

**THE PROPOSED ASSOCIATED BRITISH PORTS (EASTERN RO-RO TERMINAL)  
DEVELOPMENT CONSENT ORDER**

**DEADLINE 4**

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Response to Action Point 25 from ISH 3

Note outlining how the Harbour Works Consent process would relate to the works subject to the dDCO, including those works subject to the Deemed Marine Licence

submitted on behalf of Captain Firman, Harbour Master, Humber

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1. The ExA has asked the Applicant to outline how the Harbour Works Consent (HWC) process would relate to the works subject to the dDCO, including those works subject to the Deemed Marine Licence. The Harbour Master, Humber (HMH) provides his input into this action point for the assistance of the ExA.
2. Article 3(3) of the draft DCO disapplies section 9 of the Humber Conservancy Act 1899 which is the statutory provision which currently deals with the licensing of works by the Statutory Conservancy and Navigation Authority (SCNA). It replaces this with the protective provisions for the Statutory Conservancy and Navigation Authority for the Humber in Part 1 of Schedule 4 to the draft DCO.
3. Paragraph 3 (Tidal Works – approval of detailed design) of the protective provisions provides for the prior approval by the SCNA of plans and sections for the IERRT and such other particulars as the SCNA may reasonably require. The SCNA is concerned with the safety of all vessels operating in the Humber during the construction of the works authorised by the Deemed Marine Licence. Therefore, although it is not made explicit in sub-paragraph (1), the further particulars referred to would inevitably include detailed method statements and programmes for those works.
4. Paragraph 3 states:

*‘3.—(1) Prior to the commencement of the authorised development in the marine environment the Company must submit to the Statutory Conservancy and Navigation Authority plans and sections of the tidal works or operation and such further particulars as the Statutory Conservancy and Navigation Authority may, within 28 days from the day on which plans and sections are submitted under this sub-paragraph, reasonably require.*

*(2) Any approval of the Statutory Conservancy and Navigation Authority required under this paragraph shall be deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 28 days of the day on which the request for consent is submitted under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable requirements as the Statutory Conservancy and Navigation Authority may make for the protection of—*

- (a) traffic in, or the flow or regime of, the river;*
- (b) the use of its operational land or the river for the purposes of performing its functions; or*
- (c) the performance of any of its functions connected with environmental protection.*

*(3) Requirements made under sub-paragraph (2) may include conditions as to—*

- (a) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work; and*
- (b) the expiry of the approval if the Company does not commence construction of the tidal work approved within a prescribed period.*

*(4) Before making a decision on any such approval, the Statutory Conservancy and Navigation Authority must take into account any opinion on plans and sections provided to it by the Environment Agency.*

*(5) Whenever the Company provides the Secretary of State with an environmental document it must at the same time send a copy to the Statutory Conservancy and Navigation Authority.'*

5. Importantly, paragraph 3(2) provides for the imposition of requirements at the discretion of the SNCA, including conditions for the protection of traffic in, or the flow or regime of, the river. The only proviso is that these requirements should be reasonable. Paragraph 3(3) provides, additionally, for conditions as to *'the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the tidal work'*.
6. Paragraph 8 of the protective provisions provides separately that the Company must *'exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the SCNA may from time to time reasonably require.'*
7. It should be noted that the dDCO does not seek to disapply the powers of the SCNA and HMH under the British Transport Docks Act 1972 to give directions to vessels. Paragraph 15 (5) would require the SCNA to consult the Company before giving a general direction "which directly affects the construction, operation or maintenance of the authorised development." However, there is no restriction whatsoever on the power of HMH to issue a special direction to any vessel if he considered it necessary for the safety of navigation.
8. Paragraph 16 of Schedule 4 provides for the Applicant to submit to the SCNA for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development and must operate the authorised development only in accordance with such procedure as approved, including any approved alteration made from time to time'.
9. Paragraph 18 of Schedule 4 provides that any dispute arising between the Company and the SCNA relating to the protective provisions – which would include whether they are being complied with - is to be determined by arbitration as provided for in the dDCO.
10. Once the detailed design information is to hand, the risk assessment within the Humber MSMS would be amended to reflect the extra activity and any temporary or permanent procedures that fall out of that work would form part of the MSMS.
11. It is implicit in paragraph 3 that the works cannot be carried out in the absence of the SCNA's approval. HMH considers that this stream-lined approvals process is consistent with the procedure that would exist in the absence of the Deemed Marine Licence, whilst reflecting that the making of the draft DCO would provide authority for the construction of the IERRT. HMH further considers that he has adequate powers together with the protection afforded by the dispute resolution procedure to enforce any conditions imposed by the SCNA in relation to the authorised works.

**Winckworth Sherwood LLP**