

**Infrastructure Planning
Planning Act 2008
The Infrastructure Planning (Examination Procedure) Rules 2010**

Immingham Eastern Ro-Ro Terminal DCO Application

**Response to Comments by Associated British Ports on CLdN Ports Killingholme Limited's Written
Representation**

1. INTRODUCTION

- 1.1 At Deadline 2, CLdN Ports Killingholme Limited (**CLdN**) submitted its Written Representation [**REP2-031**] (**WR**) in relation to the application for development consent for the Immingham Eastern Ro-Ro Terminal (**IERRT** or **the Proposed Development**) by Associated British Ports (**the Applicant**), to which the Applicant provided a response at Deadline 3 [**REP3-007**] (**the Applicant's Response**).
- 1.2 At Deadline 4, CLdN has submitted a summary of its Post Hearing Submissions for Issue Specific Hearing 3 (**ISH3 Summary**) and Issue Specific Hearing 4 (**ISH4 Summary**), alongside a note providing details in relation to various matters at the Port of Killingholme (**the Killingholme Note**). The ISH3 Summary in particular addresses the matters raised in Part 2 of the Applicant's Response on legal and policy matters. The ISH3 Summary and the Killingholme Note in particular address the matters raised in Part 3 of the Applicant's Response on project need. Taken together it is CLdN's view that the ISH3 Summary, the ISH4 Summary and the Killingholme Note provide a response to the majority of the points raised in the Applicant's Response, and CLdN does not consider that it will assist the Examining Authority to duplicate those submissions in this document.
- 1.3 However, CLdN has produced this document to address certain points raised in the Applicant's Response, which CLdN wishes to provide particular additional commentary on. These points are addressed in turn, referring to the paragraphs of the Applicant's Response as appropriate.

2. COMPETITION

- 2.1 As a general point, CLdN does not agree with the Applicant's assertions in relation to competition, in particular that CLdN is anti-competitive and that the Proposed Development will improve competition on the Humber. CLdN refers, again, to paragraphs 3.12 to 3.15 of the market analysis study and report prepared by CLdN's appointed economic consultants, Volterra Partners LLP (**Volterra**) included at Appendix 1 (the **Volterra Report**) of the WR, and also submissions made in relation to Agenda Item 2 in the ISH3 Summary, at pages 15-18, in which Volterra stated that the impacts on competition as a result of IERRT are neutral, rather than beneficial.
- 2.2 In paragraph 3.9 of the Applicant's Response, the Applicant references a "level playing field between the shipping lines". CLdN is unsure as to the contribution that the Applicant, as a private operator, believes it is making, via the Proposed Development, in order to achieve this. The idea of a level playing field relates to access to the same cargo across the 'short sea' sector of the market – i.e. any interference with the market, rather than simply which ports exist. Moving Stena Line's (**Stena**) operations to IERRT does not enhance the competition in this sector of the market; rather, it stays the same.
- 2.3 In paragraph 3.10 of the Applicant's Response, there is reference to the Applicant not looking "to interfere with the competitive dynamics of the shipping lines". CLdN wishes to note and confirm, that it has offered competitive, long-term shipping line contracts across the Port of Killingholme, showing that it has no intention of such interference either.
- 2.4 The final words of paragraph 3.11 of the Applicant's Response state that "there is no reason for [the Applicant] to try to influence market forces". The Proposed Development will lead to a new terminal on the Humber for Stena, and subject to clarification from the Applicant (which is still awaited) possibly other Ro-Ro shipping lines, to use, which will increase the Applicant's ability to attract cargo through this terminal and therefore increase the Applicant's revenue and profits. This constitutes an influence on market forces. In addition, it is disappointing that the Applicant continues to distract from the real issues in this Examination by making assertions about CLdN and its operations. CLdN has made it clear throughout that it does not prioritise the needs of its affiliated shipping lines over the needs of its other customers. The Applicant's consistent referencing to CLdN's shipping lines is nothing more than a distraction, and the fact that the Applicant does not have its own shipping line is not an "advantage", as the Applicant claims, in any sense.
- 2.5 CLdN agrees with paragraph 3.15 of the Applicant's Response and refers to page 14 of the Killingholme Note, alongside Table 4.1 of the Volterra Report, in relation to this.

3. BERTHS

- 3.1 In relation to paragraph 3.16 of the Applicant's Response, the Examining Authority is referred to Part 3, including Figures 3A and 3B, of the Killingholme Note, which shows the current dimensions of berths, including lengths, and confirmation of dredged depths.
- 3.2 The berths can cater for all types of Ro-Ro vessel currently in operation (including the largest vessels currently operating in the world (8000m length overall), which CLdN and the Applicant have agreed is the maximum size). These vessels can only currently use Berth 3, but there are only two such vessels in the world and these are operated only by CLdN.
- 3.3 In relation to the quote from the Volterra Report used in paragraph 3.16 of the Applicant's Response, being that "there are ambitions and possibilities to extend some of the berths in the future to accommodate larger vessels", CLdN notes that the jetties can be modified and adapted with the use of additional piles to install dolphins. This would enhance operational flexibility. Such works would be limited (comprising only of additional piles) and would not take longer than one week. When operational requirements dictate a need for these works, they will be progressed by CLdN. However, it should be understood that the berths are sufficiently sized to accommodate current vessels and schedules. Such works would not involve the installation of additional jetties. This is all explained in the Killingholme Note.

4. STORAGE

- 4.1 In relation to paragraph 3.17 of the Applicant's Response, the key point is that the Port of Killingholme consists of 115ha, as confirmed at paragraph 2.24 of the WR, of operational land that is almost entirely flexible in terms of how it is deployed.
- 4.2 In relation to the same paragraph of the WR, and in relation to paragraph 3.18 of the Applicant's Response, the Applicant has miscalculated the available number of trailer bays and container ground slots currently available at Killingholme, as shown in Table 4.1 of the Volterra Report. CLdN disputes the Applicant's estimate of existing storage capacity at Killingholme. The Applicant assumes that there are 220 container ground slots at Killingholme, when in fact there are 1,879 available. The blue hatched area in the plan in Figure 4-1 of the Applicant's Environmental Statement: Volume 3, Appendix 4.1: Market Forecast Study Report [APP-079] (the **Market Study**) does not include flexible compounds. Storage capacity is estimated by the Applicant to be approximately 290,000 units per year at Killingholme, when in fact 2023 capacity stands at approximately 625,000 units per year, rising to 750,000 units a year by 2025 through planned storage capacity growth at the port. This is a substantial difference in starting positions on existing capacity.
- 4.3 Paragraph 3.18 of the Applicant's Response also contains a number of assertions from the Applicant, which CLdN suggests may be showing misunderstanding due to the fact that the Applicant is not, itself, a shipping line operator. These are dealt with in turn:
- 4.3.1 in relation to sub-paragraph (i) CLdN is demonstrating, throughout its submissions, the existing capacity of the terminal and its potential for expansion. To some extent this is theoretical, because as of today there is no market or operational need to undertake extensive expansion by the development of large areas of development land, or increase trailer or container storage exponentially. The alteration of facilities is a commercial decision driven by market demand. Experienced operators do not undertake major projects with significant capex if the demand does not exist, to create space that is not going to be required in the foreseeable future. However, CLdN retains the flexibility and ability to respond to the market by optimising operations further and increasing storage land. Vehicle storage is a flexible operation, which can be expanded either through off-site storage or the construction of car decks - CLdN operates car decks at its terminals in London, Zeebrugge and Rotterdam;
- 4.3.2 CLdN assumes that the Applicant is referring to off-site storage in sub-paragraph (ii). CLdN does use off-site storage. It does not contend that the availability of such facilities is subject

to availability and contract, as set out at page 8 of the Killingholme Note. No such requirement exists today except in a limited scope. Now that Stena is departing Killingholme there is no imperative to enhance car storage capacity in this way until demand arises;

- 4.3.3 in response to sub-paragraph (iii), CLdN notes that it has permitted development rights across the entire terminal, with development works on land that is controlled by CLdN for the purposes of its jetty premises not being subject to the need to obtain express planning permission;
- 4.3.4 as for the customs and check-in requirements referenced in sub-paragraph (iv), CLdN has the second largest border control post (for carrying out customs and sanitary and phytosanitary inspections) in the UK, after the Government facilities at Sevington for the channel ports and Eurotunnel. This has been sized to accommodate very high volumes of plant and flower cargoes, as well as being designed to accommodate Stena's volumes of throughput. The current UK border target operating model envisages checks at a much lower level than the current design, meaning there is plenty of capability (excess, in fact) to meet these; and
- 4.3.5 in sub-paragraph (v), the Applicant states that "CLdN's position does not appear to match the reality of the situation occurring at the Killingholme facility". CLdN is unclear what the Applicant means by this, and refers to the Killingholme Note for a comprehensive summary of operations at the Killingholme facility. It is disappointing to see that the Applicant has not engaged with the clear and substantive evidence provided by CLdN, given that the Applicant does not have anything like the same expertise and experience with constructing, managing and operating Ro-Ro terminals as CLdN.

4.4 In paragraph 3.19 of the Applicant's Response, the Applicant appears to have misunderstood CLdN's position. CLdN has shown that the Applicant misunderstands and underestimates the capacity of Killingholme, by using incorrect information on storage capacity for Ro-Ro units and compounding this error by using incorrect dwell time figures that depart significantly from the real time recorded data. The Port of Killingholme is a flexible facility. As owner and operator, CLdN has the ability to manage existing capacity and respond to market demand for more capacity with the benefit of expansion land, or enhancements and optimisation of existing facilities. IERRT will not have any such flexibility, given that the total area of the IERRT will be fixed at 38Ha.

5. CAPACITY AND THROUGHPUT

5.1 As set out in paragraph 1.2 above, CLdN does not propose to repeat its submissions in relation to capacity in the context of the Applicant's Response.

5.2 CLdN does, however, wish to draw attention to the fact that the Applicant's assertions on dwell times are based on the views of its 'market study authors', who are not port operators and did not obtain actual real time data. The Applicant utilises an average dwell time of 2.25 days that is still not explained or substantiated with any relevant primary data. The basis for this assumption is outlined in a single paragraph within the Market Study (paragraph 115), where it states "we used 2.25 days as average dwell time based on our experience in the industry as being a typical dwell times across the sector." In fact, the Applicant's consultants added a 'resilience element' (a figure which is not identified and the basis of which is not explained) to come to this average of 2.25 days' dwell time for RoRo freight on the Humber. Without explanation, this 'resilience uplift' serves only to increase the figure to a point that helps to justify the Applicant's needs case.

5.3 In contrast, CLdN utilises real time operational data collected over a period of 10 years to calculate that dwell times at Killingholme vary from between 1 to 1.5 days. This is lower than the lowest sensitivity of dwell times presented by the Applicant, 1.75 days. The review of real time operational data at Killingholme shows that this average dwell time figure is so far removed from actual data that it is inherently inaccurate and therefore unreliable. CLdN's submission is that this figure has been used for one purpose only: to attempt to demonstrate that there is a capacity problem in the Humber

for Ro-Ro freight currently (or in the very near future), leading to an alleged 'imperative and urgent need' to bring forward further Ro-Ro capacity through port expansion at the Proposed Development. This is an inaccurate and misleading position, particularly bearing in mind that in 2022 Killingholme handled some of the highest volumes of cargo in its history of operation.

- 5.4 The knowledge of the Applicant's authors is no substitute for real experience or primary data collected at Humber ports, particularly where these assumptions are so far removed from the facts. It is notable that at no point have the market study authors been invited to explain their dwell time assumptions and assessment at the hearings.
- 5.5 In relation to paragraphs 3.24-3.25 of the Applicant's Response, CLdN notes that the Applicant has not chosen to examine and respond to the data provided by CLdN (through the Volterra Report), which demonstrate that existing storage capacity on the Humber is in fact substantially higher than what the market demand study sets out. In paragraph 3.24, the Applicant notes "the absence of relevant detail of the existing specific terminals in operation", yet the Volterra Report provides this for both Killingholme and DFDS, which is not acknowledged by the Applicant.
- 5.6 Combining the corrections for the Applicant's inaccurate assumptions on both dwell times and landside storage capacity at Killingholme, it is shown that the Applicant has underestimated capacity at Killingholme by 64% to 164%. This is not an immaterial error in the Applicant's calculations.
- 5.7 As for paragraph 3.26 of the Applicant's Response, CLdN notes that as set out in paragraph 1.43 of the Volterra Report, this sensitivity analysis is upwardly biased and does not appropriately account for the lower dwell times evidenced from actual operational information provided by CLdN and DFDS. For clarity, the Applicant's biased assessment (Table 8.3 of the Market Study) tests a low sensitivity scenario of 1.75 days dwell (0.5 days below their central assumptions), compared to an upper scenario of 3.5 days dwell, which is 1.25 days above their central assumption.
- 5.8 In paragraphs 3.28-3.32 of the Applicant's Response, the Applicant states that a figure of 525,000 units per annum is the likely throughput, rather than 660,000. CLdN, through the supplementary report from Volterra appended to CLdN's Responses to Deadline 2 submissions **[REP3-020]**, has provided a response on this matter, demonstrating that the dwell time required to achieve this throughput would still have to be substantially below the 2.25 assumption used by the Applicant in an attempt to demonstrate constrained existing capacity.
- 5.9 As explained in Volterra's submissions on pages 15-18 of the ISH3 Summary, the inherent contradiction in the Applicant's approach is that by using an inflated dwell time to diminish the assessment of capacity at Killingholme, it effectively reduces the throughput capacity at IERRT, meaning that IERRT would never be able to reach 525,000 freight units throughput per annum, let alone 660,000.
- 5.10 Assuming that the 2.25 day dwell time can be substantiated, then when applying this dwell time to the proposed development it would only be able to achieve an annual throughput of 195,000 unaccompanied units per annum. This is demonstrated in Table 4.4 of the Volterra Report and serves to show that the Proposed Development is not, functionally, well designed. It does not have enough landside storage capacity available within its boundary to be able to accommodate its stated level of unaccompanied throughput, at the dwell times assumed by the Applicant.
- 5.11 To achieve a throughput of 660,000, or the lower figure stated by the Applicant of 525,000, a dwell time of 0.92 – 1.16 (around 1) days would need to be achieved at the Proposed Development.
- 5.12 Therefore, even if the Applicant is correct about dwell times, then it would be clear that the Proposed Development is unable to:
 - 5.12.1 satisfy paragraph 3.3.1 of the National Policy Statement for Ports (**NPSfP**), namely that they will be able to cater for forecast growth on the Humber, which is used to justify significant and harmful development; nor

5.12.2 satisfy paragraph 3.3.3 of the NPSfP, namely to deliver a development that is well designed functionally and can deliver on its stated throughput.

5.13 The Applicant cannot claim both scenarios to be true – either the dwell time is 2.25 days, in which case the Proposed Development cannot accommodate the suggested throughput, or the dwell time is lower, which reduces the need for the Proposed Development because the existing constraint on capacity simply does not exist. This inconsistency fundamentally undermines the Applicant’s case.

6. MARKET DEMAND

6.1 In paragraphs 3.36-3.48 of the Applicant’s Response, the Applicant puts forward a number of arguments that criticise the approach in the Volterra Report to the review of the market demand scenarios in the Market Study. These include making a limited assessment on strategic industry drivers and not considering different insights of the underlying analysis. The Applicant also claims that the OBR forecasts are higher than what is presented in the Market Study.

6.2 With respect to the latest OBR forecasts, these forecast a much lower level of growth in the very short term (i.e. the next 2 years) than the Applicant assumes. The March 2023 OBR forecasts predict 1.4% growth in 2022 (compared to an assumed 3.7% for the Applicant) and 0.2% in 2023 (compared to 1.7% for the Applicant). This results in an initial jump in demand growth that serves to make the Applicant’s forecasts higher, despite the fact that the longer term projections are broadly aligned.

6.3 The Applicant does not acknowledge that CLdN has not fundamentally challenged their growth forecasts. CLdN believes that whilst demand may be slightly overstated, it is not the demand forecasts that critically undermine the needs case. It is the inaccurate, misleading and in some cases inconsistent assumptions made around capacity, as explained above, that represent much the biggest issue.

6.4 With respect to demand, however, whilst the Applicant provides text in various appendices to their submissions on “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)”, it is not made clear in the Market Study how these factors are quantitatively factored into the demand forecasts. For this reason, CLdN (and Volterra) has not been able to comment on whether these factors are reasonable or not, because the forecasts are not transparent.

6.5 Instead, simple scenarios have been presented in the Volterra Report to demonstrate how sensitive demand forecasts are to specific quantitative assumptions. CLdN agrees that some level of growth will be achieved in the Humber, but those scenarios make clear that the actual demand figure achieved in the future is by no means certain, and therefore the Applicant’s singular demand forecast is less reliable than it seeks to present. No sensitivity scenarios for demand are presented by the Applicant.

6.6 The key point that is not adequately addressed by the Applicant in their responses is that when multiple scenarios are presented for: (i) higher existing storage capacity; (ii) the potential for future expanded capacity at Killingholme; and (iii) potentially lower market demand materialising, in many scenarios of comparing demand against capacity, future demand is able to be accommodated within the existing Humber port infrastructure. Figures 6.1 to 6.4 of the Volterra report contain these comparisons within a variety of scenarios. This places significant doubt on whether there is in fact an ‘urgent need’ to expand storage capacity on the Humber to meet future demand.

7. TRAFFIC AND TRANSPORT

7.1 In relation to paragraph 6.1 of the Applicant’s Response, CLdN notes that the meeting on 15 September 2023 took place and progress was made on agreeing some of the parameters for the Transport Assessment. However, the maximum daily throughput for the Proposed Development remains unevicenced and a sensitivity assessment of gate assignment is outstanding. These matters

were discussed in ISH3 and CLdN refers to the ISH3 Summary in this respect. Based on the dwell times used, it is also unfeasible to reach such levels of throughput.

8. DRAFT DCO

- 8.1 With respect to paragraphs 4.1 and 4.2 of the Applicant's Response, the updated document 3.1 Draft Development Consent Order **[REP3-002]** submitted by the Applicant still fails to address a substantial number of the drafting issues identified in Appendix 2 of the WR. CLdN refers the Examining Authority (and the Applicant) to CLdN's detailed submissions on pages 4-13 of the ISH4 Summary.

9. REQUIREMENT FOR PROTECTIVE PROVISIONS

- 9.1 CLdN refers the Examining Authority (and the Applicant) to CLdN's detailed submissions on pages 14-15 of the ISH4 Summary.