

IERRT ISH3 and ISH4: The IOT Operators' Summary of Oral Submissions



This note summarises the submissions made by Associated Petroleum Terminals (Immingham) Limited (“**APT**”) and Humber Oil Terminals Trustee Limited (“**HOTT**”) (together the “**IOT Operators**”) at Issue Specific Hearing 3 (“**ISH3**”) and Issue Specific Hearing 4 (“**ISH4**”) on 27 and 28 September 2023 in relation to the Development Consent Order (“**DCO**”) application for the proposed Immingham Eastern Ro-Ro Terminal Development (“**IERRT**”). This document does not summarise the oral submissions of other parties.

ISSUE SPECIFIC HEARING 3

1 AGENDA ITEM 2: POLICY, STATUTORY AND OTHER LEGAL CONSIDERATIONS FOR THE PROPOSED DEVELOPMENT

1.1 The IOT Operators stated that the question of whether the IERRT is sustainable development must be considered in light of the agent of change principle and the implications of the proposed development on the Immingham Oil Terminal (“**IOT**”) and the two refineries which rely on the IOT. The project will only be sustainable development provided appropriate measures are delivered to protect the IOT.

1.2 The IOT Operators consider that the navigation and shipping impacts of the IERRT (without the protective provisions which are considered to be necessary) means that the project does not comply with the following provisions of the UK Marine Policy Statement (2011) and the East Inshore and East Offshore Marine Plans 2014:

- (a) Section 3.4 of the UK Marine Policy Statement;
- (b) Paragraphs 2.4.8, 3.5.8, 3.5.9 and 3.6.7 of the East Inshore and East Offshore Marine Plans; and
- (c) Policies PS2 and PS3 of the East Inshore and East Offshore Marine Plans.

1.3 There are also additional policies, draft legislation and decisions to be aware of in the context of national energy security considerations and the importance of the IOT and refineries to the UK’s oil supplies. These include:

- (a) Powering Up Britain – March 2023 (see pages 3 and 4)
- (b) Part 12 (previously Part 10) and Explanatory Memorandum (see in particular paragraphs 464 and 465) of the Energy Bill.

Part 12 of the Energy Bill contains provisions in relation to core fuel sector resilience and covers activities such as the refining and transporting oil.

- (c) Draft NPS EN-5 (see paragraphs 2.3.10 and 3.6.7)
- (d) The Secretary of State’s decision and Inspector’s Report in Loxley (APP/B3600/W/21/3268579) (see paragraphs 3.4 – 3.13 and 11.122 – 11.126 of the Inspector’s Report and paragraphs 10, 26 and 34 of the Secretary of State’s decision).

This is a recent case where energy resilience was a significant consideration and should be considered alongside the Secretary of State’s decision in Ellesmere Port (APP/A0665/W/18/3207952) which was issued on the same date but was

distinguished by Mrs Justice Steyn in the High Court for the reasons advanced on behalf of the Secretary of State and the developer (see paragraphs [83] – [97] of *Protect Dunsfold Ltd v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 1854 (Admin)).

1.4 Relevant extracts of the documents and decisions referred to above have been submitted to the Examination at Deadline 4.

2 AGENDA ITEM 3: NAVIGATION AND SHIPPING EFFECTS OF THE PROPOSED DEVELOPMENT

2.1 The IOT Operators confirmed that discussions have been taking place with the applicant regarding the navigation and shipping concerns raised by the IOT Operators and with regard to the provision of protective measures. These discussions led to a letter (with an accompanying plan) being submitted to the Examination on 28 September 2023 [AS-020] which outlined the intention of the applicant to make a request to amend the DCO application in order to enable the delivery of mitigation measures required by the IOT Operators. While this agreement is without prejudice to both parties' formal positions, ABP and the IOT Operators are pursuing a solution to avoid the issues of concern to the IOT Operators and would advance new protective provisions to substantially similar effect as those submitted in REP1-039.

2.2 In light of the letter submitted, the IOT Operators agreed not to engage in detail with navigation and shipping matters and the Navigation Risk Assessment (“**NRA**”) issues during ISH3.

2.3 Notwithstanding the IOT Operators' formal position regarding the adequacy of the applicant's NRA, the IOT Operators will continue discussions with the applicant in an attempt to reach agreement on the mitigation measures required. As stated in the letter and as shown on the indicative plan appended to the letter, there will be some changes to the IOT's finger pier to enable two coastal tankers to berth on the northern side of the finger pier and two barges to berth on the southern side of the finger pier. However, these are not what was envisaged in the original amendments to the protective provisions. The letter therefore refers to the protective provisions being substantially in the same form as the amendments submitted at Deadline 1 [REP1-039] to enable such changes to be made.

2.4 Until the measures required are secured to the satisfaction of the IOT Operators, representations will continue to be made by the IOT Operators to the Examination in writing. In the event that there is a failure to reach an agreement on the detail of the provisions or if the change application is not accepted by the Examining Authority, the IOT Operators will request to make oral submissions at a hearing to be arranged for November 2023. The IOT Operators also requested to be consulted on the DCO change application and to be involved in any additional simulations that will be undertaken by the applicant.

ISSUE SPECIFIC HEARING 4

3 AGENDA ITEM 3: DISCUSSION OF THE DRAFT DEVELOPMENT CONSENT ORDER

3.1 The IOT Operators noted that the applicant proposes to control the delivery of the proposed impact protection works through Requirement 18 of the draft DCO. As currently drafted, Requirement 18 provides that the Harbour Master is the body that approves the need or otherwise for impact protection. The IOT Operators consider that in the event that no agreement is reached with the applicant on the impact protection works, the approving body should be independent of the applicant (which the Harbour Master is not, since he is employed by an ABP company). In principle this function could be served by the Secretary of State for Transport.

3.2 The IOT Operators consider that in any event appropriate protective provisions should be included in the DCO substantially in the same form as submitted at Deadline 1 [REP1-039], a principle which has been accepted by the applicant in its letter of 28 September 2023 [AS-020].