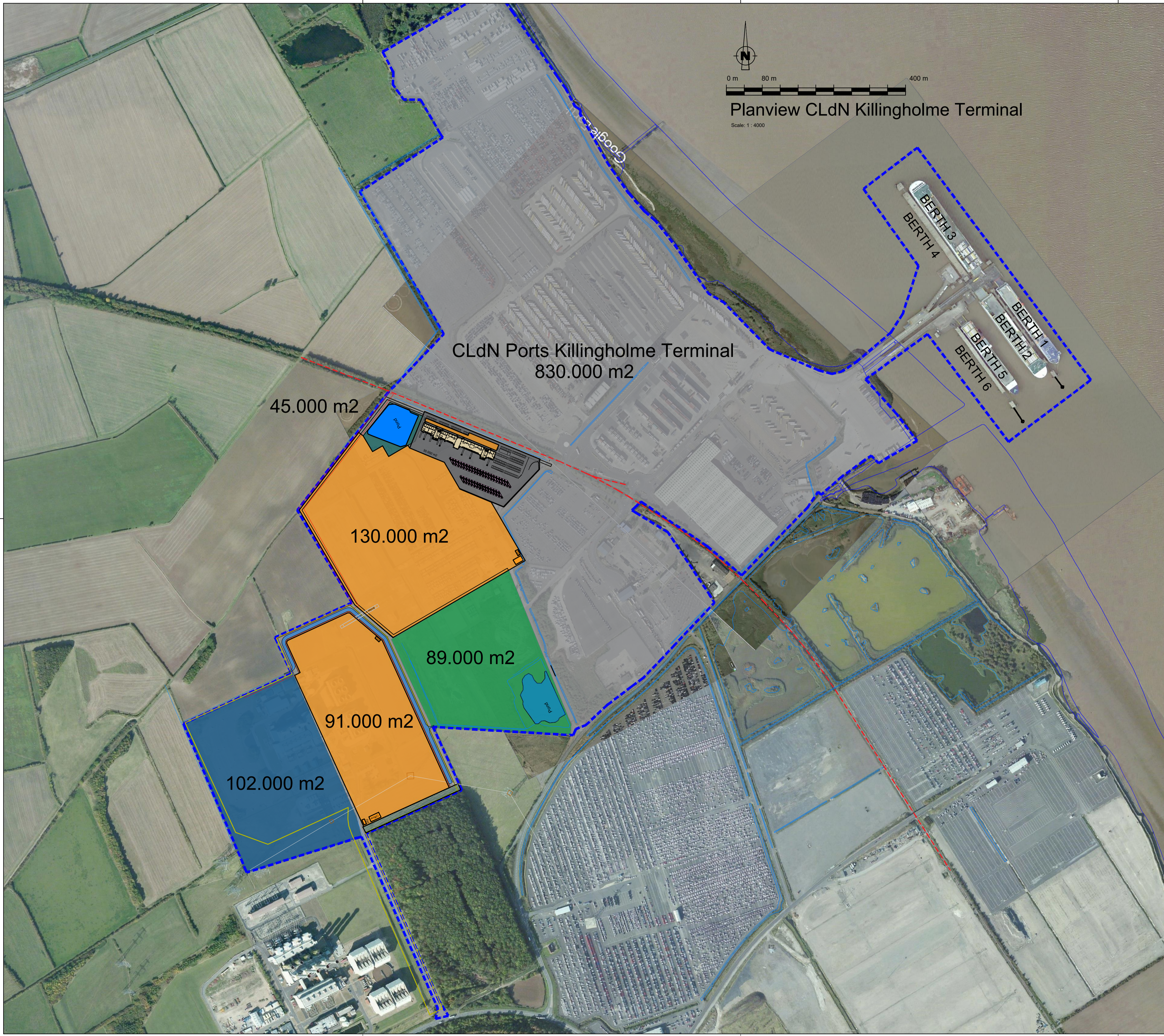
*Action Point 16 – Public access to information related to the discharge of requirements*

44. CLdN is disappointed to note that the revised DCO does not appear to contain any provisions relevant to publicising information and decision relevant to the discharge of requirements and nor does there appear to be any explanation in the Deadline 1 submissions as to why the Applicant considers it to be inappropriate to make such provision.

**APPENDIX 3**  
**KILLINGHOLME ESTATE PLAN**



Planview CLdN Killingholme Terminal



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

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

