

Infrastructure Planning

Planning Act 2008

The Infrastructure Planning (Examination Procedure) Rules 2010

Immingham Eastern Ro-Ro Terminal DCO Application

Responses to the Examining Authority's Further Written Questions and Requests for Information

on behalf of

CLdN Ports Killingholme Limited

1. **INTRODUCTION**

1.1 This document comprises the responses by CLdN Ports Killingholme Limited (**CLdN**) to the Examining Authority's further written questions and requests for information (**ExQ2**) issued on 15 September 2023 [**PD-013**].

2. **CLDN'S RESPONSES TO EXQ2**

| Question Reference | Question to: | Question | CLdN Response |
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| BGC.2.02 | Applicant, CLdN, DFDS, IOT Operators, Marine Management Organisation (MMO) and Natural England (NE) | <p>Government policy concerning need and sustainable port development</p> <p>With respect to the Government's policy relating to the need for port development and the encouragement for "sustainable port development", including what is stated in the entirety of paragraph 3.3.3 of the National Policy Statement for Ports 2012 (NPSfP), and having regard to the cases you have made to date, explain in policy terms, why you consider the Proposed Development would or would not comply with the Government's encouragement for sustainable port development. In answering this question, the Applicant and other IPs are encouraged to make concise submissions and to address the matters listed in paragraph 3.3.3 of the NPSfP, as relevant.</p> | <p>In general, CLdN does not believe that the Applicant's assessment of policy issues is sufficiently robust, and as such the Applicant's findings in relation to the following points do not demonstrate conformity with the NPSfP.</p> <p>With respect to the matters in the first two bullet points and fourth bullet point in paragraph 3.3.3 of the NPSfP:</p> <ul style="list-style-type: none"> • <i>contribute to local employment, regeneration and development;</i> • <i>ensure competition and security of supply; and</i> • <i>be well designed, functionally and environmentally,</i> <p>CLdN refers to its Post Hearing Submissions for Issue Specific Hearing 3 (ISH3 Summary), specifically in relation to Agenda Item 2(b) on pages 15-20, for a concise summary of its submissions in relation to these points.</p> <p>With respect to the following matters:</p> <ul style="list-style-type: none"> • <i>preserve, protect and where possible improve marine and terrestrial biodiversity; and</i> • <i>provide high standards of protection for the natural environment,</i> <p>CLdN is aware that discussions are continuing between the Applicant and Natural England as to the provision of information in order to demonstrate that marine and terrestrial biodiversity can be preserved and protected. At the moment, it cannot yet be said that an adverse effect on integrity of any protected sites has been ruled out beyond reasonable scientific doubt. CLdN notes from the Principal</p> |

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| | | | <p>Areas of Disagreement Summary Statement submitted by Natural England at Deadline 1 [REP1-022] and Natural England's Written Representation submitted at Deadline 2 [REP2-091] that a number of matters has yet to be resolved. CLdN notes that a Woodland Enhancement Management Plan [APP-112] has been submitted. Whilst this includes "ecological enhancement" measures, it is not clear how the proposals would necessarily improve biodiversity. In the summary of pre-application consultation with Natural England on biodiversity net gain, in Chapter 9 (Nature Conservation and Marine Ecology) of the Environmental Statement [APP-045], it is notable that the Applicant's default position is that this is not currently a legal requirement for nationally significant infrastructure project proposals. CLdN has not identified any measures which indicate that the Proposed Development would enhance marine biodiversity or deliver wider biodiversity commitments or meet the biodiversity duty on statutory undertakers in the Natural Environment and Rural Communities Act 2006, a duty strengthened by the provisions of the Environment Act 2021. There is also no demonstration by the Applicant of conformity with Government Guidance, published on 17 May 2023 by Defra¹, on complying with that strengthened biodiversity duty.</p> <p>With respect to the following matters:</p> <ul style="list-style-type: none"> • <i>minimise emissions of greenhouse gases from port related development; and</i> • <i>be adapted to the impacts of climate change,</i> <p>the Examining Authority is referred to CLdN's responses to CC.1.1 to CC.1.4 of the Examining Authority's First Written Questions [REP2-034] which identified weaknesses in the Applicant's climate change assessment, particularly with regard to the provision of information about the methodology adopted, whether all emissions sources had been included and whether the assessments are based on</p> |
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¹ [Complying with the biodiversity duty - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/complying-with-the-biodiversity-duty)

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| | | | <p>up to date guidance. Those matters reduce confidence in the Applicant's assessments.</p> <p>With respect to the following matters:</p> <ul style="list-style-type: none"> • <i>minimise use of greenfield land;</i> • <i>ensure that access to and condition of heritage assets are maintained and improved where necessary; and</i> • <i>enhance access to ports and the jobs, services and social networks they create, including for the most disadvantaged,</i> <p>CLdN has seen nothing in the Applicant's proposals that indicates it would make a significant contribution towards these matters. It follows that limited or no weight can be attached to these matters in determining whether the Proposed Development constitutes "sustainable port development".</p> |
| BGC.2.03 | Applicant and any other IPs | <p>Relevant policies other than planning policy</p> <p>Other than the policies stated in the NPSfP, the Marine Policy Statement 2011 and the East Inshore and East Offshore Marine Plans 2014 do you consider there any other policy considerations to which the Secretary of State for Transport should have regard in deciding this application?</p> | <p>CLdN considers that local planning policy is also likely to be an important and relevant consideration, particularly as referenced and set out in adopted development plans and the relevant local authority Local Impact Reports (LIR). The weight to be attached to such policy is a matter for the Secretary of State in having regard to any LIR.</p> |
| BGC.2.05 | CLdN | <p>Issues of storage capacity for Stena</p> <p>Respond specifically to representations made about trailer storage capacity for unaccompanied freight and dwell times at Port of Killingholme made by Stena Line BV (Stena) in [REP2-065]. Identify any other matters that you consider could impinge on agreeing a new contract/tenancy between your company and Stena to accommodate growth in demand.</p> | <p>CLdN refers to pages 7-10 and 20 of its note providing details in relation to various matters at the Port of Killingholme (the Killingholme Note), submitted at Deadline 4, in response to BGC.2.05.</p> |
| BGC.2.06 | CLdN | <p>Utilisation of facilities at Killingholme</p> <p>Comment on the Applicant's proposition that there "... are little to no opportunities for any further attractive berthing windows at preferred timeslots (i.e. during the day) at the</p> | <p>CLdN refers to page 16-19 and 21 of the Killingholme Note for detail on this issue. In summary, however, CLdN notes that Stena was offered berthing slots of its choice for both services, which were the same slots that Stena had been using since 2019 (and, in fact, one of which Stena are</p> |

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| | | current Ro-Ro berths in Killingholme ..." [page 72 in APP-079]? | currently using), and that there are three unused berths which are currently available (albeit one needs dredging) for additional services. CLdN has always permitted Stena to adjust the slots that they use, when requested. CLdN notes that Stena has never discussed a 3 rd service with CLdN; if it had, then as a commercial port operator CLdN would have discussed this possibility. |
| NS.2.05 | Applicant, CLdN, DFDS and IOT Operators | <p>Stakeholder input to assessment of risks</p> <p>Further to the Maritime and Coast Guard Agency's (MCA) advice in [REP1-021] that the organisation responsible for Port Marine Safety "should strive to maintain consensus ...through ... stakeholder engagement and ...review of risk assessments with users..." what are the main obstacles to achieving consensus and what are the prospects of achieving consensus by Deadline 5 of this Examination?</p> | <p>Whilst the issues of safety immediate to Immingham are not CLdN's day-to-day concern, CLdN is concerned if such issues and reservations from other IPs are not actively addressed. If an accident was to occur, this would impact the entirety of the Humber and, as such, would be detrimental for CLdN. CLdN notes that, to date, the Applicant has been resistant to, and dismissive of, these concerns. For example, whilst CLdN has not been party to the discussions between IOT and the Applicant, CLdN understands that the concerns raised by IOT remain outstanding.</p> <p>CLdN does not have any information on how the IOT works will avoid problems for the whole navigation of the Humber. However, CLdN notes that the IOT adjustments are different from those originally proposed, meaning a Navigational Risk Assessment and simulations should be required for them.</p> <p>The Applicant, as an organisation, is both the operator and the Harbour Authority, so it must address the concerns of all IPs openly and cooperatively. The status of the Applicant represents a special circumstance that requires fair demonstration of impartiality and proactive efforts to achieve consensus, which the Applicant has not shown.</p> |
| NS.2.07 | Applicant, CLdN, DFDS and IOT Operators | <p>Examples of any comparable Ro-Ro berths and fuel import/export berths siting relationships</p> <p>Give examples of any port layouts in the United Kingdom where Ro-Ro berths and fuel import/export berths have comparable siting relationships with what is being proposed for the Port of Immingham.</p> | CLdN awaits the Applicant's submissions, which it expects at Deadline 4, on this point. In relation to Action Point 12 of the ISH3 Actions List [EV6-012], CLdN notes that the distance between the petrochemical jetty at Thurrock and the CLdN Ro-Ro facility at Purfleet is 1.32km (please see Figure 1 below). However, CLdN notes at this stage that it does not agree with the Applicant's view that the siting relationship of CLdN Ports London with the petrochemical |

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| | | | <p>jetty is comparable, because the jetty is downstream and remote from CLdN Ports London, with Ro-Ro and oil vessels not manoeuvring or operating within the same waters. CLdN vessels simply steam past the jetty at a slow speed, before continuing underneath the Queen Elizabeth Bridge and then manoeuvring, rather than interacting in any way.</p> <p>CLdN considers that the slides shown in ISH3 do not demonstrate similar issues to those which will face the Proposed Development. The fact that an oil terminal is within the vicinity of other ports, and that vessels pass it (with no interaction), is not the same as vessels manoeuvring and berthing in a small, constrained area. For example, at Milford Haven, the Ro-Ro vessels moving to and from Pembroke only pass the oil and liquefied natural gas terminals, in the main channel of the Haven – Pembroke itself is several kilometres away from either facility.</p> |
| TT.2.04 | Applicant and any other IPs | <p>Accompanied and unaccompanied unit ratio</p> <p>Has agreement been reached regarding determining an appropriate split for the handling of accompanied and unaccompanied units associated with the operation of the Proposed Development?</p> | <p>CLdN notes that this matter was discussed during a transport meeting on 15 September 2023, attended by all relevant parties. It was noted that this parameter in isolation is unlikely to significantly change the assessed outcomes, however the cumulative effect of the assumptions that informed the Transport Assessment being inaccurate could have a significant impact (namely: terminal throughput, accompanied/unaccompanied unit ratio and gate assignments).</p> <p>CLdN notes that it has already shared its data in relation to this and, in summary, there is no “appropriate split” – it is only what is factually and mathematically achievable, using a calculation of: maximum accompanied capacity on vessels x number of sailings x number of days = maximum accompanied throughput.</p> |
| TT.2.05 | Applicant and any other IPs | <p>Tractor-only movements</p> <p>Has agreement been reached regarding an appropriate allowance for tractor only movements, further to DFDS’s and CLdN’s representations at ISH2 that the 10%</p> | <p>CLdN notes that this matter was discussed during a transport meeting on 15 September 2023, attended by all relevant parties, in which it was noted that there is disagreement on this matter, with DFDS tabling a figure closer to 19%.</p> |

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| | | allowance in the Transport Assessment (TA) [AS[1]008] is insufficient. | <p>All relevant parties note, as above, that this parameter in isolation is unlikely to significantly change the assessed outcomes, however the cumulative effect of the assumptions that informed the Transport Assessment being inaccurate could have a significant impact (namely: terminal throughput, accompanied/ unaccompanied unit ratio and gate assignments).</p> <p>It is understood that the Applicant is to take a view on a sensitivity assessment of the transport parameters and revert to the ExA.</p> |
| TT.2.06 | Applicant and any other IPs | <p>East and West Gate ratio</p> <p>Has agreement been reached between the parties about the proportion of traffic generated by the Proposed Development predicted to enter the Port of Immingham via the East and West Gates?</p> | <p>CLdN notes that the Applicant's Response to Interested Parties' Deadline 1 Submissions [REP2-010] contains the Applicant's sensitivity assessment of 30% of HGV traffic assigning through the West Gate. This is based on the disputed terminal throughput and therefore, in CLdN's view, cannot be considered a valid test. CLdN considers this to be a critical parameter that has the potential to materially change the outcomes of the Transport Assessment and therefore requests that adequate validated sensitivity assessment of this parameter is undertaken.</p> |
| TT.2.09 | Applicant and CLdN | <p>Protecting rights in respect to use of rail network</p> <p>CLdN in its Deadline 1 submission [REP1-025] contends it would be reasonable and proportionate to have its legal rights in respect of connecting to the rail network similarly protected (as per Part 6 of Schedule 9 of the Able Marine DCO) with appropriate protective being incorporated into any made DCO. What are the Applicant's views about this?</p> <p>CLdN should provide further justification as to why it considers such a protective provision would be necessary, given the Applicant has stated it does not expect the Proposed Development would make use of the rail network and the Proposed Development would not involve the undertaking of any physical works that would affect the rail line that serves the Port of Killingholme.</p> | <p>CLdN refers to its Post Hearing Submissions for Issue Specific Hearing 4, specifically in relation to Agenda Item 3(e) on pages 14-15, for a concise summary of its submissions in relation to its request for protective provisions. This also addresses Action Point 22 of the ISH4 Action List [EV7-006].</p> |

Figure 1: Distance between petrochemical apparatus and the CLdN Ro-Ro facility at Purfleet

