

IMMINGHAM EASTERN RO-RO TERMINAL



Applicant's Response to CLdN's Deadline 4 Submissions
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Contents

1. Executive Summary	4
2. Introduction	6
3. Legal and policy position in respect of the consideration of need and alternatives	6
4. Growth considerations	8
5. Capacity Considerations	18
6. The ability of the IERRT to handle the maximum level of activity indicated	29
7. Other matters	35
8. DCO matters	49
Abbreviations and Acronyms	54

1. Executive Summary

- 1.1. This document provides the Applicant's response to the information submitted by CLdN at Deadline 4 which in turn draws upon information submitted by CLdN at Deadline 3 and information presented by CLdN at the ISH3 session.
- 1.2. In respect of legislative and policy matters, for the reasons set out, CLdN's case is contrary to the case law, contrary to the NPSfP and misconceived.
- 1.3. In respect of growth considerations, the Applicant notes that CLdN is not fundamentally challenging the Applicant's growth forecasts. The Applicant, and its advisors, however, strongly disagree with the characterisation of the Market Study as presenting a 'black box' model. The Market Study clearly highlights how the various assumptions it makes have been derived and sets out the methodology that has been adopted. A high level summary of these matters has been provided in this response document.
- 1.4. Although the Applicant and its experts consider that the demand forecasts in the Market Study are robust, a comparison of the different projections and scenarios which have been suggested or referred to in submissions to the examination has been provided. This has also taken account of various changes and clarifications that have been provided since the submission of the Market Study.
- 1.5. The variations to the Market Study projections which result indicate a marginally higher growth rate than originally presented in the Market Study, but a growth roughly in line with those original projections. These comparisons also demonstrate that the forecasts produced on behalf of CLdN are not materially different from the Market Study projections. The analysis undertaken also shows that the Market Study based projections are more conservative than either of the National UK Government forecasts and the forecasts produced for the National Infrastructure Commission.
- 1.6. Within its submissions, CLdN now appear to be suggesting that the ExA should recommend refusal of the IERRT application on the basis that there is an alternative available to provide for growth in Ro-Ro freight on the Humber at Killingholme. CLdN appear to be claiming significant spare storage and handling capacity at the Port of Killingholme and are asserting that such capacity can be delivered quickly with minimal consenting or approval issues.
- 1.7. The basic starting point of this submission is misconceived. The NPSfP is clear that there is an established need for additional development of the type proposed through the IERRT facility regardless of any alleged spare capacity at Killingholme and that extra capacity is supported, even if there were sufficient capacity at Killingholme. Accordingly, the basic premise of CLdN's position is misconceived and contrary to established national policy. There is no policy or legislative requirement for the ExA to determine whether CLdN's claims in relation to alleged spare capacity at Killingholme are realistic and represent an alternative to the IERRT facility or would be capable of meeting the need which

has been identified. Indeed, planning simply to meet the need that is being put forward by CLdN is directly contrary to the NPSfP in terms of matters such as stimulating competition and maintaining resilience. Even if CLdN could deliver the claimed capacity at Killingholme, that clearly and self-evidently would not be a reason for not permitting the IERRT facility. To the contrary, additional capacity (if indeed it can be delivered by CLdN) would simply be a welcome addition under the NPSfP in terms of delivering competition and resilience.

- 1.8. Notwithstanding and without prejudice to that basic point, however, the analysis contained within this response demonstrates that CLdN have still not provided the necessary detail as to what their claimed alternative is and what it would involve and how it would be delivered – the position presented remains vague, hypothetical and general in nature. There is a basic lack of clarity as to what CLdN are claiming can be delivered, how it can be delivered, over what timeframe, what its implications are (including in terms of displaced activities) and what consents would be necessary - in circumstances where it is clear that reliance on permitted development rights would be flawed anyway.
- 1.9. Accordingly, even if it were relevant to consider alternatives (which it is not in any case) the relevant policy contained in the NPSfP means that CLdN has failed to demonstrate that its alternative is an alternative.
- 1.10. Furthermore, from the summary explanation and analysis provided in this response, it is demonstrated that the IERRT has the ability to handle the 1800 / 660,000 unit maximum level of activity that has been defined, and would do so in such a way that does not have any adverse implications for the operation of the surrounding port road network or the public highway network.
- 1.11. Moreover, the analysis provided demonstrates that, from an operational perspective, a significant beneficial degree of resilience has been built into the IERRT facility and that it has been laid out in a logical way that will enable efficient and safe operations. The summary explanation and analysis provided in this document demonstrates that the IERRT is well designed functionally.
- 1.12. Having regard to the analysis contained within this response, including a proper analysis of the relevant policy context, it is clear that the suggestion by CLdN that the IERRT development is not sustainable development is not supported by the evidence. In respect of the other points raised by CLdN in its Deadline 4 submissions the Applicant, for the reasons detailed in this response, similarly does not consider that the suggestions and assertions made by CLdN are supported by relevant evidence.

2. Introduction

- 2.1. This document provides the Applicant's response to the information submitted by CLdN at Deadline 4 which in turn draws upon information submitted by CLdN at Deadline 3 and information presented by CLdN at the ISH3 session. The CLdN submissions responded to in this document are:
- (i) Written submissions of oral case presented at ISH3 **[REP4-017]**;
 - (ii) Written submissions of oral case presented at3 ISH4 **[REP4-018]**;
 - (iii) Response to comments of the Applicant to CLdN's Written Representations **[REP4-019]**;
 - (iv) CLdN's responses to the ExA's further written questions **[REP4-020]**; and
 - (v) CLdN's Consolidated note on CLdN Ports Killingholme **[REP4-021]**.
- 2.2. In addition, this document provides a response to Action Points 4 and 8 arising out of the ISH3 hearing session. CLdN's Deadline 4 submissions are also responded to in other submissions of the Applicant at Deadline 5.

3. Legal and policy position in respect of the consideration of need and alternatives

- 3.1. In its various Deadline 4 submissions, CLdN provide information on its case in respect of the policy and legislative position on need and alternatives matters. This is largely set out within its written summary of oral submissions made at ISH3 **[REP4-017]**.
- 3.2. Within CLdN's submissions there is further evidence of a misunderstanding of the Applicant's case, to the extent that CLdN now appear to be suggesting – incorrectly - that the Applicant's case has only now developed to include matters relating to competition and resilience (see 'Post hearing Note' on page 12 of CLdN's written summary of oral submissions at ISH3 **[REP4-017]**).
- 3.3. This section of the response is supported by legal submissions on need and alternatives matters which are provided at Appendix 1. Within this section of this document and accompanying appendix the Applicant sets out what it considers to be the correct position in respect of the law and policy in relation to need and alternatives matters as well as, for the avoidance of doubt, reiterating what certain elements of its case is on need and alternatives matters.
- 3.4. Before doing so, however, the Applicant would highlight that – contrary to statements made at the ISH3 session by CLdN – the points it has been making in respect of need and alternatives matters are not simply 'peripheral points' as suggested. Rather, they are fundamental to the correct consideration of these matters having regard to the legal and policy basis against which the IERRT DCO has to be considered and determined.

- 3.5. Similarly, any criticism by CLdN that the Applicant has not engaged with the 'substance of CLdN's position' has to be considered on the basis that the level of engagement possible depends upon the extent to which the substance of the position to be engaged with is first set out. In this respect the Applicant considers that, through the Deadline 4 submissions, CLdN have only now provided further information of its position to enable the Applicant to appropriately respond – albeit that, as touched upon throughout this response, there remains areas where the position of CLdN remains vague and unclear.
- 3.6. Within its response to CLdN's Written Representations **[REP3-007]**, the Applicant provides a summary of its position on need matters as set out within the National Policy Statement for Ports (NPSfP). That summary is not repeated here but one or two points are highlighted in light of CLdN's latest Deadline 4 submissions.
- 3.7. In assessing the need for new port infrastructure, the NPSfP makes it very clear throughout section 3.4 on the need for new port infrastructure.
- 3.8. From the detailed analysis of these different elements of total need referred to within the NPSfP it is clear that it is not appropriate to take one of those elements (i.e., overall demand for port capacity) as the only reason why the NPSfP considers that there is a need for new port infrastructure.
- 3.9. These different elements set out within section 3.4 of the NPSfP are then reflected in the various matters listed in paragraph 3.5.1 of the NPSfP which the decision-maker should accept the need for future port capacity for, and for which a presumption in favour of granting consent for relevant applications is the starting point.
- 3.10. For the avoidance of any doubt, and as the Applicant has explained elsewhere, there is no requirement under the policy set out within the NPSfP for the Applicant to demonstrate a need for the IERRT development to benefit from the presumption in favour of such development set out within the NPSfP. This is because a compelling and urgent need for the type of infrastructure that would be established by the IERRT development is already established in the NPSfP itself.
- 3.11. Even though the NPSfP has established the need for the Applicant's proposed development, the Applicant has also separately demonstrated a need for the proposed development even if there is no requirement for it to do so. That need is detailed within the application documentation – see, for example, ES Chapter 4 **[APP-040]**.
- 3.12. On this basis, it is, therefore, incorrect for CLdN to seek to continue to characterise the Applicant's need position in a way which suggests that it is primarily just about matters relating to the 'overall demand' element of the 'total need', or that 'need' is solely just about meeting 'overall demand'. These are themes which, in the Applicant's view, run through CLdN's submissions made at

the ISH3 session. For example, CLdN's own written summary of their oral submissions at ISH3 state (at page 11) states:

*“All of the Applicant’s points regarding competition and resilience are a helpful concession, noting their original application was advanced on the basis of an urgent and compelling need. If the need is being modified to a lower level now, then CLdN has achieved what it set out to in participating in this Examination”.
..... “CLdN is hearing two things: first, that there is an urgent need; and secondly, that the purpose is for competition and resilience. Both of these points are distinct.”*

- 3.13. At the ISH3 session the Applicant made clear that it had not conceded anything in this regard, because its case relates to the different elements the NPSfP indicate contribute to the need for port infrastructure.
- 3.14. The Applicant notes that in its latest submissions, CLdN appear to now be questioning whether the Applicant’s proposal ‘meaningfully addresses the need that is identified in the NPS’ (written summary of oral submissions page 18 post hearing note) although this appears to be by reference to section 3.3 of the NPSfP rather than section 3.5. The evidence does not support CLdN’s assertion.
- 3.15. Further responses on relevant points made by CLdN in this regard are dealt with elsewhere within this response document. From these responses it will be clear that the Applicant does not agree with CLdN’s submissions in this regard.

4. Growth considerations

- 4.1. This section of the response considers matters which have been raised by CLdN relating to the various growth forecasts and market demand information that is before the examination.
- 4.2. In providing a response, the Applicant notes from CLdN’s Deadline 4 submissions that CLdN is not fundamentally challenging the Applicant’s growth forecasts. Rather, it believes that ‘demand may be slightly overstated’ and that it is capacity matters that represent ‘much the biggest issue’ ([REP4-019] paragraph 6.3).
- 4.3. Having set out that position, however, CLdN then go on to raise points relating to the transparency of the analysis contained in the Market Study and the alleged lack of the use of sensitivity scenarios within the Market Study ([REP4-019] paragraph 6.4 and 6.5). These matters are responded to below, and matters relating to capacity are considered elsewhere within this document.

Market Study Forecasting Methodology

- 4.4. The assertions made in paragraphs 6.4 and 6.5 of [REP4-019] reflect earlier assertions made in the first Volterra report [REP2-031] where, for example, it was

suggested that *“the forecasting methodology outlined in the market study and used to estimate future demand in the Humber lack transparency, resulting in a black box model being presented”* (First Volterra Report, paragraph 5.8)

- 4.5. The Applicant and its advisors strongly disagree with this characterisation of the Market Study. The Market Study clearly highlights how the various assumptions have been derived and sets out the methodology that has been adopted. Indeed the sections setting out the methodological steps within the Market Study do not appear to be challenged in any way by Volterra.
- 4.6. For the avoidance of any doubt, a brief high-level summary of the approach that was used in the Market Study is provided below (although reference should be made to the Market Study itself for the full methodology). In short:
- An assessment of the historic shortsea traffic flows on a national level and specifically for the Humber was undertaken. The shortsea trade covers unaccompanied traffic, accompanied traffic and Lo-Lo containers on board Ro-Ro vessels (see section 3 of the Market Study).
 - An analysis of the competitive environment in terms of Ro-Ro facilities was then carried out to understand the current position and the potential for expansion (see section 4 of the Market Study).
 - An analysis of the structure of the hinterland served by facilities on the Humber was then undertaken to understand where the demand being served and likely to be served is located (see section 5 of the Market Study).
 - An analysis of the shortsea shipping structure – with a particular focus on Ro-Ro shipping - was then carried out to assess the shipping costs, frequency of services and potential bottlenecks in the shipping element of the supply chain (see section 6 of the Market Study).
 - A logistic cost assessment was then undertaken to identify the competitiveness of the Humber facilities in serving the hinterland as well as assessing any impacts of changing cost structures (and, consequently, changing market shares) (see section 7 and appendix 2 of the Market Study).
 - The shortsea demand allocated to different areas in the hinterland, combined with the cost competitiveness of the different ports over which the cargo can be routed, results in an assessment of the total market share of the Humber ports on a national level (see section 7.3 of the Market Study).
 - Bringing all of the relevant aspects of the preceding analysis together a UK national forecast for shortsea demand was then prepared based on macro-economic and national trade characteristics and trends, including the shift between modalities within the shortsea traffic segment (see sections 8.3 and 8.4 of the Market Study).

- The role of the UK's East Coast ports in shortsea traffic growth was then analysed to assess the specific role of the North Sea trades on the northern UK shortsea market. This is the wider market the Humber is located in and filters out effects from trades with, for example, Ireland and southern Europe (see section 8.5 of the Market Study).
 - The preceding analysis was then brought together as necessary in the preparation of a forecast for shortsea traffic in the Humber region (section 8.6 of the Market Study).
- 4.7. By way of response to the unjustified assertion that the methodology underlying the Market Study has not been detailed or explained in the report, the following further points are highlighted:
- Section 3.2.1 of the Market Study provides an overview on how the shortsea trade statistics have been arrived at, with a detailed description on how data from the Department for Transport and His Majesty's Customs and Excise can be combined to arrive at a more detailed level of data for analysis. This provides the basis for analysing separate trends in trade between different parts of Europe (section 3.2.2.2 of the Market Study).
 - In Chapter 5 of the Market Study, a detailed description of regional key drivers for demand including population, GDP, location of distribution centres and the road infrastructure network is provided. This analysis is the basis on which the location of demand is identified.
 - Section 7.2 of the Market Study describes the methodology used for the logistic cost assessments. These cost assessments form the basis for the market share modelling which in turn is key in preparing the forecast. Logistic costs are one of the most important freight routing criteria. The model is also used to evaluate the impact of new costs introduced (such as carbon taxes) or changing transportation costs.
 - In Appendix 2 of the Market Study a more detailed five-page description of the drivers and methodology of the logistic cost assessment is provided. In Figure A2-4 a flow diagram is provided with an explanation of how the hinterland demand assessment in combination with the regional market share assessment provides the basis for the market share potential of the Humber.
 - Section 8.2 of the Market Study provides a step-by-step description of the forecasting methodology. Each of the steps has been described with charts and descriptions in the subsequent sections 8.3 to 8.6, drilling down from the national forecast to the Humber-specific projections.
 - Appendices 3 and 4 of the Market Study provide detailed assumptions on the shipping costs and shipping structure aspects included in the analysis.

4.8. In CLdN’s submissions (paragraph 6.4 of **[REP4-019]** and paragraph 5.15 of the First Volterra Report **[REP2-031]**) queries are raised as to how the various factors set out in the Market Study have then been factored into the demand forecasts. Although this should be clear from the Market Study itself, in the table below (Table 1) a summary is provided as to how the key factors work through into the forecast.

Table 1: Links between factors and the forecasts

Factors	Link to forecast
Logistics cost model	<p>The logistic cost model is central in the forecasting methodology, in particular, in assessing changes in market shares in the future. It is used to identify the competitiveness of the Humber facilities in serving each part of the hinterland (at a NUTS-3 reporting level/county level) and the impacts of changing cost structures (and, consequently, changing market shares), such as carbon taxes, changes in vessel sizes etc.</p> <p>Examples of the results of this part of the analysis are provided in Figure 7-1, 7-2, Appendix 5 and on a weighted average basis in Figure 7-4 of the Market Study.</p>
Hinterland demand modelling	<p>The hinterland demand modelling is used to allocate the shortsea demand to a geographic region in the hinterland. The total UK shortsea demand is allocated to each county (NUTS-3 reporting level/county level). By combining the size of the demand in each region with the logistic costs assessment of routing the resultant shortsea traffic through various UK ports or direct trucking via Dover, a market share of the Humber ports can be determined.</p> <p>The hinterland demand modelling takes account of factors such as the Government’s levelling-up agenda.</p> <p>The main results of the combination of the logistic cost assessment and the hinterland demand modelling are summarised in Table 7-1 in the Market Study. In this table the hinterland is divided by the level of competition between the ports and the demand generated from each of the hinterland areas.</p>
Facilities competitive reviews	<p>This information is used on both the demand and the supply side.</p> <p>On the demand side the competitive review is used to assess what facility will attract most cargo. In the case where one specific facility is identified as the better facility, that particular facility is the basis for the potential market share being attracted in the market share assessment. In the case of the Humber the facilities are - for the purposes of the particular analysis undertaken – considered to be relatively competitive to each other and the terminals can collectively, therefore, be considered as one shortsea shipping block. In addition, the facility review is used to</p>

	<p>determine the key parameters feeding into the logistic cost assessment such as the vessel sizes to be assumed at each facility. Finally, the facility review provides insights into which vessels can call where and thereby which terminal can handle which traffic flow from a berthing and supporting facilities perspective.</p> <p>On the supply side the facility review is used to estimate the capacity and expansion potential. This also provides insight into the capacity utilisation of the terminals and whether there is a situation of constrained or unconstrained demand which may result in the re-routing of volumes.</p> <p>For the competitive review the aspects of each terminal are given particular consideration in light of the key requirements for efficiently operating Ro-Ro facilities as set out in section 1.5 of the Market Study.</p>
<p>Trends in the Ro-Ro demand segment</p>	<p>Trends in the Ro-Ro sector (for example as discussed in section 3.1.4 of the Market Study) are incorporated in the forecast in various places. For example, the trend from accompanied to unaccompanied is incorporated in the forecast in the modality used for short sea traffic (Figure 8-2 and 8-3). This particular forecast for unaccompanied traffic also takes into account factors like</p> <ul style="list-style-type: none"> • a partial shift away from ‘just in time’ delivery for some products • truck driver availability (and the corresponding impact on the attractiveness of accompanied trades). <p>Other trends in the Ro-Ro segment are incorporated into the logistic cost assessment, such as carbon pricing impact or other impacts of the costs of shipping goods.</p> <p>The volatility in the Ro-Ro supply chains witnessed over the past few years as a result of the Covid pandemic and increased nearshoring is captured through a larger resilience allowance for the infrastructure to cope with the increasing volatile macro-economic and logistic conditions.</p>
<p>Trends in Ro-Ro shipping</p>	<p>The size of the vessels deployed has been used in the logistic cost assessment as a sensitivity check. In addition, this has been analysed in light of berthing windows and berths where the larger vessels could potentially call at and the capacity these vessels would be supplying to the market.</p>

Key Growth Drivers, Scenarios and Sensitivity

4.9. At paragraph 6.5 of [REP4-019] CLdN repeat an assertion made within the First Volterra report in which it is suggested that the Market Study is incomplete in its

analysis of key growth drivers and it is claimed that it has not considered sensitivity scenarios to assess the impact of variations in assumptions. In paragraph 1.9 of the First Volterra report, for example, it was claimed:

“A comprehensive forecasting approach should have extended beyond simply GDP to consider relationships with other economic indicators, such as trends in consumer spending, when forecasting future demand for freight in the Humber, at least as a sensitivity analysis.”

- 4.10. The Applicant’s experts agree that macro-economic matters have an influence on demand, but it is simply incorrect to suggest or claim that the influence of such matters has not been considered in the Market Study. Relevant trends in changing macro-economic conditions have been considered, for example, by analysing the trade:macro-economic growth relationship over a historic period of time. In addition, throughout the study the impact of a large variety of factors affecting demand have been addressed, such as trends in Ro-Ro traffic (section 3.1.4.) changing trade relationships and Covid (section 3.1.5.), fluctuations in the type of commodities transported within Europe (section 3.3), regional variation in demand by means of hinterland demand modelling and trade partner analysis (section 3.2.2.2).
- 4.11. In addition, the forecast is based upon a careful evaluation of the competitive position of the Humber based on comparative cost analyses and regional economic developments.
- 4.12. It is noted that Volterra does not comment on (nor offer) any alternative analyses or perspectives to those used by the Applicant’s experts. The assertion that the forecasting methodology is limited to ‘simply GDP’ is incorrect.
- 4.13. In addition, CLdN seem to be questioning throughout their commentary and submissions whether GDP is a good parameter on which to base a forecast. This is a strange and unsubstantiated position which does not reflect good practice. The Applicant’s experts consider that the use of GDP as a parameter is a position which is supported by wider industry, and it used for the Government forecasts as well. It, therefore, represents both good practice and a practice which is consistent with the formulation of Government policy. Moreover, elsewhere in its document, the use of GDP actually seems to be accepted by Volterra. Although other macro-economic parameters can influence trade in the short term, the longer-term trends utilised to identify demand can be described by the trade:economic growth relationship to the required level. Shifts in trade characteristics occurring over the years are captured in the GDP:trade multiplier effectively.
- 4.14. The Applicant further notes that CLdN also claim that *“No sensitivity scenarios have been presented”* ([REP4-019] paragraph 6.5). Again this is simply incorrect.

Various sensitivity scenarios have been considered within the Market Study, such as:

- Different GDP scenarios - described in paragraph 167 and depicted in Figure 8-1 of the Market Study.
- Different demand scenarios and their implications on the conclusions are described in paragraph 184 and depicted in Figure 8-16 of the market study.
- Supply (capacity) sensitivities are described in paragraphs 116 and 177, with further background provided in Appendix 7 of the market study. These sensitivity scenarios are then also included in the overall demand sensitivities shown in Figure 8-15 and 8-16.

Comparison of Demand Projections

4.15. The Applicant and its experts consider that the demand forecasts and projections that are presented in the Market Study are robust. Given the passage of time, it is inevitable that some additional baseline data is now available which is the subject of comment by other Interested Parties. It is also noted that the Examining Panel have been provided with various different growth projections and scenarios.

4.16. To assist, the Applicant's expert advisors set out the following information which provides a comparison of the different projections and scenarios which have been suggested or referred to in the submissions made to the examination, noting that overall (as already highlighted in the summary provided above) that there is in fact little disagreement by Volterra with the Market Study projections and the outlook presented in its own projections.

4.17. In Figures 1 and 2 that follow, the various forecasts referenced in information submitted to the examination have been plotted. These take account of the following changes that have occurred or clarifications that have been provided since the submission of the Market Study:

- Inclusion of 2022 actual traffic figures as reported by DfT.
- Revised accompanied Ro-Ro data for imports in Hull in 2022 relative to DfT published data. The DfT had, it transpires, wrongly copied over the raw statistics provided to them by the Applicant. Although acknowledging this error, the DfT statistics have not yet been updated.
- Revised accompanied Ro-Ro data from Harwich in 2021 to correct the DfT's use of a wrong data point which had caused a jump in market share and traffic in the Humber. The DfT has acknowledged to the Applicant's experts that this was a wrong data point and is checking this with the Port of Harwich.
- Additional 'Mafi' type volumes handled at the Port of Killingholme reported in Table 5.1 in the First Volterra report **[REP2-031]** which appear to have been reported to the DfT by CLdN under traffic code 63, and which, as such, were

not included in the baseline Ro-Ro data reported in the Market Study (the Market Study – as recognised by Volterra - having taken account of the flows reported to the DfT under the accompanied Ro-Ro, unaccompanied Ro-Ro and shortsea Lo-Lo categories as relevant). Having indicated that there were additional volumes handled at the Port of Killingholme, the Applicant wonders why these were not then seemingly taken forward into Volterra’s own forecasts.

- Additional volumes apparently handled at the Port of Killingholme - based on Table 5.1 in the Volterra report - which do not seem to have been reported at all in the DfT statistics. This roughly equates to an additional 7.5% of Ro-Ro units when comparing the two data sets. The data provided by CLdN does not allow one to check quoted growth rates or trends on a per modality level. Volterra only quotes total units imported and exported making no distinction as to the mode used. Therefore, a full consolidation with DfT statistics is not possible.
- Revised GDP Forecast, as suggested by Volterra, where the basic GDP scenario from the July 2022 Forecast of Oxford Economics has been replaced by the June 2023 OBR forecast. This results in a higher long term GDP rate adopted in the forecasts.

Figure 1: Total Humber shortsea units forecasts

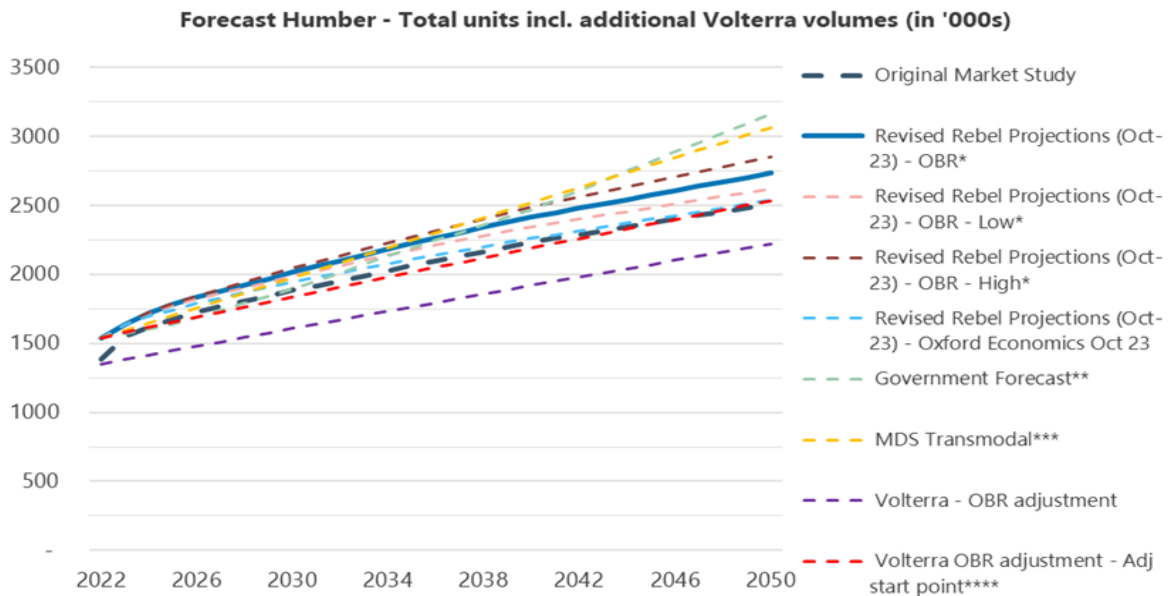
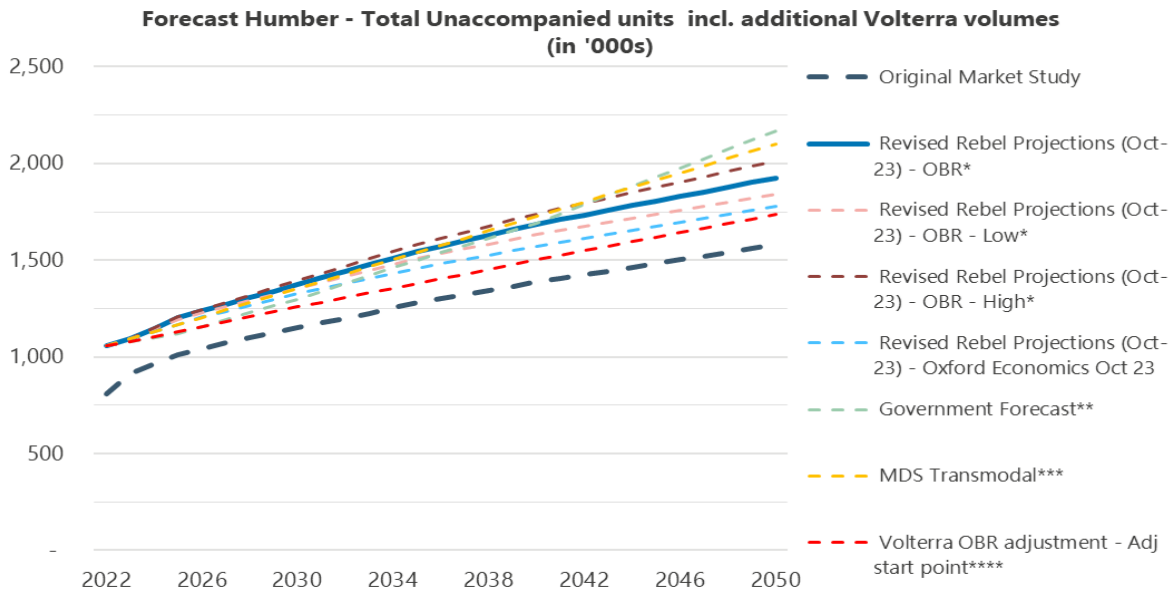


Figure 2: Humber unaccompanied Ro-Ro units forecasts



* Revised GDP: Based on OBR June 2023 GDP forecast¹

** Government forecast: Based on the overall UK Ro-Ro growth rate applied to the 2022 starting point².

*** MDS Transmodal: based on the growth rate of Humber traffic applied on the 2022 starting point³

**** Volterra – Adjusted Start Point: Volterra growth rate applied to the new starting point.

4.18. As will be seen from Figures 1 and 2, one implication of reflecting the changes set out above is that the forecasts now start from a higher starting point. For the avoidance of doubt, the various lines shown on the two figures are:

- (i) ‘Original Market Study’ – the base case scenario forecast presented in the Market Study. This has been presented unchanged for context (i.e. no adjusted start point).
- (ii) ‘Revised Rebel Projections (Oct 23) – OBR’ – this is the revised Market Study base case scenario which uses the June 2023 OBR GDP forecast rather than the July 2022 Oxford Economics GDP forecast.
- (iii) Revised Rebel Projections (Oct 23) – OBR – Low ‘- this is the revised Market Study low scenario using the June 2023 OBR GDP forecast rather than the July 2022 Oxford Economics GDP forecast.
- (iv) ‘Revised Rebel Projections (Oct 23) – OBR – High’ - this is the revised Market Study high scenario using the June 2023 OBR GDP forecast rather than the July 2022 Oxford Economics GDP forecast.

¹ <https://obr.uk/efo/economic-and-fiscal-outlook-march-2023/>, accessed 8 September 2023

² Department for Transport, 2019, UK Port Freight Traffic

³ MDS Transmodal on behalf of the National Infrastructure Commission, 2019. Future of Freight Demand

- (v) 'Revised Rebel Projections (Oct 23) – Oxford Economics Oct 2023' - this is the revised Market Study base case scenario using the Oxford Economics October 2023 GDP forecast rather than the July 2022 Oxford Economics GDP forecast.
- (vi) 'Government Forecast' – this is the forecast provided in the national forecasts contained within the DfT's 'UK Port Freight Traffic 2019 Forecasts', which supersede the previous national forecasts referred to within the National Policy Statement for Ports (NPSfP).
- (vii) 'MDS Transmodal' – this is the forecast contained within the National Infrastructure Commission 'Future of Freight Demand 2019' document that was produced by MDS Transmodal and which is referenced at paragraph 5.10 of the First Volterra Report.
- (viii) 'Volterra – OBR Adjustment' – this appears to be the base case scenario which is presented in the First Volterra report
- (ix) 'Volterra OBR adjustment – Adj start point' – this is the Volterra base case scenario but from an adjusted 2022 starting position.

Comparison of Market Study Forecasts with Market Study Forecast variations

- 4.19. The variations to the Market Study projections result in a marginally higher growth rate but a growth roughly in line with the original Market Study projections. The same changes in the forecast are noted in the forecast for unaccompanied units.
- 4.20. In terms of unaccompanied Ro-Ro units, the original Market Study base case forecast growth was an increase from 746,000 units in 2021 to 1,580,000 units in 2050 handled on the Humber (an increase of 834,000 units). In comparison, the revised Market Study base case using June 2023 OBR GDP forecast predicts a growth from 1,056,000 units in 2022 to 1,925,000 units in 2050 (a similar increase of 869,000 units).

Comparison with Volterra projections

- 4.21. Within the first Volterra report, three different growth scenarios were provided – an OBR Adjustment Forecast, a CAGR Adjustment Forecast and a Slower Short Term Growth Forecast. All of these three scenarios appear to reach largely the same position in 2050, albeit that this is shown to be lower than the Market Study base case forecast (see Figures 5.2 and 5.3 of the First Volterra report). However, it would appear that this difference in the final 2050 level predicted is largely to do with the fact that the Volterra forecasts are shown on the Volterra figures as starting from a different position. The actual levels of growth shown by the various forecasts do not appear to be significantly different between the Market Study predictions and the Volterra scenarios.

- 4.22. This position is effectively confirmed by the preceding analysis. When the Volterra OBR adjustment scenario is applied from the revised 2022 starting point (i.e. the starting point which incorporates cargo reported to the DfT under code 63 as well as the additional average 7.5% of additional traffic identified as not reported) a similar forecast is provided to the revised Market Study forecasts.
- 4.23. The Applicant is surprised that, having identified that the additional cargo flows referred to above had not been included within the base data, Volterra did not itself re-adjust the starting position for the forecasts presented in the First Volterra Report.

Comparison to other industry forecasts

- 4.24. It should also be noted that the revised Market Study based projections are more conservative than either of the National Government and the MDS Transmodal forecasts.

Comparison of growth rates

- 4.25. The actual growth rates of the various forecasts over different time horizons have been summarised in Table 2 below.

Table 2: Shortsea traffic growth rates

	Short Term (2025-2030)	Medium term (2030-2035)	Long term (2035-2050)
MDS Transmodal Humber	>2%*		
UK Government 2019	3.0%	2.9%	2.5%
Rebel Market Study - UK	1.8%	1.5%	1.3%
Rebel Market Study - Humber	2.5%	1.9%	1.3%
Rebel Revised Forecast - Humber	2.5%	2.0%	1.4%
Volterra – No UK or Humber forecast available / in line with Rebel			
Volterra - OBR adjustment	1.8%		
Volterra - CAGR adjustment	1.5%		

- 4.26. Having regard to all of the above, it is considered that the Applicant’s shortsea growth projections for the Humber are entirely robust and in no way should be considered too bullish as is claimed by CLdN and its advisor, Volterra.

5. Capacity Considerations

- 5.1. In section 3 of this response it is explained why any alleged spare capacity (assuming it exists) at the Port of Killingholme simply does not constitute an alternative to the Applicant’s IERRT proposal.

- 5.2. Notwithstanding this fundamental point, this section also provides comments on the information relating to that alleged spare capacity that has now been provided by CLdN in its 'Consolidated Note on CLdN Ports Killingholme' (the 'Note') **[REP4-021]**.

Establishing the existing alleged baseline capacity position at Killingholme

- 5.3. This section sets out the Applicant's understanding, as far as it is able, of the existing baseline capacity position at Killingholme as now claimed by CLdN.
- 5.4. Using the information provided in the table on pages 4, 5 and 6 of the Note, information in Figures 2A and 2B of the Note and the Applicant's own measurement calculations (see Appendix 2) the Applicant understands that CLdN's position is that:
- (a) the various existing and future compounds at Killingholme total 106.57 ha;
 - (b) the compound areas that are currently normally used for the handling of Ro-Ro cargo (both containers and trailers) total 25.44 ha;
 - (c) the compound areas that are currently normally used for the handling of cars total 30 ha;
 - (d) the compound areas that could currently potentially be used for the handling of Ro-Ro cargo (both containers and trailers) total 34.51 ha. That in turn would reduce the areas currently in normally use for car storage by 6.02 ha to 23.98 ha.
- 5.5. In seeking to understand the position being presented by CLdN the Applicant notes that there appears to be an inconsistency in the information provided in the Note in respect of compound HSB. Figure 2B of the Note indicates that the compound is normally in use for the storage of Ro-Ro trailers but can also already be used for both Ro-Ro trailer storage and container storage. By contrast Figure 1 and accompanying information provided in the Note (where the compound is alternatively labelled as part of compound S) indicates that the compound is in fact in use for the storage of export cars but only has the ability (through the provision of concrete pads) to enable the storage of Ro-Ro trailers.
- 5.6. From Table 4.1 within the Note – which is a reproduction of Table 4.1 from the First Volterra Report **[REP2-031]** – the Applicant understands that CLdN are claiming that the current 2023 maximum total unaccompanied Ro-Ro storage capacity at the Port of Killingholme is 625,861 Ro-Ro units. The Applicant assumes that this is the amount of unaccompanied cargo which CLdN consider that they can handle over the 34.51 ha area it claims to be available for unaccompanied Ro-Ro storage use that is referred to above, even though this

requires the removal of c6 ha of existing utilised car storage, with no explanation provided as to where this would be relocated.

- 5.7. There is a lack of clarity in the information provided by CLdN. For example, no details are provided as to where all of the trailer bays (asserted to be 1,176 in total) and all of the container ground slots (asserted to be 893 in total and not made clear as to whether they are 20ft or 40ft container slots) are currently provided on the terminal to provide the claimed level of 2023 capacity. In addition, the Applicant is unable to establish whether the 2023 maximum total unaccompanied Ro-Ro storage capacity of 625,861 units asserted by CLdN is actually a reflection of the position that is occurring at the facility.
- 5.8. As indicated, Table 4.1 in the Note makes clear that this level of capacity is based upon a claim that the facility has 1,176 trailer bays and 893 container ground slots. But, as analysed by the Applicant's advisors Rebel using the throughput figures which CLdN reported to the DfT on the annual amount of unaccompanied Ro-Ro cargo handled, it would appear that the split in the type of unaccompanied Ro-Ro cargo handled in 2022 was actually around 70.4% trailers and 29.7% 'mafi' type unaccompanied containers.
- 5.9. On the basis of this split of unaccompanied cargo, the numbers would more accurately be 1760 trailer bays and 309 container ground slots. If these figures are then used in the analysis contained within CLdN's Table 4.1 but all other inputs and calculations kept the same, then the 2023 maximum capacity figure - reflecting the actual traffic mix and operations at Killingholme - is estimated to be 532,608 units (some 15% lower than the 625,861 maximum capacity level claimed by CLdN).
- 5.10. CLdN's existing and future storage capacity calculations in Table 4.1, therefore, are considered to be unreliable for the purposes of claiming the capacity level which CLdN assert, as they rely on the existence of a higher number of container slots and throughput than in reality appears to be the case.

Future capacity

- 5.11. Having regard to Figure 2B of the Note, the Applicant now understands that CLdN are claiming that, in addition to the 34.51 ha of compound areas indicated as currently able to be used for the storage of unaccompanied Ro-Ro cargo, they would also be able to create a further 72.06 ha of unaccompanied Ro-Ro storage. Moreover, CLdN appear to be claiming that 29.74 ha of this (according to the key of Figure 2B) could be developed in less than 12 months and 42.32 ha of which CLdN claim would be able to be developed in around 24 months.
- 5.12. For context, this 72.06 ha expansion would constitute an approximate 208% increase in the landside unaccompanied Ro-Ro storage area at Killingholme and

- would also mean that no other trades (for example, cars) or other developments would be able to be handled or carried out across at the facility.
- 5.13. It is unclear from the Note or the wider CLdN submissions what capacity this alleged 72.06 ha unaccompanied Ro-Ro storage expansion proposal would provide at Killingholme. The Note – when discussing expansion capacity in Part 3 – only indicates an expansion of the facility to provide a maximum 748,268 unaccompanied units of capacity by 2025 (see Table 4.1).
- 5.14. Leaving aside questions over whether the 748,268 capacity figure is in fact an accurate reflection of the type of Ro-Ro cargo that would be handled at the facility (see paragraphs 5.8 and 5.10 above), the Note does not take forward the ‘illustrative assumption’ given in paragraph 4.28 of the first Volterra report **[REP2-031]** that claims the Killingholme facility could increase its number of trailer bays to 4000 by 2050. Nor does the Note deal with the claim in the first Volterra report that up to 6,500 trailer bays and 1800 container slots could be provided, although it is recognised that within the first Volterra report itself this is described as unreasonable (paragraph 4.28).
- 5.15. On one reading, it appeared that the additional alleged potential future Ro-Ro trailer storage areas indicated on Figure 2B (which CLdN claim could be developed within a 24 month period) was what would generate the 748,268 storage capacity figure given in Table 4.1 for the year 2025. However, having regard to the various different total amounts of additional storage being suggested by CLdN, this does not appear to be the case.
- 5.16. It is also unclear from the Note whether, or at what point, any landside expansion capacity would need to be accompanied by adaptations to the existing berths, for example, in order for more than one of the berths to be able to handle the large Ro-Ro vessels considered increasingly likely to handle Ro-Ro cargo on the Humber in the period to 2050.
- 5.17. Furthermore, as already indicated, there is no explanation provided as to what precisely CLdN would do with all the displaced existing trades and uses currently occupying the compounds that it is claimed can be converted to unaccompanied Ro-Ro storage use. The Note makes some general assertions as to the ways in which car storage and container storage capacity might be increased, i.e., the future development of multi-deck facilities for the storage of trade cars or the future use of rubber tyred gantries or rail mounted gantries for containers. Leaving aside basic questions over the costs and the ability to obtain consent for such development solutions, there is no serious suggestion from CLdN that they intend to promote such solutions at the Port of Killingholme now or in the near future.
- 5.18. Accordingly, it remains the case that there is no clarity as to what CLdN claim to be the additional capacity at Killingholme, what this would involve by way of

development at the terminal or how or when CLdN would go about seeking to achieve such capacity and the implications of doing so.

- 5.19. In light of the clear policy guidance provided within the NPSfP (at paragraph 4.9.3), if CLdN were to be suggesting – as it appears they are now seeking to do – that there is such alleged spare capacity at Killingholme as an alternative, then the onus is on CLdN to set out sufficiently clearly what that alternative is and how it can be delivered. The Applicant remains of the view that CLdN’s alleged alternative capacity remains both vague and inchoate.

Consents for any additional capacity

- 5.20. Leaving aside basic questions over precisely what CLdN are now claiming is the alleged additional capacity at Killingholme and the effects of displacement which are not addressed (as noted above), the Applicant notes that the Note claims (page 15) that *“Most capacity enhancements at Killingholme can be achieved by using permitted development rights under the scope of the Harbour Empowerment Order [RR-007].”* In addition, at paragraph 4.3.3 of [REP4-019] it is claimed that CLdN has permitted development rights across the entire terminal.
- 5.21. These general assertions are made without any supporting evidence or information as to how CLdN consider they can undertake the claimed capacity enhancements by reliance upon permitted development rights, what those permitted development rights are and the limitations and controls on their use. Again, this reinforces the general and vague nature of claimed suggestions about potential future capacity in principle.
- 5.22. The Applicant assumes that CLdN’s references to permitted development rights are references to such rights for relevant statutory undertakers under Schedule 2, Part 8, Class B of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). A copy of the relevant extracts of the GPDO are provided at Appendix 3.
- 5.23. The applicability of those rights and the basic problem of reliance upon them in respect of CLdN’s alleged expansion suggestions is briefly considered in the following paragraphs.

Statutory Undertaker status

- 5.24. Part 8, Class B rights can only be exercised by a relevant statutory undertaker, a lessee of that undertaker or an agent of development of the undertaker. The relevant definition of statutory undertaker is provided in section 262 of the Town and Country Planning Act 1990 (the 1990 Act). The Applicant agrees that, by virtue of the 1994 HEO and the 2006 HRO (submitted as Appendix 1 and 2 of CLdN’s Relevant Representation [RR-007]), CLdN would be a statutory undertaker.

Operational land

- 5.25. Part 8, Class B rights can only be exercised on 'operational land' of the said statutory undertaker. What constitutes operational land is defined in sections 263 and 264 of the 1990 Act.
- 5.26. Having reviewed the content of the 1994 HEO and the 2006 HRO, it remains unclear whether the landside area of the Killingholme facility constitutes operational land of a statutory undertaker. In this regard it is noted that at Appendix 3 of its Relevant Representation [RR-007] CLdN have produced a plan which it labels 'CLdN's Operational Land' which appears to indicate that the boundary of 'Operational Land' stops at the mean high-water mark and does not extend inland of this point. This plan matches the Applicant's understanding of the position following a review of the HEO and HRO.
- 5.27. There are other ways in which land can become operational land. However, on the basis that the land has to be operational land for Part 8, Class B permitted development rights to apply, further explanation and clarification from CLdN would be required to demonstrate what land within their ownership is in fact operational land and why this is the case.

Does the proposed development fall within the description of development permitted by Part 8, Class B

- 5.28. Even if one assumes that all of the land is operational land, the proposed development must fall within the scope of the description of permitted development in Part 8, Class B. One basic problem is that the details of what would be necessary to use the land in the way claimed is not specified in sufficient detail or assessed. So whilst storing and handling Ro-Ro freight moved by vessel to and from the facility would be development falling within the scope of development permitted by Part, Class B, it is unclear what exactly would be necessary to achieve this in practice. There is a basic lack of clarity and detail. However, for the purposes of this exercise, it will be assumed that the proposed development falls within the scope of Part 8, Class B and is not subject to any relevant restriction or limitation set out in paragraph B.1.

Article 3(1) of the GPDO remove and the ability to rely upon Part 8, Class B permitted development rights.

- 5.29. Article 3 of the GPDO (a copy of which is attached as Appendix 3) sets out a series of standard limitations on the use of permitted development rights set out within the GPDO.
- 5.30. Each of these limitations needs to be considered on a case-by-case basis once specific details are known about the development proposed and its implications

for permitted development rights. Two specific limitations are, however, addressed further in the paragraphs that follow given their fundamental importance.

- 5.31. Before doing so, however, it should be noted that, by virtue of changes made to the GPDO in April 2021 (through SI 2021/428) the use of Part 8, Class B rights in the vast majority of instances is now subject to a condition that the statutory undertaker must consult with the local planning authority before carrying out development by reliance on Part 8, Class B rights. The Applicant is not aware of any such consultation by CLdN. As a result of these changes to Part 8, Class B there is now a greater degree of local authority scrutiny on the use of Part 8, Class B rights than has historically been the case prior to 2021, and in many instances this now requires prospective developers to set out in sufficient detail for the local authority why those rights can be relied upon.
- 5.32. EIA Limitation - One of the most fundamental limitations on permitted development rights under Article 3 – to which CLdN itself refers in the Note – is, if the development being proposed constitutes EIA development then the majority of permitted development rights (including those granted by Part 8, Class B) cannot be relied upon (Article 3(10) to (12) of the GPDO).
- 5.33. The EIA limitation requires a case-by-case consideration as to whether the development proposed is EIA development. If the development is a Schedule 1 development (as detailed in Schedule 1 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (as amended) (“the TCP EIA Regulations) then EIA is mandatory and relevant permitted development rights cannot be relied upon. If the development is a Schedule 2 development as defined in the TCP EIA Regulations then it will be EIA development if there are any likely significant effects. It is well established in EIA case law that such likely significant effects can either be positive or negative.
- 5.34. It is also well established in case law that it is not permissible for a developer to “salami slice” any proposal or to split the project in order to avoid EIA (see, for example, *R (Ashchurch Parish Council) v Tewksbury Borough Council* [2023] EWCA Civ 101 applying *R v Swale Borough Council ex parte RSPB* [1991] 1 PLR 6 at [16]; *Preston New Road Action Group v Secretary of State for Communities and Local Government* [2018] Env.L.R at [69] and *R (Larkfleet Limited) v South Kesteven District Council* [2016] EnvLR 4). It would, therefore, be necessary to consider any proposals by CLdN in this respect in the terms of those requirements.
- 5.35. However, even if each change to a compound for unaccompanied Ro-Ro storage purposes as suggested in Figure 2B were taken to be an individual project or development in its own right then each one of them (apart from the suggested change to the Humber WB compound) would appear to constitute a development falling within the description of development set out in Schedule 2, paragraph

- 13(a) of the TCP EIA Regulations, namely a change to or extension of an existing Schedule 1 development (i.e. the Port of Killingholme) where the change or extension meets a relevant threshold. The relevant threshold being that applicable to a Schedule 10(g) development, namely the “*Construction of harbours and port installations*” where “*The area of the works exceeds 1 hectare*” (the ‘area of works’ being taken to include any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for construction or installation). On this basis, it would appear that the change suggested to all of the compounds being suggested (with the exception of the Humber WB compound) even on an individual basis would need to be subject to EIA screening at the very least.
- 5.36. However, it would not be appropriate to simply consider each compound change as a stand-alone project in any event in light of the case law on project-splitting.
- 5.37. Through its submissions to the IERRT examination, and as already highlighted, CLdN has now apparently claimed a lower level and an upper level of unaccompanied Ro-Ro storage capacity increase at the Port of Killingholme.
- 5.38. In respect of the lower level claimed, this relates to CLdN’s assertion that they consider that – using their own figures presented in Table 4.1 of the Note unchallenged - they can increase potential Ro-Ro storage capacity from a current 2023 level of 625,861 units to 748,268 by 2025. This would be a storage capacity increase of just over 122,000 Ro-Ro units. Even though CLdN do not provide the requisite detail of how exactly this capacity increase would be achieved on the ground, this is, of itself, around a 20% increase on indicated 2023 levels that would require changes to be made to more than one existing storage compound across the terminal. As a Schedule 2 development, EIA would be required if there were any likely significant effects, whether positive or negative. Even on the basis of likely socio-economic effects alone of such an increase, it is obvious that this would be EIA development and fall outside the scope of Part 8, Class B permitted development rights.
- 5.39. As to the upper level claimed, this is based upon the claim made in the first Volterra report that an assumption can be made that the number of trailer bays at Killingholme can be increased to 4,000 by 2050 (the suggested 6,500 trailer bay scenario has not been used because the first Volterra report itself identifies this as unreasonable). The level of capacity which this number of trailer bays would generate is not clear but even if one simply substitutes this number of trailer bays in Table 4.1 of the Note, but leaves all other inputs as detailed by CLdN, the subsequent level of total storage capacity at Killingholme would be somewhere in the order of 1.285 million unaccompanied Ro-Ro units – an increase of some 659,000 Ro-Ro units over current claimed levels.
- 5.40. Again, even though CLdN have not provided details of how this capacity increase could ever realistically be achieved on the ground and its knock on implications,

this capacity increase (around a 105% increase on claimed 2023 levels) would clearly require changes to large parts of the terminal. For such a scenario, EIA screening would clearly be needed and it is obvious on the socio-economic effects alone that this would be EIA development and so outside the scope of Part 8, Class B permitted development rights.

- 5.41. Any attempt to increase Ro-Ro storage capacity at the Port of Killingholme by small increments in sequence on a compound-by-compound basis to the levels of capacity indicated above – even the lower level indicated above – would be a classic case of impermissible “salami slicing” under the environmental assessment process and prohibited in principle without compliance with the EIA Regulations.
- 5.42. Moreover, having regard to various submissions made to the IERRT examination – largely by other interested parties, and particularly by DFDS and CLdN’s transport consultants – it is suggested by the Applicant that the corresponding increases in traffic along the road network from the Killingholme facility to the A180 that would be generated by such capacity increases would also, of themselves, trigger the need for a full EIA. In contrast to the IERRT development, growth at Killingholme would require all HGV traffic generated by such growth to route via the A160 corridor to the A180. Sensitivity assessment of this corridor is being undertaken as part of ongoing discussions with DFDS and CLdN. That currently indicates that there is unlikely to be spare capacity on that corridor to accommodate the level of growth CLdN are claiming is possible at Killingholme. Certainly, having regard to the submissions of others made to the IERRT examination, there would likely be a number of third parties reliant upon the A160 corridor in respect of their current and future operations interested in ensuring this matter was appropriately analysed and considered.
- 5.43. It is also clear that the local authority – given its role in respect of monitoring the use of permitted development rights and the application of the EIA Regulations, would likely take a keen interest in considering such expansion proposals at Killingholme. The fact that the local authority’s ability to secure mitigation (such as any necessary highway improvements) is very limited in circumstances where development proceeds under permitted development rights – would likely further add to the local authority being keenly interested in considering any such expansion proposals at Killingholme.
- 5.44. In addition, as has previously been indicated, there is no clarity provided by CLdN as to whether any marine infrastructure improvements might be needed to enable the terminal to handle the level of Ro-Ro cargo which has been indicated. Any marine infrastructure improvement works – no matter how apparently small they may be – would be taking place within the Humber Estuary designated site.
- 5.45. HRA Limitation – The second limitation on the use of permitted development rights that the Applicant draws specific attention to is that detailed in Article 3(1)

of the GPDO. This relates to Habitats Regulations matters and, in effect, removes the ability to rely upon any permitted development rights in circumstances where the development proposed would have any adverse effect on the integrity of a designated site.

- 5.46. Article 3(1) of the GPDO cross refers to the Habitats Regulations where a process is set out to consider this matter further. In effect, in circumstances where it cannot be demonstrated with sufficient certainty that the development proposed is not likely to have a significant effect on the designated site the development must not be begun until written notification of the approval of the local planning authority has been received. That approval can only be provided once the local planning authority, following an application to it, have consulted with Natural England, undertaken an appropriate assessment of the proposed development and concluded that the proposed development will not have an adverse effect on the integrity of a designated site. In the absence of necessary clarity as to CLdN's proposals and any knock-on effects they might have, there is simply no way of knowing whether or not this restriction will be engaged.
- 5.47. Accordingly, there are some basic limitations on reliance upon Part 8, Class B permitted development rights and there is certainly no clarity, let alone likelihood, that such rights could be used in the way CLdN appear to be claiming.
- 5.48. Accordingly, leaving aside the fact that the conspicuous lack of detail as to what CLdN are actually claiming (if anything) as an alternative to the IERRT facility in the form of spare capacity at Killingholme – it is clear that any such Ro-Ro capacity increases at the Port of Killingholme could not be undertaken by reliance upon permitted development rights in the way which appears to be suggested by CLdN in its submissions.
- 5.49. It is highly likely that some form of express grant of consent would be necessary.
- 5.50. In addition, if capacity increases at the Port of Killingholme were brought forward that required consent and as a result of those capacity increases an additional 250,000 Ro-Ro units could be handled at the facility (a position toward the lower end of the capacity increases indicated by CLdN as potentially achievable) then it remains unclear why this would not then constitute a Nationally Significant Infrastructure Project.

Conclusion

- 5.51. Within its submissions, CLdN now appear to be suggesting that the ExA should recommend refusal of the IERRT application on the basis that there is an alternative available to provide for growth in Ro-Ro freight on the Humber at Killingholme. Section 4 of this note makes clear that the requirements for capacity are significant under any suggested growth forecast. CLdN appear to be claiming significant spare storage and handling capacity at the Port of

Killingholme, and are asserting that such capacity can be delivered quickly with minimal consenting or approval issues.

- 5.52. The basic starting point of this submission is misconceived. The NPSfP is clear that there is an established need for additional development of the type proposed through the IERRT facility regardless of any alleged spare capacity at Killingholme and that extra capacity is supported, even if there were sufficient capacity at Killingholme. Accordingly, the basic premise of CLdN's position is misconceived and contrary to established national policy. There is no policy or legislative requirement for the ExA to determine whether CLdN's claims in relation to alleged spare capacity at Killingholme are realistic and represent an alternative to the IERRT facility or would be capable of meeting the need which has been identified. Indeed, planning simply to meet the need that is being put forward by CLdN is directly contrary to the NPSfP in terms of matters such as stimulating competition and maintaining resilience. Even if CLdN could deliver the claimed capacity at Killingholme, that clearly and self-evidently would not be a reason for not permitting the IERRT facility. To the contrary, additional capacity (if indeed it can be delivered by CLdN) would simply be a welcome addition under the NPSfP in terms of delivering competition and resilience.
- 5.53. However, notwithstanding and without prejudice to that basic point, the preceding analysis demonstrates that CLdN have still not provided the necessary detail as to what their claimed alternative is and what it would involve and how it would be delivered – the position presented remains vague, hypothetical and general in nature. There is a basic lack of clarity as to what CLdN are claiming can be delivered, how it can be delivered, over what timeframe, what its implications are (including in terms of displaced activities) and what consents would be necessary - in circumstances where it is clear that reliance on permitted development rights would be flawed anyway.
- 5.54. Accordingly, even if it were relevant to consider alternatives (which it is not in any case) the relevant policy contained in paragraph 4.9.3 of the NPSfP means that CLdN has failed to demonstrate that its alternative is an alternative in circumstances where
- (a) The onus would be on CLdN – as the person alleging deliverable spare capacity at Killingholme as an alternative – to provide sufficient detail as to what that alleged alternative consists of, how it can be delivered and how it would meet the need that has been identified. The level of detail necessary in respect of these matters has simply not been provided.
 - (b) It is incorrect to imply that there is 'no barrier' to the provision of additional Ro-Ro capacity across the Humber having regard to the alleged spare capacity at Killingholme, and similarly incorrect to imply that 'no harm' can arise if the alleged alternative is proceeded with.

- (c) The claims made by CLdN about the timescale for the delivery of any additional capacity at Killingholme are unsubstantiated and unrealistic. CLdN has not begun to establish that such capacity could in fact be delivered under permitted development rights given the basic limitations on the exercise of those rights that would be engaged.

6. The ability of the IERRT to handle the maximum level of activity indicated

- 6.1. CLdN (and other Interested Parties) have questioned whether the IERRT facility would be able to handle the level of activity which has been identified as the maximum level for the terminal. It appears that such questions have been raised in relation to the ability of the landside infrastructure to accommodate the level of activity and potential effects on disruption or queuing on the adjacent port roads. It also appears that they relate to a query as to whether the IERRT facility will be able to make a contribution to the growth in Ro-Ro freight predicted for the Humber.
- 6.2. For the avoidance of doubt and repeating the point that has already been made by the Applicant during the examination, 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.
- 6.3. In practice, however, the efficient upper level of activity at the IERRT is more likely to be around 80% of the maximum notional level of activity, i.e., 1440 units per day or around 528,000 units per annum.
- 6.4. The difference between the practical and notional maximum levels of activity is itself one which is recognised by the National Policy Statement for Ports (NPSfP) from a policy perspective. The NPSfP makes clear that achieving effective competition and resilience requires both spare capacity and ports to operate at efficient levels, which is expressly indicated as not the same as operating at full physical capacity.
- 6.5. This note explains how the IERRT would be able to handle 1800 / 660,000 units as a maximum level of activity where the effects have been fully assessed, but also, by doing so, how the facility would also be able to handle the 1440 / 528,000 level of activity.

Inputs into the analysis

- 6.6. Following the submission of the IERRT DCO application, additional detailed design work on the development has continued including that related to meeting the UK Border Force's preferences. Evolutions in the detailed design of the landside arrangements are relevant to the analysis that follows. Relevant evolutions within the Applicant's change application information, include:
- (i) an increase in trailer ground slots at the terminal to 1674 (up from 1430);
 - (ii) an increase in container ground slots to 65 (up from 40), and
 - (iii) the provision of 25 trade unit ground slots.
- 6.7. Such increases do not involve any material change to the physical development but are simply achieved by more efficiently laying out the various trailer and container slots within the identified storage areas. Ongoing detailed design work could further increase the number of notional storage slots deliverable within the proposed storage areas. The number of slots, therefore, remain subject to the ongoing detailed design process, but where the maximum level of activity remains controlled by the annual movement cap set within the draft DCO – which reflects the assessment of the environmental effects of the terminal operating at that maximum level.
- 6.8. In addition to efficiencies in the number of slots available, the further detailed design work confirms that the IERRT will benefit from:
- (i) For traffic inbound to the terminal from the UK –
 - (a) 6 automatic check in gates / lanes,
 - (b) 6 manual check in desks (within the Terminal building) supported by a pre-check in area consisting of circa 50 HGV parking bays,
 - (c) 2 terminal automated entry gates (often referred to as Visy gates) and supporting inbound lanes (the gates to include ANPR portals, damage control camera systems and other relevant systems to ensure that the unit the driver is claiming to be pulling is that unit).
 - (d) 1091m of pre-marshalling lanes.
 - (ii) For traffic outbound from the terminal to the UK –
 - (a) 4 PCP (Immigration) booths and approach lanes,
 - (b) 2 terminal automated exit gates and supporting outbound lanes, and
 - (c) Appropriate UK Border Force facilities including cyclamen gates (a scanner that screens freight to detect any illicit radioactive type materials).
- 6.9. The pre-check in area referred to above is a feature of the IERRT that is not a usual feature at the other existing Ro-Ro terminals operating on the Humber. It is an important part of the IERRT and has been included to enable the terminal to

operate efficiently and to ensure that vehicles accessing the facility do not have to queue on internal port roads before being able to gain access to the terminal.

Storage Capacity Analysis

- 6.10. Attached at Appendix 4 to this document is an analysis reflecting how Stena Line envisage using the IERRT facility. It demonstrates that, in terms of storage capacity, the facility is capable of handling both the 1800 / 660,000 maximum level of activity and the 1440 / 528,000 level of activity.
- 6.11. These demonstrations of the IERRT facility capacity use dwell times which Stena Line consider are achievable based on the operational approach it proposes to employ whereby inbound (eastbound) unaccompanied traffic is continuously loaded onto the vessel. In effect, the vessel itself is utilised when appropriate to do so as an extension of the storage capacity available on the terminal itself.
- 6.12. As to the maximum level of activity that is envisaged (i.e., the 1800 / 660,000 level) there is no requirement to include a peak factor or peak multiplier because the 1800 / 660,000 activity level is the peak.

Operational Analysis

- 6.13. The following analysis, based on Stena Line's proposed operation of the IERRT demonstrates how the facility could handle the maximum level of activity indicated above. As this demonstrates that the IERRT can handle this maximum level of activity in principle it is unnecessary to then specifically illustrate the facility can handling the more likely 80% practical level of activity referred to above.
- 6.14. A short summary explanation of how the terminal is proposed to operate is also provided within the text that follows.

Inbound HGV movements (HGVs and Ro-Ro units arriving at the terminal by road for export or HGVs collecting import units (or both))

- 6.15. Summary of operational activity – All vehicles will arrive at the terminal entrance where they will access the terminal. Vehicles will then either proceed to one of the 6 automatic check in gates / lanes or to the pre-gate area where drivers will park up to use the manual check in desks within the terminal building.
- 6.16. The expected split between automatic and manual check in will be as follows:
- Unaccompanied – 90% automatic check in, 10% manual check in.
 - Accompanied – 100% manual check in.
- 6.17. Following the check in process, all vehicles will then proceed to the entrance gates into the terminal. Accompanied vehicles will proceed to the pre-boarding marshalling lanes where they will be held until directed to embark the vessel –

which will be a controlled process. Hauliers delivering unaccompanied trailers / containers will travel to their allocated ground slot – given to them during the check in process – where they will be left or reloaded onto a Mafi trailer as appropriate.

- 6.18. The trailer park for eastbound trailers will ordinarily be the northern storage yard closest to the marine infrastructure and the vessel, but bays in the central and southern storage yards will also be allocated if necessary.
- 6.19. Hauliers delivering an unaccompanied trailer or container will then either collect a westbound unaccompanied trailer or container (i.e., a unit that has arrived on a vessel and is waiting to be imported into the country) or leave the terminal always passing through a cyclamen portal.
- 6.20. Automatic check-in gates – Consistent with the information provided within the IERRT Transport Assessment, it can be determined that during the relevant peak hour period of activity for unaccompanied traffic during the day (at the 1800 / 660,000 level of activity) approximately 74 HGVs will need to be handled by the automatic check in lanes (at the peak time of 16.00).
- 6.21. The processing time for an unaccompanied unit is up to 3 minutes through the automatic check in lanes. Based on these values, and for robustness assuming an 85% maximum lane utilisation, the minimum number of operational automatic check in lanes required is 4.4. This is calculated as follows:

$$((74 \times 3) / 60) / 0.85 = 4.35$$

- 6.22. This assessment incorporates a 10% solo tractor ratio (as explained in the Applicant's Transport Assessment). DFDS and CLdN have claimed that this ratio should be higher and have suggested figures in the order of 36% in their various representations. Adopting this figure would put the peak input rate at 93 vehicles resulting in the need for 5.47 operational automatic check in lanes.
- 6.23. The IERRT facility has been designed with 6 automatic check in lanes, and, therefore, there is more than sufficient capacity to handle the envisaged maximum level of activity. The 6 automatic check in lanes – even at an 85% maximum lane utilisation – would in fact be able to handle in the order of 102 vehicles per hour without causing any queuing back onto the port roads. This is calculated as follows:

$$((6 \times 0.85) \times 60) / 3 = 102$$

- 6.24. Furthermore, the peak inbound rate for unaccompanied movements occurs before that for accompanied movements. Given the significant spare capacity at the manual check in desks detailed below, if there were ever queuing to occur at the automatic gates (either as a result of technical failure or minor peaks within

the hour) and notwithstanding the 85% utilisation rate already allowed for, vehicles could readily divert to the manual check in desks.

6.25. Manual check in desks – Again, consistent with the information provided within the IERRT Transport Assessment, it can be determined that during the relevant peak hour period of activity for accompanied traffic (and 10% of the unaccompanied vehicles) during the day (at the 1800 / 660,000 level of activity) in the order of 88 (based on 10% solo tractor ratio) to 92 (based on 36% solo tractor ratio) HGVs would need to be handled by the manual check in desks.

6.26. On the basis that the processing time at the desk takes 2 minutes or less, and assuming an 85% utilisation rate, then 3.6 manual check in desks are required. This is calculated as follows:

$$((92 \times 2) / 60) / 0.85 = 3.6$$

6.27. As indicated, the IERRT facility has been designed to have 6 manual check in desks, and, therefore, there is more than sufficient capacity to handle the envisaged level of activity. The 6 manual check in desks – even at an 85% level of utilisation – would in fact be able to handle in the order of 153 vehicles per hour without causing any queuing back onto the port roads. This is calculated as follows:

$$((6 \times 0.85) \times 60) / 2 = 153$$

6.28. Pre-gate parking area (circa 50 bays) – The ongoing scheme design work demonstrates that the pre-gate parking area will have in the order of at least 50 HGV parking spaces.

6.29. It is anticipated that the pre-gate parking area will largely be used by accompanied traffic as drivers park up to undertake the check in process – it will not be a layby area for longer term occupation. Each space would need to be used only 1.84 times during the peak hour to accommodate the peak level of traffic predicted (i.e., 92 HGVs as indicated above).

6.30. The predicted overall peak hourly level of all inbound traffic (both accompanied and unaccompanied combined) accessing the terminal is 145 HGVs. If this overall level of activity in its entirety for whatever reason needed to utilise the pre-gate area this would require each holding space within the pre-gate area to be used just under 3 times during that hour. In effect this means that a single HGV would be able to occupy a space for an average of 20 minutes – considered to be significantly more time than would be necessary under any reasonable scenario to process an HGV for entry into the terminal. In reality, the time is considered to be more likely in the order of 5 to 10 minutes at most.

- 6.31. Automated Entrance Gates and Lanes – The processing time through an automated entrance gate is in the order of 20 seconds. On the basis that the predicted overall peak hourly level of inbound traffic (both accompanied and unaccompanied combined) entering the terminal is 145 HGVs, and assuming an 85% utilisation rate, one automated entrance gate (0.95) is required. This is calculated as follows:

$$((145 \times 0.33) / 60) / 0.85 = 0.95$$

- 6.32. As indicated, the IERRT facility has been designed to have 2 automated entrance gates, and, therefore, there is more than sufficient capacity to handle the envisaged level of activity. The 2 automated entrance gates – even at an 85% level of utilisation – would actually be able to handle in the order of 306 vehicles per hour without causing any queuing back onto the port roads. This is calculated as follows:

$$((2 \times 0.85) \times 60) / 0.3333 = 306$$

- 6.33. Marshalling Lanes – The IERRT will have at least 1,091m of marshalling lanes, equating to a static capacity for about 63 accompanied units. The proposed operator of the terminal has identified that they intend to minimise the holding period within the marshalling lane area, with accompanied vehicles boarding to suit the loading plan and to optimise the drivers time on board the vessel. As a result, the marshalling area will be managed operationally to avoid any backlog within the terminal. This can be achieved by loading accompanied units in a series of waves, interspersed as necessary by unaccompanied trailer loading.

Outbound HGV movements (HGVs / Ro-Ro units arriving at the terminal by vessel for import or empty solo tractor units leaving)

- 6.34. Summary of operational activity – The terminal has been designed to have two segregated traffic flows for accompanied and unaccompanied vehicles/trailers. All accompanied vehicles will leave the vessel in a managed way. They will travel along the main terminal spine road and will be directed to the passport control area, passing through a cyclamen portal and prior to passport checking. Once through passport control, cars and trucks will be separate to pass through UK Border Force inspection area, before reemerging and passing through the outbound automated terminal gates.
- 6.35. Unaccompanied trailers will be taken from the vessel to parking bays by terminal tractors, where they will be held pending customs clearance. Selected trailers will be collected, pass through a cyclamen portal and then inspected prior to return to the parking yard. Cleared trailers will be collected and pass through a cyclamen portal and (unless identified as hazardous) will pass directly to the outbound automated terminal gates, bypassing UKBF.

- 6.36. Passport Control – It is anticipated that the four proposed passport control booths will each be able to process 48 vehicles per hour or 192 vehicles in total per hour. Which is very close to the peak hourly flow of 196 vehicles. Operationally, however, the release of accompanied vehicles from the vessels will ensure there is no need to queue.
- 6.37. Automated outbound terminal exit gates – As already indicated, the processing time through an automated gate is in the order of 20 seconds. On the basis that the predicted overall peak hourly level of westbound traffic (both accompanied and unaccompanied combined) exiting the terminal is 196 HGVs, and assuming an 85% utilisation rate, no more than two automated exit gates (theoretically 1.28) are required. This is calculated as follows:

$$((196 \times 0.33) / 60) / 0.85 = 1.28$$

- 6.38. As indicated, therefore, the IERRT facility has been designed to have 2 automated exit gates which will actually be able to process in the order of 306 vehicles per hour (see paragraph 5.32 above). Therefore, there is more than sufficient capacity being provided in this regard.

Conclusion

- 6.39. From the summary explanation and analysis provided above, it is clear that the IERRT has the ability to handle the 1800 / 660,000 maximum level of activity that has been defined, and to do so in such a way that does not have any adverse implications for the operation of the surrounding port road network or the public highway network.
- 6.40. Moreover, the analysis demonstrates that, from an operational perspective, a significant beneficial degree of resilience has been built into the IERRT facility and that it has been laid out in a logical way that will enable efficient and safe operations. The summary explanation and analysis provided in this document demonstrates that the IERRT is well designed functionally.

7. Other matters

- 7.1. Within this section there is a response provided to other points raised by CLdN not considered either elsewhere within this document or elsewhere by the Applicant.

Sustainable Development

- 7.2. At the ISH3 session, CLdN sought to explain its position regarding its sustainable development argument in circumstances where it had previously only set out a general assertion that the IERRT development, by reference to the first bullet point of NPSfP paragraph 3.3.1., did not constitute sustainable development to cater for long-term forecast growth.

7.3. During the ISH3 session, and as reflected in its written summary of its oral submissions **[REP4-017]**, CLdN clarified in respect of sustainable development that its contentions related solely to:

- (i) the extent to which the proposed IERRT caters for long-term forecast growth in volumes of imports and exports by sea (NPSfP, para 3.3.1, bullet 1);
- (ii) the contribution the IERRT facility makes to local employment, regeneration and development (NPSfP, para 3.3.3, bullet 1);
- (iii) the contribution the IERRT facility makes to ensuring competition and security of supply (NPSfP 3.3.3, bullet 1), and
- (iv) whether the IERRT facility is well designed, functionally and environmentally (NPSfP 3.3.3, bullet 5).

7.4. The points raised by CLdN in respect of these matters are dealt with below. However, the Applicant notes that in its subsequent response to question BGC.2.02 submitted at Deadline 4, CLdN has now sought to evolve its case following the ISH3 session to raise additional points in respect of all aspects of paragraph 3.3.3 of the NPSfP.

7.5. All of CLdN's points are addressed below, but the Applicant simply highlights that this attempted evolution is opportunistic and not soundly based on any evidence.

(1) The ability of the IERRT facility to cater for long-term forecast growth in volumes of imports and exports by sea (NPSfP paragraph 3.3.1, bullet point 1)

7.6. It is important that the full wording of bullet point 1 of paragraph 3.3.1 of the NPSfP is identified, rather than the partial quotation which is consequently misused by CLdN. The text, in full, states:

"In summary the Government seeks to:

- *Encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient ports industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity.*
- *...."*

7.7. This bullet point of paragraph 3.3.1 of the NPSfP is, therefore, explaining that the Government encourages sustainable port development which provides or contributes to those matters which are then set out within the text which in turn, it

is noted, are in effect a summary of what then follows in section 3.4 of the NPSfP in respect of the Government's assessment of the need for new infrastructure.

- 7.8. The reference to 'cater for long-term forecast' in the policy is simply about encouraging sustainable port development to cater for the long-term forecast in growth, not about proving a long-term forecast (given that the NPSfP already identifies the position in that respect). Nor is it based on any particular port development having to cater for all of that long-term forecast for it to be sustainable. Rather it is an element of the policy that relates to the need elements of the policy that then follow and are specifically identified as existing within the NPSfP itself.
- 7.9. In any event, the Applicant's evidence (as further explained within this document) clearly demonstrates that the IERRT facility will cater for long-term forecast growth in volumes and exports of Ro-Ro cargo by sea. It is, therefore, inherently sustainable in that respect.

(2) New port infrastructure should also contribute to local employment, regeneration and development (NPSfP paragraph 3.3.3, bullet point 1)

- 7.10. At the ISH3 session - and as reported in its subsequent written summary of case - CLdN (through Ms Ellie Evans of Volterra) appeared to be criticising the position taken by the Applicant in respect of this matter simply on the basis that she contends that the employment benefits which have been set out have been overstated. This is a perverse criticism if intended to suggest that the proposed development is unsustainable. That is clearly not the case. Even if CLdN dispute the level of the local employment, regeneration and development benefits provided by the proposed development, that does not affect the principle that the proposed development will indeed contribute to such local employment, regeneration and development matters (as recognised – for example – by the local planning authority).
- 7.11. Bullet point 1 of NPSfP paragraph 3.3.3 states:
- "In addition, in order to help meet the requirements of the Government's policies on sustainable development, new port infrastructure should also;*
- *Contribute to local employment, regeneration and development;*
 - *...."*
- 7.12. The policy does not require any specific or particular level of contribution to local employment, regeneration and development to be made for the development to be sustainable. It simply requires a contribution. CLdN are not suggesting, and in any event could not reasonably suggest, that the IERRT facility provides no contribution to these matters, just that the contribution the Applicant indicates is overstated.

- 7.13. Furthermore, and in any event, the Applicant understands CLdN's criticism and dispute relates solely to the level of 'employment' in relation to this aspect of policy. However, as the Applicant indicated at the ISH3 session the matters covered by the potential contribution identified do not need to be, and are not, limited to employment anyway. In respect of regeneration and development matters it is again highlighted that the IERRT development will contribute to a number of the aims and objectives set out within the local development plan – the land use strategy guiding regeneration and development matters for the area within which the IERRT development is located. Moreover, the evidence presented to the examination – both by the Applicant and the local planning authority – demonstrates that the IERRT development is fully in accordance with the development plan. As far as the Applicant is aware, CLdN have not indicated they dispute this in their submissions to the examination. Accordingly this criticism is misplaced.
- 7.14. However, without prejudice to the basic point set out above, the specific criticism raised by Volterra on behalf of CLdN regarding employment relates solely to the operational phase of the IERRT project and is not one which seeks to dispute the number of jobs indicated as being created, but rather purports to take issue with the way in which the magnitude of that beneficial impact is described. CLdN's criticism appears to be that the number of jobs has been indicated as a % increase to the employment levels of a particular sub-sector of the economy in the area considered rather than as a % increase of the total workforce in the area. This criticism is not justified anyway.
- 7.15. The Applicant's socio-economic experts note that there are no benchmarks or standards which determine the levels of impact magnitude in a socio-economic assessment. It is a matter based on professional judgement. It is very surprising for a consultancy like Volterra to criticise the characterisation of the creation of 176 jobs within the Grimsby TTWA (and a further 20 outside of this TTWA) in the way it does. On any view, the creation of much needed new jobs in the local area will provide a significant boost to employment within the TTWA and the relevant sub-sector of the economy (transport and storage). The Applicant's expert advisors remain entirely satisfied that the conclusion reached – namely, that this is a moderate beneficial effect – is reasonable and not overstated.

(3) New port infrastructure should also ensure competition and security of supply (NPSfP paragraph 3.3.3, bullet point 2)

- 7.16. In its written summary of its ISH3 oral submissions **[REP4-017]** CLdN suggest that there are, in effect, two different forms of competition on the Humber that need to be considered namely: (i) competition relating to shipping lines, and (ii) competition relating to port terminal operations (**[REP4-017]** page 17). This is simply a meaningless gloss on the NPSfP policy aspirations which do not limit the beneficial effects of competition that come from the provision of new port infrastructure.
- 7.17. In these latest submissions, however, CLdN seek to repeat an entirely unfounded assertion that allowing additional Ro-Ro capacity at the Port of Immingham would

somehow give the Applicant 'greater potential to exert monopolistic power and influence' over Ro-Ro services on the Humber. This assertion merely serves to reveal the anti-competitive nature of CLdN's objection, reinforced by their attempt to suggest that their own port should be treated as providing any spare capacity (even though the necessary detail for such a claim has not remotely been provided) in circumstances where the NPSfP is seeking to promote and encourage competition, not limit it.

- 7.18. If, as CLdN assert, they have the ability to provide additional capacity at Killingholme and it is as easily delivered as they suggest, they would be able to bring it forward and increase competition (as well as resilience) in respect of any additional capacity provided by the proposed development. It is bizarre to be suggesting that the existence of its own claimed capacity is, in some way, a reason for objecting to the proposed development in any shape or form. As a matter of policy, competition through provision of extra capacity is strongly to be encouraged not inhibited.
- 7.19. In addition, one of the many basic fallacies in CLdN's claims as to the provision of further capacity is that even if it could be brought forward, there is simply no likelihood, certainty or guarantee that it would be brought forward and then made available to rival operators on commercially acceptable terms for the long term. Indeed, one of the basic reasons that Stena Line require the proposed development is because of CLdN's conduct to date in relation to the facilities at Killingholme. Whatever assertions or claims are now expediently made by CLdN in an attempt to prevent competition being created by the creation of the extra capacity at the Port of Immingham, no mechanism is provided of ensuring that any extra capacity that they claim they might be able to create is made and kept available to rival operators on acceptable commercial terms. CLdN's objection embodies the continuation of exactly the anti-competitive (and non-resilient) environment that the NPSfP is seeking to avoid, where such capacity that does exist is controlled by a rival operator that can impose controls on its future use on whatever commercial terms it imposes and, as experienced during Covid-19, impose restrictions on operators which are unacceptable.
- 7.20. Moreover, and regrettably in advancing its argument, CLdN is conflating the role of a port owner with the role of a terminal operator. For the reasons that have previously been explained, the Applicant is not a Ro-Ro terminal operator. Nor is it a Ro-Ro shipping line. It is the owner of the ports on the Humber which contain the existing Ro-Ro terminals and would be the owner of the IERRT facility. However, the IERRT facility, like the other Ro-Ro terminals on the Humber, would be operated by a separate entity. In this instance it is proposed to be Stena Line. This reflects the existing position on the Humber where existing Ro-Ro terminals within the Applicant's ports are operated by other entities, namely, DFDS at the Port of Immingham and P&O at the Port of Hull.
- 7.21. It is this which manifests and stimulates healthy competition, as compared with the provision of facilities like Killingholme where the owner and operator are controlled by the same interests. Thus, for example, the statement made by CLdN in its written summary that *"The premise still remains; Stena is a shipping*

line that would be operating within a terminal controlled by a separate commercial (i.e. profit motivated) entity” is a clear example of CLdN conflating the role of a port owner with the role of a terminal operator and, in fact, highlights the existing anti-competitive nature of reliance upon Killingholme where CLdN is both owner and operator.

- 7.22. The situation at the existing Ro-Ro terminals within the ports owned by the Applicant on the Humber – and the situation that would exist at the IERRT facility - is fundamentally different to the situation at the Port of Killingholme where, in effect, the owner of the port is also both the operator of the terminal and the owner of one of the Ro-Ro shipping lines that operate from that terminal.
- 7.23. What is more, it is clear that the position of Stena Line in this respect – independent of both CLdN and the Applicant – is important. They consider that their needs can be met through a facility within the Port of Immingham but do not consider that they would be met at the Killingholme facility (for reasons which are explained). This is the clearest evidence of the anti-competitive environment that currently exists on the Humber where there is a major barrier to entry for an operator wishing to operate its business for the benefit of the United Kingdom. It is in fact the position that CLdN are: the port owner at Killingholme; the operator at Killingholme, and also the owner of a Ro-Ro shipping line operating from Killingholme in direct competition to Stena Line for business from the same customers, that is the problem. Whilst one can see why that is something that CLdN are strenuously seeking to perpetuate in objecting to the proposed development, given that the proposed development will stimulate competition to their own operations (as well as creating additional resilience), it is not something which Government policy in the NPSfP supports. To the contrary, it strongly encourages the creation of competition and resilience. It is a gross distortion of national policy for CLdN now to assert that the Applicant’s promotion of a facility to enable an independent operator to operate on the Humber is somehow “monopolistic” when that is only something that can be used to describe the situation at Killingholme and which would be seriously aggravated if reliance is placed on provision of additional capacity at that location, left entirely to the discretion of CLdN at Killingholme.
- 7.24. As to competition between shipping lines, CLdN do not address this point in any meaningful way, let alone produce any evidence which could begin to explain how provision of extra capacity at the Port of Immingham to be used by an independent operator could do anything other than promote competition (and resilience).
- 7.25. The high water mark of CLdN’s claims in this respect is to assert that the proposed development serves simply to displace one shipping line operation from one terminal to another. This assertion is misconceived for a number of different reasons. First, it is simply not correct as a matter of fact. Stena Line has already been displaced from Killingholme by the actions of CLdN itself.
- 7.26. Second, the proposed IERRT development provides for the needs of Stena Line which are not being met at Killingholme anyway. The IERRT development will enable Stena Line’s existing operations to move and to grow to increase

competition more effectively for current Ro-Ro trade and the future growth in the Ro-Ro trade on the Humber, for example, through certainty over the availability of suitable and sufficient landside storage capacity and certainty over the use of suitable and sufficient berths.

- 7.27. Third, the claim is fallacious anyway as the existing facilities at Killingholme are not equivalent to those being proposed. Stena Line will be the operator of the IERRT facility thereby giving it control of operations and activities, rather than its current position where it does not have such control but has to operate under the control of a third party with whom it is effectively competing. CLdN is, therefore, not offering an existing or alternative facility of the same kind in any event.
- 7.28. Fourthly, and irrespective of the points made above, even if it were the case that the IERRT facility 'primarily serves to displace one shipping line operation from one terminal to another' as CLdN claim, that would itself be a recognised feature of the NPSfP in stimulating competition and resilience with the presumption in favour of allowing such development in that it provides the terminal being vacated with improved opportunities to compete for current and future trade. There is, of course, no reason why any existing or future capacity at Killingholme cannot be used consistently with the context NPSfP in addition to the proposed development, and the NPSfP specifically recognises that displacement of activity from one port to another is what can be expected in a truly competitive and resilient environment anyway.
- 7.29. The evidence is, therefore, clear. The IERRT facility will significantly benefit the enhancement of competition in the Ro-Ro sector as well as making a valuable contribution to the security of supply of goods handled in the form of Ro-Ro cargo. By contrast, retaining the status quo or, even worse, purporting to rely upon the potential for additional capacity at Killingholme which is neither planned nor properly explained and would remain capacity controlled by, and available only at the discretion of, CLdN as an owner and operator would neither be competitive nor resilient.

(4) New port infrastructure should also preserve protect and where possible improve marine and terrestrial biodiversity (NPSfP paragraph 3.3.3, bullet point 3) and provide high standards of protection for the natural environment (NPSfP paragraph 3.3.3 bullet point 8)

- 7.30. As to points of this kind raised by CLdN as set out in its answer to BGC.2.02 [REP4-020], the Applicant notes all of its evidence as to the way in which the Proposed Development will preserve, protect and enhance such habitat. The Applicant further notes the response that was provided by Natural England at Deadline 4 in their submission 'Natural England's response to the Examiner's second round of Written Questions (ExQ2)' [REP4-016]. This response confirms that Natural England welcomes the Applicants off-site environmental enhancements and go on to list the measures that will be implemented within the woodland through the IERRT development to enhance ecology and thus biodiversity.

7.31. The measures proposed in the Woodland Enhancement Management Plan (WEMP) [APP-112] document and within the wider environmental assessments were developed to deliver biodiversity enhancement to meet all legislative and policy requirements, which include the Natural Environment and Rural Communities (NERC) Act 2006 and the Environment Act 2021, noting that formal adoption of the requirement for 10% net gain using the Defra Biodiversity Net Gain metric under the Environment Act 2021 is not yet mandatory for NSIPs (targeted mandate for this requirement for NSIPs is 2025). This position is also confirmed by Natural England within its response [REP4-016].

7.32. In addition to the above, the detailed assessments provided as part of the IERRT application demonstrates that no significant ecological or biodiversity effects will be caused by the proposed development.

(5) New port infrastructure should also minimise emissions of greenhouse gases from port related development (NPSfP paragraph 3.3.3, bullet point 4) and be adapted to the impacts of climate change (NPSfP paragraph 3.3.3 bullet point 6)

7.33. CLdN's position on these matters – as contained within its answer to BGC.2.02 [REP4-020] - is similarly perverse and again simply appears to be motivated by a desire to prevent competition in the form of the Proposed Development. CLdN appear to be questioning of the methodology used within the Applicant's assessments but without any proper substantive basis for doing so. The Applicant reiterates the points it has previously made (see Applicant's response to CLdN answer to CC.1.1 [REP3-016]) that the GHG assessment was undertaken in alignment with the requirements of PAS 2080 (Carbon Management in Buildings and Infrastructure) and the Greenhouse Gas Protocol (GHGP). Table 19.13 and Table 19.14 of the ES [APP-055] present the emission totals alongside the source of the data emissions factors and conversion unit used. Further data transparency is provided in Table 19.14 of the ES [APP-055] with references to relevant chapters for further information provided where required.

7.34. For freight transport movements, it was referenced in Table 19.14 of the ES [APP-055] that *"The Air Quality chapter (Chapter 13) of the ES informed these results"*. Furthermore, as mentioned in Table 19.14 of the ES [APP-055], emissions from *"operational tugs were calculated by the Air Quality assessment (Chapter 13 of this ES)"*. As explained in Section 13.8.51 of Chapter 13 - Air Quality in the ES [APP-049] *"Land-tugs are required to move all unaccompanied freight to docked vessels during loading and from docked vessels during unloading"*.

7.35. In addition, as already made clear in the Applicant's response to CLdN's answer to question CC.1.4 (see [REP3-016] at the time of submission of the ES on 6 March 2023, the GHG Assessment [APP-055] was completed using the most up-to-date guidance as the updated PAS 2080:2023 was released in April 2023.

7.36. However, considering the updates from the latest PAS 2080:2023, which *"Expanded scope to include all the built environment (buildings and infrastructure)"*, the ES GHG Assessment is considered comprehensive.

- Fundamentally, this is because, as detailed in Table 19.1 of the ES **[APP-055]**, the construction and operational lifecycle stages were scoped into the assessment, already encompassing all buildings and infrastructure in the IERRT project.
- 7.37. It is important to recognise explicitly as explained in Section 19.3.9 of the ES **[APP-055]** that *"The level of significance of total project-related emissions has been determined using IEMA's (2022) significance criteria which are not solely based on whether a development emits GHG emissions alone, but how it makes a relative contribution towards achieving a science based 1.5°C aligned transition towards net zero"*.
- 7.38. As detailed in Section 19.9.23 of the ES **[APP-055]** *"In line with the UK government's Clean Maritime Plan and Transport Decarbonisation Plan, it is predicted that the activities occurring at the IERRT will continue to decarbonise in accordance with the budgeted, science based 1.5°C trajectory. Therefore, based on the IERRT project's GHG emissions being below the indicative 5% threshold and the expectation that associated activities will decarbonise in accordance with the UK government's agendas, it is considered that the magnitude of impact from the combination of construction and operation GHG emissions is minor adverse. As such, the construction and operation of the IERRT project is not expected to affect the UK in meeting its Carbon Budget."*
- 7.39. *Therefore, in alignment with PAS2080:2023, the ES adequately assessed the IERRT project's impact towards the UK's net zero trajectory."*
- 7.40. The Applicant's response to CLdN's answers to questions CC.1.1, CC.1.2, CC.1.3 and CC.1.4 (see **[REP3-016]**) provides further information relating to these points.
- 7.41. Thus, in accordance with PAS2080:2023, the Applicant considers that the ES adequately assessed the IERRT project's impact towards the UK's net zero trajectory.
- 7.42. CLdN's position on these matters – as contained within its answer to BGC.2.02 **[REP4-020]** – appears to be questioning the sustainability of the proposed port development. This makes little sense.
- 7.43. The construction of the proposed IERRT project has been confirmed under Table 3.12 of the CEMP **[APP-111]** to be in *"adherence with British Design Standards"*.
- 7.44. The Applicant has explicitly confirmed that the proposed IERRT project will be constructed in alignment with Part L of the Building Regulations, which deals with the conservation of fuel and power. This covers requirements for the energy performance of buildings and provides guidelines for achieving energy efficiency in both new and existing buildings.
- 7.45. Further information is also provided in the CEMP **[APP-111]**, which sets out the mitigation measures needed to manage environmental effects during the

- construction of the proposed IERRT development. These mitigation measures include addressing considerations around sustainability, efficiency and waste.
- 7.46. As stipulated under section A.3.5 in the CEMP **[APP-111]**, the sustainability of the material resources is considered with: *“Key materials required for the construction and operation are likely to be available comprising a high proportion of sustainable features and benefits (e.g. recycled content).”* Thereby contributing to reducing embodied carbon within materials.
- 7.47. Additionally, as detailed in in the ES under paragraph 19.9.2 **[APP-055]**, *“It is noted that the use of shoreside electrical power to ships at berth, electric vehicle charging points, the phasing out of diesel-powered land-tugs for electric land-tugs, and the use of other electric powered site plant are likely to become more common in future years.”* Hence, if these mitigation measures are implemented, they will likely help improve the energy efficiency of the proposed IERRT development.
- 7.48. Furthermore, minimising waste and re-using materials is considered in the CEMP **[APP-111]** under Section B.7. Paragraph B.7.1 states, *“The waste hierarchy sets out the priority order that should be considered when managing wastes. A basic representation of the waste hierarchy is provided in Plate B1. The Principal Contractor will use the hierarchy as a guide to encourage the prevention of waste and to define waste management options.”*
- 7.49. Moreover, paragraph B.7.3 and B.7.4 in the CEMP **[APP-111]** states, *“The aim is to provide design features on the IERRT project to use materials in their current state and form. Re-use can be undertaken either on-site or offsite.”* And *“Where possible, excavated earthworks materials and soils arising from the IERRT project will be stockpiled on-site and re-used within the IERRT project.”*
- 7.50. CLdN’s position within its answer to BGC.2.02 **[REP4-020]** also appears to be questioning if the IERRT project is adapted to the impacts of climate change. With regards to these suggestions the Applicant reiterates the points it has previously made (see the Applicant’s response to CLdN’s answer to CC.1.2 **[REP3-016]**)
- 7.51. The impact of climate change was assessed in the ES **[APP-055]**, and embedded climate change mitigation measures were identified during construction and operation as detailed in Table 19.19 and 19.21, respectively and summarised below:
- 7.52. *“Provision of safe refuge within the terminal building and the production of a flood response plan along with other mitigation measures are detailed in the Coastal Protection, Flood Defence and Drainage chapter (Section 11.9 in Chapter 11 of this ES).*
- 7.53. *The Drainage Strategy is based upon the flood risk assessment’s findings to ensure that suitable surface water drainage is embedded into the IERRT project, which considers climate change. The Drainage Strategy is provided in Annex C*

of the Flood Risk Assessment at Appendix 11.1 Volume 3 of ES (Application Document Reference number 8.4).

- 7.54. *It is ABP's intention that the standard of protection afforded by the existing flood defences under their jurisdiction, along both the IERRT site frontage and the wider Port of Immingham, will be kept under consideration and reviewed as appropriate to account for climate change in line with 'Hold the line' management policies in the flood risk management plan and Shore Management Plan 3 (Section 11.9 in Chapter 11 of this ES).*
- 7.55. *The Coastal Protection, Flood Defence and Drainage chapter provides more information on this (Section 11.9 in Chapter 11 of this ES).*
- 7.56. *All new buildings and assets will either be designed for the climatic conditions using appropriate design guidance where available, or adaptive capacity will be built into the designs."*
- 7.57. *Additionally, further adaptation measures are proposed in Section 11.9 in Chapter 11 of this ES "Prevention measures and health and safety plans to be developed to prevent worker exhaustion due to heat. Use of materials with superior properties which offer increased tolerance to high temperatures to be considered. Regular maintenance of assets to be undertaken to detect deterioration and damage."*
- 7.58. *As summarised in Chapter 11 of the ES [APP-055], "The CCR review has considered the climate adaption measures which are integrated into the design during construction and operation (see Table 19.19 and Table 19.21). These measures are considered an adequate response to the projected climate change impacts to which the IERRT project would be exposed. Therefore, the significance level identified through the CCR review is determined as **not significant**. Therefore, no further mitigation is required."*
- 7.59. *Moreover, all of this evidence must be contrasted with CLdN's lack of any detailed evidence as to what alternative form of development it would be relying upon and how it would comply with the above principles if purporting to do it differently from the Applicant.*

(6) New port infrastructure should also be well designed, functionally and environmentally (NPSfP paragraph 3.3.3, bullet point 5)

- 7.60. *CLdN's position on this matter – which was raised at ISH3 and now appears in its written summary of its oral submissions [REP4-017] – appears to be that the IERRT facility will not cater for forecast growth and so it is not a development that is well designed functionally.*
- 7.61. *This is similarly nonsensical. The information provided in section 6 of this document demonstrates that the IERRT facility is well designed functionally and, along with the Applicant's wider evidence, demonstrates that the IERRT facility will be able to cater for forecast growth.*

7.62. CLdN do not appear to raise a specific point at the ISH3 session that the IERRT facility was not well designed environmentally.

(7) New port infrastructure should also minimise use of greenfield land (NPSfP paragraph 3.3.3, bullet point 7), ensure that access to and condition of heritage assets are maintained and improved where necessary (NPSfP paragraph 3.3.3, bullet point 8) and enhance access to ports and the jobs services and social networks they create, including for the most disadvantaged (NPSfP paragraph 3.3.3, bullet point 9)

7.63. CLdN's position on these points - contained within its answer to BGC.2.02 **[REP4-020]** – is simply that “CLdN has seen nothing in the Applicant's proposals that indicates it would make a significant contribution towards these matters”. From this bland assertion, CLdN then suggest that limited or no weight can be attached to these matters in determining whether the proposed development constitutes ‘sustainable port development’.

7.64. Again the Applicant would highlight that the policy contained within the NPSfP at paragraph 3.3.1 does not require a specific level of contribution towards the matters listed in order for development to constitute sustainable development.

7.65. However, within Appendix 1 of its Planning Statement **[APP-019]** the Applicant's position on these points is summarised. The position is as follows:

- (i) the IERRT facility will minimise the use of greenfield land by developing previously developed land within an existing port estate;
- (ii) the IERRT will, where as far as is relevant and necessary (having regard to the baseline environment which is detailed within the relevant assessment) maintain access to and the condition of heritage assets; and
- (iii) the IERRT facility will enhance access to the Port of Immingham and the jobs, services and social networks the Port has created and sustains.

Conclusion on Sustainable development matters

7.66. On the basis of the above, it is clear that the suggestion by CLdN that the IERRT development is not sustainable development is not supported by the evidence.

Marine policy matters

7.67. CLdN's position on this matter – which was raised at ISH3 and appears in its written summary of its oral submissions **[REP4-017]** – is very general. CLdN indicated that they had reviewed the Marine Policy Statement and Marine Plans and highlighted that “they refer to broad aims of ensuring efficient and economic marine industry” and are, therefore, in this regard consistent with the NPSfP.

7.68. In the absence of any specific point being raised, the Applicant is unable to respond. The Applicant would, however, highlight that its Planning Statement

[APP-019] provides a comprehensive analysis of the accordance of the IERRT development with both the Marine Policy Statement and the relevant Marine Plan.

7.69. 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.

Dwell time criticism

7.70. Throughout its submissions to the examination – including within its Deadline 4 submissions – CLdN has sought to criticise the use of the 2.25 day dwell time figure within the Applicant’s Market Study. The use of the 2.25 dwell time figure and the reasons behind the use of that figure have already been explained within the Applicant’s response to CLdN’s written representation **[REP3-007]**.

7.71. There is now further claimed criticism of this matter by CLdN in **[REP4-019]** where it appears that the ability of the authors of the Market Study to advise on this point is now drawn into question. This is unwarranted.

7.72. The purpose of the use of the 2.25 day dwell time was, as already explained, to give an estimate of Ro-Ro capacity cross the Humber in the absence of any available and relevant specific details from the operators of the terminals. Moreover, a series of sensitivity analysis was also undertaken to demonstrate the implications of different dwell times and to reflect the inherent uncertainty in seeking to identify an average dwell time – matters which are set out in the Market Study.

7.73. The 2.25 day dwell time is generally in line with average dwell times for Ro-Ro terminals listed by PIANC (the World Association for Waterborne Transport Infrastructure, which brings together international experts to issue technical reports) in its recently published guidelines ‘The Design of Terminals for RoRo and RoPax Vessels’ (MarCom Working Group (Report No 167, 2023).

7.74. CLdN refer to real world information. In this respect, the Applicant notes that the only additional Ro-Ro capacity that is now being alleged as being available on the Humber is that which is being claimed by CLdN in its relevant submissions – which have been addressed above. For example, DFDS - in respect of its operations at the Port of Immingham which the Applicant understands from comments made at the accompanied site visit is operating at 90 to 95% capacity – have not suggested that they currently have significant expansion opportunities. Without prejudice to all of the points already made about CLdN’s claimed additional capacity, the following can also be noted.

7.75. The evidence before the examination on alleged additional capacity is solely that made in the assertion by CLdN that the Killingholme facility can create sufficient additional capacity to meet the forecast level of growth that is predicted.

- 7.76. Leaving aside the fact that only forecasts of growth up to 2050 have been provided to the examination (but where growth will continue beyond this point) the level of growth to 2050 under any scenario that has been presented to the examination is significant (see Section 4 of this report). It is, the Applicant estimates, in the order of an additional 870,000 units. Furthermore, as detailed in Section 5 of this report there is no proper basis for claiming that this level of additional throughput can actually be delivered at Killingholme, let alone in a competitive or resilient or acceptable way and within the timeframe needed. Even if it were, there would clearly be significant adverse competition and resilience implications associated with a single Humber Terminal handling the overall amount of Ro-Ro freight which such a scenario would require.
- 7.77. Finally, as reiterated within this response document such a scenario would still be incapable of meeting the need which has been identified by the operator (for its own facility) and it is not a scenario which either policy or legislation indicates needs to be considered.
- 7.78. As to dwell times, the Applicant is conscious of ISH3 action point 5 where the Applicant, CLdN, DFDS and Stena Line were asked to prepare a joint Statement of Common Ground on dwell time matters. The Applicant sent a request for availability to all of the parties on 12 October to meet to discuss this matter. As of the finalisation of this document the Applicant is waiting for confirmation of availability from CLdN and DFDS.

Brexit Impacts

- 7.79. Within its Consolidated Note **[REP4-021]** CLdN seek to raise some points relating to the impact of Brexit on the operations at Killingholme. However, these comments simply highlight the central importance of port infrastructure being resilient overall which requires, amongst other things, spare capacity. Having regard to the fact that, as the NPSfP makes clear, resilience is provided most effectively as a by-product of a competitive ports industry providing capacity at a variety of locations, this is not, however, just about having spare capacity at a single facility.

Harbour Improvement Statement

- 7.80. Within its written summary of oral submissions made at ISH3 **[REP4-017]** CLdN provide further submissions relating to the 'Harbour Improvement Statement' required by the APFP Regulations.
- 7.81. Towards the end of this section of its written summary (page 21 of **[REP4-017]** CLdN state *"CLdN's case is that the fact that IERRT is not "desirable" harbour development is a factor to be weighed in the balance and is capable of reducing the weight to be given to the general need for development established by the NPS as it applies to this scheme."*
- 7.82. In response - albeit only briefly, recognising that these matters are explained in further detail elsewhere – the Applicant would highlight:

- (i) The NPSfP does not just establish a general need for development. The NPSfP establishes a need – which the decision maker is required to accept - for the type of port infrastructure that would be provided by the IERRT facility. The level and urgency of that need being such that the decision maker should start with a presumption in favour of granting consent.
- (ii) The Applicant's evidence clearly demonstrates that the proposed development is 'desirable harbour development', particularly having regard to the fact that the harbour to be considered in respect of this matter under the APFP Regulations is the Port of Immingham Statutory Harbour Area.

Traffic and Transport

- 7.83. In relation to the Traffic and Transport aspects of **[REP4-019]** the Applicant has provided – at section 6 of this note - a detailed explanation and justification for the adoption of 1,800 as the maximum throughput of the terminal along with an assessment that clearly demonstrates the terminal can operate at that level without impact on the local or wider network in terms of queuing or waiting vehicles.
- 7.84. Since ISH3, discussions have been ongoing with both CLdN and DFDS in relation to terrestrial transport matters. As required by AP30, a Statement of Common Ground is under discussion with the parties which will set out the current position and will be submitted at Deadline 5. The Applicant is preparing updated modelling to provide a sensitivity test. The parameters of that sensitivity test will consider a very robust basis for an alternative East / West Split. The precise details of that assessment are still to be agreed but the Applicant is proposing to test the following:
- Average Throughput – 1,440 units per day, 19% Solo Tractor Ratio, 85/15 East West Split.
 - Peak Throughput – 1,800 units per day, 19% solo tractor ratio, 63/ 35 East West Split.

Navigation Matters

- 7.85. The navigation points arising from CLdN responses to NS.2.05, NS.2.07 in REP4-020 are responded to in the Applicant's separate submissions on those answers.

8. DCO matters

- 8.1. The Applicant has been asked to provide a response to CLdN'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.

- 8.2. An updated dDCO has been prepared for submission at Deadline 5 (“Updated dDCO”) which has taken into account CLdN’s submissions concerning the dDCO as appropriate.
- 8.3. Responses to CLdN’s written submissions of oral case presented at ISH4 [REP4-018] are presented below.

DCO Articles

Article 6

- 8.4. The Applicant notes CLdN’s comments in respect of the definition of “maintain” in article 2 and the maintenance provisions in article 6(2) of the dDCO.
- 8.5. The Applicant is adopting an approach which is based on precedent. As articulated on behalf of the Applicant at ISH4 [REP4-010], the maintenance powers are not intended to give rise to the 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.
- 8.6. 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, paragraph 5.117)

- 8.7. In light of the above, the Applicant is of the view that an amendment to the dDCO in this respect is unnecessary.

Article 7

- 8.8. The Applicant thanks CLdN for its comments in respect of article 7, particularly in respect of the levels shown on the Engineering sections, drawings and plans.

- 8.9. The Applicant submitted an updated version of the Engineering sections, drawings and plans at Deadline 4 **[REP4-004]** and considers that this addresses CLdN's concerns and no further amendments to the dDCO are required.

Article 21

- 8.10. The Applicant notes CLdN's comments in respect of Article 21 both in respect of: (i) whether a daily cap of 1,800 units should be applied; and (ii) the tailpiece in article 21(2).
- 8.11. As to (i), the Applicant refers to paragraph 6.2 above – a daily cap of 1,800 is not considered to be necessary.
- 8.12. 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.
- 8.13. The Applicant does not agree with CLdN's assertion that the tailpiece permits “*the discharging authority to approve matters which are outside the parameters authorised by the dDCO and assessed in the ES and Habitats assessment*”. Article 21(2) is clearly qualified by article 21(3), which makes clear that consent cannot be given if the amended details would give rise to any significant adverse effects that have not been assessed in the Environmental Statement as defined.

Article 22

- 8.14. The Applicant notes CLdN's comments in respect of Article 22 but does not agree with CLdN's assertion that Article 22 is inconsistent with section 33 of the Harbours, Docks, and Piers Clauses Act 1847 (“the 1847 Act”), as was articulated in Issue Specific Hearing 4 **[REP4-010]**.
- 8.15. The Applicant also refers to its updated document reference **3.2 – Explanatory Memorandum** submitted at Deadline 5.

Article 28

- 8.16. The Applicant notes CLdN's comments in respect of article 28. The Applicant has repeatedly made clear that the highway works to be undertaken relate to improvements to East Gate (Work No. 12 in the dDCO) and this is clearly explained in the Explanatory Memorandum **[REP1-006]**. Therefore, the Applicant does not consider that amendments to this article are required.

Article 29

- 8.17. The Applicant notes CLdN's comments in respect of article 29 but disagrees with its assertion that submissions made by the Applicant in response to Action Point 14 arising from ISH1 **[REP1-008]** and its updated Explanatory Memorandum **[REP-006]** submitted at Deadline 1 do not assist with its concerns.

- 8.18. The Applicant made further submissions in respect of this matter at ISH4 **[REP4-010]** and has provided further information in its updated document reference **3.2 – Explanatory Memorandum** submitted at Deadline 5.

Schedule 2 – Requirements

Requirement 4

- 8.19. The Applicant notes CLdN's comments in respect of requirement 4. The Applicant has updated the drafting for requirement 4 in the Updated dDCO.

Requirement 6

- 8.20. The Applicant notes CLdN's comments in respect of requirement 6 and whether the impact of capital dredging on certain species has been assessed.

- 8.21. A full and detailed assessment of the potential impacts of capital dredging has been undertaken and is provided in several chapters of the Environmental Statement. Chapter 9 of the ES **[APP-045]** assesses effects on migratory fish (see paragraphs 9.8.110 et seq.) and coastal waterbirds (paragraph 9.8.242 et seq.). The assessment concludes that effects from capital dredging would not be significant, and mitigation is not required. It is not clear what impact pathway would exist for capital dredging on Bittern, Marsh harrier, Avocet, or Little Tern, and these species have also not been recorded in significant numbers (if at all) during the Immingham Outer Harbour (IOH) bird monitoring that has been undertaken in the Immingham area (see Section 9.6 of Chapter 9 of the ES **[APP-045]**). It is also not clear how the terrestrial environment could be impacted by capital dredging. Chapter 10 of the ES **[APP-046]** and the Navigation Risk Assessment (NRA) **[APP-089]** assesses the risk to navigation from marine construction works (including capital dredging) in detail.

- 8.22. It is clear from the above that the Applicant has properly assessed the works restrictions as set out in requirement 6.

Requirement 8

- 8.23. The Applicant notes CLdN's comments on requirement 8 and thanks it for its observations in respect of the CEMP.

- 8.24. The Applicant has reviewed the CEMP and has decided that it should be treated as an outline document to be approved pursuant to Requirement 8 of the dDCO. The 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.

- 8.25. The Applicant does not consider that it would be appropriate to include CLdN as a consultee on the detailed CEMP prior to its submission for approval.

Requirement 15

- 8.26. The Applicant has amended the dDCO to remove reference to "general" in requirement 15.

Requirement 17

- 8.27. The Applicant notes CLdN's comments in respect of requirement 17 and has updated the drafting of this requirement in the updated dDCO.

Requirement 18

- 8.28. 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 – Protective Provisions

- 8.29. Regarding CLdN's submissions on protective provisions, the Applicant is considering CLdN's letter dated 9 October 2023 discussing protective provisions and the submission CLdN has made in respect of these – including those made in response to ExQ2 TT.2.09 in **[REP4-020]** and in its ISH4 post-hearing submissions **[REP4-018]** and will respond in due course.

Abbreviations and Acronyms

Acronym	Definitions
ABP	Associated British Ports
CAGR	Compound Annual Growth Rate
CEMP	Construction Environmental Management Plans
DCO	Development Consent Order
DfT	Department for Transport
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	Examining Authority / Examining Panel
GDP	Gross Domestic Product
GHG	Greenhouse Gas
GHGP	Greenhouse Gas Protocol
GPDO	General Permitted Development Order
HEO	Harbour Empowerment Order
HGV	Heavy Goods Vehicles
HRA	Habitats Regulations Assessment
HRO	Harbour Revision Order
IEMA	Institute of Environmental Management and Assessment
IERRT	Immingham Eastern Ro-Ro Terminal
ISH	Issue Specific Hearing Session
Lo-Lo	Lift-on / Lift-off
NERC	National Environment & Rural Communities
NPSfP	National Policy Statement for Ports
OBR	Office of Budget Responsibility
Ro-Ro	Roll-on / Roll-off
TCPA	Town and Country Planning Act 1990
TTWA	Travel to Work Area
UK	United Kingdom
UKBF	United Kingdom Border Force

Appendix 1 – Legal Submissions on Need and Alternatives

1. In response to CLdN’s submissions on need, the Applicant has already responded in detail by reference to the correct policy and legal position and those submissions are not repeated again in full here.

2. In its oral submissions at ISH3, CLdN’s representative (Miss Grogan) submitted that CLdN was not objecting to the Proposed Development for reasons of competition and asserted that CLdN was “not in the least behaving anti-competitively”. It is clearly easy to make such an assertion, but the reality is to be judged by the nature of the objection and its effect. As set out in greater detail in the Applicant’s analysis of CLdN’s position, it is clear that:
 - a. CLdN’s representations are self-evidently motivated by the effect of the Proposed Development in terms of increasing competition. CLdN is seeking to prevent the Proposed Development proceeding on the basis of a claim that it can provide further capacity at its own port. There could not be a clearer example of an objection based on competition than that, in circumstances where the NPSfP is clear that the need for additional port infrastructure already exists, that it is not appropriate to limit the provision of such infrastructure by reference to some notion of capacity, particularly where extra capacity creates both competition and resilience, and accordingly the only reason for pursuing this sort of objection must be that of objecting to such competition.

 - b. In any event, it does not matter whether CLdN is actually motivated by a desire to prevent, limit or control competition (although that is obviously the motivation in play), as it is enough if its objection would result in inhibiting such competition as well as resilience.

 - c. CLdN is simply silent on the other equally clear aspect of NPSfP policy which the Applicant has set out in some detail, namely the importance attached to resilience. Resilience only exists where more capacity exists

than is actually needed in order to be resilient and create security now and for the future. This point remains unanswered and is unanswerable.

3. In developing submissions for CLdN at ISH3, Ms Grogan contended that a central tenet of the Applicant's justification for the Scheme is that there is no capacity for forecast growth in Ro-Ro freight at Killingholme. Having set up this proposition, it was then said that CLdN's concern is that this proposition is not factually true.
4. Again, it is easy to make an assertion about what CLdN contend to be "central tenet" of the Applicant's justification for the Scheme, simply for the purpose of then purporting to knock down that claimed "central tenet"; but that is a meaningless exercise where it involves a basic mischaracterisation of the Applicant's justification for the Scheme. It is simply deployment of a rhetorical technique of setting up an "Aunt Sally" in order to knock it down.
5. As all of the supporting material for the Applicant makes clear, it is **not** the "central tenet" of the Applicant's justification for the Scheme that there is no capacity for forecast growth in Ro-Ro freight at Killingholme. That is clear mischaracterisation of the justification for the Scheme as well as everything the Applicant has submitted about the clear policy context that applies to the consideration of the Proposed Development. Indeed, the basic starting point that the Applicant has repeatedly emphasised as being laid down by the NPSfP is that there is already an established need for the Proposed Development set out in the NPSfP (for all of the reasons given) regardless of any existing or future capacity for Ro-Ro freight at Killingholme. It is a central tenet of the NPSfP, and consequently of the Applicant's justification for the Proposed Scheme that it does not **matter** whether there is extra capacity for forecast growth in Ro-Ro freight at Killingholme as claimed by CLdN. Even if there were such extra capacity as claimed, it would not affect the established need set out in the NPSfP for infrastructure development of the type being proposed in the Scheme at the Port of Immingham. That is because (as repeatedly explained in the NPSfP) the Government's policy is based on an ever-increasing need for further capacity, the principle that it is for developers of such infrastructure and consequently the market to make the

commercial decisions as to when and where to provide that infrastructure, and the whole principle of the NPSfP is to encourage extra capacity to enhance competition and to secure resilience, even if that means activity moving from one port to another.

6. Accordingly, the starting proposition of CLdN in their submissions at ISH3 not only mischaracterises the Applicant's case, but it also mischaracterises or misunderstands the NPSfP itself.

7. The Applicant has always made it clear that without prejudice to that case and the central thrust of the NPSfP which establishes the need for the Proposed Development at the outset (regardless of any claimed capacity at Killingholme), it is also the case that there is an additional need for the Scheme at the Port of Immingham on the Humber because of the situation there locally, even though it is unnecessary for the Applicant to demonstrate any of that. And again, even in this respect CLdN does not accurately characterise the Applicant's case. Amongst other things:
 - a. It is obvious that whatever capacity currently exists or is now claimed could be created at Killingholme (a matter addressed in more detail in the main body of this response document), it is not actual capacity that is capable of meeting the specific need that the Proposed Development will serve. That need is for a facility for an independent operator, in this case Stena Line, to meet its existing and anticipated future needs without the controls that come from CLdN in providing use of their own facility at Killingholme, with all of the restrictions and basic problems that have accompanied such provision in the past. In short, CLdN has not and is not offering the sort of facility needed by the operator. Moreover, any claims now made to suggest that it might offer such a facility on commercial terms to such an operator are hollow, not just because of the timing of any such claims now made (i.e., as a basis for seeking to object to the Proposed Development), but also because such claims are inchoate and unsecured. CLdN has not and is not offering capacity to Stena Line on commercially acceptable

terms that will secure Stena Line's existing and future needs with all of its planned growth. CLdN's ISH3 representations simply fail to address this question of extra Ro-Ro capacity which is actually useable by a rival operator.

- b. In any event, claimed extra capacity at Killingholme (even though it is not being offered on secured terms to meet the operators need) is in principle vague, inchoate and unevidenced in nature anyway. Merely referring to potential storage space which, of itself, would involve the need for development and displacement of other activities in circumstances where delivery of any such extra capacity would be entirely at the discretion of CLdN in the future (if they were successful in eliminating potential competition at the Port of Immingham as they are seeking to do) is illusory and directly contrary to the basic aspirations of Government policy in the NPSfP.
 - c. As to the claimed physical capacity in any event, the basic problems in analysing let alone relying upon that are addressed in more detail in the body of this response document.
8. In an ironic submission, CLdN suggest that it is best placed to provide an assessment of capacity at the Port of Killingholme because it runs the terminal and its own shipping line, and the Applicant is not an operator - but therein lies one of the central problems and basic problem for competition. Amongst other things:
- a. It is an ironic submission because, of course, in essence it serves to underline the point emphasised in Government policy that there is an existing need for further port infrastructure and it is for the port operators and developers to identify how and where that need should be provided. The submission therefore reinforces the point that Government policy emphasises that it is for the Applicant (not CLdN) to determine the need for the Scheme at the Port of Immingham in light of Stena Line's stated

- requirements, and if this stimulates further competition with CLdN then that is another strong benefit of it.
- b. It is ironic because, of course, CLdN is not best placed to provide an assessment of the needs of Stena Line in circumstances where it has failed to offer commercially acceptable terms to this rival operator to allow it to continue using Killingholme so thereby proving the need for additional facilities to create the competition that is lacking, as well as the resilience.
 - c. It is ironic because, of course, CLdN is not best placed to judge the anti-competitive effects of its objection to the Proposed Development and its motivation (whether conscious or unconscious) to talk up potential capacity at its own port in order to avoid the competition of further capacity being provided to a rival operator in another port (something which Government policy strongly encourages).
 - d. It is ironic because whatever claims are made about the assessment of theoretical capacity, such claims are meaningless anyway absent such capacity being actually available on commercially acceptable terms for the long-term future of rival operators, none of which is either on offer or secured by any legally enforceable means.
 - e. It is ironic that CLdN relies on the fact that it is also an operator in this respect, in contrast to the Applicant, because that is one of the central vices in its anti-competitive objection. By contrast, the Applicant has no such commercial axe to grind in simply providing the Scheme at the Port of Immingham for an independent operator to enable that operator to compete on equal terms with existing operators such as DFDS (who operate their facility) and CLdN (which controls their facility).
9. All of this underpins the sense of Government policy which does not purport to adjudicate on such commercial rivalries that can motivate operators, but rather

emphasises that such competition is to be encouraged and supported and the market then makes the relevant decisions on actual investment.

10. At ISH3 Miss Grogan continued by suggesting that the Applicant has not engaged with CLdN's case or the substance of it. It will be evident that is not the case. The Applicant has consistently and repeatedly engaged directly with CLdN's objections and sought to set them correctly in the context of the NPSfP (something which CLdN does not do for itself), as well as separately engaging with the notion of whether or not any physical capacity actually exists at Killingholme as only recently claimed by CLdN and as addressed further in the body of this response, even where the existence of any such capacity misses the more fundamental points addressed above. The fact that the Applicant has identified CLdN's objection as being commercially motivated and, in any event, directly contrary to NPSfP is not aggressive but simply a statement of the reality of the situation. Moreover, the Applicant has gone on to engage with actual claimed capacity at Killingholme in any event, but it would be wrong in principle to do so without pointing out that it is not relevant to the core part of the justification for the Scheme as summarised above and earlier in the Applicant's documents. It is unfortunate that this attention to the requirements of NPSfP is now said to show a lack of rigour and understanding (if that is what is being suggested). CLdN may ultimately disagree with national policy in the NPSfP, but a DCO is not a proper forum to challenge such policy given that it has been designated through a statutory process.

11. As to what is now being claimed about physical capacity of Killingholme that is addressed further in the body of this response without prejudice to what is stated above. Reference is made by CLdN to matters such as dwell times which is covered further in the response, but is in any event a matter on which the parties are seeking to agree common ground.

12. At ISH3 Ms Grogan then turned to what was said to be a second introductory point, namely its claim that the Scheme was not providing anything new to the market and it was simply enabling the preferences of one operator to be met by

moving from Killingholme to the Port of Immingham. Leaving aside that this too is a gross mischaracterisation of the position, given that one of Stena Line's operations was terminated by CLdN (as Stena Line explained) and CLdN have not offered acceptable commercial terms for the other to continue and all of this ignores the fact that Stena Line is not operating from its own facility which it controls, something which the Proposed Development will offer and, therefore, is fundamentally different, the point is flawed as a matter of national policy anyway. The NPSfP specifically recognises that if the consequence of the provision of extra capacity with the effect of competition and resilience is to cause operators to move from one place to another, that is a recognised part of the positive policy benefits of NPSfP. So this introductory point goes nowhere.

13. CLdN then turned to the question of need again, with Mis Grogan contending that the Applicant's case is that there is no policy or legal requirement to establish need for the development because the Applicant has decided to provide the Proposed Development. Again, that is not a correct characterisation of the Applicant's case and the Examining Authority is referred to the previous detail of the Applicant's case on need. It is the NPSfP which already establishes the need for this facility within the policy document itself, for all of the reasons it has identified. CLdN has now sought to temper its case as one where it is seeking to address the Examining Authority on the weight to be given to that need and it is said that is where the question of "alternatives" and the weight of the Applicant's need case "comes into play". This is said to derive from the case of *R (on the application of Scarisbrick) vs Secretary of State for Communities and Local Government* [2017] EWCA Civ 787.

14. The Applicant respectfully submits that all of the analysis that followed in the ISH3 submissions was seriously flawed in terms of its application to the current case. The position is very much more straightforward and clear once the obfuscatory submissions on alternatives and need are clarified. In short:

- a. The need for the proposed development is established by the NPSfP itself (not any different NPS such as that in issue in *Scarisbrick*). All that

Scarisbrick establishes is that a need for development is not of itself determinative of the outcome of the DCO, nor given decisive weight, but the Applicant has never suggested it is. That is a truism which is uncontroversial. However, the NPSfP establishes the correct policy response to the existence of the need that is identified in the NPSfP, namely the presumption in favour of the development that then applies. Whilst as in any case, such a presumption is capable of being outweighed by other adverse implications of a particular development, there are no such adverse consequences, let alone ones that would be capable of outweighing that presumption in this case. The need identified in the NPSfP does not create a trump card or blank cheque in the hands of the developer and the Secretary of State will need to carry out a proper balancing exercise after giving the correct policy weight specified by the NPSfP to this need, but no one has ever suggested anything to the contrary. This is another “Aunt Sally” by CLdN.

- b. The points made by CLdN on need are ones that contradict the policy in the NPSfP. CLdN has sought to object to the proposed development on the basis, for example, that it is merely meeting a need in terms of preference stated by a rival operator; but that, of course is a central part of the justification for new development supported by the NPSfP which places huge emphasis on stimulating competition, allowing operators to identify when and where infrastructure should be delivered, and stimulating resilience (something left unaddressed by CLdN).

15. Reference was then made by CLdN to the ability of the Proposed Development to meet an urgent need as a benefit of the scheme. That is indeed one of the many benefits it offers (but far from being the only benefit) and in that respect, CLdN’s response falls wide of the mark. Once again, CLdN fail to recognise that it is the need of Stena Line as an operator to be able to operate from its own controlled facility, just as DFDS and CLdN do currently, which is the need which CLdN is not offering and will not offer. Even if there were physical capacity for Stena Line’s operations and it were to be offered on commercial terms, it would

simply be unable to provide capacity at a facility which was controlled by Stena Line to enable it to compete effectively with DFDS and CLdN. This is an urgent need for Stena Line as it has identified. The submissions made by CLdN therefore miss that basic point.

16. CLdN then explained that its case was advanced on three bases:

- a. The relevance of alternatives was said to be a matter of law where it was claimed that they were mandatory material considerations in law (referring to paragraph 4.9.1 of the NPSfP. It is claimed that the Proposed Development falls into the category of an exceptional circumstance where the alternatives are so obvious that they require consideration because the IERRT gives rise to “substantial planning harms”.
- b. Alternatively, it is said that the Examining Authority and Secretary of State are not precluded from considering alternatives and this is an important and relevant matter for the purposes of section 104(2) of the PA 2008 and the Secretary of State should exercise its discretion to consider alternatives here.
- c. Finally, it is argued that if and to the extent on the advice of Natural England, it is concluded that there are adverse effects on the integrity of a relevant protected site from the Proposed Development, then there will be a legal need to show alternatives.

17. Each of three bases for the case on alternatives is flawed for very simple reasons on any proper analysis of the relevant case law. Although there is much lengthy focus on the different facts of other legal authorities, the legal principles are in fact clear but not correctly stated by CLdN.

The Law on Alternatives

18. The law on alternatives has developed through the case law and it is important to understand the distinction as to what the law requires, and then the role of policy

in determining what is required of decision-making in a specific context if the law itself does not mandate consideration of alternatives.

19. CLdN begin by citing the approach of Simon Brown J in *Trusthouse Forte Ltd v Secretary of State* (1986) 53 P&CR 293.

20. What that case established, however, was that the existence of an alternative location for development, even if might be more desirable, is usually **not** a relevant consideration in planning decisions. Where a decision-maker has a discretion that is not otherwise affected by a policy then what is stated by Simon Brown J may apply:

“Where...there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it.”

21. These observations and the use of the specific language “*may well be relevant and indeed necessary*” have been the subject of further elucidation by the Courts. In particular, six principles were set out by the Court of Appeal in (*R (on the application of Mount Cook Land Ltd) v Westminster City Council* [2002] EWCA Civ 1346). There the Court of Appeal identified those six principles relevant to the consideration of alternative proposals in planning cases (again where not affected by specific policy in an NPS) as follows:

“1) in the context of planning control, a person may do what he wants with his land provided his use of it is acceptable in planning terms;

2) there may be a number of alternative uses from which he could choose, each of which would be acceptable in planning terms;

3) whether any proposed use is acceptable in planning terms depends on whether it would cause planning harm judged according to relevant planning policies where there are any;

4) in the absence of conflict with planning policy and/or other planning harm, the relative advantages of alternative uses on the application site or of the same use on alternative sites are normally irrelevant in planning terms;

5) where, as Mr. Corner submitted is the case here, an application proposal does not conflict with policy, otherwise involves no planning harm and, as it happens, includes some enhancement, any alternative proposals would normally be irrelevant;

6) even, in exceptional circumstances where alternative proposals might be relevant, inchoate or vague schemes and/or those that are unlikely or have no real possibility of coming about would not be relevant or, if they were, should be given little or no weight.”

22. The Court of Appeal decision therefore firmly establishes that consideration of alternatives is in fact normally irrelevant except in exceptional circumstances, and even in exceptional circumstances alternative proposals for inchoate or vague schemes may not be relevant or should be given little or no weight.

23. That approach by the Court of Appeal was reinforced by Lord Justice Carnwath (as he then was) in *Derbyshire Dales District Council v Secretary of State for Communities and Local Government* [2010] 1 P&CR 19), Carnwath LJ considered the passage quoted above from *Trust House* and identified a

fundamental distinction between an alternative being potentially relevant in the sense that it is not an error of law to take it into account, as compared with an alternative necessarily being relevant in the sense that it is an error of law not to take it into account:

“17. I have highlighted the words...“relevant and indeed necessary”, because they signal an important distinction, insufficiently recognised in some of the submissions before me. It is one thing to say that consideration of a possible alternative site is a potentially relevant issue, so that a decision-maker does not err in law if he has regard to it. It is quite another to say that it is necessarily relevant, so that he errs in law if he fails to have regard to it.

18. For the former category the underlying principles are obvious. It is trite and long established law that the range of potentially relevant planning issues is very wide (Stringer v Minister of Housing and Local Government [1970] 1 WLR 1281); and that, absent irrationality or illegality, the weight to be given to such issues in any case is a matter for the decision-maker (Tesco Stores Ltd v Secretary of State [1995] 1WLR 759, 780). On the other hand, to hold that a decision-maker has erred in law by failing to have regard to alternative sites, it is necessary to find some legal principle which compelled him (not merely empowered) him to do so.”

24. Those principles as then subsequently considered in the *Langley Park* case were reiterated by the High Court in *(R (oao) Save Stonehenge World Heritage Site Ltd) v Secretary of State for Transport* [2021] EWHC 2161. The Court held that paragraph 4.27 NPS for National Networks (the NPSNN) did not override paragraph 4.26 NPSNN (see para 260-261), so that alternatives may sometimes still need to be considered where, under the common law, exceptional circumstances mean that they become a mandatory material consideration. Such exceptional circumstances were found to exist in *Stonehenge* on the exceptional facts of that case. However, it is clear that a NPS can remove the requirement to consider alternatives in all other

circumstances, i.e., in circumstances where the law does not require them to be considered.

25. Moreover, in *Stonehenge* the Court, having considered the above principles, reached a conclusion that there were exceptional circumstances in that particular case that the Defendant ought to have considered, namely two alternative tunnel options for the Proposed Development around Stonehenge using the same red-line site.

26. In doing so, Holgate J described the Stonehenge DCO as “*wholly exceptional*” (see judgment at 277) and set out five reasons which, cumulatively, led him to the conclusion that there were exceptional circumstances to render those alternatives mandatory material considerations. Those reasons were: (1) the development involved harm to a World Heritage Site; (2) the changes brought about by the development in that case were accepted to be “significantly adverse”; (3) the development involved permanent and irreversible harm; (4) the western cutting had attracted strong criticism from the World Heritage Committee and the Examining Authority; and (5) there was no net benefit to heritage and the acceptability of the Scheme was based on a judgment that the heritage harms were outweighed by the need for the new road and all of its other benefits. The decision in *Stonehenge* is therefore a fact specific decision that relates to the exceptional circumstances of Stonehenge and the issue of two alternative tunnel options which were in issue in that case.

27. In *R (oao Substation Action Save East Suffolk Limited) v. SSBEIS* [2022] EWHC 3177 (Admin) Mrs Justice Lang identified that *Stonehenge* was not a true alternatives case because it concerned different proposals for carrying out the same scheme (see paragraphs 227-228) and so was more akin to the decision in *Langley Park* where the Court held that the decision-maker ought to have considered the argument that the same development proposal could be provided on the same application site but in a different location within that site. That was not the case for *Substation Action*.

28. In light of these clear legal principles, it can be seen that each of the three alternative ways that CLdN now purports to put its case on alternatives is simply misconceived.
29. As to the first claim that this is a case involving exceptional circumstances where alternatives are a mandatory material consideration, that is a submission which is totally without merit. The facts of the case here in relation to the Proposed Development are plainly not exceptional at all, and do not begin to engage with the combined exceptional circumstances which arose in the *Stonehenge* case. There is no identified significant harm being identified to something akin to a World Heritage Site, nor indeed any heritage assets, let alone a situation where the alternatives in question are ones which could be delivered on the same redline site (as identified by Lang J in *Substation Action*). Moreover, none of the other additional characteristics identified in *Stonehenge*. It is fanciful in the extreme to contend that this is a case where alternatives are mandatory material considerations required by law, and such a conclusion would itself involve a clear error of law and misapplication of the principles in the *Derbyshire Dales* case. Indeed, even in that case where harm to a national park was being identified, the Court was clear that consideration of alternatives was not mandatory.
30. Accordingly the first basis of CLdN's case on alternatives is misconceived.
31. The second basis, namely a contention that the Examining Authority and Secretary of State should consider alternatives in the exercise of some sort of planning judgment, is similarly misconceived and involves a misunderstanding of the case law and the NPSfP. As the case law makes clear, the starting position is that alternatives are irrelevant, rather than matters that can be taken into account. That starting position applies here. Moreover, even in cases where alternatives can be taken into account (rather than cases where they must be taken into account) that discretion will only arise provided that there is no other policy environment which identifies what the Secretary of State's position should be. This is where CLdN simply ignore the clear effect of the

NPSfP which makes it clear that there is no obligation or policy basis for positive consideration of alternatives, where the policy is about ensuring the provision of extra capacity for competition and resilience. In those circumstances, the discretion to consider alternatives that might exist in ordinary planning cases if significant harm were engaged, simply does not arise at all because there is a policy position set out in the NPSfP and, moreover, no significant planning harm being identified.

32. As to CLdN's attempted reliance on paragraph 4.9.3 of the NPSfP, this is providing the policy approach where there **is** a requirement to consider alternatives, not setting out a requirement to consider alternatives. It has therefore been misconstrued by CLdN in its ISH3 representations. But in any event, even if this had been a case where consideration of alternatives was required, it is obvious that CLdN's claimed alternative of Killingholme fails to satisfy the basic requirements of paragraph 4.9.3 in any event, where CLdN has not provided the necessary information nor detail in respect of such vague and inchoate proposals and the alternative on offer simply fails to be an actual alternative for the need that is to be addressed by the Scheme.
33. Moreover, CLdN's contrary submission on this second element of its case is a direct contradiction of the NPSfP which is not open to them to raise in this DCO. By suggesting the Secretary of State should exercise a judgment to consider alternatives, but where the policy does not require the Secretary of State to do this, CLdN is inviting the Secretary of State to act contrary to the terms of the PA 2008 which make it clear that it is inappropriate to try and challenge Government policy through the DCO process. That is where that policy has been designated under s.5 of the PA 2008 through a specific statutory process involving the endorsement of Parliament and where any change in policy has to go through a statutory review process. CLdN's second element of its case is directly contrary to the principles discussed by the High Court in *R(Clientearth)* as dealt with in earlier submissions by the Applicant.

34. The third basis for CLdN's case only arises if Natural England were to advise and the Secretary of State were ultimately to conclude that the Proposed Development does involve some adverse effect on the integrity of a designated site. However, the Applicant's position is that there is no such adverse effect and it has not seen any evidence from Natural England to support a claim of any such adverse effect. This third basis therefore has no independent life outside a conclusion of such an adverse effect.
35. Finally, it is important to note that CLdN has not put forward a true alternative in this case in any event and its claims are vague and inchoate anyway (see *Mount Cook*). Their purported alternative of capacity at Killingholme is not an alternative to meet the identified need which is for a facility that a rival operator can operate on equal terms to that operated by DFDS and CLdN and CLdN have never offered such a facility, let alone on commercial terms. In so far as is now claimed that there is physical extra capacity, such claims are vague and inchoate as referenced in the body of this response.
36. For these reasons, CLdN's case on alternatives is contrary to the case law, contrary to the NPSfP and misconceived.

Appendix 2 - CLdN Area Calculations

1. Compounds are as shown on Figure 2A of the 'Consolidated Note on CLdN Ports Killingholme.
2. The areas of the different compounds indicated by CLdN are set out below. These have been measured by overlaying the Google Map based image given in Figure 2A and matching this to an Ordnance Survey Base that is to scale (in this instance 1:10,000) which then provides Figure 2A at a scale of 1:10,000. The areas have then been measured from that scaled figure using measurement tools contained within Adobe Acrobat Professional.
3. Using this methodology, the following areas (which are all clearly an approximation) are calculated:
 - Compound A = 41,558.7 square metres or 4.16 ha
 - Compound B = 26,111.9 square metres or 2.61 ha
 - Compound C = 56,530.4 square metres or 5.65 ha
 - Compound D = 49,746.2 square metres or 4.97 ha
 - Compound E = 37,390.9 square metres or 3.74 ha
 - Compound G = 32,596.7 square metres or 3.26 ha
 - Compound HC = 22,770.5 square metres or 2.28 ha
 - Compound HT = 37,214.1 square metres or 3.72 ha
 - Compound HSB = 15,783.3 square metres or 1.58 ha
 - Compound J = 18,482.5 square metres or 1.85 ha
 - Compound K = 36,957 square metres or 3.7 ha
 - Compound L = 67,642.1 square metres or 6.76 ha
 - Compound M = 45,879.9 square metres or 4.59 ha
 - Compound N = 40,867.9 square metres or 4.09 ha
 - Compound Q = 24,753.7 square metres or 2.48 ha
 - BCP = 30,491.1 square metres or 3.05 ha
 - Sheds = 57,596.2 square metres or 5.76 ha
 - Humber WB = 4452.2 square metres or 0.45 ha
 - 2nd Site = 121,244.1 square metres or 12.12 ha
 - Cgen = 93,675.5 square metres or 9.37 ha
 - Centrica North = 104,768.8 square metres or 10.48 ha
 - Centrica South = 98,980.5 square metres or 9.9 ha

Total Area = 106.57 ha

Appendix 3 – Relevant extracts from the Town and Country Planning (General Permitted Development) Order 2015 (as amended)

'Permitted development

3.—(1) *Subject to the provisions of this Order and regulations 75 to 78 of the Conservation of Habitats and Species Regulations 2017 (general development orders), planning permission is hereby granted for the classes of development described as permitted development in Schedule 2.*

(2) *Any permission granted by paragraph (1) is subject to any relevant exception, limitation or condition specified in Schedule 2.*

(3) *References in this Order to permission granted by Schedule 2 or by any Part, Class or paragraph of that Schedule are references to the permission granted by this article in relation to development described in that Schedule or that provision of that Schedule.*

(4) *Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order.*

(5) *The permission granted by Schedule 2 does not apply if—*

- (a) *in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;*
- (b) *in the case of permission granted in connection with an existing use, that use is unlawful.*

(6) *The permission granted by Schedule 2 does not, except in relation to development permitted by Classes A, B, D and E of Part 9 and Class A of Part 18 of that Schedule, authorise any development which requires or involves the formation, laying out or material widening of a means of access to an existing highway which is a trunk road or classified road, or creates an obstruction to the view of persons using any highway used by vehicular traffic, so as to be likely to cause danger to such persons.*

(7) *Any development falling within Class A of Part 18 of Schedule 2 authorised by an Act or order subject to the grant of any consent or approval is not to be treated for the purposes of this Order as authorised unless and until that consent or approval is obtained, except where the Act was passed or the order made after 1st July 1948 and it contains provision to the contrary.*

(8) *Schedule 2 does not grant permission for the laying or construction of a notifiable pipe-line, except in the case of the laying or construction of a notifiable pipe-line by a gas transporter in accordance with Class A of Part 15 of that Schedule.*

(9) Except as provided in Classes B and C of Part 11, Schedule 2 does not permit any development which requires or involves the demolition of a building, but in this paragraph “building” does not include part of a building.

(9A) Schedule 2 does not grant permission for, or authorise any development of, any new dwellinghouse—

- (a) where the gross internal floor area is less than 37 square metres in size; or*
- (b) that does not comply with the nationally described space standard issued by the Department for Communities and Local Government on 27th March 2015.*

(9B) The reference in paragraph (9A) to the nationally described space standard is to that standard read together with the notes dated 19th May 2016 which apply to it.

(10) Subject to paragraph (12), Schedule 1 development or Schedule 2 development within the meaning of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (“the EIA Regulations”) is not permitted by this Order unless—

- (a) the local planning authority has adopted a screening opinion under regulation 6 of those Regulations that the development is not EIA development within the meaning of those Regulations;*
- (b) the Secretary of State has made a screening direction under regulation 5(3) of those Regulations that the development is not EIA development within the meaning of those Regulations; or*
- (c) the Secretary of State has given a direction under regulation 63(1) of those Regulations that the development is exempted from the application of those Regulations.*

(11) Where—

- (a) the local planning authority has adopted a screening opinion under regulation 6 of the EIA Regulations that development is EIA development within the meaning of those Regulations and the Secretary of State has in relation to that development neither made a screening direction to the contrary under regulation 5(3) of those Regulations nor directed under regulation 63(1) of those Regulations that the development is exempted from the application of those Regulations; or*
- (b) the Secretary of State has directed that development is EIA development within the meaning of those Regulations,*

that development is treated, for the purposes of paragraph (10), as development which is not permitted by this Order.

(12) Paragraph (10) does not apply to—

- (a) development which consists of the carrying out by a drainage body, within the meaning of the Land Drainage Act 1991, of improvement works within the meaning of the Environmental Impact Assessment (Land Drainage Improvement Works) Regulations 1999;*

- (b) *development for which permission is granted by Class E of Part 6, Class K of Part 7, Class B of Part 12, Class A(a) of Part 15, Class D, E or I of Part 17 or Class A of Part 18 of Schedule 2;*
- (c) *development for which permission is granted by Class F, H or K of Part 17 of Schedule 2 where the land in, on or under which the development is to be carried out is—*
 - (i) *in the case of Class F of Part 17, on the same authorised site,*
 - (ii) *in the case of Class H of Part 17, on the same premises or, as the case may be, the same ancillary mining land,*
 - (iii) *in the case of Class K of Part 17, on the same land or, as the case may be, on land adjoining that land, as that in, on or under which development of any description permitted by the same Class has been carried out before 14th March 1999;*
- (d) *the completion of any development begun before 14th March 1999;*
- (e) *development for which permission is granted by Class B of Part 9 of Schedule 2.*

(13) Where a person uses electronic communications for making any application required to be made under any of Part of Schedule 2, that person is taken to have agreed—

- (a) *to the use of electronic communications for all purposes relating to that person's application which are capable of being effected using such communications;*
- (b) *that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, that person's application; and*
- (c) *that the deemed agreement under this paragraph subsists until that person gives notice in writing revoking the agreement (and such revocation is final and takes effect on a date specified by the person but not less than 7 days after the date on which the notice is given).*

....

Schedule 2
Permitted development rights

...
Part 8
Transport related development

...
Class B – dock, pier, harbour, water transport, canal or inland navigation undertakings

Permitted development

B. Development on operational land by statutory undertakers or their lessees or agents of development (including the erection or alteration of an operational building) in respect of dock, pier, harbour, water transport, or canal or inland navigation undertakings, required—

- (a) *for the purposes of shipping,*

- (b) *in connection with the embarking, disembarking, loading, discharging or transport of passengers, livestock or goods at a dock, pier or harbour, or with the movement of traffic by canal or inland navigation or by any railway forming part of the undertaking, or*
- (c) *in connection with the provision of services and facilities.*

Development not permitted

B.1 *Development is not permitted by Class B if it consists of or includes—*

- (a) *the construction or erection of a hotel, or of a bridge or other building not required in connection with the handling of traffic; or*
- (b) *the construction or erection otherwise than wholly within the limits of a dock, pier or harbour of—*
 - (i) *an educational building,*
 - (ii) *a car park, shop, restaurant, garage, petrol filling station or other building provided under transport legislation, or*
- (c) *where the development falls within paragraph B(c)-*
 - (i) *the erection of a building other than an operational building or*
 - (ii) *the alteration or reconstruction of a building other than an operational building, where its design or external appearance would be materially affected.*

B.1A. Condition

- (1) *Development is permitted by Class B subject to the condition that the relevant statutory undertaker consults the local planning authority before carrying out any development, unless that development falls within the description in paragraph B.3.*

Interpretation of Class B

B.2 *For the purposes of Class B—*

- (a) *references to the construction or erection of any building or structure include references to the reconstruction or alteration of a building or structure where its design or external appearance would be materially affected, and*
- (b) *the reference to operational land includes land designated by an order made under section 14 or 16 of the Harbours Act 1964 (orders for securing harbour efficiency etc., and orders conferring powers for improvement, construction etc., of harbours), and which has come into force, whether or not the order was subject to the provisions of the Statutory Orders (Special Procedure) Act 1945.'*

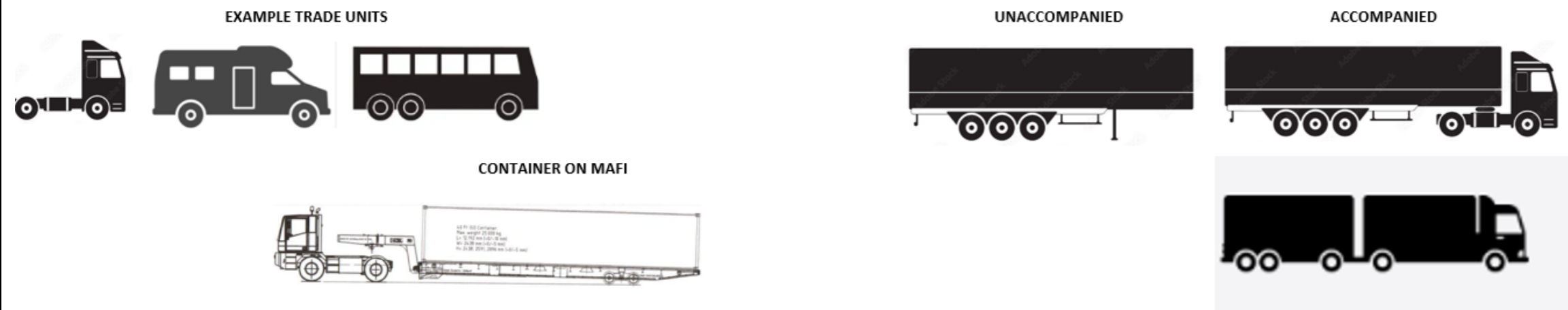
B.3. *Development falls within this paragraph if-*




- (a) *it is urgently required for the efficient running of the dock, pier, harbour, water transport, canal or inland navigation undertaking, and*
- (b) *it consists of the carrying out of works, or the erection or construction of a structure or of an ancillary building, or the placing on land of equipment, and the work, structure, building, or equipment to not exceed 4 metres in height or 200 cubic metres in capacity.*

Appendix 4 – IERRT Storage Capacity Analysis

Theoretical terminal capacity	Utilisation factor	Practical terminal capacity	Accompanied factor	Annual accompanied units	Annual unaccompanied units	WB Unaccompanied units (NL-VK)	EB Unaccompanied units (VK-NL)
660000	100%	660000	28%	184800	475200	237600	237600
Unaccompanied storage		WB	EB	Practical Peak terminal capacity	Slots	Assumed Volumes (Capped)	
Trailer bays	1446	228	WB Unaccomp	238665	WB Unaccomp	189330	
Container ground slots	65	0	EB Unacommp	237771	EB Unacommp	189330	
Stack hight	195	0					
Stack efficiency	0.8	0	WB Accomp	92400	WB Accomp	73920	
Stack capacity	156	0	EB Accomp	92400	EB Accomp	73920	
Static capacity	1602	228					
Multiply per year	584730	83220	WB Other types	1,141	WB Other types	750	
Average dwell time	2.45	0.35	EB Other types	1,141	EB Other types	750	
Peak multiplier	0.00	0.00					
Practical storage capacity trailers / containers	238665	237771	Overall annual capacity	663518	Annual throughput	528000	
			Throughput per day	1818	Throughput per day	1447	
Other type storage (trade vehicles)		WB/EB	Dwell time factor				
Ground slots	25		Dwell time for all Westbound unaccomp				2,45 days
Multiply per year	9125		Dwell time for all Eastbound Unaccomp				0,35 days
Average dwell time	4		Other types trade vehicles included chassis, cars etc.				4,00 days
Peak multiplier	0						
Practical storage trade vehicles	2281						

The EB dwell time of 0.35 is based on the fact that the EB slots are used several times a day due to Stena Line's system of continuous loading of the vessel.



Capped operating terminal capacity	Utilisation factor	Practical terminal capacity	Accompanied factor	Annual accompanied units	Annual unaccompanied units	WB Unaccompanied units (NL-VK)	EB Unaccompanied units (VK-NL)
660000	80%	528000	28%	147840	380160	190080	190080
Unaccompanied storage		WB	EB	Practical terminal capacity including Peak multiplier	Slots	Assumed Volumes (Capped)	
Trailer bays	1446	228	WB Unaccomp	190932	WB Unaccomp	189330	
Container ground slots	65	0	EB Unaccomp	190217	EB Unaccomp	189330	
Stack high	195	0					
Stack efficiency	0.8	0	WB Accomp	73920	WB Accomp	73920	
Stack capacity	156	0	EB Accomp	73920	EB Accomp	73920	
Static capacity	1602	228					
Multiply per year	584730	83220	WB Other types	913	WB Other types	750	
Average dwell time	2.45	0.35	EB Other types	913	EB Other types	750	
Peak multiplier	1.25	1.25					
Practical storage capacity trailers / containers	190932	190217	Practical annual capacity	530814	Annual throughput	528000	
			Throughput per day	1454	Throughput per day	1447	
Other type storage (trade vehicles)		WB/EB	Dwell time factor				
Ground slots	25		Dwell time for all Westbound unaccomp			2,45 days	
Multiply per year	9125		Dwell time for all Eastbound Unaccomp			0,35 days	
Average dwell time	4.00		Other types trade vehicles included chassis, cars etc.			4,00 days	
Peak multiplier	1.25						
Practical storage trade vehicles	1825						
<p>The EB dwell time of 0.35 is based on the fact that the EB slots are used several times a day due to Stena Line's system of continuous loading of the vessel.</p>							
<p>EXAMPLE TRADE UNITS</p> 			<p>UNACCOMPANIED</p> 		<p>ACCOMPANIED</p> 		
<p>CONTAINER ON MAFI</p> 