Immingham Eastern Ro-Ro Terminal ("IERRT")

PINS Ref: TR030007

Comments on Deadline 4 submissions

Preliminary Comments on Applicant's Change Notification:

1. The IOT Operators note that the Applicant has commenced consultation on 20 October on proposed changes to its DCO application. Those include "Change 4: Enhanced Management Controls and Options for the Potential Provision of Additional Impact Protection Measures". The consultation on those proposed changes runs to Sunday 19 November, and the IOT Operators will consider the information provided and respond to the consultation within that time period.

2. At this stage, and as a preliminary reaction to the proposed Change 4, the IOT Operators wish to note their surprise and disappointment that the Applicant has made that proposed change request without (a) providing the IOT Operators with a copy of the proposed changes prior to the materials being submitted and consulted on, given that they differ significantly from those attached to the letter of 27 September 2023 [AS-020] (b) seeking the IOT Operators' agreement to (or even comments on) those proposed changes or (c) providing any details of the "enhanced management control" measures that the Applicant now intends to rely on.

3. In its letter of 27 September 2023 [AS-020] the Applicant accepted the need for a change to be made to accommodate impact protection capable of mitigating (to an acceptable level) the risks identified by the IOT Operators' sNRA. The IOT Operators have expended considerable efforts to help the Applicant identify the standard to which those mitigation measures should be designed, including providing details of that standard to the Applicant in a letter on 16 October, which appears as Appendix 1 to this document. That of course is work that the Applicant ought to have undertaken following the Statutory Consultation for the scheme in early 2022, and sought to agree with the IOT Operators at that time and well in advance of the DCO submission.

4. Whilst the IOT Operators are continuing to review and consider the proposed changes, including Change 4, they are very disappointed to note that the Applicant appears to have proposed a series of measures which fail to meet the standards identified by the IOT Operators as necessary to provide adequate protection to their significant interests. As the Applicant again appears to accept (through its actions if not its language) that further impact protection measures are required, it is not clear to the IOT Operators why measures of a standard which they have identified have not been provided. An explanation why it is said to be difficult for the project to accommodate those standards is provided (at 3.27 of the change notification document), but that is very different to an explanation of why the level of protection reflected in the IOT Operators' standards should not be provided. Detailed consideration will be given to the proposed changes, and comments provided in due course. However, given the potentially catastrophic nature of the safety concerns raised by the IOT Operators, it is expected that this advance warning will be of assistance to the ExA. The IOT Operators do not at this stage expect to be able reach consensus on the proposed

Change 4, despite what is said at paragraph 3.33 of the change notification document. It may be that despite there being no objection in principle to the proposed ERRT the lack of adequate response from ABT leads to a position in which the DCO should be rejected. If it is ABP's case that the provision of adequate measures is too expensive, then the proper response may be simply to conclude that ABP is unable to provide the necessary protective measures for the important IOT facilities and to accommodate the genuine risks created by its proposal.

5. The IOT Operators also note that in its letter during ISH3 [AS-020] that Applicant accepted that protective provisions substantially in the form advanced by the IOT Operators [REP1-039] would be included in any change request. There is no reference to those protective provisions in the notification of the proposed change, and the IOT Operators expect they will be included in the updated dDCO at D5. The Applicant has to date not provided the IOT Operators with an updated SoCG or PADS, despite the indication that such matters would be addressed alongside its change request.

6. Given the current approach of the Applicant to the change request, the IOT Operators ask that the ExA uses the reserved hearing days during late November (21, 22 and 23 [PD-009]) for the purposes of a further ISH on navigation and safety matters and whatever ABP finally settles on as its proposed protective measures. It was agreed at ISH3 that the IOT Operators would not provide oral submissions to the ExA on account of the Applicant's intention to submit a change request. Given that change request appears to be unsatisfactory, the IOT Operators now ask that a further hearing is convened to hear their concerns with the existing NRA carried out by the Applicant as well as those measures. In the event the change request is accepted by the ExA, it may also be necessary for a further hearing to be convened to consider the (in)adequacy of the Applicant's alternative mitigation proposals.

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7. The Applicant has written to the IOT Operators, at 15:50 on Friday 20 October (i.e. the working day before Deadline 5) to propose additional simulations are carried out on 7 and 8 November (i.e. ten working days' hence). The IOT Operators are considering the details which have been provided by the Applicant, and will endeavour to attend those sessions if their staff and consultants are available to do so. An initial response has been provided to the Applicant by letter dated 23 October 2023, which has been enclosed with these D5 submissions.

8. The Applicant accepts that the simulations are necessary, from which it flows that new evidence will be submitted as a result of these simulations late in the examination process. The IOT Operators are continuing to incur very significant costs in response to the Applicant which could have been avoided, or at least significantly reduced, had the Applicant addressed matters (such as these additional simulations) adequately prior to submitting its DCO Application.

Part 1

Comments on Applicant's Cover Letter to PINS regarding the Applicant's Deadline 4 Submissions

Page No.	ABP Response	Comments by the IOT Operators
2	**Response to IOT Operators' Additional Navigational Risk Assessment ('the IOT NRA')** At Deadline 3, the Applicant submitted an Interim Response to the IOT Operators' Additional Navigational Risk Assessment [REP3-9012]. The Applicant has not submitted a further response to the IOT NRA in light of ongoing negotiations between the Applicant and the IOT Operators. This is without prejudice to the Applicant's views on the IOT NRA, and the Applicant reserves the right to respond to this at a later deadline, if required.	The IOT Operators note that the Applicant is yet to provide a detailed response to its sNRA. As and when further submission are made by the Applicant (and if accepted by the ExA), the IOT Operators reserve a right to respond to those.

Part 2

Comments on Stena Line response to ExQ2

Page No.	Stena Line Response	Comments by the IOT Operators
2	**Response to effects arising from contingency of lack tug availability**: SLBV has a contact with SMS TOWAGE. If it is not possible, for whatever reason, for them to arrange a tug as an alternative tug supplier e.g. SVITZER HUMBER LTD is then arranged by SMS TOWAGE. In a situation that a tug is required, but is not available the vessel will either not depart the Port or it will not try and drop anchor until an appropriate solution were found.	There are a limited number of Tugs in the Humber. If IERRT vessels are needing to Arrive/Sail at similar times to other users (specifically at HW/LW slack water periods) then there will be an increased amount of traffic that requires a tug. Therefore, a preferential ordering system needs to be in place so that IOT vessels are not cancelled because of a lack of Tug availability. The IOT Operators have concerns with the response regarding situations where a tug is not available. Clarity is required on what vessels may or may not do in such situations. This is in terms of vessels arriving and departing the Port and in terms of what “appropriate solutions” can be found.

Part 3

Comments on Applicant's Response to ExQ2 Submissions by the IOT Operators

Question		ABP Comments	Comments by the IOT Operators
DCO.2.05	**Requirement 18 (Impact Protection Measures)** a) In the redrafted version of Requirement 18 why has the Statutory Conservancy and Navigation Authority (Harbour Master for the Humber) rather than the Statutory Harbour Authority for the Port of Immingham (the Dock Master) been identified as the body that would be responsible for making a recommendation to the Undertaker ("Company") as to whether or not the impact protection measures should be installed? b) In sub-paragraph (1) should "The Company must give due consideration to any recommendation received …" be replaced with 'must implement any [direction or instruction] [received or issued] by …'? c) Is the sequencing for sub-paragraphs (2) and (3) correct? Following any	As the ExA is aware, the provision of impact protection measures (IPM) is currently subject to ongoing discussions with the IOT Operators in the light of information provided to the ExA during ISH3. The revised version of the dDCO to be submitted at Deadline 5 will include such revisions to Requirements 18 and related provisions as may be considered necessary.	In its letter of 28 September 2023 [AS-020] the Applicant has accepted the need for the protective provisions sought by the IOT Operators in respect of the IOT, as outlined in [REP1-039]. That acceptance is framed in the context of the anticipated change request to be made by the Applicant but would apply in principle to the existing DCO application as well (with more force). IOT awaits the Applicant's D5 submissions in that regard, and refers to its preliminary comments on the Applicant's change notification above. As the Applicant has accepted the principle of the IOT Operators' proposed protective provisions, the need for a separate Requirement controlling the delivery of the necessary impact protection measures is less certain. The IOT Operators' protective provisions [REP1-039] provide a mechanism by which the IOT Operators will approve the design of the necessary impact protection measures, to the IOT

	decision to install the impact protection measures it would appear more logical that the IOT Operators and the MMO be advised of that decision and then prior to the installation of those measures they be consulted about the detailed design for the measures. d) In terms of enforceability the wording for Requirement 18 needs further review, because the final design for the measures would need to be approved by a regulatory authority with that authority then having responsibility for enforcing the installation of an agreed/approved set of measures. As currently drafted the Applicant/developer would be required to consult on the design of the impact protection measures but having undertaken a consultation there would be no compulsion on it to implement the measures that had been consulted upon.		Operators' reasonable satisfaction (see para 5 of REP1-039). With those controls in place, the IOT Operators do not consider a separate Requirement is necessary. The IOT Operators would also recognise that the ExA and other third parties may take the view that a public-facing Requirement is necessary, in addition to the direct controls which are understood to be made available to the IOT Operators through the protective provisions at D5. Should the Applicant depart from the principle which has been established in its letter [AS-020] for any reason, the IOT Operators reserve the right to revisit the need for Requirement 18 protective provisions more widely, and any other measure relevant to the impact protection measures, both in written submissions and at the future ISH5 which it is understood by the IOT Operators to be reserved for that purpose in November at the third round of hearings. In the interim, the IOT Operators await sight of the Applicant's revised D5 submissions, and refers to its preliminary comments on the Applicant's change notification above.

DCO.2.08	**Schedule 4 (Protective Provisions)** General consistency point, in some parts of Schedule 4 reference is made to "authorised works" (e.g., Statutory Harbour Authority and Northern Powergrid), while in others reference is made to "authorised development" (e.g., Environment Agency, Exolum). Consistent phraseology should be used. **...** **Part 4 Humber Oil Terminal Trustees Ltd** • Paragraph 37 – final word "Schedule", should this be "protective provision"? • Paragraph 38(1)(b), (c) and (d) - "relevant works", undefined, issue of consistency. • Paragraph 38(2)(a) – "Schedule", should this be "protective provision"? • Part 5 Northern Powergrid • Paragraph 43 "authorised works"? • Paragraph 45(4) and (5) – references to "Schedule" rather than protective provision? • Paragraph 46(1) – reference to Schedule rather than protective provision? Paragraph 53 - reference to	The Protective Provisions as they appear in the dDCO are under negotiation with the relevant IPs, having been substantially based on precedents received from those parties. Inconsistencies in approach such as in the phraseology of defined terms are, therefore, (for the most part) because of the preferences of the recipients of these Protective Provisions, many of whom are unlikely to countenance revisions. This is especially the case where the revisions will have very limited or no impact on the meaning of the Protective Provision as a whole. It is also the Applicant's experience that, even where precedent provisions are not applicable and have no relevance to the Proposed Development, some IPs are still insisting that these provisions be retained rather than deleted 'just in case'. This is most notable in the retention of protections against compulsory acquisition for statutory undertaker land interests, despite the Applicant not seeking the compulsorily acquisition of any such land; but would also apply to points such as protections against the use of explosives. That said, the Applicant notes the ExA's comments and, following ISH4 and the action points arising from that hearing, intends to submit a revised dDCO at Deadline 5. That draft will capture those amendments from ExQ2 DCO.2.08 with	Please refer to the IOT Operators' response to DCO.2.05 above in this regard. The IOT Operators await sight of the Applicant's revised D5 submissions, and refers to its preliminary comments on the Applicant's change notification above.

	Schedule rather than protective provision?	which the Applicant agrees, and which the Applicant can agree with the relevant Interested Parties.	
NS.2.01	**Responsibility for safety management in the Port of Immingham** Based on the contents of the "Immingham and River Humber – Management Control and Regulation" note [REP1-014] is the ExA correct in believing that it is the Port of Immingham SHA which has responsibility and authority for the safety management system applicable to the Port itself, acting in liaison with the Humber Harbour Master as Competent Harbour Authority (CHA) responsible for pilotage services and as the SHA operating Vessel Traffic Services?	This is a correct summary of the position – with the emphasis being placed on the close liaison between both SHA's for the reasons enumerated in [REP1-014].	The IOT Operators have made clear their views on the existing safety management provisions proposed by the Applicant in their submissions to date, including most recently their D4 submissions [REP4-035]. Commentary in that document in response to HMH's observations on paragraphs 88 – 97 of the IOT Operators' sNRA are particularly relevant (numbered pages 23 and 24), as are the comments at paragraph 9 concerning the lack of independence of ABP, the harbour master and dock master (numbered page 42). The commentary above in respect of DCO.2.05 is also relevant. It is understood the Applicant has accepted the principle that the IOT Operators will approve the standard of impact protection to be provided through protective provisions [reflecting AS-020 and REP1-039]. That overcomes the IOT Operators' concerns with the independence of the mechanism proposed by the Applicant.
NS.2.02	**Harbour Authority and Safety Board (HASB) decision to defer impact protection to the IOT trunkway**	During ISH3, Captain McCartain explained how the HASB is involved in the wider decision-making process, including in relation to the Applicant's	Please see the response to NS.2.01 above.

	The Applicant's explanation in REP1-014 concerning the HASB's decision on risk acceptability for the Proposed Development does not fully clarify what consideration was given by the Designated Person and the HASB to the inclusion of adaptive risk control measures, such as IOT trunkway protection measures and/or the relocation of the IOT finger pier, identified and considered by the Applicant's consultants in the NRA report [APP-089, para 9.9.3]. Accordingly, the Applicant should submit copies of: a) any recommendation report for the Proposed Development submitted to the HASB meeting of 12 December 2022; and b) the minutes of that meeting relating to the consideration of the Proposed Development. With respect to the submission of the HASB recommendation report and meeting minutes, if they contain any material that the Applicant would not wish to be placed in the public domain then a full set of the minutes should be submitted for the ExA's confidential use together with a redacted set for publication in the Examination Library.	consideration of the Proposed Development. The presentation given to the HASB meeting, circulated in advance of the meeting for the consideration and review of members of the HASB and the minutes of that meeting are provided at document 10.2.39 – Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 3 submitted at Deadline 3.	In addition, the IOT operators remain unclear with regard to the cost benefit method undertaken by the Applicant in relation to determining that impact protection measures are not necessary and that the navigation risk for the IERRT development can be effectively management through the use of procedural controls, which are neither defined nor secured in the DCO. Further meetings held in October were identified as cost benefit meetings, but the detail of these has also not been provided. In view of the latest view of ABP on proposed protective measures and viability, it is essential that the details of those meetings be disclosed immediately so it can be understood what assumptions were made about cost benefit.
NS.2.03	**The "Designated Person"**	a) Gareth Robins has had no role in the Proposed Development as he	Please see the response to NS.2.01 above.

	Having regard to the DFDS submissions [pages 23 and 24 in REP2-039 and REP3-022], advise on: a) What role Gareth Robins, as the named Designated Person (DP) in the "Port of Immingham Marine Safety Management System" (September 2023 version) [REP3-017], has had in advising the HASB about the Proposed Development. b) Whether Mr Robins attended the HASB's meeting on 12 December 2022, when the draft NRA for the Proposed Development was considered by the HASB prior to its submission as an application document. c) When Mr Robins was appointed as the DP. d) Whether the DP has been asked to review the NRA [APP-089] in the light of the written and oral representations that have been raised about it by IPs; and has made any further recommendations to the HASB about any aspect of the Proposed Development in the light of those representations.	was not in post at the time. James Clark was the DP at the time and provided advice with respect to marine risk and simulation results. b) Mr Clark, as the Designated Person, attended the HASB Meeting on 12 December 2022. It will be noted from the minutes (which are provided as Appendix 4 to document 10.2.39 – Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 3) that discussions at the meeting were captured but were not specifically attributed to individuals. c) Mr Robins was appointed on the 24 August 2023. As explained during ISH3, however, Mr Robins has since been required to provide urgent cover for a marine operational role in ABP's Welsh Ports and is not currently acting as the DP. d) The DP was consulted on representations as was the Marine Adviser acting as the DP in his absence. e) As is common practice, the DP is a direct employee of ABP and as Captain McCartain explained at ISH3, acting in his temporary capacity as Designated Person, the DP's duties and obligations encompass all of ABP's twenty	In addition, IOT operators have repeatedly communicated marine safety concerns of the IERRT development to the Applicant (e.g. see REP2-063, REP1-035). IOT operators note that the Applicant - ABP is the: - Developer of IERRT - Commercial port operator for the Humber Estuary - Statutory Harbour Authority for IERRT - Competent Harbour Authority for IERRT The Applicants NRA was also undertaken by ABPmer; a wholly owned subsidiary of ABP and the ABP Designated Person (Captain McCartain – Executive Group Director: of Safety, Marine & Engineering), specifically charged by the PMSC para 1.11 [REP1-015] with providing "*independent assurance directly to the duty holder that the MSMS, for which the duty holder is responsible, is working* effectively" is not only an employee of ABP, and ultimate line manager to the IERRT ABP Development and Engineering Team, but is also Duty Holder (PMSC para 1.6 [REP1-015] "*accountable for their compliance with the Code and their*

	e) Whether the DP is a direct employee of Associated British Ports or an advisor fulfilling this role as a contractor. Documentary evidence of any advice given to the HASB by the DP about the Proposed Development and any subsequent consideration of the Proposed Development undertaken by the HASB since December 2022 should accompany the answer to this question.	one ports, across England, Wales and Scotland – not a single standalone port – thereby ensuring consistency of approach and review. As noted above, the HASB minutes provide a correct record of the comments made at the HASB, without attribution. That said, subject to decisions yet to be made by the Applicant in terms of the proposed changes, it will be necessary for the Applicant's HASB to reconsider the scheme and the changes proposed at the appropriate time.	*performance in ensuring safe marine operations, responsible*". The lack of independence in the assessment process to date by the Applicant and without any independent assurance has led to the very late acceptance of these concerns, at a point in the examination where little time is available to address the issue satisfactorily.
NS.2.04	**Decision making with respect to the installation of the impact protection measures (IPM)** [Note question omitted for brevity]	As the ExA is aware, this question may become of less direct relevance if negotiation between the Applicant and the IOT Operators in relation to IPM reach a conclusion. The Applicant will ensure that the ExA is kept fully informed as to the progress of those negotiations and if those negotiations prove constructive, what scheme of IPM will be included in the Applicant's pending Changes Application. Subject to the outcome of those negotiations, the Applicant intends to set out a further reply to the additional questions posed by the ExA as necessary.	Please see the response to NS.2.01 above.
NS.2.05	**Stakeholder input to assessment of risks** Further to the Maritime and Coast Guard Agency's (MCA) advice in [REP1-021] that the organisation	It should be noted at the outset that the MCA's advice simply reflects their published advice detailing how the Port Marine Safety Code should be implemented [REP1-021].	Please see the response to NS.2.01 and NS 2.03. In addition, IOT operators note the lack of any independence in the NRA

	responsible for Port Marine Safety "should strive to maintain consensus …through … stakeholder engagement and …review of risk assessments with users…" what are the main obstacles to achieving consensus and what are the prospects of achieving consensus by Deadline 5 of this Examination?	It is certainly the case that a statutory harbour authority "strive[s] to maintain consensus" and the MCA guidance does indicate how this can be achieved, namely via stakeholder engagement and the review of risk assessments. As the ExA is aware, the Applicant has explained how stakeholders have been kept fully involved in this process with a view to achieving consensus but the MCA's Guidance does, of course, not require consensus to be achieved and it is inevitable that there may sometimes be disagreement between stakeholders given their different aspirations or commercial objectives. As an experienced SHA and to whom this type of exercise is far from novel, the level of engagement and consultation undertaken to date has far exceeded that which would normally be the case and the SHA has acted fully in accordance with the guidance in seeking to achieve consensus. In the circumstances where commercial considerations are in play for stakeholders, and notwithstanding the efforts made to achieve consensus, it has not been possible so to do. As far as the prospects of achieving consensus by D5 are concerned, the SHA will continue to seek to do so, but the main obstacles are the different commercial aspirations and objectives of certain stakeholders. In producing purported alternative NRAs	process and that there has been no effort to seek consensus with stakeholders. The Applicant's NRA consultation process was flawed in that: 1. Initially no stakeholders were consulted with on the NRA at Hazard Workshop 1 for the PIER 2. At hazard workshop 2 the NRA methodology was changed from that provided in Applicants the PIER NRA, which IOT operators and other non-ABP stakeholder noted was not an agreed method and had serious concerns with its efficacy (see IOT operators correspondence to the Applicant at [REP2-063]). 3. At hazard workshop 3 the attendees were not aware of what the resulting risk rating (i.e. the standard of acceptability) and what risk scores necessitated the introduction of risk controls. This was considered to be "blind" scoring by ABPmer. It was therefore impossible to reach any degree of consensus as the methodologies employed were constantly changing and key details required to meet consensus were never shared. The methodology and detailed results of the cost benefit analysis employed by the Applicant to determine

		which have not been made subject to the requisite engagement with the relevant bodies, the IPs are pursuing their own commercial agenda. Those NRAs have not been the subject of consultation which of itself necessarily reduces any chance of achieving consensus. In many respects they largely follow the same format as the Applicant's own NRA – save for the insertion of individual judgements by these other commercial stakeholders in relation to tolerability which rather predictably support the stakeholders' own commercial objectives but – without any consideration given to the views of the SHA which actually has the statutory duty safely to manage the Port. In light of the above, it is difficult to see how consensus can ultimately be achieved. It should be noted that as SHA, all regulatory oversight of the management of the Port remains the responsibility of the SHA – and no other party. The SHA will continue to take account of the information provided by the other stakeholders including what is now included in these alternative NRAs, but the SHA will also continue to fulfil its own statutory duties objectively by reference to what its responsibilities require and as a result of overall assessment of all the relevant issues taking account of the full range of information including that provided by persons with both particular	ALARP justification of key IOT operator hazards has still not been shared or explained. Further it is not clear in the Applicant's response whether in it is responding in the capacity of the developer of the IERRT or in its capacity as the authority responsible for navigation safety – the SHA.

		experience and expertise in this area including persons like the Harbour Master Humber and the Dock Master.	
NS.2.06	**Inputs informing HASB judgements of risk control cost effectiveness** What assumptions on cost and risk consequences were presented to the HASB in deciding to potentially defer the implementation of IOT trunkway protection measures until after the Proposed Development had become operational and to discount the relocation of the IOT finger pier all together?	The HASB received a detailed presentation which set out the process which had been undertaken to complete the navigational risk assessment (NRA) including a discussion and consideration of the likelihood/consequence tables, the tolerability approach and the cost/benefit exercise which helped determine whether or not a risk was as low as reasonably practicable (ALARP) and tolerable. As the ExA is aware, the Applicant's NRA, a draft of which was provided in advance to members of the HASB for their consideration, concluded that all risks were both tolerable and ALARP without the need to introduce impact protection measures and without the relocation of the finger pier. Following careful discussion and consideration, the HASB confirmed that, on the basis of the information provided: • It was satisfied with the approach taken to the marine navigational risk in relation to the future development of IERRT; and • It agreed with and approved the conclusion that the risks identified were as low as reasonably practicable (ALARP) and tolerable. In addition, the HASB took into account –	The IOT Operators note that at the time of the HASB conducted on the 12 December 2022, no stakeholders were aware of what standards of acceptability were being applied to the IERRT NRA. It is understood that at the HASB meeting these were agreed with ABPmer - the Applicant's NRA consultants and a wholly owned subsidiary of the Applicant. The engagement with stakeholders undertaken by the Applicant was against unknown levels of acceptability. Stakeholders therefore had no indication of whether hazards assessed as part of the hazard workshop were acceptable or not until the Applicant's NRA was published as part of the ES by the Planning Inspectorate. Further the HASB Meeting Minutes and IERRT Presentation (presented at Appendix 4 and 5 of [REP4-009]) provide no detail on any Cost Benefit Analysis undertaken to justify ALARP definition to hazards which are key to understanding safety for the IOT operators. It is however identified at pg 4 of the meeting minutes (page 79 of [REP4-009]) that a "*Cost-Benefit Analysis meeting was held on 06*

		• The consideration of costs and benefits which formed part of the NRA process – as is described in the NRA [APP-089]; • The analysis demonstrated that any residual risks in respect of the finger pier were tolerable such that relocation was simply not required; and • The risk assessment considered the risk to be ALARP.	*October 2022 to evaluate the risk controls from the Hazard Logs (stage 4). Attendees at the Cost-Benefit Analysis meeting included members of the ABP Project Team, ABPmer, the HES Harbour Master, and Clyde & Co (legal team). The summary of this meeting was presented to the ABP SteerCo including the position of tolerability that was reached and the recommended 'Applied Controls' ('Further Applicable Controls' to be taken forward) on 09 October 2022".* No details of these meetings have been provided despite them seemingly to provide detailed justification for the ALARP definitions of the IOT operators' key hazards. This is of particular concern given the clear lack of independence in the process. In order for the ExA, the IOT operators and other interested parties to adequately understand the process of Cost Benefit Analysis undertaken by the Applicant the minutes and input papers must be provided and indeed should have been included in the Applicants NRA, as has been provided in the IOT operators sNRA [REP2-064]. The failure to provide these details results restricts the available time for the ExA and other interested parties to review in a timely manner.

			In relation to the HASB meeting minutes (Appendix 4 of [REP4-009]) and the requirement to implement Impact Protection Measures (IPM) then it is noted that "*BH (Ben Hodgkins – Group Head of Projects) explained that the outcomes of the navigation simulations did not support the premise that IPM were required and it was confirmed that they were not considered necessary or required*." This statement is entirely at odds with the Applicant's statement to date that the ALARP principal through cost benefit was used to confirmed that IPM were not required. The IOT operators can only raise concerns regarding the Cost Benefit Analysis given the lack of any detail shared in terms of such as assessment. Further in relation to HASB meeting of 12 December 2022, it is noted by IOT operators that no Humber Harbour / Dock Master or any authorised deputy was present at the meeting. As such the Humber Estuary Service Harbour Master and Port of Immingham Dock Master could not have had any say in the conclusions reached.
NS.2.08	**Equally challenging manoeuvres undertaken on the Humber** Under item 32 in your post Issue Specific Hearing (ISH) 2 written submissions [REP1-009] reference	The use of the word "challenging" simply describes navigational manoeuvres which require navigational skills from a master or a pilot or PEC master. The safe manoeuvring of a vessel in any tidal	If routine manoeuvres in the River Humber can be described as challenging, then arrivals and departures at the proposed IERRT could be described as 'exceptionally challenging'.

	has been made to "…challenging manoeuvres currently undertaken on the Humber …" by pilots and masters with pilot exemption certificates. Provide examples of situations where challenging manoeuvres are currently being undertaken on the Humber.	estuary, be it the Humber, the Solent, the Mersey or elsewhere in the UK – by the very nature of tidal estuaries which are hydrodynamically variable with varying tidal forces, water levels, shifting morphology and, of course, changeable weather conditions all fall within the category "challenging." It simply denotes that it requires skill and control and is reliant on a number of factors including training, the use of tugs (in appropriate circumstances), the observance of SHA directions etc. As far as typical examples on the Humber are concerned, the operating conditions at the Immingham Outer Harbour are obvious examples which fall within the same definition of the word "challenging" as is the case for vessels using Immingham Lock. The ExA will be aware that at ISH3 the Applicant has asked the operators of the Outer Harbour RoRo berths to produce any recent navigational simulations undertaken in relation to vessel access and departure from the Inner Dock. It should be noted that the Outer Harbour has been operating safely for just under 20 years. In addition, both Stena and DFDS vessels currently use the Port of Immingham's Inner Dock with an approach beam to tide and crossing a flow gradient with a departure from lock at Immingham on an ebb tide. All without incident.	Immingham Outer Harbour (IOH) has a relatively clear approach from seaward and once a RoRo is swung to enter the terminal area, the terminal and berths are protected from flood and ebb tidal flow due to the presence of Immingham Bulk Terminal. Similarly, Immingham Lock has a clear approach from the east and once a vessel is stopped over the ground off the entrance, has the benefit of an area of still water in the area of the lock bellmouth in which to perfect its final approach. RoRo vessels approaching IERRT would be presented with the challenge of manoeuvring close to the IOT berth 1 and associated dolphins, having to deconflict with any vessels finishing their approach to or departing Immingham Lock, then manoeuvring across either a flood or ebb tide where the precise alignment of the vessel's heading in relation to the tidal flow would be absolutely critical to achieving a safe outcome. Longitudinal space constraints between the upstream knuckles of IERRT 2 and 3 and the Eastern Jetty allow minimal margin, especially if tugs are used ahead or astern on design length vessels. Unlike IOH and the Lock, the final stages of the manoeuvre

			would be in the full force of both the ebb and flood tide, in close proximity to an oil terminal trunkway of national significance.
NS.2.10	**Responsibility for safe navigation** If a marine incident occurs within a port, who is ultimately responsible: ship's master; pilot; or port/harbour authority and are any spatial constraints on vessel manoeuvring a defence against culpability?	If a marine incident occurs within a port, and the vessel concerned was without a pilot/PEC, consequent investigation and review would be the responsibility of the Port of Immingham SHA. If a vessel is involved in a marine incident and it was carrying a pilot or had a controlling PEC, then that would lead to a joint investigation between, in the context of incidents on the Humber, the Port of Immingham SHA and the Humber SHA, through Humber Estuary Services. The investigation would involve a joint MARNIS incident report and would be led by the Humber harbour Master/HES. Responsibility for safe navigation, therefore, rests with a number of different bodies and individuals, all with specific legal duties and obligations and whose remits will inevitably on occasion, quite properly, overlap. The safe management of a Port cannot be run in management silos. Whilst it is incumbent upon the relevant SHA to exercise powers of direction over vessels within its harbour authority area, the complex nature of vessel movements within the marine environment will often mean that marine incidents can have multiple, and sometimes compounding, causes.	The Applicant has failed to answer the ExA question. In a general context, in relation to navigation, the ship's master, being in overall command of the vessel, is ultimately responsible. They will take advice from a pilot or PEC holder (assuming that they are not the PEC holder themselves) who may have the navigational conduct of the vessel for practical purposes. They will also be advised by their bridge team, crew and external sources such as VTS. Having in mind their berth-to-berth voyage plan, international regulation and industry best practice, plus the additional requirements of the ship operating company's Safety Management System, they will reach conclusions as to what is safe and what is not. Every act of ship manoeuvring is a continuous dynamic risk assessment on the part of the master – determining whether it is safe to continue or not. In reaching this conclusion, the master's experience of their vessel, the size of the vessel, its equipment and limitations, the tidal, wind and visibility conditions, will all

		Ultimately, the ship's master is in command of the vessel at all times. The pilot is only present in an advisory capacity. That said, however, ignoring the pilot's advice could in many circumstances result in further safety breaches. Whilst the SHA exercises powers of direction, ultimately it does not directly control the vessel. In the context of the question generally, it should be noted that the provisions of the Dangerous Vessels Act 1985 empowers harbour masters to give directions prohibiting vessels from entering the areas of jurisdiction of their respective harbour authorities or to require the removal of vessels from those areas if it is considered that those vessels present a grave and imminent danger to the safety of any person or property, or risk of obstruction to navigation. In all cases the relevant SHA in accordance with the provisions Harbour, Docks, Piers Clauses Act 1847 has overall control and jurisdiction for incident management and will take the lead in any such incident or event. Assistance can be provided (depending on the nature of the incident) by the MCA (HM Coastguard), local authorities, emergency services or the Secretary of State's Representative for Counter Pollution and Salvage. Primacy, however, remains with the SHA through the relevant appointed person be it the Humber harbour Master or in	be taken into account and professional judgement exercised. If manoeuvring space is constrained, the manoeuvre should only be attempted if suitable risk mitigation is in place and the master is content that the manoeuvre is both practical and safe. Therefore, it can be concluded that spatial constraint is not a defence against culpability.

		this context, the Port of Immingham Dock Master.	
NS.2.11 (**Question to Harbour Master Humber**)	**Closure of river due to a marine incident** Under what circumstances it might it become necessary to wholly or partially close the river Humber to commercial shipping after an incident involving a tanker or pipeline infrastructure and what might be the duration and consequences of such closure?		This is a very difficult question to answer, however HOPPRC (Humber Oil Pollution Preparedness & Response) does have some example scenarios, that have been worked during workshops and exercise drills. A major obstruction to the main shipping channel and a moderate/severe pollution incident would be examples where closure would be appropriate. The duration would depend on the severity of the incident and could range from a few hours to many weeks.
NS.2.15	**Potential consequences of collision with a tanker berthed at the IOT** IOT's Written Representation in commenting on ExQ NS1.17 [REP2-062] describes a catastrophic potential chain of events consequent were a Ro-Ro to come into contact with a vessel on Berth 8 whilst it is loading motor spirit. Provide clarification as to whether and how such a consequence was assessed in the Applicant's NRA and confirm if and when a "chain of events" similar to that described was raised in stakeholder consultation for the Proposed Development.	The Applicant's NRA [APP-089] at Appendix C, Table C1 contains the Hazard Log detail for the risk that corresponds to this scenario, namely an allision/contact between a Ro-Ro vessel and a vessel moored on the Finger Pier. In the 'worst credible scenario' section of the Hazard Log (Table C1) there is a chain of disastrous events which was considered by the participants at the HAZID workshops by reference to questions of credibility in the worst of all instances. During the HAZID workshop each risk was first identified in the within the 'operation' category and was then discussed in detail with the Interested Parties – all of whom contributed with their respective robust views. These views which informed the risk	The IOT Operators maintain the concerns raised in the letters to ABP dated 26 August 2022 and 16 September 2022 (items 5 and 6 in [REP2-063]).

		assessment, were then recorded in Hazard Log Table C1.	
NS.2.16	**Grading residual IOT allision risk As Low As Reasonably Practicable (ALARP)** The Applicant's Deadline 3 interim response to the IOT Operator's NRA at paragraph 1.16 [REP3-012] states "the applicant has not ruled out impact protection. These two controls along with a substantial list of other controls identified by the Applicant are sufficient to reduce the risk associated with allision to the point where the risk is considered ALARP and tolerable by the SHAs." Confirm if this means that impact protection is considered necessary for the risk to be considered as ALARP, and if so, why is the protection subject to Requirement 18 and why is the above statement at odds with the statement made in the Applicant's response to the DFDS alternative NRA [paragraph 1.7 in REP3-009] and its answer to ExQ NS.1.12 [REP2-009]?	Negotiations between the Applicant and the IOT continue to take place, but without prejudice to the Applicant's basic position that impact protection measures are not necessary in light of the Applicant's NRA and the assessment of safety that has been undertaken. As has been explained during ISH3 and underlined in the Applicant's responses submitted for D3 [REP3-009, REP3-011], the Applicant's position remains that the conclusions of its submitted NRA are correct and have not in any way been undermined by the alternative NRAs submitted by DFDS and IOT Operators - both of whom it is suggested are pursuing their own aspirations in terms of commercial objection or improvement of their own facilities. On that basis, the Applicant maintains, that for the reasons that have been rehearsed in the NRA and reviewed by the Applicant's HASB, impact protection measures are not required and are not necessary for the risk to be ALARP and the interim response did not alter that. It was simply summarising the position that with the measures identified in the NRA itself all risks have been reduced to ALARP and tolerable without such impact protection measures, but they remain available to be introduced if the Harbour Master were to recommend	The suggestion that the IOT Operators are pursuing "*their own aspirations in terms of commercial objection or improvement of their own facilities*" is a baseless assertion. The IOT Operators have carefully explained their safety concerns to the Applicant from the first statutory consultation on the proposals. Those concerns have not changed. It is for the Applicant to design and implement a scheme which takes account of existing constraints. Had the Applicant designed a scheme which avoided unacceptable impacts, the IOT Operators would not be expending significant sums on its professional team to repeatedly make the case for an acceptable level of impact protection to be provided for the benefit of the IOT. As noted in the IOT operators response to NS.2.06 above, these is a lack of justification provided by the Applicant to support a residual assessment of risk as ALARP, for Allision of an IERRT vessel with the IOT. This is because no standards of acceptability are provided by the Applicant and no details on the cost benefit analysis have been provided by the Applicant. Further meeting minutes of the HASB are clear that it

		their introduction. As the ExA is aware, however (and without prejudice to that basic position informed by the NRA), in light of the IOT Operators' position and the wish of the Applicant to maintain good relations with it as one its tenants, the Applicant has indicated during ISH3 that it is prepared to continue negotiations with the IOT Operators with a view to providing impact protection measures. If these can be agreed by the ExA and otherwise incorporated, the Applicant will propose amendments to the provisions of the draft DCO – although the ExA will understand that it has not been possible to provide the necessary revisions by Deadline 4 in that the revisions themselves will be subject to the acceptance by the ExA of the Applicant's pending Changes Application.	was the results of simulation that was used to support the premise that the Impact Protection Measures were not required.
NS.2.17	**Standard for acceptability of societal risk** Comment on the summary conclusion reached by the IOT Operators in its NRA [paragraph 194 in REP2-064] that "an appropriate standard of acceptability for societal risk, in relation to harm to people is a figure of one fatality in 100 years could be adopted, which is the limit between Tolerable subject to ALARP and Intolerable. An appropriate and robust Navigation Risk Assessment	In the context of any proposed marine infrastructure development and/or marine licensing, the exercise of Navigation Risk Assessment (NRA) when forming part of required Environmental Impact Assessment (EIA) is to seek to identify, assess and if necessary, propose mitigation to ensure that the proposed development does not have a significant impact on shipping and navigation receptors – and in the context of development within the Port of Immingham, the already implemented MSMS and underpinning Formal Risk	The IOT Operators are concerned that the Applicant has not adequately captured the purpose of a NRA and the context of the question posed by the ExA. The Applicant proposes that an NRA assesses impacts to shipping and navigation receptors only; this is completely incorrect, an NRA should seek to assess risk brought about by shipping and navigation activities irrespective of whether the realisation of a hazard (or risk) relates specifically to a

	should therefore adopt these parameters."	Assessment (FRA) as outlined in the Port Marine Safety Code (PMSC). Assessment as part of an NRA is not required to include the assessment of societal risk nor is it required to identify and address COMAH Hazards which are subject to their own regulations and different considerations apply. That said, there is nothing to prevent an NRA informing the Societal Risk Assessment (which is produced as a distinct exercise) or COMAH risk and how the COMAH site operator should control and mitigate any identified risk. The point to be noted, however, is that the NRA is not the principal vehicle for such assessment exercises – at best, it can merely be used to inform. The HSE does not regulate the maritime, marine, or navigational functions of the port or the terminals therein. COMAH and the use of COMAH and HSE Societal risk applies to landside. The use of an NRA to make decisions on COMAH and Public Safety hazard ID and control is completely inappropriate and wrong in principle and no precedent has been identified for this approach and it is not an approach required by the HSE – which is responsible for COMAH. Moreover, the Maritime and Coastguard	shipping and navigation receptor. In assessing four different consequences (people, property, planet and business) in its NRA the Applicant accepts that the realisation of shipping and navigation hazards result in widespread adverse consequences that relate directly to societal concerns. The Applicant's response also fails to address the question posed by the ExA on standards of acceptability (as mandated by the PMSC Section 2.6). The IOT Operators' sNRA [REP2-064] utilised a defined standard of acceptability based on published guidance.[1]It should be noted that the same HSE standards are also specifically adopted by the International Maritime Organization Formal Safety Assessment methodology[2] (see Appendix 5 para. 5.3.1), which provides guidance on conducting assessments for both individual and societal risk. Further that the IMO FSA guidance is adopted by both the PMSC [REP1-015] and the MCA MGN 654 [REP1-017] as the appropriate international standard to follow. As the Applicant has stated that they have followed these guidance

[1] Health and Safety Executive, *Reducing Risks: Protecting People – HSE's decision making process*, ISBN 0 7176 2151 0, (Report, 2001).
[2] International Maritime Organization, '*MSC-MEPC.2-Circ.12-Rev.2 - Revised Guidelines for Formal Safety Assessment (FSA) for Use in the IMO Rule-Making Process*' (Circular, 9 April 2018).

		Agency (MCA) guidance states (only guidance existing that references marine based assessment against HSE guidance) – The HSE is careful to note that any quantitative 'unacceptable' limits must be used with great caution. The concepts used in establishing them are complex, and the quantitative predictions that might be compared against them are fraught with uncertainty. It may not be helpful to attempt to define quantitative limits, and developers should consider whether there are other ways to define what is unacceptable. The HSE guidance document Reducing Risks Protecting People (R2P2) notes that what is unacceptable "…is often spelled out or implied in legislation, ACOPs, guidance, etc or reflected in what constitutes good practice" such that there is no need to set an explicit quantitative boundary. Developers should therefore carefully justify any unacceptable limits they propose.	documents, then its response to the ExA question that the HSE standards are not appropriate is entirely at odds with the guidance it has claimed to have followed. The definition for societal risk provided by the IMO FSA is as follows; *"Societal Risk: Average risk, in terms of fatalities, experienced by a whole group of people (e.g. crew, port employees or society at large) exposed to an accident scenario…."* The IOT operators assume that the Applicant's NRA is to undertake an assessment of societal risk, as they do not appear to have conducted an assessment of individual risk. The reason the IOT Operators take this view (noting that no details are provided in the Applicant's NRA) is that in the context of the IERRT development to assess individual risk would include an assessment for each type of individual exposed to the risk, and therefore specific assessments should have been undertaken for IERRT terminal staff, IERRT ferry crew, the tug crews, third party vessel crews, linesmen, IOT staff and members of the public and passengers. To undertake individual assessment of risk for all these specific different individuals, noting that the IMO FSA applies different standards of

			acceptability between workers and the public, would be extremely onerous and has obviously not been undertaken. More specifically the question posed by the ExA is what standards of acceptability the Applicant has used – the Applicant has responded with reference to standards it has not used (e.g. the HSE standards as used by the IMO, PMSC and MGN 654), but has failed to identify those standards it has used. In the context of acceptability it remains unclear to IOT Operators why ABP (as both the Applicant and also as the Statutory Harbour Authority) considers that a "fatality that could" occur is not acceptable whilst a "fatality that might" occur is acceptable (see Applicants NRA [APP-089] at Figure 26 in which the "People" tolerability matrix is provided which is cross referenced to Table 15 Consequence descriptors for People – Single Fatality and likelihood descriptors presented at Table 16).
NS.2.18	**Maximum number of passengers and drivers on board Ro-Ro vessels** Clarify the maximum number of passengers (non-ship's crew) expected to be on board a Ro-Ro vessel arriving at or departing from the Proposed Development and	The intention at present is that once operational, only vessels on the Immingham – Hook of Holland route will carry passengers and then only at weekends and as noted in the draft DCO, with numbers limited to a maximum of 100 passengers. No passengers will be carried on the	Passengers in this context refer to any persons onboard who do not form part of the complement crew. IOT Operators have clearly stated at paragraph 151 of the sNRA [REP2-064] that the reference to 300 passengers relates to the capacity of the current T-

	comment on the figure of up to “300 passengers” made by IOT in its NRA [REP2- 064] and the implications for the related conclusions. In answering this question, the Applicant should make clear the number of lorry drivers it is envisaged would be on board Ro-Ro vessels and how this category of person has been accounted for in arriving at the conclusions included in the Applicant’s NRA [APP-089].	Immingham to Rotterdam route. When there is sufficient capacity for passengers to travel, it is anticipated that the vessel will also carry between 30 and 69 freight drivers. The Hook of Holland vessels have ample accommodation for both passengers and freight drivers. The Applicant has no idea how and why the IOT Operators’ NRA references 300 passengers – which in the context of the exercise would seem to be a surprising error – particularly bearing in mind the clear wording of the limitation in the draft DCO.	Class Stena Ferries which have a passenger capacity of 300 people in 150 twin cabins, which are generally booked for lorry drivers. Ships classed as Cargo Ships are allowed to carry up to 12 passengers only. Hence these T-class Stena vessels are Class 1 passenger ships for the purpose of the Merchant Shipping Act Rules. It may be that passengers e.g. car and caravan or camper van, may be allowed during the summer season when freight space permits but the vast majority of passengers are lorry drivers with accompanied freight (driver, cab, trailer) - the Stena model primarily being accompanied ‘just in time’ freight rather than the unaccompanied (trailer only) model preferred by many other RoRo operators who prefer to offer only 12 passenger berths in line with the cargo ship rules. Further note that no details on the design and passenger capacity for the proposed IERRT vessels have been provided by the Applicant. The Applicant in its response to the ExA has identified up to 100 members of the public on a particular route – but nowhere in the Applicant’s NRA are passenger number or indeed driver numbers or vehicle types broken down by specific routes.

			The IOT Operators are concerned that the Applicant is not aware of the significant passenger status of the vessels currently using its port. The IOT Operators' sNRA for the Quantitative Riks Assessment uses an IMO rule to calculate people on board, which determined that persons on board to be 244 (based on the assumptions at para. 315). Had the requested details of the design vessel been provided then this could have been more accurately calculated, however the Applicant has continuously failed to respond to the IOT operators' requests for information. Based on the information now provided by the Applicant then the number of people on board could be in the order of 200 people made up of crew, members of the public and freight drivers.
NS.2.20	**Further Controls to be applied to control risks of collision or allision in relation to IOT** Confirm or correct the assumptions made in paragraphs 333 to 339 of the IOT Operator's NRA [REP2-064] on further Risk Controls that would be committed to and applied by the Applicant if the DCO is made.	As the authors of the IOT Operator's NRA accept, the risk controls identified in their alternative NRA simply constitute good practice which is already in place as part of the Applicant's day to day safe management of the Port. The references to the MSMS are misleading – the Applicant has published the MSMS Manual but is not able to publish the MSMS itself for the reasons already explained. As far as the point raised about the Marine Liaison Plan is	The Applicant's response has not answered the issue raised in the ExA's question. Paragraphs 333 to 339 of the IOT Operators' sNRA provides a review and summary of the Applicant's risk control measures and clearly demonstrates that for the operational phase the only risk controls committed to are procedural controls which IOT operators understand from ISH 3 will neither be defined, agreed or included in

		concerned, this is dealt with in the Applicant's response to NS.2.21 below. In brief, therefore, all of the controls identified by the Applicant's NRA and reflected in the IOT Operators' NRA either already constitute operational good practice within the port or will be put in place for the Proposed Development as the SHA considers to be appropriate.	the DCO by the Applicant. No risk controls are being offered in the DCO. The Applicant's statement that "*all of the controls identified by the Applicant's NRA and reflected in the IOT Operators' NRA either already constitute operational good practice within the port or will be put in place for the Proposed Development as the SHA considers to be appropriate*", is exactly the point the IOT Operators have been making exhaustively during the NRA and now in the ExA phase of the IERRT project – that there are no additional controls over and above those that are already in place (embedded) being secured for the IERRT development as part of the DCO Application and that the Applicant is therefore entirely reliant on these embedded controls to justify its ALARP judgement.
NS.2.21	**Port Liaison Role and Marine Liaison Plan details** A 'Port Liaison Officer' role is referenced in [paragraph 1.12 in REP1-013] "to ensure that there is a suitable marine liaison plan and that it is followed". Signpost or provide further detail on the scope and responsibilities of such a role, its initiation and duration and reporting line(s) and clarify when a Marine Liaison Plan would be produced,	Section 9.9.14 of the NRA [APP-089] explains that a 'port liaison officer' was included as an added control for the risk associated with a collision between a craft associated with the marine works and a Ro-Ro vessel, in the event that construction and operation occur simultaneously. This captures an important requirement for liaison to occur between the works contractor, Dock Master, VTS and Pilotage (CHA), to ensure that the works are coordinated	IOT operators note that the Port Liaison Officer is solely identified as a construction and construction/operation risk control measure in the Applicant's NRA and does not apply to the operational phase of the IERRT. IOT operators have clearly stated the requirements for and detailed required for the Marine and Liaison Plan in the sNRA at Section 11.23 [REP2-064]. The Applicant in its response to the ExA has

	what it would comprise and how this role is secured in the dDCO.	and carried out safely, with clear lines of communication established. In practice, this role will be fulfilled by the Assistant Dock Master (ADM) function which provides 24/7 coverage of the marine operations at the Port of Immingham. The contractor will also be required to allocate a key point of contact who is responsible for keeping the ADM informed of marine construction works. This will be initiated prior to the commencement of the relevant construction activities and the lines of communication captured within a marine liaison plan specific to the works. The roles and responsibilities and reporting lines are described below: The Immingham Dock Master is responsible for all marine activities at Immingham and is supported by the Deputy Dock Master. There is a shift on permanent duty at Immingham to oversee the marine activities at the Port and each shift is under the control of an Assistant Dock Master (ADM). In addition to the ADM, each shift consists of two Marine Supervisors, a Radio Operator (RO) and six persons under a composite staffing arrangement. The number of staff in a shift may vary depending on workloads and staff changes. Marine Supervisors supervise the berthing of vessels on the East and West Jetties, the mooring of vessels entering the lock, the berthing and mooring of vessels in the enclosed	detailed the mechanics of the individuals that would fulfil the role as a Port Liaison Officer not the detail of any Marine Liaison Plan and the need for IOT operators to be consulted and involved in approving procedural risk control measures, which the Applicant has noted at ISH 3 will be not be included in the DCO. It is proposed that the Applicant and SHA (both of which are part of ABP) will solely decide on whether or not to implement procedural controls and what level/magnitude of control is required. The process for establishing procedural controls such as operating limits should be as IOT operators have documented in response to ExA ISH 3 Agenda Question d [REP4-037].

		dock and Humber International Terminal, in addition to preparing the berths for vessel arrivals. The Marine Supervisors attend the berthing of vessels in the Outer Harbour and ensure that Safe Systems of Work are complied with and that Port Authority By Laws and Merchant Shipping regulations are adhered to. Both report to the ADM who is responsible to the Dock Master. The Radio Operator is responsible to the ADM for all communications with vessels on passage to Immingham and for liaison with VTS Humber for logging arrival and departure data and general telephone enquiries. The six additional staff work to the instructions of the Marine Supervisors. The scope of the Marine Liaison Officer will be to liaise with the contractor undertaking the IERRT construction works and ensure there are clear lines of communication between all parties to allow the safe planning and berthing of vessel movements alongside construction activities.	
NS.2.22	**Consequences of reduced space for operations at IOT Berth 8** Signpost where and how the NRA has taken into account the risk consequences of reduced manoeuvring space adjacent to IOT berth 8, specifically with regard to the use of tugs to help vessels arrive at or depart from IOT berth 8; and with	Appendix C, Tables C2 and C3 within the Applicant's NRA [APP-089] describe the risks considered and assessed in relation to the operation of barges and tankers at the IOT Finger Pier. Further discussion on these risk assessment hazard logs can be found within Section 9 of the NRA. The necessary manoeuvres were considered in the	IOT agrees that de-slopping to barges was not specifically covered during the workshops. However, this is an example of how the IOT and its stakeholder refineries need to react at short notice, to adapt how it operates to utilise new sustainable feedstocks.

	regard to the IOT answers to ExQ NS.1.9 and 1.10 [REP2-062] that "de-slopping" to barges would further reduce the clearance between a vessel berthed at Berth 8 and the Proposed Development.	navigational simulations and the simulations using the design vessels - which were agreed by APT prior to the navigational simulations - demonstrated that the reduced space made no significant difference to the navigational limits at which the vessels arriving or departing Berth 8 would be able to operate. It was, however, advised that additional training would be required to familiarise pilots and PECs and tug masters with the techniques applied in the simulations. As far as de-slopping is concerned, it is understood that this is not currently part of the IOT Operators' operations and is not, therefore, considered in the NRA. Should a de-slopping operation be required in the future, both parties would work together to agree safe operating procedures.	No simulation exercises studied a situation where vessels were double-berthed alongside berth 8. The ExA will be aware of IOT Operators' views regarding the adequacy of simulations from previous submissions. These remain unchanged. The IOT Operators await the Applicant's D5 submissions and refers to its preliminary comments on the Applicant's change notification above. The response to DCO.2.05 above is relevant to the position in respect of this query.
NS.2.23 (Question to Applicant and IOT Operators	**Relocation of the Immingham Oil Terminal (IOT) finger pier berths 8 and 9** [detail of question omitted for brevity]	As already noted, without prejudice discussions as to the provision of IPM are currently ongoing with the IOT Operators and an update as to the current position of these discussions will be provided by the Applicant for Deadline 5.	The IOT Operators await the Applicant's D5 submissions and refers to its preliminary comments on the Applicant's change notification above. The response to DCO.2.05 above is relevant to the position in respect of this query.
NS.2.27	**Betterment** Explain in what ways is it considered that the implementation of the IPM and the full or partial relocation of the IOT Finger Pier would constitute betterment for the IOT Operators	Existing operations at the IOT, including the finger pier, already take place in the existing operating environment at the Port of Immingham and have done safely with all appropriate controls and measures already identified without IPM. The introduction of IPM in circumstances	The concept of betterment is misplaced; it is a concept associated primarily with financial compensation where powers of compulsory acquisition are being exercised. In any case, there is no

	[Table 7.17 in REP1-013 and section 5 of REP3-011]?	where they are not considered necessary for the Proposed Development (as set out in the NRA conclusions) will result in betterment of the existing facilities, as would the partial or full relocation of the IOT finger pier, as inevitably any such changes will introduce further enhanced facilities for the IOT (for example by of enhanced protections for their own operations) in circumstances where those measures are not considered to be required as a result of the Proposed Development. As with the response provided to NS.2.23, negotiations as to the provision of IPM are currently ongoing – and the Applicant will address the issue of betterment further in light of the outcome of such negotiations. It is intended that a comprehensive update will be provided at Deadline 5.	betterment being offered by the proposed IERRT development. The Applicant appears to have accepted that there are unacceptable risks associated with the IOT Operators' existing operations posed by its development. That is clear from its letter AS-020. It is necessary to address those unacceptable risks through additional mitigation measures, as identified by the IOT Operators in their s.42 consultation response (Appendix L of APP-034 and noted in the IOT Operators' Relevant Representation [RR-003]). The measures sought by the IOT Operators are proportionate to the risk created by the Applicant's proposals. The IOT Operators have been (and remain) willing to discuss those measures with the Applicant. The most recent example of the assistance it is offering to the Applicant is captured in its letter of 16 October 2023, which is enclosed with these D5 submissions. The mitigation measures are the minimum measures identified to address the otherwise unacceptable risks associated with the Applicant's proposals, as evidenced in the IOT Operators' sNRA [REP2-064].

			In accepting the mitigation measures the IOT Operators would be limiting the adaptability of the existing IOT finger pier. For example, the current finger pier design allows APT to potentially relocate loading arm platforms to accept larger vessels than 105m in future. Moving all berths to a Finger Pier extension removes this option of adaptability, as there will be insufficient mooring space.
NS.2.28	**Impact speeds and forces for the proposed IOT trunkway IPM** Identify what vessel speeds and impact forces the proposed IPM for the IOT trunkway, subject to proposed Work No. 3, have been designed to accommodate.	As noted above, negotiations as to the provision of IPM are currently ongoing with the IOT Operators – those discussions including issues such as vessel speeds and impact forces. It is intended that a comprehensive update will be provided at Deadline 5.	The IOT Operators' letter to the Applicant of 16 October 2023 (appended to these submissions) sets out the IOT Operators' expectations in this regard. The Applicant's update is awaited. It is noted that the change notification appears to indicate a slower impact speed is being proposed, but not detailed explanation or justification has been provided to date by the Applicant.
NS.2.29	**Towage as embedded risk control for berthing and unberthing** On the basis of that the Applicant's explanation [REP2-009] that although towage would be one of the embedded risk controls, the provision of towage services should not and cannot be secured by a made DCO explain how the Immingham and Humber SHAs would each respond to ensure that the identified risks	The SHA is responsible for ensuring the safe operation of the Port in any conditions. The simple and straightforward position is that a berthing or unberthing manoeuvre would not be completed if there is no tug availability where a tug is required. The vessel would stay on berth until safe to sail (if leaving) or turn around and go back to anchorage until it was safe to berth (whether because a tug became	Weather conditions can dictate that is safer for a vessel to leave the berth for sea than remain alongside. The option of remaining alongside in peak, off-berth, beam winds could only be achieved with the assistance of a tug pushing up. This is not unusual practice with high sided vessels.

	associated with berthing or unberthing at the Proposed Development would be controlled to ALARP in the event that suitable towage were to be unavailable to meet the demand.	available or the conditions no longer required). This is simply reflective of current practice which already applies for the Port of Immingham now. In the very unlikely event that demand for towage outstrips supply then, where the required manoeuvre cannot take place, the manoeuvre would simply not be allowed to take place.	
NS.2.30	**Vessel propulsion redundancy for dredging and construction vessels** Further to the answer given to ExQ NS.1.8 regarding embedded risk controls, would dredging and construction vessels used in connection with the Proposed Development have "vessel propulsion redundancies" available to them and if that is not known how has that informed the assessment of risk?	In the Applicant's experience undertaking marine construction projects, it is common for construction vessels such as dredgers to have propulsion redundancies in place such as double-engine propulsion systems and back up engines. In addition, the works craft will deploy spud-legs to provide a stable working platform for piling activities and will be equipped with anchors in the unlikely event these also need to be deployed. When a contractor is appointed for the works, there will be a requirement to liaise with the SHA for the Port of Immingham and HMH to ensure that safe operating processes and systems are implemented that are satisfactory to both SHAs and incorporated to the MSMS. The Humber Harbour Works Consent process is an established control. The Applicant has explained this process, and its ongoing discussions with the Harbour Master Humber in relation to this process, in its response to ISH3 Action Point 25.	Double engine propulsion systems are generally provided in recognition of the high degree of manoeuvrability required by vessels of this nature and are unrelated to machinery system redundancy. Furthermore, such vessels are often under powered, intended for work in a benign port environment or not self-propelled.

NS.2.32	**Use of tugs with Ro-Ro vessels** Comment on the concerns made by the IOT Operators in REP3-026 further to the Applicant's answer to ExQ NS.1.8 regarding the disadvantages or hazards inherent in using towage tugs with Ro-Ro vessels.	The comments made by the IOT Operators have been made without any justification. They are considered to be completely unfounded and represent a lack of understanding and expertise informing the IOT Operators' alternative NRA. The practical fact is that tugs are employed in an 'assistance' capacity for Ro-Ro and Ro-Pax operations in ports around the UK. It is important to note that a tug will only be required to fulfil its "assistance" role if the conditions or situation so demands. It is not intended that tugs will operate as a full time berthing requirement for the Proposed Development. For assistance, by way of example, "Towage Guidance" for Portsmouth International Port, which operates Ro-Ro, Ro-Pax, cruise ships and general cargo vessels explains and underlines the routine nature of tug assistance with Ro-Ro vessels.	IOT Operators refute the Applicant's comments, particularly those in the first and second sentences. Comments in REP3-026 NS1.8 were submitted in response to ExQ1, post-dating and therefore supplementing the content of the sNRA, to better appraise ExA in respect of the advantages and limitations of towage. **If** the Applicant does not accept comments made by IOT Operators in REP3-026 NS1.8 in which the limitations of tug use with high powered RoRo ferries were described, particularly when operating in a strong tidal flow, then ExA should be even more concerned as to the potential of the Applicant to be aware of and able to understand the dangers, to take them into account in their operating guidelines and to operate the proposed terminal safely. The Applicant's own Pilot Handbook for the River Humber gives an example of an incident in which a tug was badly damaged, in only moderate wind and no tidal flow, when assisting a modern RoRo ferry which, according to the MAIB report,[3] resulted from the lack of a centre fairlead aft (due to the presence of the

[3] Marine Accident Investigation Branch, *'Contact made by tractor tug Svitzer Constance with lock gate at King George Dock, Hull, England*' (Report No 22/2020, November 2020).

			centre stern ramp) and the resulting problems which ensued. The Applicant refers to the Towage Guidelines for Portsmouth International Port (PIP). IOT operators highlight the following points: • Tug assistance for RoRo vessels in PIP is not at all routine. • Tug assistance was made compulsory (by the then Queens Harbour Master as the SHA for Portsmouth Harbour) **only** in winds over 30 knots, for the primary purpose of protecting his own infrastructure and military vessels. This was in response to an accident in 2002 when the ferry Pride of Portsmouth attempted to berth in winds gusting 65 knots, leading to an allision with and extensive damage to HMS St Albans. • It should be noted that all of the RoRo vessels routinely using PIP Ferry Port are RoPax ships with significantly higher freeboard and therefore windage than freight ferry RoRo. Importantly, PIP ferry basin has no tidal flow and therefore manoeuvring in the turning and berth area is wholly dissimilar and far less challenging than in the strong tidal flows

			experienced in the area of the proposed IERRT. • PIP Towage Guidelines do not require tugs to be secured. Generally tugs at PIP are used only in pushing mode on the ship's flat side, in recognition of the inherent dangers introduced by the limited securing locations, the limited experience of PEC holders in tug use and the potential for high powered thruster and propeller wash as outlined by IOT Operators comments in REP3-026 NS1.8. To further highlight the infrequence of tug use by RoRo/RoPax ferries at PIP and the inherent dangers, an Annex has been included in the Portsmouth Towage Guidelines entitled 'Portsmouth Towage - A Guide for Ferry Captains'.[4] This document further explains that PEC holders are recommended to take a pilot when using tugs and emboldens many of the vulnerabilities drawn to ExA's attention by IOT Operators in [REP3-026] at NS1.8.
NS.2.33	**Effects arising from contingency of lack of tug availability** What would be the typical consequences if an additional tug	The basic point is simple. If a tug is required for a safe manoeuvres (for whatever reason, whether determined dynamically or not) and there is no tug	The tug still needs to be available. If the Ro-Ro has suddenly encountered a mechanical failure, experiences wind gusting above that expected or has

[4] Portsmouth International port: *Towage Guidelines*, Version 4.3, July 2023, at Annex 1.

	was unavailable for a planned passage if a master during an "act of pilotage" for an arriving vessel (whether with a Humber pilot engaged or acting with the benefit of a Pilotage Exemption Certificate) determined dynamically that an additional tug would be required to make a safe manoeuvre at its commencement, having regard to the DFDS Written Representation [REP2-040] and the Harbour Master's answers to ExQ NS.1.14 [REP2-058] and NS.1.15 [REP2-059]? The Applicant refers to the answer above to NS2.29.	available, then the manoeuvres will not take place until such time as a tug is available or the conditions have changed to make a tug unnecessary. It is also understood that the Humber Harbour Master will respond to this question.	already swung into the approach to the IERRT, then decides that the conditions are difficult and that a tug is needed - it has already passed a safe abort point. At short notice the Fire Tug may be available but could be 20mins away from the IERRT/IOT.
NS.2.42	**Automatic Identification Systems (AIS) tracks for tanker vessels to and from the IOT Finger Pier** Comment specifically on Figures 24 and 25 in the IOT Operators' NRA [REP2-064] showing AIS tracks for tanker vessels and the descriptive paragraphs 242 to 247 and how that evidence correlates to data used in the Applicant's NRA [APP-089] and its consequences for conclusions on risk controls to reduce risk of collision or allision to ALARP.	Due to the nature and limitations of AIS grouping, Bunker Vessels/Barges fall into the category of 'Tanker'. As a consequence, the AIS data tracks for 'Tankers' includes, albeit misleadingly, the AIS signatures of bunker barges. There is no method or process to further disseminate the class of tanker using AIS sourced information. For its assistance, the ExA should note that AIS is intended, primarily, to allow ships to view marine traffic in their area and to be seen by that traffic. AIS was not designed nor was it intended as a data collection tool for assessing navigational risk. The fact that this information can be corrected and used to provide track analysis is useful but the limitations and	The Applicant is not correct in its answer to the ExA question – there are processes for further identifying the class of tanker. IOT Operators have done this and presented analysis at Section 7.5.5 of the sNRA [REP 2-065]. This is possible by cross referencing AIS data to known estuarial barges plying trade on the Humber and identifying vessels that visit berth 7 and berth 9 of the finger pier which are dedicated for estuarial barges. The response to the ExA question by the Applicant evidences its limitations in the analysis and modelling of vessel traffic data. The Applicant notes that AIS is primarily to "*allow ships to view marine traffic in their area*", which IOT operators agree

		inaccuracies of the information as presented must be taken into account.	with (indeed it is an international requirement as part of the IMO SOLAS convention), and as such its purpose makes historical data very useful for the plotting and analysis of vessel tracks. It is not clear why the Applicant is now disputing a core component of its own NRA, and provides no details of the supposed "*limitations and inaccuracies"* it identifies. In addition, the Applicant's has provided no details on the quality of AIS data provided in its NRA. The IOT Operators' NRA however was clear that AIS data used in its sNRA was collected from a dedicated AIS receiver located at the IOT [para. 237 [REP2-065].
NS.2.50	**Evidence of future tug provision** With respect to tug availability, provide evidence from SMS and Svitzer to support the statement at page 185 of REP1-013 that those tug operator fleets will "grow to meet conditions as required", noting DFDS concerns, as expressed in [RR-008], with the availability of tugs in sufficient numbers and capabilities when the need arises.	Please see Appendix 5 to this document.	It should be noted that in previous meetings between IOT & ABP that the lack of tug provision/availability on the Humber has been discussed and the lack of co-operation between the two providers as recorded in the minutes of the *Port Liaison meeting* on 4 August 2022 (enclosed with this submission).

Part 4

Comments on Applicant's Summary of Oral Submissions at ISH3 with Appendices

Item No.	ExA Question	Applicant's Response	Comments by the IOT Operators
16	The ExA asked the Applicant if it considered there to be any similar relationships between Ro-Ro berths and petrochemical infrastructure	Mr James Hannon, on behalf of the Applicant, started by stating that the power of the Secretary of State to intervene in a shipping incident which involved a risk to life or a hazardous substance (as highlighted by DFDS) was a last resort. The primary response remains with the Statutory Harbour Authority and the Harbour Master. Mr Hannon provided examples from Purfleet Ro-Ro Terminal, the Port of Milford Haven and the Port of Portsmouth. Mr Hannon's notes that formed the basis of his oral representations and the photos that were presented to the ExA have been appended to this document (see Appendix 1). Post hearing submission: The Applicant has provided an additional response to this question at N2.207 of document 10.2.38 - Applicant's Response to ExQ2 [with Appendices] - submitted at Deadline 3.	The IOT Operators have produced a note on any similar relationships between Ro-Ro berths and petrochemical infrastructure which is enclosed with this submission.

Footnote References

Fn	Reference	Link
1	Health and Safety Executive, Reducing Risks: Protecting People – HSE's decision making process, ISBN 0 7176 2151 0, (Report, 2001).	https://www.hse.gov.uk/enforce/expert/r2p2.pdf
2	International Maritime Organization, 'MSC-MEPC.2-Circ.12-Rev.2 - Revised Guidelines for Formal Safety Assessment (FSA) for Use in the IMO Rule-Making Process' (Circular, 9 April 2018).	https://wwwcdn.imo.org/localresources/en/OurWork/HumanElement/Documents/MSC-MEPC.2-Circ.12-Rev.2%20-%20Revised%20Guidelines%20For%20Formal%20Safety%20Assessment%20(Fsa)For%20Use%20In%20The%20Imo%20Rule-Making%20Proces...%20(Secretariat).pdf
3	Marine Accident Investigation Branch, 'Contact made by tractor tug Svitzer Constance with lock gate at King George Dock, Hull, England' (Report No 22/2020, November 2020).	https://www.gov.uk/maib-reports/contact-made-by-tractor-tug-svitzer-constance-with-lock-gate-at-king-george-dock-hull-england
4	Portsmouth International port: *Towage Guidelines*, Version 4.3, July 2023, at Annex 1.	https://portsmouth-port.co.uk/wp-content/uploads/2023/07/Portsmouth-Towage-Guidelines-v-4.3_accessible.pdf