

CLdN PORTS KILLINGHOLME LIMITED

SUMMARY OF WRITTEN REPRESENTATION

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

1. INTRODUCTION

1.1 This Summary of Written Representation is submitted on behalf of CLdN Ports Killingholme Limited (**CLdN**) and summarises CLdN's Written Representation submitted at Deadline 2 (the **Written Representation**). It is further to CLdN's previous submissions in relation to the development consent order application (the **DCO Application**) for the Immingham Eastern Terminal RoRo (the **Proposed Development** or **IERRT**).

1.2 The Written Representation is supported by the report prepared by economic consultants, Volterra Partners LLP included at Appendix 1 to the Written Representation (the **Volterra Report**). The Written Representation is intended to be read in conjunction with the Volterra Report and this summary document draws from the conclusions of both.

Summary

1.3 CLdN maintains its in-principle objection to the Proposed Development in light of the full review of market projections in the freight sector and the Humber specifically, as set out in the Written Representation and Volterra Report. In particular, CLdN does not agree with several key aspects of the project need case presented by the Applicant, in particular:

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

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

1.3.3 the optimistic level of growth presented; and

1.3.4 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.

1.4 CLdN also continues to have concerns in relation to the Applicant's draft Development Consent Order (**dDCO**), its assessments in relation to marine ecology and traffic impacts, and the legal and policy grounds for determining the DCO Application.

2. PROJECT NEED

2.1 The primary basis for CLdN's objection is that the need case as presented by the Applicant is not substantiated and/or is not credible, for the following reasons.

Existing and future capacity on the Humber

2.2 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). The Applicant has applied incorrect assumptions about the availability of berths and operational land at Killingholme which create a misleading impression as to available capacity.

Dwell times

- 2.3 The basis for the Applicant's assessment of capacity is a dwell time, relative to its assessment of available storage capacity. Although CLdN agrees that dwell time is a key factor in assessing capacity, CLdN is concerned that the values applied by the Applicant are not justified and lead to inaccurate assessments of capacity. As set out in the Volterra Report, adjustments to the dwell time can make a significant difference to available capacity.
- 2.4 In CLdN's view and questioning of the Applicant's 2.25 average day dwell time assumptions, a correction to the study should be undertaken to reflect the facts and evidence and then all reliant assessments re-run and outcomes reconsidered and tested in the Examination.

Projected growth and market share

- 2.5 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**)¹. According to the Applicant, that figure sits well within the anticipated growth in volumes on the Humber. Analysis of the figures given by the Applicant indicates that Stena will absorb approximately 52% of the projected growth on the Humber, i.e. 440,000 units.
- 2.6 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 use². The ability of IERRT to deliver additional capacity would therefore always be reliant on Stena capturing additional market share. In addition, the Applicant's expansion to control a larger market share on the Humber estuary as a result of the Proposed Development does not align with or support the National Policy Statement for Ports (**NPSP**) explicit support for competition within the freight industry.

Operational parameters

- 2.7 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 increasing³, rather than reducing.
- 2.8 The operating parameters on ports (aside from dwell times) would require challenging and novel operational measures at IERRT to achieve a throughput of 660,000 units. 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 the average volumes referred to above.
- 2.9 This high throughput is not achievable due to limitations on berth contingencies, service demand patterns, seasonal variations in volumes, vessel utilisation levels, and fleet variation. Specifically, if Stena does not increase the size of its vessels or change its operations, then it cannot deliver the above noted level of throughput. Furthermore, its operational flexibility to increase growth is constrained by the size of the other terminals it operates in for example in Rotterdam and Hoek, and there is no indication or evidence of an intention to operate out of other locations.

¹ Planning Statement, paragraph 3.40.

² See further discussion at paragraphs 15 - 18 of Appendix 2 (Applicant's comments on the draft DCO) of the Written Representation.

³ Market Study, paragraphs 83.b.II and 183.b.

Market demand

2.10 Whilst the overarching approach of the Applicant's Market Study 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 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.

2.11 In parallel, three scenarios of revised storage capacity in the Humber (low, medium and high) are tested in the Volterra Report 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), based on realistic dwell times discussed above, 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 later 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 CLdN has reviewed the dDCO submitted by the Applicant at Deadline 1 on 5 September [REP1-004] 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. These are set out in full at Appendix 2 to the Written Representation.

4. **REQUIREMENT FOR DCO PROTECTIVE PROVISIONS**

4.1 Furthermore, the Proposed Development risks significant adverse impacts on CLdN's operations and business continuity. As a result, CLdN must secure protective provisions to safeguard its interests, operations and established operational port capacity. CLdN's concerns and reasons for requiring protective provisions are set out in full in Part 4 of the Written Representation.

5. **OTHER MATTERS**

5.1 CLdN maintains its objection with respect to the adverse impacts of the Proposed Development on traffic and transport, and navigation and safety matters. CLdN recognises that it is principally the role of Natural England to comment and advise on marine ecology concerns. However, CLdN notes from the Principal Areas of Disagreement Summary Statement submitted by Natural England at Deadline 1 [REP1-022] that a number of matters are yet to be resolved and so maintains its objection on the basis that the Proposed Development could cause significant and irreversible damage to marine ecological receptors, biodiversity and protected habitats.

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. 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 as a whole. However, properly construed the NPSP does not preclude examination of whether the Proposed Development contributes to that need and complies with the detail and conditions set out in relation to that presumption in the NPSP.

6.2 Additionally, CLdN refers to the Applicant's submission in relation to the ClientEarth cases⁴ and has provided a detailed analysis of them. The correct position in law is that it is up to the decision-maker

⁴ R (ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy [2020] EWHC 1303 and [2021] EWCA Civ 43.

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.

7. **CONCLUSION**

- 7.1 For the foregoing reasons, CLdN maintains its in-principle objection to the Proposed Development. The DCO Application should be refused.