

Principal Areas of Disagreement Summary Statement – 05 September 2023

CLdN Ports Killingholme Limited

Principal Issue in Question	Brief concern held which will be reported on in full in written submissions	What needs to change, or be included, or amended so as to overcome the disagreement	Likelihood of the concern being addressed during Examination
Policy Compliance	The absence of adequate or demonstrable compliance with the National Policy Statement for Ports, and UK Marine Policy Statement, East Inshore and East Offshore Marine Plans is of significant concern alongside compliance with other planning policy including the National Planning Policy Framework and policies contained in the North East Lincolnshire Local Plan.	See comments in relation to specific issues below.	We have in-principle concern with respect to the proposed development being compliant with national planning policy. However, we will engage with the Applicant through the rest of the Examination stages with a view to addressing, or at least narrowing, the scope of any disagreement with respect to compliance with planning and marine planning policy and the evidence required from the Applicant to achieve this.
Project Need	From the documentation that is available, the Applicant has not adequately explained or supported how the Proposed Development constitutes “sustainable port development” that addresses an identified “need”. CLdN has concern regarding the accuracy and completeness of the information on capacity constraints and market demand that is presented in Chapter 4 of the ES (Need and Alternatives) [APP-040] and Appendix 4.1 (Market Forecast Study Report) [APP-079].	The Applicant would need to fully address the concerns with respect to project need at paragraph 3.3.2 and 4.3.1 of CLdN’s Relevant Representation dated 19 April 2023 [RR-007] and in CLdN’s Written Representation. The Applicant has commented on CLdN’s Relevant Representations in relation to the need case need in its Response to Relevant Representations submitted at Deadline 1 [REP1-013]. CLdN has responded to these comments in its Responses to Deadline 1 Submissions, submitted at Deadline 2.	We have in-principle concern with respect to the need for the proposed development, and related compliance with planning policy but will continue to engage constructively with the Applicant on these matters during the course of the Examination to seek to understand any evidence being brought forward to substantiate and support the Applicant’s promoted case and conclusions.
Adequacy and conclusions of the Environmental Statement (ES)	There are a number of weaknesses in the scope and content of the ES, and the apparent assumptions that underpin its conclusions.	The Applicant needs to demonstrably address the concerns identified by CLdN in its Relevant Representation dated 19 th April 2023 [APP-007] with respect to Chapter 4 (Need and Alternatives) [APP-040], Chapter 11 (Coastal Protection, Flood Defence and Drainage) [APP-047]; Chapter 15 (Cultural Heritage and Marine Archaeology) [APP-051], Chapter 17 (Traffic and Transport) [APP-053] and Chapter 20 (Cumulative and In-combination Effects) [APP-074]. CLdN has provided an update on its position on these topics in its Written Representation submitted at Deadline 2.	We will consider any further substantive information on the adequacy of the ES that the Applicant consults on and brings forward in response to Relevant Representations, ExA questions and matters arising in hearings and Written Representations and update and reflect any change in position or narrowing of areas of disagreement consequent on these substantive matters.
Adequacy and conclusions of the Habitats Regulations Assessment (HRA)	The conclusions of the HRA [APP-115], and in particular that the loss of protected habitat would not have an “adverse effect on integrity” of the designated sites, has not been properly evidenced, reasoned or supported by adequate environmental information at this stage.	Substantial additional environmental information, on a wide range of matters, must be further consulted on and submitted by the Applicant in order to satisfy the legal requirements under the Conservation of Habitats and Species Regulations 2017. Further details of the information that is required is set out in Natural England’s updated Relevant Representation dated 4 July 2023 [AS-017], additionally submitted Log of Key Issues [AS-016] and Principal Areas of Disagreement Summary Statement submitted at Deadline 1 [REP1-022].	The impact of the proposed development on designated sites cannot be fully assessed until this information is available. Accordingly, it is not possible at this stage to confirm the likelihood of this matter being adequately addressed.
Navigational safety and shipping	Significant weaknesses have been identified by other parties with respect to the Applicant’s Navigational Risk Assessment [APP-089]. These include the baseline inputs used to develop the assessment and concerns with the optimistic assumptions (including on the use of tugs and bow	Further work must be undertaken to address the shortcomings of the navigational safety/risk assessment [APP-089] and demonstrate that the Proposed Development can operate safely and without the risk of business interruption to CLdN. In this regard we would also draw attention to and endorse a number of the concerns expressed by DFDS in their Relevant Representation with respect to these matters	We would welcome receipt of updated environmental information that demonstrates the proposed development can operate safely and without the risk of business interruption to CLdN including prioritisation safeguards for the benefit of CLdN. This issue may in part be capable of

Principal Issue in Question	Brief concern held which will be reported on in full in written submissions	What needs to change, or be included, or amended so as to overcome the disagreement	Likelihood of the concern being addressed during Examination
	<p>thrusters and with respect to mitigation) that underpin the assessment that do not accord with "real world" shipping operations. The assessment also appears to conflate different methodologies for undertaking an assessment which result in the potential downplaying of effects. CLdN is concerned that apparent deficiencies in the NRA could mean that the impacts of manoeuvring of vessels on the new berths, at Immingham Oil Terminal and the Port of Immingham could impact its operations, particularly if this necessitates restrictions on the passage of vessels upstream and downstream of the Proposed Development or the risks associated with vessel allision/collision that may mean traffic on the River Humber is disrupted or prevented if an incident occurs. This could have significant detrimental effects on scheduled services that utilise the Port of Killingholme.</p>	<p>[RR-008]. CLdN notes with concern the correspondence submitted by Immingham Oil Terminal at Deadline 1 [REP1-035] in which the Applicant denied IOT's request for the necessary information to run a further Navigational Risk Assessment on the basis of concerns around the inadequacy of the Applicant's Navigational Risk Assessment.</p>	<p>being safeguarded through the inclusion in the DCO of adequate protective provisions for the benefit of CLdN (see below).</p>
Dredging proposals	<p>CLdN has concerns with the selection of deposit site HU056 for the disposal of arisings from the capital dredge and future maintenance dredging. Chapter 8 - Water and Sediment Quality [APP-044] and Appendix 2.1 - Waste Hierarchy Assessment [APP-076] do not consider the impact of the disposed, inerodible, material on the depth of HU056 and its continued capacity as a disposal site for maintenance dredge material. Specifically, the potential effects of 40,000m³ clay at this site does not appear to have been modelled in terms of suspended sediment and bedload transport.</p> <p>It is not clear what parameters of suitability have been applied to determine HU056 as the preferred location for the disposal of the clay material. While Chapter 10: Commercial and Recreational Navigation of the ES (Document Reference 8.2.10) [APP-046] assesses the impact of dredging vessels on traffic, there does not appear to be reference to the potential effects of the inerodible clay material being deposited on the channel bed at HU056 and navigational risk potentially associated with it.</p> <p>CLdN also retains concerns over the impact of the dredging works on disposal site HU60 that it utilises for the disposal of arisings from maintenance dredging, part of its operational undertaking.</p>	<p>The Applicant should enable and secure measures in the DCO to safeguard CLdN's operations, including requirements in the DCO and/or deemed marine licence that secure a safeguarding plan that details the locations and timing of dredging works and which demonstrates that the disposal of dredged material will not cause sediment to be retained within the riverbank system and avoids impacts to other users. The Applicant should also propose protective provisions that secure arrangements for engagement with CLdN and measures to safeguard the navigational channel at the Port of Killingholme and, if necessary, fund any costs incurred by CLdN as a consequence of carrying out additional maintenance dredging works or disposal.</p> <p>Further assessment of the disposal plans should be undertaken to better understand the potential effects on the channel bed, and consequential effects to local hydrodynamics, sediment transport, navigation, and disposal site suitability and capacity.</p>	<p>See following two rows which set out CLdN's current position with respect to seeking to resolve its concerns through securing protective provisions and Requirements in the draft development consent order.</p> <p>We will consider any further substantive information on the adequacy of the ES that the Applicant submits and update and reflect any change in position or narrowing of areas of disagreement consequent on these substantive matters.</p>
DCO protective provisions	<p>CLdN notes that there are no protective provisions in the draft DCO [APP-013] for the benefit of CLdN and its statutory undertaking</p>	<p>Adequate protective provisions that provide robust protection for CLdN's interests must be agreed with CLdN and secured in the final DCO. Adequate protective provisions to ensure business continuity and safeguard CLdN's assets and existing Port undertaking and duties need to be agreed between the parties before the close of Examination. CLdN wrote to the Applicant on 31 August 2023 with</p>	<p>To date, the Applicant has not provided draft Protective Provisions for CLdN. Accordingly, it is unknown at this stage whether the Applicant</p>

Principal Issue in Question	Brief concern held which will be reported on in full in written submissions	What needs to change, or be included, or amended so as to overcome the disagreement	Likelihood of the concern being addressed during Examination
		full details of the justification for, and scope of, protective provisions that it requires to be included in the final DCO (should the Secretary of State decide to grant the DCO application). A response is awaited at the time of writing.	intends to address this matter, and therefore whether it is likely to be resolved.
DCO Requirements	Necessary and adequate Requirements have not been included in Schedule 2 to the draft DCO [APP-013].	Further discussion is required between the Applicant and CLdN as to the drafting of existing Requirements, and the inclusion of additional Requirements or alternative control and delivery mechanisms, as well as the potential inclusion of CLdN as a mandatory consultee prior to the discharge of relevant Requirements.	Although CLdN will continue to seek to engage with the Applicant, the detail of the Requirements will necessarily be informed by current technical work and examination submissions. Therefore, it is not possible to confirm at this stage whether this issue is likely to be resolved during the Examination.
Adequacy of consultation	The Applicant has made limited attempts to engage with CLdN both during the pre-application, acceptance and pre-examination stages of the DCO application, for example only having sent to CLdN a draft SoCG on 30 th June 2023.	The Applicant needs to take proactive steps to meaningfully engage with CLdN and address its concerns above, including through progressing and finalising a Statement of Common Ground and discussing protective provisions, as now requested by the Examining Authority.	As the Statement of Common Ground with CLdN is now a procedural requirement, CLdN remains hopeful that its concerns with respect to the level of consultation and meaningful engagement by the Applicant will be properly addressed during the Examination. The draft SoCG received from the Applicant on 30 th June 2023 is being considered by CLdN. However, from an initial assessment, various matters cannot currently be agreed. CLdN intends to provide comments on the draft SoCG to the Applicant shortly after Deadline 2.