

# IMMINGHAM EASTERN RO-RO TERMINAL



Applicant's Response to CLdN's  
Written Representation

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## Executive Summary

1. This document provides the Applicant's response to the written representation (WR) submitted by CLdN. Due to the very short time available, it is only possible for a high-level response to be provided.
2. Within Section 6 of its WR, CLdN set out an analysis of the legal and policy framework of relevance to the IERRT development. The analysis provided incorrectly summarises the Applicant's position, and CLdN's position is contradictory and involves a significant distortion of the National Policy Statement for Ports (NPSfP) and the requirements of the Planning Act 2008.
3. The Applicant's position is clear. The NPSfP is a clear statement of national policy which remains in force and which establishes the need for the IERRT development. The Applicant, therefore, is not required to demonstrate need because the need is already established in the NPSfP itself. CLdN's case remains one that flies in the face of Government policy in the NPSfP and invites the decision-maker to do exactly the opposite of what the NPSfP requires and to question the need and the application of the presumption in favour set out in the NPSfP.
4. In a number of respects, CLdN have wrongly set out what the NPSfP requires. In addition, CLdN have misunderstood and misapplied the basic principle that is to be derived from the *ClientEarth* decisions. CLdN have also misunderstood the regulatory requirement in respect of the submission of a harbour improvement statement and have misapplied the *Stonehenge* case in respect of alternatives matters.
5. Within section 2 of its WR – although provided under the heading 'Project Need' – CLdN concentrate on only one element of need matters which are set out within the Applicant's application and which the NPSfP indicates makes up the total need for new port infrastructure. For the reasons set out within this WR, the Applicant does not agree with the argument which CLdN put forward, but it is important to highlight that what CLdN indicate the need to be does not constitute the need which the Applicant has identified and neither does it reflect what the NPSfP explains the position is in terms of need.
6. The Applicant notes that the Volterra report attempts to question some elements relating to competition and resilience matters, but, for the reasons explained, the arguments put forward are flawed.
7. In terms of capacity matters at its Killingholme facility, CLdN appear to be asking it to be accepted that they can simply expand its Ro-Ro activities across further parts of the facility. The suggestion being made is, in the Applicant's view both simplistic and hypothetical.

8. Matters raised by CLdN relating to dwell times, throughputs and the ability of the Applicant's customer to capture market growth are also responded to.
9. In terms of points raised about market demand, the Applicant considers that the forecasts that have been presented on its behalf are not unduly optimistic as claimed by CLdN and its advisors. The Applicant's Market Study goes into more detail and considers a greater number of factors than considered by CLdN. In addition, the GDP forecasts used in the Market Study are more conservative than those which CLdN's advisors indicate should have been used.
10. In terms of comments on the draft DCO and protective provisions, CLdN's position is noted. Where necessary, CLdN's comments on the draft DCO have been addressed in the revised draft submitted at Deadline 3. The Applicant does not consider the Protective Provisions requested by CLdN to be justified or necessary, and has written to CLdN to this effect.
11. For the reasons set out in this response and elsewhere, the Applicant does not agree with the conclusions reached by CLdN. Furthermore, in respect of the specific CLdN position that the IERRT development does not constitute 'sustainable port development', this does not have regard to relevant policy contained within the NPSfP or the wider body of evidence on these matters provided by the Applicant. The Applicant's evidence demonstrates that the IERRT development is sustainable port development.

## 1. Introduction

- 1.1. This document provides the Applicant's response to the written representation (WR) submitted by CLdN at Deadline 2 [REP2-031]. Due to the very short time between the publication of the WR – which only now provides detail of certain aspects of CLdN's position - and Deadline 3 it is only possible for such a high-level response to be provided by Deadline 3. The Applicant will want to respond further as necessary.

## 2. Legal and Policy Framework Analysis – CLdN WR Section 6

- 2.1. This section of the WR is addressed first as it sets a context for the remainder of the Applicant's initial response on need and policy related matters contained within the CLdN WR.
- 2.2. At paragraph 6.2 of its WR, CLdN refer to disagreement between the Applicant and CLdN on how issues around need should be addressed. CLdN then purports to summarise the Applicant's position 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) ..."* and suggests that 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 then go on to state:

*"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 (WR paragraph 6.4).*

*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 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."*

- 2.3. Unfortunately, CLdN's summary of the Applicant's position is not correct and CLdN's position as summarised in these paragraphs is inherently contradictory and involves a significant distortion of NPSfP and the

requirements of the Planning Act 2008. On the one hand CLdN is purporting to accept (for the first time) that there is a need for port development in the NPSfP and the starting point is a presumption in favour of sustainable port development which responds to the need as identified in the NPSfP. No such acceptance was previously evident in CLdN's representations. Yet on the other hand, the reality of CLdN's submissions are directed at challenging the existence of such a need, purporting to question the nature of the need both of which are clearly set out in the NPSfP and the pursuit of an objection to the Proposed Development which is firmly rooted in its position of trying to prevent it proceeding because of any potential competitive effect it will have on CLdN.

- 2.4. The Applicant's position is clear. The NPSfP is crystal clear as a statement of national policy which remains in force that the need for the Proposed Development is already established in the NPSfP and the Applicant, therefore, is not required to demonstrate need because that need is already established in the NPSfP itself. CLdN's objection is inevitably one based on an impermissible attack on what is clearly stated in the NPSfP as to the nature of that need, its urgency and the presumption that applies in favour of the Proposed Development because of that need. In addition, the Applicant has provided further detailed evidence of the nature of the need that the Proposed Development will address which further reinforces the already clear and established need for the Proposed Development set out in the NPSfP. It is, therefore, permissible to consider that further detailed evidence that has been presented by the Applicant, but not in the way that CLdN purport to do of questioning the underlying need for the Proposed Development in the NPSfP itself.
- 2.5. CLdN's WR then embarks upon a recitation of some of the relevant parts of the NPSfP to which the Applicant has referred; but having done so CLdN then purports to invite the decision-maker to do exactly the **opposite** of what is stated so clearly in those paragraphs (e.g. those very clear statements of Government policy – found within sections 3.3, 3.4 and 3.5 of the NPSfP - that, amongst other things, require an approach of encouraging the Proposed Development, allowing judgments about when and where new development might be proposed to be made to be left to the Applicant "*operating within a free market environment*" and requiring the decision maker to accept the urgent need for such proposed development and to encourage competition by allow such development to come forward.) The approach from CLdN is the antithesis of the NPSfP which requires a decision maker to accept the need for future capacity to, amongst other things, "*cater for long-term forecast growth in volumes of imports and exports by see for all commodities...*" and applying the presumption that consequently applies given the level and urgency of the need that the Government has set out. CLdN's case remains one that flies in the face of Government policy in the NPSfP and invites the decision-maker to do exactly the opposite of what the NPSfP requires and to question that need and the application of the presumption. Contrary to what is

asserted, this is not a proper construction of the NPSfP nor is it consistent with the decision in *ClientEarth* or *Scarisbrick* at all (which simply identifies that a presumption in favour is not “automatically conclusive” of the outcome of a particular application of a DCO). Such claimed analysis simply distorts the basic concepts of the NPSfP.

- 2.6. The examination will clearly look at and is looking at all the other policy aspects that relate to the Proposed Development, but that clearly cannot be confused or conflated with the topic of need for the Proposed Development which is established in the NPSfP in the way the Applicant has identified. CLdN’s position is an attack on national policy in the NPSfP on the question of need and one which it is not permissible to make as clearly established in principle in the *ClientEarth* case. CLdN’s position on alternatives is similarly misconceived for the reasons the Applicant has already given and involves a clear misapplication of the *Stonehenge* case. The Court in that case was at pains to point out that the need to consider alternatives in that specific case arose because of the exceptional circumstances that existed in terms of a proposal that was going to cause significant harm to a World Heritage Site. There is nothing remotely equivalent in what is involved for this Proposed Development which would trigger any requirement to consider alternatives, but as has already been pointed out the Applicant has identified the absence of alternatives in any event.

#### **CLdN WR Paragraphs 6.1.to 6.14**

- 2.7. As indicated in the concluding paragraphs of Appendix 6 of the Written Summary of the Applicant’s Oral Case at ISH2 [REP1-009], and as further explained above, the question of whether or not need is established for the proposed IERRT development by the NPSfP is settled by the NPSfP.
- 2.8. Although this has previously been set out elsewhere, in light of CLdN’s continued misstating of the effect of the NPSfP, a summary of why this is the case is set out below.
- (i) The NPSfP – at paragraph 3.5.1 – makes clear that having regard to the reasoning set out earlier in the NPSfP – there is a need for future port capacity to address the matters which are then listed in the five bullet points following paragraph 3.5.1.
  - (ii) The NPSfP further makes it clear at paragraph 3.5.1 that the need for such future capacity is such that the decision maker should accept it.
  - (iii) In respect of the matters listed in paragraph 3.5.1 for which future capacity is needed there is no quantification, ceiling or threshold which has to be met. For example, there is not a specific amount of competition or resilience which needs to be met by a particular proposal in order for it to benefit from falling under the fourth bullet point of 3.5.1. The NPSfP does not, therefore, require the decision maker to examine in



any way the extent or the weight which should be given to a particular development's contribution to the matters set out in paragraph 3.5.1.

- (iv) The Applicant's IERRT development will provide future capacity for four of the five matters which are listed in paragraph 3.5.1 of the NPSfP (the only exception being that the IERRT facility will not support the development of offshore sources of renewable energy). Therefore, the need for the IERRT development – and not just port development generally - is established by the NPSfP.

In respect of this point, the Applicant highlights that CLdN's case as now detailed in its WR only seeks to attack the IERRT proposal in respect of certain elements potentially of relevance to the matter covered by bullet point 1 of paragraph 3.5.1 – a matter returned to in this response. CLdN does not appear to have produced any evidence in its WR that the IERRT project does not provide capacity for the other relevant matters listed in the paragraph 3.5.1 bullet points. Furthermore, no other interested party at the examination raises any issues in respect of these matters.

- (v) Paragraph 3.5.2 of the NPSfP then goes on to make it clear that given the level and urgency of need for infrastructure of the types covered by the preceding parts of the NPSfP, the decision maker should start with a presumption in favour of granting consent to applications for port development. This presumption applies unless any more specific and relevant policies set out in the NPSfP or another NPS clearly indicate that consent should be refused. It is also made clear that the presumption is subject to the provisions of the Planning Act 2008.

The presumption in favour of granting consent applies to the IERRT. It is infrastructure which the NPSfP identifies as needed and the wider evidence of the Applicant demonstrates that there is no specific or relevant NPS policy which 'clearly indicates' consent should be refused. Furthermore, no provision of the Planning Act 2008 indicates that consent should be refused.

In this regard, it is noted that CLdN does not appear to have produced any substantive evidence in its WR that there is a specific or relevant NPS policy which 'clearly indicates' consent should be refused. Neither do CLdN appear to be raising any substantive evidence that a specific provision of the Planning Act 2008 indicates that consent should be refused.

- 2.9. In summary, therefore, under the policy set out within the NPSfP there is no requirement for the Applicant to demonstrate a need for the proposed IERRT development to benefit from the presumption in favour of such development set out within the NPSfP. This is because a compelling and urgent need for the type of infrastructure that would be established by the IERRT development is already established in the NPSfP itself. As it happens, however, the

Applicant has also separately demonstrated a need, even though there is no requirement to do so. This adds further weight to the clear presumption in favour of the development that already exists under the NPSfP.

- 2.10. Against the preceding summary, the Applicant now responds to specific aspects of paragraphs 6.1 to 6.14 of the CLdN WR where CLdN wrongly set out certain points.
- 2.11. *CLdN WR paragraph 6.1* – CLdN claim in this paragraph that the proposed development ‘*fails to meaningfully address an identified need.*’ Leaving aside the fact that the Applicant does not agree with this statement, for reasons summarised above, the need identified in the NPSfP does not require that a certain level of contribution to the various elements of the need identified (i.e. a meaningful level) has to be provided and demonstrated.
- 2.12. *CLdN WR paragraph 6.5* – CLdN indicate that ‘*The question of the weight to be given to any particular development’s contribution to that need [i.e. the need specified in the NPSfP] is also left open to the decision maker.*’ The NPSfP does not require the decision maker to examine the extent or the weight which should be given to a particular development’s contribution to the need matters set out in NPSfP paragraph 3.5.1.
- 2.13. *CLdN WR paragraph 6.5* – The NPSfP settles more than just ‘the general question of need’. It established the need for the specific IERRT development being promoted.
- 2.14. *CLdN WR paragraph 6.5* – Although the Applicant considers that the proposed development does respond to a specific urgent need for port development in the Humber, it is not necessary – as implied by CLdN in this paragraph – for this to be demonstrated in order for the need for the project to be demonstrated.
- 2.15. *CLdN paragraph 6.11* – This paragraph sets out CLdN’s overall summary of the policy framework on need matters set out within the NPSfP.
- 2.16. *CLdN Paragraph 6.11.1* - This paragraph is a very short summary of that part of the NPSfP explanation of the Government’s assessment of the need for new port infrastructure which considers matters relating to the location of development (NPSfP, paragraphs 3.4.11 and 3.4.12). These matters make up only one element of the Government’s assessment of the need for new port infrastructure and, furthermore, in considering this element it is important to consider the entirety of what the policy says.
- 2.17. It would appear that CLdN are specifically referring to these parts of the NPSfP in support of its position set out at paragraph 6.12 of the WR that the NPSfP “*does not preclude examination of ....the commercial case for the Proposed Development*”. As indicated above, the entirety of what the policy says in paragraphs 3.4.11 and 3.4.12 of the NPSfP needs to be considered, but the precise wording of the NPSfP summarised by CLdN actually reads:

*“...with developers bringing forward applications for port developments where they consider them to be commercially viable.”*

- 2.18. The Applicant has brought forward an application for a port development which it considers to be commercially viable – it would not have brought forward an application if it considered that the proposed development was not viable. In this regard it is emphasised that the development is not speculative in nature – unlike various other NSIP harbour facility developments - in that there is an existing customer in place who wishes to operate from the new facility once it has been created.
- 2.19. There is, however, no specific express requirement within the NPSfP for the Applicant to demonstrate that the proposal is viable, and certainly no such requirement is necessary to benefit from the need which is established within the NPSfP.
- 2.20. *Paragraph 6.11.2* – NPSfP paragraph 3.5.1 does not just set out a ‘general need’, rather it sets out ‘the need’ for future capacity. Proposed development that provides capacity for those matters listed in paragraph 3.5.1 clearly benefits from the presumption in favour of granting consent, but there is no requirement to interpret this matter in light of the NPSfP as a whole as is suggested by CLdN.
- 2.21. *Paragraph 6.11.3* - the presumption set out in NPSfP paragraph 3.5.2 applies unless any more specific and relevant policies in the NPSfP or any other NPS ‘clearly indicate’ that consent should be refused.
- 2.22. *Paragraph 6.11.4* – CLdN indicate that there is no guidance as to the weight to be given to a particular development’s contribution to the identified need. As already indicated, the need identified in the NPSfP does not require it to be demonstrated that a particular development makes a certain level of contribution to the various elements of the need identified.
- 2.23. *CLdN Paragraphs 6.13 and 6.14* – The Applicant is not claiming that the presumption in the NPSfP for granting consent is “*automatically conclusive of the outcome*” of the application. Rather the Applicant has demonstrated that the presumption in favour of granting consent contained within the NPSfP applies to the IERRT development and that none of the reasons given in the NPSfP that could remove this presumption apply or have effect.
- 2.24. In this regard, the Applicant again highlights that CLdN do not produce any substantive evidence which shows that:
  - (i) the IERRT does not fall within the need identified within the NPSfP and which has to be accepted by the decision maker, or
  - (ii) that the presumption in favour of granting consent set out in the NPSfP does not apply.

**CLdN WR Paragraphs 6.15 to 6.21 – The Client Earth cases**

- 2.25. For the reasons set out above, CLdN is simply misunderstanding and misapplying the basic principle that is to be derived from the *ClientEarth* decisions. Where (as is clearly the case here for the reasons separately analysed) national policy itself establishes a need for the Proposed Development, then it is not permissible to attack such national policy in dealing with a DCO. CLdN is seeking to question what is stated in national policy that applies to the Proposed Development in questioning that established need and it is exactly this impermissible approach which has been specifically identified as wrong in principle by both the High Court and the Court of Appeal.

**CLdN WR Paragraphs 6.22 to 6.23 – Other Matters**

- 2.26. Within these paragraphs CLdN refer to the requirement set out within Regulation 6(3) of the APFP Regulations.
- 2.27. The Applicant has provided the information required by Regulation 6(3) and has drawn this together into a summary statement in section 5 of the Planning Statement **[APP-019]**.
- 2.28. The Applicant highlights the following initial points in response to CLdN's criticism:
- (i) The requirement set out in Regulation 6(3) of the APFP Regulations is simply that a statement must be provided – this requirement has clearly been met within the IERRT Application.
  - (ii) There is no legislative requirement or guidance setting out the form which such a statement needs to take or precisely the information which needs to be provided.
  - (iii) The setting out of the matters required by Regulation 6(3) does not 'require' the consideration of the economic case for the development as claimed by CLdN in paragraph 6.23 of the WR. Rather – in the Applicant's experience – this is more a statement setting out how the proposed development will operate in an efficient and economic manner, matters which are summarised within the Applicant's information dealing with this regulatory requirement contained within the Planning Statement **[APP-019]**.
  - (iv) CLdN do not actually appear to indicate that the information which the Applicant has provided in respect of Regulation 6(3) within its application documentation is incorrect.

### **CLdN WR Paragraphs 6.24 to 6.25 – Alternatives**

- 2.29. Within these paragraphs of its WR, CLdN refer to the *Stonehenge* case but misapply it.
- 2.30. The paragraph referred to by CLdN (paragraph 269 of the case) is one paragraph of a much broader review of relevant authorities provided by Holgate J. in *Stonehenge* (see paragraphs 268 to 276 of the case). It is important to read the complete review provided and not simply one paragraph from that review.
- 2.31. The correct NPSfP position and the general common law principle is that there is no requirement to consider alternatives in the absence of a proposal causing significant planning harm – which is the case in respect of the IERRT proposal.

## **3. Project Need – CLdN WR Section 2**

- 3.1. The Applicant's comments on this section of the CLdN WR should be read in the context of the overarching approach to need matters set out in the preceding section. In addition to providing comments on section 2 of the WR, this section of the response also provides initial responses to matters set out within the Volterra report provided at Appendix 1 of the CLdN WR.
- 3.2. Within this section of the WR, CLdN concentrate solely on aspects of only one element of need matters which are set out within the Applicant's application and aspects of only one element which the NPSfP indicates makes up the total need for new port infrastructure.
- 3.3. Those matters which CLdN consider relate to – in the words of the NPSfP at paragraph 3.4.1 – the 'overall demand for port capacity' aspect of need matters. At its most simplistic, CLdN's argument is that the demand for Ro-Ro freight is not as great as the Applicant predicts and the available capacity is sufficient to meet this demand, therefore, the IERRT project is not needed.
- 3.4. Whilst ABP does not agree with CLdN's argument around this point – which is returned to below – it is important to highlight that this does not constitute the need which the Applicant has identified and neither does it reflect what the NPSfP explains the position is in terms of need.
- 3.5. It is noted in this regard that CLdN provide information on this point under headings such as 'Project Need', that the Volterra report is titled 'Needs Case Review', and that it uses phrases implying that CLdN is providing comments on the full need case of the Applicant. The CLdN WR, at best, is only considering one element of need matters which the Applicant and the NPSfP sets out.
- 3.6. This approach of CLdN is, therefore, misleading and seeks to narrow down need matters solely to those relating to 'overall demand' points. The CLdN WR fails to consider the other elements that make up the total need position

which has been set out by the Applicant, which in turn reflects the position set out in the NPSfP.

- 3.7. The Applicant does note that in the Volterra report (at paragraphs 3.12 to 3.15) there is an attempt to question some elements of competition considerations, albeit that the conclusion reached is only that the Applicant in the view of the author of the report “*has not demonstrated robustly enough*” how the proposed development promotes a competitive position on the Humber (Volterra report paragraph 3.15).
- 3.8. Volterra’s argument appears to be that because the new facility is to be provided at a port controlled by the Applicant, who already control the majority of port facilities on the Humber, then this will in some way adversely affect competition in the Ro-Ro sector. This argument is fundamentally flawed for the following summarised reasons.
- 3.9. Competition in the Ro-Ro freight sector best results from circumstances where there is a level playing field between the shipping lines. The Applicant acts solely as an independent port infrastructure provider for Ro-Ro shipping lines. Given the characteristics of the Ro-Ro sector it, therefore, has limited ability to influence market forces other than by ensuring that the shipping lines have access to adequate facilities.
- 3.10. The Applicant currently has contracts in place with two other Ro-Ro operators – DFDS and P&O – who operate from its Humber ports without any influencing control from the Applicant. The Applicant certainly does not look to interfere with the competitive dynamics of the shipping lines.
- 3.11. The fact that the Applicant – unlike CLdN – does not itself have any form of ownership of or control over a Ro-Ro shipping line is an advantage in this regard as there is no reason for it to try and influence market forces.
- 3.12. The Applicant’s information clearly demonstrates the effective competition which the IERRT facility will provide.
- 3.13. In addition, the Applicant notes that in the Volterra report (at paragraphs 4.29 to 4.33) there is also seemingly an attempt to consider resilience matters. Leaving aside the fact that the Applicant considers there are issues with the position expressed by Volterra, what the analysis fundamentally fails to consider is that the NPSfP does not set out a specific level of resilience that needs to be achieved.
- 3.14. Against this background, the Applicant now provides responses to some of the points raised by CLdN in respect of the ‘overall demand’ related points which it raises. The following should not, however, be taken to be a comprehensive response to every single aspect of CLdN’s WR in this respect – this has simply not been possible within the time available. Neither should it be taken to be the case that the Applicant agrees with the points raised by CLdN if no comment or response is provided.

**Capacity matters – WR paragraphs 2.14 to 2.59**

- 3.15. Fundamentally, from the information provided within these paragraphs, CLdN are saying that the amount of Ro-Ro cargo which can be handled at the Port of Killingholme is greater than the amount which the Applicant has suggested in its application documentation.

**Berths – paragraphs WR 2.17 to 2.22**

- 3.16. The Applicant notes that within its WR, CLdN have not provided the full detail of the berths which it has available at the Killingholme facility. For example, the length and beam of the vessel which can be accommodated and the water depth of each berth. At paragraph 4.30 of the Volterra report it is stated that *“There are ambitions and possibilities to extend some of the berths in the future to accommodate larger vessels ...”* but no explanation is provided in the Volterra report or the CLdN WR as to what these are, how they would be achieved, whether they are technically and operationally possible and whether they are anything more than aspirations.

**Storage Capacity – WR paragraphs 2.23 to 2.32**

- 3.17. Within this part of the WR, CLdN are asking it to be accepted that it could simply expand its Ro-Ro activities across further parts of the 115ha of land it indicates it has available at the Port of Killingholme and, thereby, provide a significant increase in the amount of landside Ro-Ro storage capacity available.
- 3.18. Noting that CLdN do not appear to dispute the Applicant’s analysis of the current extent of Ro-Ro storage at the Port of Killingholme (WR paragraph 2.29), the suggestion being put forward by CLdN is – the Applicant would suggest – extremely simplistic and hypothetical. For example,
- (i) CLdN does not explain where the other trades or activities currently occupying some of these other parts of the port would be relocated to. In addition to being a key UK gateway for the Ro-Ro trade, the Humber estuary is also a key UK gateway in respect of the import and export of trade cars and vehicles, a significant proportion of which are moved through the Port of Killingholme.
  - (ii) CLdN does not explain how it would overcome any commercial or contractual issues to achieve such expansion, and how long any such expansion could be secured for.
  - (iii) CLdN does not explain what consents or approvals issues it would have to satisfactorily address to enable such expansion to take place. In this regard, for example, it is noted that reference is made to the fact that 22.1 ha of the expansion land is ‘Level Storage’ benefiting from extant planning permission PA/202/1483. However, that planning

permission is for the construction of 'additional vehicle storage area', where the supporting information contained within the planning statement makes clear (at Section 3.0) that 'The Site will only be used as car storage'.

- (iv) CLdN does not demonstrate how such an expansion could actually occur in reality with regard to matters such as customs and check in requirements – facilities which themselves take up space and have an influence on the throughput and capacity of a Ro-Ro facility – or whether other elements of the port could also service such levels of expansion.
  - (v) CLdN's position does not appear to match the reality of the situation occurring at the Killingholme facility. In this respect, ABP notes the position of Stena Line in its Deadline 2 response to ExQ1 **[REP2-065]** where issues associated with potential limits on storage areas at Killingholme are highlighted.
- 3.19. It is noted that nowhere within the CLdN WR is there actually any suggestion from CLdN that they, in reality, are actively looking to expand the Ro-Ro storage at the Port of Killingholme in the way that has been suggested.
- 3.20. In this respect, the Volterra report – at Table 4.1 – seems to suggest that CLdN will increase storage capacity at Killingholme by 2025, but it is noted that Volterra have simply accepted information provided to it by CLdN in this regard with no explanation provided as to how that increase will be achieved. Leaving aside the fact that no information on such expansion is provided, the implication given that this will happen would appear to demonstrate that CLdN – even in the circumstances where Stena Line are going to be vacating the Killingholme facility – consider there is sufficient growth in the Ro-Ro trade to justify such an expansion of storage capacity.
- 3.21. In this respect, within the Volterra report (at page 31) there is the suggestion that the IERRT facility will simply just displace freight from Killingholme and create idle capacity at Killingholme. Whilst the Applicant does not agree that the IERRT facility is just about displacing existing freight, it makes the following points:
- (i) if the capacity to be created at Killingholme by freight moving to the IERRT facility is 'idle capacity' then this would appear to contradict the earlier suggestion in Table 4.1 that additional capacity is to be created at Killingholme, and
  - (ii) if capacity is subsequently created at the Port of Killingholme by existing freight moving to the IERRT facility then this itself is an outcome supported by the NPSfP as it will provide the Killingholme



facility with improved opportunities to compete for the future growth in trade which both parties predict.

***Capacity assessment, dwell times and capacity relative to dwell time – WR paragraphs 2.33 to 2.42***

- 3.22. Within CLdN's submissions there is a continued criticism of the use of an average 2.25 day dwell time for unaccompanied Ro-Ro units.
- 3.23. The Humber Short Sea Market Study (ES Appendix 4.1 [APP-079] explains at section 4.5 the difficulties in calculating a precise capacity of a Ro-Ro terminal having regard to inputs – such as dwell times - which can vary on a case-by-case basis and as different situations occur.
- 3.24. To give an estimate of capacity across the Humber, and in the absence of relevant detail of the existing specific terminals in operation, it was necessary for the Market Study to define an appropriate average dwell time to be used.
- 3.25. The average figure of 2.25 days was determined having regard to the experience and knowledge of the authors of the Market Study in respect of this matter, sense checked against what was occurring in respect of Stena Line operations. A 'resilience' element was then added to this figure to take account of the changes that can occur over time - for example, volatility in supply chains or logistics preferences – in order that the subsequent capacity estimates related to efficient levels of operation rather than full levels of operation. In this respect it is once again highlighted that within the NPSfP at paragraph 3.4.13, competition – which the Government welcomes and supports – is identified as requiring sufficient spare capacity to ensure real choices for port users and requires ports to operate at efficient levels. The use of 2.25 days is, therefore, considered a reasonable assumption to be made for the purposes of giving an overall estimate of capacity across the Humber. It is noted that the 2.25 days also reflects a not dissimilar rate currently experienced by the Ro-Ro operators within the Port of Immingham
- 3.26. The market study, however, recognising the potential for changes in dwell time figures also sets out a series of sensitivity analyses to demonstrate the implications of different dwell times on estimates of capacity.
- 3.27. In terms of dwell time matters, and in general terms, it is recognised within the industry that a facility which has issues in respect of landside capacity will look to reduce dwell times and, thereby, increase capacity. Often this can be achieved by imposing increased punitive charges on customers that leave cargo to dwell at the facility longer than the operator would like. Such charges are not, it is suggested, normally likely to be imposed in circumstances where the facility does not have a capacity issue as this would put the facility at an unnecessary competitive disadvantage.

***IERRT throughput and the actual operating capacity of IERRT – WR paragraphs 2.43 to 2.45 and 2.52 to 2.55***

- 3.28. CLdN – and in turn Volterra – appear to have misunderstood the position in respect of the 660,000 unit throughput of the IERRT facility.
- 3.29. The 660,000 unit throughput position is the maximum throughput which the Applicant considers the IERRT could operate at. This level has, therefore, been put forward for the purpose of ensuring a robust position in terms of the operation of the facility was considered within the environmental and associated assessments that needed to have been undertaken for the project.
- 3.30. In practical terms, however, the efficient level of throughput at the terminal on a day-to-day basis is considered more likely to be around 80% of its total capacity – around 525,000 units per annum.
- 3.31. As has been indicated by the Applicant in its responses to ExA first round questions, it is currently in the process of preparing a change notification and associated documentation which reflect the ongoing detailed design refinement work that has taken place on the IERRT since the submission of the DCO application.
- 3.32. Elements of the terminal which have an influence in its throughput are matters that have been refined during this ongoing detailed work. Once it makes this further design refinement information available, the Applicant will provide a further level of reassurance that the IERRT facility will be capable of handling 660,000 units, albeit that in reality that is not the level of throughput which it is expected to handle.

***The ability of Stena to capture such market growth – WR paragraphs 2.46 to 2.51***

- 3.33. Against the position summarised above the Applicant can confirm that it does not preclude other Ro-Ro shipping lines using the IERRT facility once it has been constructed subject to availability and agreement.
- 3.34. In any event, although its business development plans are clearly confidential, Stena Line are not simply looking to maintain the status quo in terms of its Ro-Ro operations but it is also looking to grow its operations and activities on the Humber and thereby better compete with other shipping lines. The IERRT facility allows it to achieve this.
- 3.35. Throughout the CLdN WR (and the supporting Volterra report) it is noted that it suggested that the Applicant has conflated a need for more capacity on the Humber with the commercial preference of an operator, namely Stena Line (see, for example, paragraph 4.31 of the Volterra report). As has been explained in the Applicant's information, the needs of Stena Line reflect, in a number of different respects, the elements of the Government's consideration of the need for new port infrastructure set out within the NPSfP. Therefore,

these matters are of significance even if they are rather dismissively labelled by CLdN as ‘the commercial preference of an operator’.

### **Market Demand – WR paragraphs 2.60 to 2.65**

- 3.36. As this section of the WR makes clear, the position set out relies upon the information provided in the accompanying Volterra report that has been commissioned by CLdN.
- 3.37. The demand projections in the Applicant’s market study [APP-079] appear to be generally in line with Volterra’s projections. It is noted that Volterra states in paragraph 5.15 that *“from an initial review (...) the Humber forecasts do on the whole seem reasonable (i.e., they are not fundamentally challenged here)”*.... A similar statement is provided at paragraph 5.10 on the national growth levels *“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.”*
- 3.38. The approach taken in the Applicant’s market study considers:
- (1) GDP outlook;
  - (2) GDP-trade relation outlook (which includes and increased focus on shortsea shipping);
  - (3) Trade forecast by direction (import and export);
  - (4) Forecast shifts in modality;
  - (5) Geographical forecast of the shortsea trades within the UK (market share of the east coast and the Humber region).
- 3.39. The results of each of these steps have been set out in detail in the Market Study. For the latter steps of the forecast the logistic cost modelling, competitive analysis, hinterland demand structuring and the trends in the Ro-Ro shipping sector are required to understand the growth potential of the Humber region in the context of the overall UK shortsea market. This competitive position of the Humber region is essential for the demand forecast for the Humber. This approach has been explained in detail in, for example, sections 3.21, 7.2, 8.2, appendix 2 and appendix 4 of the Market Study.
- 3.40. Unfortunately, it is not possible to fully consider the arguments Volterra have used to arrive at their lower Humber forecast as these have not been provided. Volterra, it is noted, make very limited and incomplete comments or assessments on strategic industry drivers discussed in the Market Study in arriving at their alternative forecasts. The review appears to focus solely on the outcomes of the forecast but does not appear to consider different insights or projections on the underlying analysis (such as, for example, hinterland

- demand analysis, impacts of carbon taxing on maritime trade, competitive setting, trends in Ro-Ro shipping, HGV driver availability etc).
- 3.41. At paragraph 2.63 of its WR, CLdN state that *“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.”* The Applicant’s advisors disagree. GDP is a good driver to forecast growth, as has been acknowledged by the wider industry and actually also seemingly accepted by Volterra in sections 3.2 and 3.3 of its report. Although other macro-economic parameters can influence trade in the short term, the longer-term trends utilised to identify the need for infrastructure can be described by the trade : economic growth relationship to the required level.
- 3.42. At paragraph 5.12, Volterra state that *“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.”*
- 3.43. Most of these described trends have been developing for years. Also the impact of recessions have been captured by analysing a longer historic range in which recessions occurred. With the historic trade-economic growth multiplier this has been captured in the modelling. It is not considered that there would be an acceleration in these developments above the historic trend which should be taken into account and the economic model is considered to be sufficiently robust for the long-term projections. In addition, low and high GDP scenarios have been used to reflect the uncertainty of the GDP and the GDP-trade relationship in three sets of forecasts.
- 3.44. The key aspect being challenged by Volterra does not appear to be the use of GDP but the actual underlying GDP assumptions. In paragraph 5.11 Volterra state that *“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.”*
- 3.45. The Applicant does not consider this to be accurate since Oxford Economics outlook used in the Market Study was more conservative than OBR forecasts at the time of its production and is more conservative than that of OBR contemporary forecasts. Also, the applied long term GDP outlooks used in the Market Study (1.5% in the base case as mentioned in section 8.3 of the Market Study) are actually below the current OBR long term outlook of 1.8% and 1.6% between 2030-2035 and 2040 to 2045 respectively. Given the extensive track record of Oxford Economics and the use of its GDP projections across various industries, including the port sector, these projections are considered to be reliable. The difference in timing of the

preparation of the outlook will, of course, result in some degree of variation between the forecasts. In addition, the projections will differ as they are based on different sources to a small extent.

- 3.46. In summary, if the OBR forecasts were to be used then the Ro-Ro growth forecasts would be higher than have been presented in the Market Study.
- 3.47. In paragraph 5.15, Volterra question the transparency of the modelling carried out within the Market Study. The market study, however, provides quite some detail on the methodology used (as mentioned earlier) which does not appear to be challenged in any way by Volterra. For example,
- Section 3.2.1 of the Market Study gives an overview on how the shortsea statistics have been arrived at, with a detailed description on how data from the DfT and customs can be combined to arrive at a more detailed level of analysis.
  - Section 7.2 of the Market Study describes the high-level methodology applied for the transportation cost assessments. The text refers to Appendix 2 in which a five-page description of the drivers and methodology of the logistic cost assessment is provided.
  - Section 8.2 of the Market Study provides a step-by-step description of the forecasting methodology. Each of the steps has been described with charts and descriptions in the subsequent sections 8.3 to 8.6, drilling down from the national forecast to the Humber forecast.
  - Appendices 3 and 4 provide detailed assumptions on the shipping costs and shipping structure aspects included in the model.
- 3.48. Having regard to its preliminary analysis of the Volterra report, the Applicant does not agree that – as suggested by CLdN at paragraph 2.64 of the WR – the forecasts contained within the Market Study are unduly optimistic.

#### **4. Comments on the Draft DCO submitted at Deadline 1 – CLdN WR Section 3 (and Appendix 2)**

- 4.1. The Applicant thanks CLdN for its comments in respect of the draft Development Consent Order provided at Appendix 2 to its Written Representation.
- 4.2. The comments provided by CLdN have informed the updated **document 3.1 Draft Development Consent Order** submitted by the Applicant at Deadline 3.

#### **5. Requirement for DCO Protective Provisions – CLdN WR Section 4**

- 5.1. The Applicant has carefully considered CLdN's request that the dDCO include protective provisions for their benefit. Having done so, the Applicant is of the view that the protective provisions which were suggested would be neither appropriate in the circumstances nor justified as being necessary.

The Applicant's position, including its specific reasoning relating to each of the Protective Provisions requested, was articulated to CLdN by letter dated 6 September 2023 [Appendix 1].

## 6. Other Matters – CLdN WR Section 5

### Traffic and transport, and navigational safety matters – paragraphs 5.1.1 to 5.1.2

- 6.1. The Applicant notes that CLdN maintain their objection with respect to the impacts of the IERRT scheme on traffic and transport matters. CLdN also confirm that they will continue to engage in discussions with the Applicant and DFDS with the view to agreeing the parameters and methodology of the Transport Assessment [AS-008]. The Applicant can confirm that discussions will continue with CLdN and DFDS with a third meeting planned for 15th September.

### Marine ecology, biodiversity and protected habitats – paragraphs 5.13 to 5.14

- 6.2. The Applicant does not agree that the development could cause significant and irreversible damage to marine ecological receptors, biodiversity and protected habitats. This is based on the conclusions of a robust Habitats Regulations Assessment [APP-115].
- 6.3. Constructive dialogue remains ongoing between Natural England and the Applicant. Furthermore, Natural England has indicated that it is likely that all of their concerns raised can be addressed during the course of the Examination [REP1-022].

## 7. Conclusion – CLdN WR Section 7

- 7.1. The Applicant disagrees with the conclusions reached by CLdN for the reasons summarised in the preceding paragraphs of this initial response.
- 7.2. Amongst the conclusions reached by CLdN is a repeated claim that the IERRT development is not 'sustainable port development' and, therefore, fails to comply with the 'fundamental policy' of Government under paragraph 3.3.1 of the NPSfP.
- 7.3. The specific paragraph of the NPSfP being quote by CLdN reads:

*“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;”*

- 7.4. This element of the fundamental policy needs to be read in its entirety alongside the other fundamental policy elements contained within the bullet points following paragraph 3.3.1 of the NPSfP. However, in terms of the

specific part of the bullet point highlighted by CLdN - namely the wording 'sustainable port development' – it is surprising that CLdN do not then consider what the following paragraphs of the NPSfP set out.

- 7.5. In particular, at paragraph 3.3.3, the NPSfP sets out a series of matters new port infrastructure should also achieve *“in order to help meet the requirements of the Government’s policies on sustainable development..”*. These matters correspond with the wider understanding of what the planning system considers sustainable development to consist of.
- 7.6. These matters have been considered further within Appendix 1 of the Applicant’s Planning Statement [APP-019] which demonstrates that the IERRT facility achieves the matters set out within NPSfP paragraph 3.3.3. It is noted that nowhere within its information submitted to date does CLdN disagree with the evidence provided by the Applicant in this regard.
- 7.7. For the reasons summarised above, the evidence demonstrates, contrary to the assertions made by CLdN, that the IERRT development is ‘sustainable port development’.

## **8. Principal Areas of Disagreement Summary Statement – 05 September 2023 [REP2-028]**

### **Dredging Proposals**

- 8.1. The physical processes assessment (ES Chapter 07 [APP-043]) fully assesses the potential impact of the capital dredge campaign and associated disposal. It concludes that the capacity of the proposed disposal sites (HU060 and HU056), the maintenance dredge requirements at existing berths at the Port of Immingham, and the bathymetry of the wider Humber Estuary will not be adversely affected by the Proposed Development.
- 8.2. The HU056 disposal site is already licensed for the disposal of dredge arisings. Placement of material will be guided to the deeper areas of the disposal site (as is the current accepted practice), in order that the site is not overfilled and associated changes to bathymetry remain within the conditions of the existing disposal licence. These measures will further ensure that there are no consequential effects to local hydrodynamics, sediment transport, navigation, and disposal site suitability and capacity.

## **Appendix 1 – Letter to CLdN dated 6 September 2023**



Mr Robbie Owen  
Pinsent Masons LLP  
30 Crown Place  
Earl Street  
London  
EC2A 4ES

██████████@clydeco.com  
Dir Line: ██████████

Our Ref  
BJG/10276966

Your Ref

Date  
6 September 2023

Dear Mr Owen

## **Proposed Immingham Eastern Ro-Ro Terminal DCO CLdN – Protective provisions**

I write on behalf of my client, Associated British Ports (ABP), in relation to the above application and in particular, with regard to your client CLdN's request that my client includes protective provisions within its draft DCO for the benefit of your client.

Having given careful consideration to your client's request, our client is of the view that the protective provisions that you have suggested in your *ISH1 Post Hearing Note* as supplemented by your letter of 31 August would be neither appropriate in the circumstances – nor can they be justified as being necessary.

We are conscious that the Able Marine Energy Park DCO which came into effect in October 2014 does include a number of protective provisions for the benefit of C.Ro. We would remind you, however, that your client's Port of Killingholme lies some three kilometres upstream from the Port of Immingham and is in addition separated from that Port by the South Killingholme Jetty and potentially, the Able Marine Energy Park wharf.

Your client will I am sure acknowledge that in terms of location alone, there is a significant difference between works undertaken for the construction of three new berths within the Port of Immingham some three kilometres from your client's Port and a proposal to construct an entirely new port with a quay of just under one and a half kilometres in length in a location effectively adjacent to the Port of Killingholme.

That said, you have helpfully provided an outline of the provisions sought and I trust our response below will assist.

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**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.***

ABP does not understand the justification for such a proposal save perhaps that, in the context of our client's proposed development, as CLdN is self-evidently a commercial competitor both in terms of the Port of Immingham generally and the potential operator of the new facility, namely Stena Lines, your client is simply attempting to secure a right effectively to interfere with and delay the development process.

To be frank, to give your client such protections would effectively hand control of the new Ro-Ro project to a direct competitor.

**2 *Co-operation provisions, including sharing of information upon request.***

If your client has any particular queries regarding the construction of the proposed development, ABP will be happy to respond to any reasonable requests that it receives. There is certainly no need for a protective provision to cover that point as it simply represents prudent health and safety and operational practices.

**3 *A duty on the Applicant 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.***

As your client is aware, construction traffic and future operational traffic will enter the Port of Immingham via the Port's East Gate and your client's Transport consultant will, I trust, be fully aware that there is ample capacity on the dual carriageway A160 link to accommodate any traffic which might inadvertently enter the Port via the West Gate.

Indeed, the A160 was recently upgraded (through the NSIP process) and the DCO application included an assumption of significant increases in road traffic to reflect growth not just at the Port of Immingham, but also at the Port of Killingholme. We would suggest that the enhanced capacity on the A160, coupled with the new gyratory system at the A160/Rosper Road junction will be able to accommodate any additional traffic, should it mistakenly use the Port's West Gate entrance.

**4 *The submission to, and approval by, CLdN of a construction management protocol to manage construction traffic on the surrounding road network that affect CLdN's operations.***

As far as management of construction traffic is concerned, this is the subject of discussions with North East Lincolnshire Council and National Highways and it would be entirely inappropriate for CLdN to be involved in those discussions – bearing in mind also that your client's port operations are on the side of the Port of Immingham furthest from the site of the proposed development – some three kilometres upstream.

**5 *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.***

6 The impact of the construction and operation of the proposed development has, as you are aware, been comprehensively assessed and it is not considered that any protections are required in terms of your client's operations. If your client is of the view that ABPmer's assessment is incorrect, we would be happy to review your client's evidence and data in this respect. Robust modelling has demonstrated that hydrodynamic changes resulting in geomorphological effects will be muted to the point of being beyond detection and, given the highly dynamic nature of the Humber Estuary, we would suggest that it would be challenging at the very least to attempt to link changes in erosion and deposition processes at the Port of Killingholme with the presence of IERRT.

7 ***Measures to cease works where there has been, or is likely to be, an adverse impact on CLdN's operations or infrastructure.***

Our client cannot contemplate such a generalised and vague protective provision. Bearing in mind that our client is confident that the proposed development will have no adverse effect on your client's operations, such a provision is not required.

8 ***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 7 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.***

The use of the word "may" demonstrates that your client's request in terms of this protective provision has no substance. As has already been noted, our client's assessment of the proposed development has concluded that the construction of three new berths adjacent to the port, with a single capital dredge, will have no impact on other Port operations on the Humber. If your client is concerned with navigational arrangements or the timing of services, those concerns should be directed to the Harbour Master Humber through Humber Estuary Services.

We would add that by the same token, if at any stage in the future CLdN were to decide to change aspects of their operation, ABP would not seek to impose such onerous restrictions on the off chance that marine traffic accessing the upstream estuary infrastructure would be affected. We would consider any changes to be a fundamental right for you – and indeed other port operators on the estuary – to operate and grow your business under the regulatory oversight of the Humber Harbour Master.

9 ***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.***

Our client fails to understand how the introduction of three Ro-Ro berths at the Port of Immingham can in any way impact the operations authorised by the 1994 and 2006 Orders. Such a provision is clearly unnecessary.

- 10 ***Confirmation that no powers may be exercised under the DCO which would have the potential to affect CLdN's ability to exercise its legal rights in respect of connecting rail sidings within CLdN's estate to the national rail network pursuant to legal agreements CLdN has the benefit of.***

As far as this last proposed protective provision is concerned, we do query whether CLdN has actually taken the time to understand our client's proposals for the IERRT development. First, the new Ro-Ro Terminal will not be making any use of rail traffic. Secondly, the railway line used by CLdN which passes through the Port of Immingham enters and leaves the Port through the western side of the port estate – effectively on the other side of the Port from the site of the proposed development. It should be very evident that the proposed development will not in any way interfere with CLdN's use of the railway line and the proposed protective provision is certainly not required.

I hope that the comments above clarify my client's position, but if your client feels that a meeting would assist, then we would be happy to discuss the issues further.

Yours sincerely

*Brian Greenwood*

Brian Greenwood  
Clyde & Co LLP