

## IMMINGHAM EASTERN RO-RO TERMINAL DCO APPLICATION

### PINS REFERENCE TR030007

#### SUMMARY OF CASE MADE AT ISH4 BY DFDS

##### **Introduction**

1. This document is summary of the case that DFDS Seaways plc (**DFDS**) made at Issue Specific Hearing 4 that took place on the afternoon of 28 September 2023. In fulfilment of Action Point 12 from that hearing, a signposting documents is appended identifying DFDS' drafting concerns.

##### **DCO Articles**

###### ***Article 2***

2. DFDS are neutral about the use of 'company' or 'undertaker' as long as it is consistent, although noting that 'company' is in widespread use it may be more generally understandable if that term is used.

3. DFDS are concerned that the definition of 'construct' is too wide (e.g. it includes 'replace') and is not limited to what has been assessed in the same way as 'maintain' is in article 6(2). By virtue of article 5 the Applicant is granted development consent for the works, such as Work No. 1, which is defined as 'The construction of a jetty and three berths ...', and so could theoretically be replaced according to that wording. DFDS would prefer that the definition of construct is also limited to what has been assessed in the environmental statement.

###### ***Article 21***

4. Based on what has been assessed in the environmental statement as a peak of 1800 units per day, this article should be amended to contain a daily cap of 1800 units or an annual cap of the daily average multiplied by 365 which is around 525,000 rather than 660,000, so that the DCO matches what has been assessed. See for example the assumptions on page 92 of the Transport Assessment [[AS-008](#)]: "The IERRT as a whole (marine and landside elements combined has been designed to accommodate up to 1,800 units per day" – 'up to', not an average of.

###### ***New requirement***

5. Somewhere around requirements 2-4, DFDS would wish to see a restriction on simultaneous construction and operation unless and until such a situation has been properly assessed in the environmental statement. References to where the environmental statement refers to 'construction and subsequent operation' in chapters 7, 8, 9, 11 12, 13, 14, 15, 16, 17 and 19 can be found on page 5 of DFDS' comments on D1 submissions [[REP2-039](#)]. The Applicant responded that the local highway authorities are content that consecutive construction and operation are the worst case since the construction traffic peak is less than the traffic generated by any individual berth (see NELC and NLC responses to TT.1.6 [[REP2-025](#)] and [[REP2-026](#)] respectively).

6. That only covers one of the eleven chapters where consecutive construction and operation were assessed and does not even amount to an assessment of that topic – the Applicant should provide its own assessment and commit, if necessary to construction plus operational traffic never exceeding the peak of what has been assessed for operational traffic.

#### ***Requirement 7***

7. DFDS note that this requirement is headed 'External appearance and height of the authorised development' but does not include any height-related provisions. The Applicant submitted a building schedule that specifies heights [APP-078] and DFDS suggests that this is referred to in this requirement to limit heights to those that have been assessed.

#### ***Requirement 8***

8. This requirement is duplicated (save for the addition of 'general') by requirement 15 and one should be removed – not having 'general' would be preferable.

#### ***Requirements 15 and 18***

9. DFDS would support the ExA's suggestion of external approval of mitigation measures, perhaps by the Secretary of State for Transport, given the overlapping and opaque governance of the Applicant and its subsidiaries.

10. The NRA does not specify the proposed mitigation with any precision and so compliance with it is largely meaningless. The ExA need to be satisfied that the project is being capable of being operated safely given the available mitigation, and that the mitigation will be employed to make it safe.

11. Given that the construction of the works is permissive, i.e. not obligatory, DFDS would wish to see in Requirement 18 an obligation on the Applicant to construct Work No. 3 or its replacement before either construction or operation of the project depending on whether it would increase safety of the former as well as the latter.

#### ***Schedule 4***

12. DFDS is pleased to be offered protective provisions but has still not had its proposals commented upon by the Applicant.

## APPENDIX – SIGNPOSTING

Provision	Old draft	Issue	When raised	Outcome
Article 2	Definition of 'construct'	Limit to what has been assessed in the environmental statement (itself being defined to include any subsequent documents submitted during the examination)	ISH1 and ISH4	No change yet
Article 2	Definition of 'order limits'	Tie in with plans	RR	Amended at D1
Article 2	Definition of 'order limits'	There is an area outside the works limits with no explanation	ISH1	No change yet
Article 2	Definition of 'relevant planning authority'	Should include NLC because west gate is in their area	ISH1	No change yet
Article 6	Maintenance extent	Has maintenance been assessed in the ES?	RR	No change yet
Article 7	Downward variation	Shouldn't apply to Work No. 2 (dredging)	RR	Amended at D1
Article 10(1)	Rights being sought	Very vague	RR	Amended at D1
Article 16	Ref to para (2)	There is no para (2)	RR	Amended at D1
Article 21	Passenger variation	Tailpiece	RR	Amended at D1
Article 21	Cap on ro-ro units	Change 660,000 to a daily cap of 1,800 or an annual cap of 525,000	ISH4	No change yet
Article 24(4)(b)	Watercourses	Duplicate wording	RR	Amended at D1
Article 25	Dredging power	Not linked to DML	RR	Amended at D3
Schedule 1: Work No. 2	Berthing pocket	Area too large	RR	No change yet
Schedule 1	Ancillary works	Does not apply to all works	RR	No change yet
New requirement	Construction and operation	Ban on simultaneous construction and	ISH4	No change yet

		operation while unassessed in the ES		
New requirement	Pure car carriers	Ban on such vessels until assessed	Response to D3 submissions (Q NS.1.19)	No change yet
Requirements 5 and 8	Piling restrictions	Duplicated but not identical	RR	Amended at D1
Requirement 7	Heights	No restriction, add reference to building schedule	ISH4	No change yet
Requirement 10	Noise insulation	Commitment too weak	RR	No change yet
Requirement 11	Environmental enhancement	Not required to be implemented	RR	Amended at D1
Requirement 15	Control documents	Conflicts with requirement 8	RR and ISH4	No change yet
Requirement 15	Approval of mitigation measures	External approval should be added	ISH4	No change yet
Requirement 18	Impact protection	Make obligatory	RR, ISH1 and ISH4	No change yet
Requirement 19	Use of arisings	Tailpiece	RR	Amended at D1
Requirement 23	Appeal process	Third parties not involved	RR	No change yet
Schedule 3	DML	Licensed work not sufficiently specified	RR	No change yet
Schedule 4	Protective provisions	None for DFDS	RR	No change yet