

IMMINGHAM EASTERN RO-RO TERMINAL



Issue Specific Hearing 4 Action Points for Deadline 5

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1 Executive Summary and Purpose

- 1.1 Issue Specific Hearing 4 ('ISH4'), during which consideration was given to the issue specific topic of the **Draft Development Consent Order (dDCO)**, was held on the afternoon of Thursday 28 September 2023.
- 1.3 At **Table 1** below, this document provides a summary of the action points arising from ISH4 which are due at Deadline 5 only and, where these action points fell to Associated British Ports as the Applicant ('the Applicant') to be addressed for Deadline 5, how these have been addressed.

2 Table 1: Action Points

Action	Description	Action by	Deadline	Applicant's Comment/where has the action been answered
1	Further consider replacing references to "Company" with "Undertaker" in the draft Development Consent Order (dDCO) [REP3-002].	Applicant	D5	The Applicant has replaced references to "Company" with "undertaker" in the dDCO. In addition, the Applicant has replaced references to "licence holder" with "undertaker" in the deemed marine licence (DML) as requested by the MMO in its response to ExQ2 DCO.2.07 and paragraph 6.2.1 of its Deadline 4 submissions [REP4-015]. Please see updated 3.1 Draft Development Consent Order submitted at Deadline 5.
2	Undertake a general review of the drafting for the Articles and Requirements and other provisions within the dDCO. In undertaking this review the Applicant should assess the need for all the Articles, Requirements and other provisions of the dDCO and ensure that all of the retained Articles, Requirements and other provisions include all necessary 'anatomical' elements. That is, do the Articles, Requirements and other provisions amongst other things state: what has to be done (eg make submissions for approval), by whom	Applicant	D5	Please see updated 3.1 Draft Development Consent Order submitted at Deadline 5.

	and by when; include timing and implementation clauses, as necessary; and include any retention and/or maintenance clauses. The use of “tailpieces” should also be avoided.			
3	In relation to Article 4, further review the sections of the Harbours, Docks and Piers Clauses Act 1847 (the 1847 Act) intended for incorporation into any made DCO, ensuring that only extant sections of the 1847 Act are cited. Consideration should be given to positively wording Article 4. The reason(s) for incorporating each section of the 1847 Act into any made DCO must be included in an updated version of the Explanatory Memorandum [REP1-007].	Applicant	D5	Please see updated 3.1 Draft Development Consent Order and updated 3.2 Explanatory Memorandum submitted at Deadline 5.
4	Consider the extent to which maintenance has been assessed in the Environmental Statement and how that has been reflected in the drafting of the dDCO. Review the dDCO and DML definitions for ‘maintain’ and ‘construct’ and the description of maintenance activities within the Environmental Statement.	Applicant	D5	<p>Ongoing maintenance 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.</p> <p>As articulated on behalf of the Applicant at ISH4 [REP4-010], the maintenance powers are not intended to give rise to reconstruction of the works as a whole, but rather refer to ‘maintenance’ within its ordinary meaning.</p>

			<p>Article 6(2) of the dDCO limits the maintenance powers to what has been assessed in the Environmental Statement.</p> <p>The Applicant notes that there is precedent for the approach it has taken in respect of its assessment of maintenance in the Environmental Statement. For example, the Environmental Statement for The Port of Tilbury (Expansion) Order 2019 states the following at paragraph 5.117 (emphasis added):</p> <p><i>“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. <u>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.</u> They would also fall to be controlled by the Operational Management Plan (OMP, Document Reference 6.10).”</i></p>
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5	Consider the need for and drafting of the tailpiece in Article 21(2). If that tailpiece is to be retained, then a written justification should be submitted.	Applicant	D5	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.
6	Consider appropriateness of amending Article 21(1) to incorporate a daily Ro-Ro unit limit.	Applicant	D5	The maximum level of activity for the proposed development equates to 1800 Ro-Ro units per day (which equates to 660,000 Ro-Ro units per year). The identification of this maximum level of activity has been to ensure that the various environmental and related assessments for the DCO application have considered a ‘reasonable worst case’ position in terms of potential adverse effects. It is common practice and necessary in order to produce an effective Environmental Statement to identify the notional maximum level of activity of a proposed development in this way. Therefore, and as the facility is designed to accommodate a maximum throughput of 1,800 units per day, the Applicant does not consider that it is appropriate or necessary to amend Article 21(1) to incorporate a daily Ro-Ro unit limit.
7	Further clarify in the Explanatory Memorandum the wording in the dDCO. To include: <ul style="list-style-type: none"> • Article 22 (Power to appropriate) • Article 28 (Agreement with highways authority); and 	Applicant	D5	Please see updated 3.2 Explanatory Memorandum submitted at Deadline 5.

	<ul style="list-style-type: none"> Article 29 (Defence to proceedings in respect of statutory nuisance) 			
8	Consider amending Requirement 4 (Construction hours) and provide reasons for retention/amendment.	Applicant	D5	Please see updated 3.1 Draft Development Consent Order submitted at Deadline 5.
9	In relation to Requirement 6 (Piling and marine construction works restrictions) explain how the restrictions on piling and marine construction works have been determined. Refer to the assessments where appropriate.	Applicant	D5	<p>Requirement 6 sets out that Piling and Marine works may be undertaken 24 hours a day, Monday to Sunday, subject to restrictions within paragraph 12, Part 2 of Schedule 3 (deemed marine licence) of the dDCO. Capital dredge works may also be undertaken without restriction.</p> <p>Within marine construction it is typical to seek to provide flexibility in the timing windows in order to optimise the utilisation of specialist marine plant and work with tidal windows.</p> <p>Further restrictions on the timing of works and mitigation measures have been proposed in order to reduce effects to coastal waterbirds, migratory fish and marine mammals during construction. This is based on the assessment set out in Chapter 9 of the ES [APP-045] and the Habitats Regulations Assessment report (HRAr) [APP-115].</p>
10	Engage with the Marine Management Organisation to ensure that it has reviewed the dDCO in full and not limited its consideration of the dDCO	Applicant	D5	The Applicant raised the ExA's comments made at ISH4 with the MMO in a meeting held on 12 October 2023 and the MMO referred to its response to this matter at

	to Schedule 3 (the deemed Marine Licence)			paragraph 6.2.2 of its Deadline 4 submissions [REP4-015] .
11	Explain where the worst case for simultaneous construction and operation activities was assessed in the Environmental Statement, demonstrating that simultaneous construction and operation has been assessed.	Applicant	D5	<p>As detailed in Chapter 3: Details of Project Construction and Operation of the Environmental Statement [APP-039], two construction scenarios are possible for the IERRT. As part of each individual environmental topic assessment, both scenarios were considered by the applicable technical assessors to identify which of these two scenarios would give rise to the largest potential for likely significant effects, thus the worst-case scenario.</p> <p>An explanation as to which of these two scenarios is considered a worst-case scenario for each environmental topic is provided within the following chapters and paragraphs of the Environmental Statement:</p> <ul style="list-style-type: none"> • Chapter 7: Physical Processes [APP-043], paragraph 7.8.4; • Chapter 8: Water and Sedimentary Quality [APP-044], paragraph 8.8.5; • Chapter 9: Nature Conservation and Marine Ecology [APP-045], paragraph 9.8.9; • Chapter 11: Coastal Protection [APP-047], paragraph 11.8.7;

			<ul style="list-style-type: none"> • Chapter 12: Ground Conditions including Land Quality [APP-048], paragraph 12.8.12; • Chapter 13: Air Quality [APP-049], paragraph 13.8.4; • Chapter 14: Noise and Vibration [APP-050], paragraph 14.8.21; • Chapter 15: Cultural Heritage and Marine Archaeology [APP-051], paragraph 15.8.5; • Chapter 16: Socio-economic [APP-052], paragraph 16.8.4; • Chapter 17: Traffic and Transport [APP-053], paragraph 17.8.4; • Chapter 18 Land Use [APP-054], and 18.9.12; and • Chapter 19: Climate Change [APP-055], paragraph 19.8.9 4.6. <p>The assessments that are presented in each of these chapters is then based on the identified worst-case scenario for that topic. For the avoidance of doubt, the worst-case scenario of each of the environmental topics noted above would be a scenario whereby the IERRT would be constructed and then operated sequentially.</p> <p>Where differing risks may be generated as a result of concurrent construction and operation as opposed to sequential these have been discussed in Chapter 10:</p>
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				Commercial and Recreational Navigation of the Environmental Statement [APP-046] paragraph 10.8.1 to 10.8.5 and based upon the wider Navigational Risk Assessment, which is provided within Volume 3, Appendix 10.1: Navigation Risk Assessment of the Environmental Statement [APP-089] .
12	Each party to submit a signposting document identifying the dDCO drafting concerns raised in its Relevant Representations and subsequent written Examination submissions.	CLdN and DFDS	D4	
13	Provide responses to CLdN's and DFDS' written submissions concerning dDCO drafting made in their Relevant Representations and subsequent written Examination submissions.	Applicant	D5	The Applicant has responded to comments raised by the parties in the following documents submitted at Deadline 5 : a) CLdN's comments are addressed at section 8 of 10.2.48 Applicant's Response to CLdN's Deadline 4 Submissions ; and b) DFDS's comments are addressed at section 5 of 10.2.50 Applicant's Response to DFDS's Deadline 4 Submissions .
14	Consider if the Construction Environmental Management Plan (CEMP [REP2-004] should be considered as being a draft/outline or final version document. If the CEMP is to be considered as being a	Applicant	D5	The Applicant has reviewed the CEMP and considers that it should be considered as an outline document to be approved pursuant to Requirement 15 of the dDCO. Please see updated 3.1 Draft Development Consent Order and updated 9.2 Construction

	<p>draft/outline document, then consider redrafting the dDCO to:</p> <ul style="list-style-type: none"> • require the submission of a final version of the CEMP for approval; • include the approval process; • the individual mitigation measures to be developed under the CEMP; and • include monitoring provisions to ensure compliance. 			<p>Environmental Management Plan submitted at Deadline 5.</p>
15	<p>Review compliance responsibilities within in the CEMP, including what has been stated in Table 3.4.</p>	Applicant	D5	<p>The Applicant has reviewed the compliance responsibilities within the CEMP [REP2-004], including what has been stated in Table 3.4 – please see the Applicant’s response to Acton Point 24 raised at Issue Specific Hearing 3 as set out in 10.2.45 – Applicant’s Issue Specific Hearing 3 Action Points and the updated 9.2 Construction Environmental Management Plan submitted at Deadline 5.</p>
16	<p>Explain the details of the offer of noise insulation subject to Requirement 10 in the dDCO in an updated version of the Explanatory Memorandum.</p>	Applicant	D5	<p>Please see updated 3.1 Draft Development Consent Order and updated 3.2 Explanatory Memorandum submitted at Deadline 5.</p>
17	<p>Review Requirements 8 (CEMP), 13 (Flood risk assessment) and 15 (Construction and operational plans and documents) and amend as</p>	Applicant	D5	<p>Please see updated 3.1 Draft Development Consent Order submitted at Deadline 5.</p>

	necessary to address any duplication.			
18	Delete 'in general' in Requirement 15.	Applicant	D5	Please see updated 3.1 Draft Development Consent Order submitted at Deadline 5.
19	Consider the appropriateness of the reference to the submitted Navigational Risk Assessment (NRA) [APP-089] within Requirement 15. Provide a written justification for why the Applicant considers the NRA should or should not be document listed in Requirement 15.	Applicant	D5	The Applicant has deleted reference to the submitted NRA within Requirement 15. Please see updated 3.1 Draft Development Consent Order submitted at Deadline 5.
20	Consider and comment on the drafting for Requirement 18 (Impact protection measures) in light of the emerging negotiations between the Applicant and IOT Operators, as outlined in the Applicant's letter of 28 September 2023. Under a scenario where agreement is not reached with respect to altering the layout for the IOT Finger Pier and amending the design for the proposed impact protection measures, review the wording for Requirement 18 and, amongst other things, comment on whether the Secretary of State for Transport or any other regulator should have the responsibility for discharging the provisions of Requirement 18.	Applicant	D5	The Applicant submitted a change notification to the ExA on 19 October 2023 [AS-026 – AS-035] . Proposed Change 4 details amendments to the impact protection measures detailed in the dDCO. The Applicant will review any consultation responses in respect of this proposed change prior to finalising any amendments to the proposed impact protection measures, which will then be submitted to the ExA in a change application. The Applicant considers that Proposed Change 4 will naturally include amendments to the drafting of Requirement 18. Therefore, the Applicant has not amended the drafting of Requirement 18 at this stage but shall do so as part of the revised dDCO to be submitted with the Change Application.

21	Provide update on negotiations on Protective Provisions.	Applicant	D4	Applicant has responded in [REP4-010] .
22	Provide submissions explaining the need for Protective Provisions in favour of CLdN in any made DCO, including a detailed explanation as to why Protections Provisions concerning the railway line connection with the Port of Killingholme are considered necessary.	CLdN	D4	
23	Submit any change request(s) as considered necessary.	Applicant	As soon as possible	The Applicant submitted a change notification to the ExA on 19 October 2023 [AS-026 – AS-035] .

3 Glossary

Abbreviation/ Acronym	Definition
CEMP	Construction Environmental Management Plan
CLdN	CLdN Ports (Killingholme) Limited
dDCO	Draft Development Consent Order
DFDS	DFDS Seaways Plc
DML	Deemed Marine Licence
ExA	Examining Authority
HES	Humber Estuary Services
HOTT	Humber Oil Terminal Trustees Limited
IERRT	Immingham Eastern Ro-Ro Terminal
IOT	Immingham Oil Terminal
IP	Interested Party
ISH4	Issue Specific Hearing Four
MMO	Marine Management Organisation
NPSfP	National Policy Statement for Ports
NRA	Navigational Risk Assessment