

# IMMINGHAM EASTERN RO-RO TERMINAL



Applicant's Response to DFDS's Deadline 4 Submissions

Document Reference: 10.2.50

APFP Regulations 2009 – Regulation 5(2)(q)

PINS Reference – TR030007

October 2023

<b>Document Information</b>		
<b>Project</b>	Immingham Eastern Ro-Ro Terminal	
<b>Document Title</b>	Response to DFDS's Deadline 4 Submissions	
<b>Commissioned by</b>	Associated British Ports	
<b>Document ref</b>	10.2.50	
<b>APFP Reg 2009</b>	Regulation 5(2)(q)	
<b>Prepared by</b>	IERRT Project Team	
<b>Date</b>	<b>Version</b>	<b>Revision Details</b>
23/10/2023	01 Deadline 5	Submitted at Deadline 5

**Contents**

<b>1. Executive Summary</b> .....	4
<b>2. Introduction</b> .....	5
<b>3. Policy, statutory and other legal considerations</b> .....	5
<b>4. Onshore Transportation</b> .....	6
<b>5. DCO matters</b> .....	7
<b>6. Navigation and Shipping</b> .....	12

## **1. Executive Summary**

- 1.1. This document provides the Applicant's response to the information submitted by DFDS at Deadline 4, which in turn draws upon information submitted by DFDS at Deadline 3 and information presented by DFDS at the Issue Specific Hearings 3 and 4.

## 2. Introduction

- 2.1. This document provides the Applicant's response to the information submitted by DFDS at Deadline 4 which in turn draws upon information submitted by DFDS at Deadline 3 and information presented by DFDS at the ISH3 and ISH4 sessions. The DFDS submissions responded to in this document are:
- a) Written submissions of oral case presented at ISH3 **[REP4-025]**;
  - b) Written submissions of oral case presented at ISH4 **[REP4-026]**;
  - c) Comments on deadline 3 submissions by DFDS's **[REP4-024]**.
- 2.2. In addition, this document provides a response to Action Point 13 arising out of the ISH4 hearing session.

## 3. Policy, statutory and other legal considerations

- 3.1. Under this general topic heading, DFDS raise points relating to sustainable development matters and marine policy matters. The Applicant's response is provided in the following paragraphs.

### Sustainable Development

- 3.2. Within its written summary of case made at ISH3 **[REP4-025]** and its answers to the ExA's second written questions **[REP4-023]** DFDS raise a concern that because – in their view – the IERRT development has a number of implications in terms of safety, on commercial operations at the Port of Immingham, on the local road network and communities it is not 'well designed, functionally and environmentally'. As a result of not, therefore, complying with this single bullet point of paragraph 3.3.3 of the NPSfP, DFDS indicate that the IERRT development does not constitute sustainable development.
- 3.3. The Applicant does not agree with DFDS in respect of the conclusions it reaches on the matters it lists. The Applicant – for the reasons it has explained elsewhere – considers that the IERRT development is well designed, both functionally and environmentally. The Applicant's evidence as to why the IERRT development constitutes sustainable development is set out within its evidence – for example, in its Planning Statement **[APP-019]**. The Applicant's position has most recently been set out within its detailed response to the Deadline 4 submissions of CLdN that have been submitted at Deadline 5.

### Marine Policy

- 3.4. Within its written summary of case made at ISH3 **[REP4-025]** highlight certain aspects of the UK Marine Policy Statement and the East Inshore and East

Offshore Marine Plan which relate to navigational safety matters. DFDS's concerns in respect of these policy considerations again relates to the different position it takes to the Applicant on the implications of the IERRT project on safety and operational matters. The Applicant's evidence is that the IERRT project does not generate significant adverse effects in respect of these matters and there is, therefore, no conflict with those parts of the plans which DFDS highlight.

- 3.5. The Applicant would point out, however, that DFDS have not in fact provided the full wording of policy PS2 of the East Inshore and East Offshore Marine Plan. If they had provided the full policy they would have had to have acknowledged that the policy does not in fact apply to the IERRT development.
- 3.6. This is because the first part of East Inshore and East Offshore Marine Plan Policy PS2, which DFDS do not quote, states that:

*“Proposals that require static sea surface infrastructure that encroaches upon important navigation routes (see figure 18) should not be authorised unless there are exceptional circumstances. Proposals should ....”*

- 3.7. An examination of figure 18 of the plan reveals that no 'important shipping routes' occur in close proximity to the site of the proposed IERRT development. Furthermore, on a full reading of paragraphs 358 and 359 of the Plan – including those parts of those paragraphs which DFDS do not quote in their submission – it is clear that the purpose of this policy is to protect the important navigation routes identified in the plan from any encroachment by static sea surface infrastructure. This is not what is being proposed through the IERRT development.
- 3.8. In respect of this matter the Applicant would also highlight that in its Deadline 4 submission – **[REP4-015]** – the author of the relevant Marine Plans (the MMO) has indicated that they concur with the Applicant's assessment of the works as it relates to compliance with the Marine Plans.

## 4. Onshore Transportation

- 4.1. At Paragraphs 4.1 and 4.2 **[REP4-025]**, DFDS make reference to the need to update the traffic modelling presented in Transport Assessment to amend various factors including conversion of some input flows to Passenger Car Units (PCUs). This has been undertaken and a draft of the revised assessment was provided to DFDS for review. They provided further comments on 16<sup>th</sup> October 2023, which have also been incorporated and the final revised assessment is provided at Annex D of the Modelling Update Note (DTA Ref 23325-27)

[document 10.2.45.3 - Applicant's Issue Specific Hearing 3 Action Points for Deadline 5 – Appendix 2 - DTA Report 23325-27 Annex D]. This confirms there are no material changes to the conclusions of the Transport Assessment **[AS-008]** in that the proposed development will have no material impact on the safety or operation of wider highway network.

- 4.2. Section 4a **[REP4-025]** refers to general comments in relation to dwell times and the ability of the terminal to accommodate stated throughputs. A full response to this is provided at Section 6 of Response to CLdN's Deadline 4 Submissions submitted at Deadline 5.
- 4.3. Section 4b **[REP4-025]** refers to the need for further justification on the validation of surveyed flows on the A160 corridor. This was provided at Appendix 6 to the Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 3 **[REP4-009]** and has been agreed as part of the SOCG.
- 4.4. Section 4c **[REP4-025]** refers to the distribution of HGV traffic from the terminal in respect of the East Gate / West Gate split.
- 4.5. The Applicant remains of the view that the assignment and distribution of HGV traffic in the Transport Assessment **[AS-008]** is robust, for the reasons set out at Section 4 of the Modelling Update Note (DTA REF 23325-27) **[document 10.2.45.2 - Applicant's Issue Specific Hearing 3 Action Points for Deadline 5 – Appendix 2 - DTA Report 23325-27 including Annexes A-C]**. As set out in the Statement of Common Ground on Transport issues submitted at Deadline 5 the Applicant is willing to provide a sensitivity test that it considers will resolve this matter. This will be undertaken pending final agreement on the parameters as discussed in the Statement of Common Ground on Transport issues.

## 5. DCO matters

- 5.1. The Applicant has been asked to provide a response to DFDS's written submissions concerning the dDCO drafting made in their Relevant Representations and subsequent written Examination submissions under Action Point 13 arising out of the ISH4 hearing session.
- 5.2. An updated dDCO has been prepared for submission at Deadline 5 ("Updated dDCO") which has taken into account DFDS's submissions concerning the dDCO as appropriate.
- 5.3. Responses to DFDS's written submissions of oral case presented at ISH4 **[REP4-026]** are presented below.



## DCO General Comments

- 5.4. The Applicant confirms that the dDCO has been reviewed in respect of the footnote references and confirms that footnotes are shown in bold in the Updated dDCO. As noted by DFDS, the issue with footnotes not being shown in bold only appears in the tracked version of the dDCO – this appears to be as a result of an issue with the software.

## DCO Articles

### Article 2

- 5.5. The description of the Applicant as the “company” has been changed throughout to “undertaker”.
- 5.6. The Applicant notes DFDS’s concern that the definition of ‘construct’ is too wide and should be amended to remove the word ‘replace’. The definition of ‘construct’ which has been used in the dDCO reflects the wording used in The Port of Tilbury (Expansion) Order 2019 (“Tilbury 2”) and The Able Marine Energy Park Development Consent Order 2014 (“ABLE”) and therefore has precedent. Further, in this respect, the Applicant notes the approach taken in the environmental statement for Tilbury 2 where it is stated that future maintenance, which includes repairs, would be required for the infrastructure but that it was not specifically considered in the assessment as it would fall within the environmental envelope related to the initial construction phase. As such maintenance would involve similar activities, as follows (emphasis added):

*“Routine maintenance of the proposed facilities will be required in the future. This will include repairs to any damaged infrastructure, resurfacing of worn surfaces, and routine cleaning of equipment and buildings. Maintenance may itself be an element in operational mitigation in order to ensure the satisfactory environmental performance of plant and equipment. Aside from maintenance dredging (which is specifically considered in the ES) maintenance operations would all fall within the environmental envelope related to initial construction phase, as they would involve similar activities. They would also fall to be controlled by the Operational Management Plan (OMP, Document Reference 6.10).”*  
(Environmental Statement for The Port of Tilbury (Expansion) Order 2019 states the following at paragraph 5.117)

- 5.7. The Applicant is adopting a similar approach, which therefore has precedent. As articulated on behalf of the Applicant at ISH4 [REP4-010], the maintenance powers are not intended to give rise to reconstruction of the works as a whole, but rather refer to ‘maintenance’ within its ordinary meaning. Ongoing



maintenance for the IERRT is addressed at paragraphs 3.2.22 – 3.2.25 of Chapter 3 (Details of Project Construction and Operation) of the Environmental Statement [APP-039], where it is clear that the IERRT infrastructure will be maintained pursuant to the Applicant's statutory powers. Article 6(2) of the dDCO limits the maintenance powers to what has been assessed in the Environmental Statement. In light of the above, the Applicant is of the view that an amendment to the dDCO in this respect is unnecessary.

**Article 6**

- 5.8. The Applicant notes but does not agree with DFDS's comment with regard to Article 6(1), as explained during ISH4.

**Article 7**

- 5.9. The Applicant notes DFDS's concern that Article 7(b) does not refer to building schedule and suggests this could be addressed in Requirement 7. The Applicant is of the view however that a building schedule is not required. See response in respect of Requirement 7 below.

**Article 21**

- 5.10. The Applicant notes DFDS's comments that Article 21(1) has an annual cap of 660,000 units rather than a daily cap of 1,800 Ro-Ro units and no monitoring is provided. Further, it is noted in respect of Article 21(3) the concern that the tailpiece has been amended but such amendments usually refer to 'new or different' environmental effects.
- 5.11. The maximum level of activity for the proposed development equates to 1800 Ro-Ro units per day (which equates to 660,000 Ro-Ro units per year). The identification of this maximum level of activity has been to ensure that the various environmental and related assessments for the DCO application have considered a 'reasonable worst case' position in terms of potential adverse effects. It is common practice and necessary in order to produce an effective Environmental Statement to identify the notional maximum level of activity of a proposed development in this way. Therefore, and as the facility is designed to accommodate a maximum throughput of 1,800 units per day, the Applicant does not consider that it is appropriate or necessary to amend Article 21(1) to incorporate a daily Ro-Ro unit limit.
- 5.12. The Applicant considers that it is appropriate to retain the "tailpiece" in Article 21(2) as explained in updated document 3.2 Explanatory Memorandum submitted at Deadline 5. The Applicant is of the view that an amendment to the dDCO in this respect is not required.

**DCO Schedules**

**Schedule 1**

- 5.13. DFDS express concern that in Schedule 1 there is no change to works, including the lettered ancillary works.
- 5.14. The wording in the dDCO has precedent and the Applicant is of the view that an amendment to the dDCO is not required.

**Schedule 2****New Requirement**

- 5.15. DFDS would wish to see a new requirement providing a restriction on simultaneous construction and operation unless and until such a situation has been properly assessed in the environmental statement.
- 5.16. Such a restriction is not required as the scenario was assessed in the Environmental Statement submitted for the IERRT Application, as detailed in Chapter 3: Details of Project Construction and Operation [APP-039]. That chapter states that two construction scenarios are possible for the IERRT, and as part of each individual environmental topic assessment, both scenarios were considered by the applicable technical assessors to identify which of these two scenarios would give rise to the largest potential for likely significant effects, thus the worst-case scenario. The assessments presented in each of the chapters of the environmental statement, for the individual environmental topics, were based on the identified worst-case scenario, which was the scenario whereby the IERRT would be constructed and then operated sequentially.
- 5.17. The Updated dDCO has, therefore, not been updated to include a restriction on simultaneous construction and operation pending assessment in the environmental statement, as that scenario was in fact assessed.

**Requirement 4**

- 5.18. This Requirement has been amended in the updated dDCO.

**Requirement 7**

- 5.19. The Applicant notes DFDS's suggestion that this requirement should be amended to limit heights of the authorised development to those which have been assessed in the environmental statement and as set out in the building schedule.
- 5.20. As explained by the Applicant in its Written Summary of the Applicant's Oral Submissions at ISH1 For DL1 [REP1-008], the approach taken by the Applicant is entirely appropriate given that the proposed development comprises more

than just buildings. There is precedent for this in other made DCOs for port-related infrastructure such as The Port of Tilbury (Expansion) Order 2019 and The Able Marine Energy Park Development Consent Order 2014.

- 5.21. The Applicant is of the view that it is sufficient, in respect of building heights for reference to be made to the Engineering, Drawings and Plans in the dDCO. Reference to height is just confined to external appearance.

### **Requirement 8**

- 5.22. The Applicant notes DFDS's comments that requirement 8 is duplicated by requirement 15 save for the addition of the word 'general' and suggestion one should be removed, as well as their preference for not including the word 'general'.
- 5.23. The Applicant has reviewed the CEMP and considers that it should be treated as an outline document to be approved pursuant to Requirement 8 of the dDCO. The Applicant confirms that dDCO has been revised in the Updated dDCO such that: (i) requirement 8 refers to the Outline CEMP, and (ii) the Outline CEMP forms one of the Certified Documents. Requirement 15 has been updated to refer to the Outline CEMP and the word 'general' has been removed.
- 5.24. As such, requirements 8 and 15 serve individual purposes and have been retained in the Updated dDCO. Requirement 15 ensures that the IERRT is constructed in accordance with the Outline CEMP. The final CEMP, as approved, will have to reflect the principals which were laid out in the Outline CEMP which forms one of the Certified Documents for certification by the Secretary of State. Requirement 8 ensures that the IERRT must be constructed in accordance with the final CEMP, following approval by the relevant bodies.
- 5.25. The Applicant is therefore content that requirements 8 and 15 should be retained in the dDCO.

### **Requirement 10**

- 5.26. The Applicant notes DFDS's comments that requirement 10 relating to noise insulation should be amended to require the Applicant to reach a specified standard of protection.
- 5.27. The Requirement has been updated in the Updated dDCO.

### **Requirement 15**

- 5.28. Reference to the submitted NRA within Requirement 15 has been deleted in the Updated dDCO.

**Requirement 18**

- 5.29. The objectives and purpose of this Requirement will be reviewed following the close of the current Proposed Changes Notification consultation exercise **[AS-026 – AS-035]**.

**Schedule 4**

- 5.30. The Applicant is reviewing the draft heads for protective provisions proposed for DFDS and will be responding shortly after Deadline 5.

**6. Navigation and Shipping –**

- 6.1. In light of the Applicant's Proposed Changes Notification **[AS-027]** and the consequential ongoing public consultation, rather than enter into a lengthy exchange at this stage on Navigation and Shipping matters, the Applicant is reserving its position in the context of comments and responses so as to give it the opportunity to engage further with the Interested Parties during the current consultation process. A comprehensive response will be provided at Deadline 6 – possibly earlier subject to the progress made.