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All Interested Parties and Statutory
Parties

Your Ref:

Our Ref: TR030007

Date: 27 October 2023

Dear Sir/Madam

Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rules 8(3), 9 and 17

Application by Associated British Ports for an Order Granting Development Consent for the Immingham Eastern Ro-Ro Terminal (TR030007)

We write to provide notification firstly that the Examining Authority (ExA) has made a Procedural Decision to vary the Examination Timetable relating to the submission of Statements of Common Ground (SoCG) under Rules 8(3) and 9 and secondly to request further information under Rule 17 from:

- 1) the Applicant;
- 2) the Health and Safety Executive; and
- 3) the Applicant, DFDS, IOT Operators and Stena Line.

Notice of variation to the Examination Timetable

The variation to the Examination Timetable is set out in **Annex A**. The variation has been made further to:

- The receipt of some written submissions at Examination Deadline 5, 23 October 2023.
- The procedural decision issued by the ExA on 26 May 2023 concerning the submission of various FINAL and SIGNED Statements of Common Ground (SoCG) [\[PD-005\]](#). While that Procedural Decision was issued prior to the holding of the Preliminary Meeting and the finalisation of the Examination Timetable, the Applicant and other Interested Parties (IPs) were advised that they should work on the basis of there being a requirement on them to submit final and signed SoCGs by the midpoint of the Examination.
- The confirmation in the Examination Timetable that all final and signed SoCGs were to be submitted by Deadline 5 [Annex A in [PD-009](#)], which as previously foreshadowed in PD-005 was around the midpoint for the Examination.

- Further to the holding of and actions arising from Issue Specific Hearing 3 (ISH3), agreement between the Applicant and CLdN, DFDS, IOT Operators and Stena Line, as relevant, that topic specific SoCGs relating to container dwell times (Action Point 5) and highways matters (Action Point 30) would be submitted at Deadline 5 [[EV6-012](#)].

Only two final and signed SoCGs were submitted at Deadline 5, those statements having been concluded between: the Applicant and National Highways; and the Applicant and North Lincolnshire Council. Correspondence between the Maritime and Coastguard Agency and the Applicant has been submitted advising that the former considers there to be no need to prepare and submit a SoCG. The ExA further notes that the Health and Safety Executive in its written submission [[PDA-011](#)] was of the view that there would be no need to prepare and submit a SoCG.

So, of the 18 SoCGs that the ExA identified in [[PD-005](#)] should be submitted in their final forms by around the midpoint of the Examination, what became Deadline 5, fourteen were not submitted, nor were the two specific SoCGs referred to above submitted. The ExA therefore finds it necessary to express its disappointment that the Applicant and the other relevant IPs failed to submit all of the requested SoCGs at Deadline 5, notwithstanding the fact that in most cases the parties have had five months in which to prepare and conclude their respective SoCGs. Although the position with respect to the two topic specific SoCGs is a little different, in that it was during the course of ISH3 that the parties in question reached agreement that they would be prepared, the possibility this type of SoCG being submitted was foreshadowed in [[PD-005](#)] as a potentially expeditious way of addressing shared issues of concern for some IPs.

To avoid the ExA's preparations for ISH5 and ISH6, which are to be held between 21 and 23 November 2023 being unduly frustrated, the Applicant **MUST** ensure that all of the outstanding SoCGs, namely the fourteen identified by the ExA in [[PD-005](#)] together with topic specific ones, are submitted **not later** than Monday 13 November (Deadline 6). As highlighted in [[PD-005](#)] and at the Preliminary Meeting the purpose of the SoCGs should be to record matters for which there is agreement and disagreement at the point they are finalised, signed and concluded. The ExA is mindful of the fact that while there may currently be agreement between the Applicant and other IPs about some of the matters to be included in their respective SoCGs, equally there may be other matters for which there will be ongoing disagreement at Deadline 6. That said, in what remains of the Examination period, through ongoing engagement between the Applicant and other IPs there may be scope for there to be a narrowing of matters which may not be agreed.

The fact that the ExA requires final and signed SoCGs to be submitted at a revised Examination deadline, i.e. Deadline 6, should not be taken as being a bar to any further discussions being held between the Applicant and other IPs, especially if such dialogue would facilitate the narrowing of disagreements. In that regard, amongst other things, the purpose of Applicant's submission of Principal Areas of Disagreement (PADs) Trackers at each Examination deadline is to record when there may have been progress in narrowing PADs.

Any of the outstanding SoCGs that are submitted ahead of Deadline 6 it is envisaged would be categorised by the ExA as being Additional Submissions enabling them to be published via the project website for this application.

Given the importance the ExA places on the receipt of SoCGs, it has taken the decision not to ask a round of further written questions on 31 October, replies to which would have been due for submission not later than 13 November. By doing that the ExA considers the Applicant and IPs should have sufficient time available to them to devote to concluding the SoCGs.

Requests for further information under Rule 17

1) For the Applicant - navigation simulation reports submitted in September 2023

On 27 September 2023 the Applicant submitted a letter [[AS-021](#)] and the following revised application documents:

- Amended document 8.4.10(b) Environmental Statement - Volume 3 – Appendix 10.2 - Navigation Simulation Study - Part 1 (Version 2) [[AS-022](#)];
- Amended document 8.4.10(b) Environmental Statement - Volume 3 - Appendix 10.2 - Navigation Simulation Study - Part 2 (Version 2) [[AS-023](#)]; and
- Amended document 8.4.10(c) Environmental Statement - Volume 3 - Appendix 10.3 - Navigational Simulation - Stakeholder Demonstrations (Version 2) [[AS-024](#)].

Documents AS-022 to AS-024 each run to several hundred pages and it has been proving difficult for IPs and the ExA to quickly identify what changes have been made in them when they are compared with the originally submitted application versions [APP-090, APP-091 and APP-092].

The Applicant should therefore submit tracked changed versions of AS-022 to AS-024. The Applicant should also submit a note explaining: what changes have been made to those documents; why those changes have been made; and any implications the changes may have for any of the conclusions reached in the Applicant's Navigation Risk Assessment [[APP-089](#)].

The Applicant should respond to this request for further information by not later than Examination Deadline 6, Monday 13 November.

2) For the Health and Safety Executive (HSE) - Implications of the Proposed Development's operation for adjoining Control of Major Accident Hazard (COMAH) sites and 100 passenger threshold

- a) The HSE is requested to explain what consideration it has given to the Proposed Development's operation having the potential to cause an incident affecting the safe use of any adjoining COMAH sites, most particularly the Immingham Oil Terminal (IOT) and the Eastern Jetty (part of Exolum East), together with the wider Port of Immingham. In this context, incidents might involve: a construction vessel or Ro-Ro vessel making contact (alliding) with either a berthed tanker or the IOT pipeline trunkway or an unoccupied berth forming part of the IOT's Finger Pier; a tanker manoeuvring on or off the IOT Finger Pier that allides with a Ro-Ro vessel berthed at one of the Proposed Development's berths; a collision between a Ro-Ro vessel manoeuvring to or from one of the Proposed Development's berths and a tanker vessel sailing to or from the IOT Finger Pier; or an allision between a Ro-Ro vessel and a vessel berthed at the Eastern Jetty. (This question essentially being a re-

asking the ExA's second written question BGC.2.04 in [\[PD-013\]](#) which the HSE did not answer.)

- b) The HSE is requested to clarify whether lorry drivers should be considered as being included or excluded from the maximum number of 100 passengers that the Applicant proposes may depart by vessel from the Proposed Development each day. In responding to this request for information the HSE is asked to take account of the answer the Applicant gave in response to the ExA's second written question NS.2.18, as stated on page 32 of [\[REP4-008\]](#) and the current wording for Article 21 within the draft Development Consent Order [\[REP5-004\]](#).

The HSE should respond to these requests for further information by not later than Examination Deadline 6, Monday 13 November.

- 3) For the Applicant, CLdN, DFDS, IOT Operators and Stena Line – additional navigation simulation report due for submission at Deadline 6 (13 November 2023)

With respect to the undertaking of the additional navigational simulation exercise (7 and 8 November 2023) and subsequent reporting, further to ISH3 action points 17 and 18 [\[EV6-012\]](#), the ExA notes the Applicant's observation relating reporting in [\[REP5-001\]](#). The ExA recognises that there will be a limited amount of time between the holding of the navigational simulation demonstrations and 13 November (Deadline 6) when the ExA expects a report relating to that activity to be submitted. The ExA remains of the view that the requested report should be submitted no later than Deadline 6, so that its contents can be considered by both IPs and the ExA in advance of the holding of ISH5, which will begin on 21 November, not least because nearly six weeks will have elapsed between the acceptance during ISH3 that there may be a need to undertake additional simulation runs and the staging of the navigational simulation demonstrations. However, in the event of it not being possible for the Applicant to submit a full report by the 13 November, then as a **minimum** the ExA would expect the following information to be submitted not later than Deadline 6:

- a) The Applicant:

- Details of the run manoeuvres and operating parameters requested by DFDS, CLdN and IOT Operators pursuant to ISH3 action point 17. In the event of the Applicant having not been agreeable to the running of any of the requested manoeuvres and/or the application of any of the requested operating parameters, an explanation for their non-acceptance should be provided.
- Confirmation of which manoeuvres were simulated on 7 and 8 November, including the vessel types and environmental conditions (wind, current, etc) used.
- Plots for each of the run manoeuvres.

- b) DFDS:

- Summary comments about each of the run manoeuvres observed.

- c) In the event of CLdN and IOT Operators attending the demonstration sessions:
- Summary comments for each of the run manoeuvres observed.

If you have any questions about the content of this letter, please contact the Case Team on the details above.

Yours faithfully

Grahame Gould

Grahame Gould
Lead Member of the Examining Authority

Annex A

Original timetable

13	<p>Deadline 5 (D5) Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on responses to ExQ2 (if required) • Applicant's updated version of the dDCO, to be submitted in clean and tracked change versions (if required) • Comments on any submissions received at D4 • Final and signed SoCGs • Submission of an updated PADs Tracker by the Applicant • An updated Guide to the Application documents to be submitted by the Applicant • Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	Monday 23 October 2023
14	Publication by the ExA of:	Tuesday 31 October 2023

	<ul style="list-style-type: none"> ExA's Further Written Questions (ExQ3) (if required) 	
15	<p>Deadline 6 (D6)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> Responses to the ExA's ExQ3 (if required) Applicant's updated version of the dDCO, to be submitted in clean and tracked change versions (if required) Submission of an updated PADs Tracker by the Applicant Comments on any submissions received at D5 A Statement of Commonality for the matters included in the SoCGs from the Applicant An updated Guide to the Application documents to be submitted by the Applicant Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	<p>Monday 13 November 2023</p>
16	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> Any requests for information under Rule 17 of the Examination Procedure Rules 2010 (if required) <p>Publication by the ExA of:</p> <ul style="list-style-type: none"> The Report on the Implications for European Sites (RIES) The ExA's proposed schedule of changes to the dDCO (if required and if no DCO specific ISH is to be held on Tuesday 21 to Thursday 23 November 2023) 	<p>Wednesday 15 November 2023</p>
17	<p>Date reserved for third round of hearings:</p> <ul style="list-style-type: none"> ISH (if required) CAH (if required) 	<p>21 to 23 November 2023</p>

<p>18</p>	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA's Further Written Questions (ExQ4) (if required) • The ExA's draft Schedule of Changes to the dDCO (if required and if not issued on 15 November 2023) 	<p>Friday 1 December 2023</p>
<p>19</p>	<p>Deadline 7 (D7) Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 21 to 23 November 2023 are required) • Comments on the Report on the Implications for European Sites (RIES) • Responses to the ExA's ExQ4 (if required) • Applicant's final dDCO to be submitted in the SI template with the SI template validation report. This version of the dDCO should be submitted in an editable format and it should also be accompanied by an editable copy showing any revisions to the preceding version shown using tracked changes (if required) • Submission of an updated PADs Tracker by the Applicant • Final Statement of Commonality from the Applicant • An updated Guide to the Application documents to be submitted by the Applicant • Comments on any submissions received at D6 • Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	<p>Monday 11 December 2023</p>

20	<p>Deadline 8 (D8)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 Comments on any further information requested by the ExA and received by D7 	<p>Monday 8 January 2024</p>
21	<p>The ExA is under a duty to complete the Examination of the application by the end of the period of six months.</p> <p>Please note that the ExA may close the Examination before the end of the six-month period if it is satisfied that all relevant matters have been addressed and discussed.</p>	<p>Thursday 25 January 2024</p>

Varied timetable

13	<p>Deadline 5 (D5)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> Comments on responses to ExQ2 (if required) Applicant's updated version of the dDCO, to be submitted in clean and tracked change versions (if required) Comments on any submissions received at D4 Final and signed SoCGs Submission of an updated PADs Tracker by the Applicant An updated Guide to the Application documents to be submitted by the Applicant Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	<p>Monday 23 October 2023</p>
14	<p>Deadline 6 (D6)</p>	<p>Monday 13 November 2023</p>

	<p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Final and signed SoCGs • Applicant's updated version of the dDCO, to be submitted in clean and tracked change versions (if required) • Submission of an updated PADs Tracker by the Applicant • Comments on any submissions received at D5 • A Statement of Commonality for the matters included in the SoCGs from the Applicant • An updated Guide to the Application documents to be submitted by the Applicant • Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	
15	<p>Issue by the ExA of:</p> <ul style="list-style-type: none"> • Any requests for information under Rule 17 of the Examination Procedure Rules 2010 (if required) <p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The Report on the Implications for European Sites (RIES) • The ExA's proposed schedule of changes to the dDCO (if required and if no DCO specific ISH is to be held on Tuesday 21 to Thursday 23 November 2023) 	Wednesday 15 November 2023
16	<p>Date reserved for third round of hearings:</p> <ul style="list-style-type: none"> • ISH (if required) • CAH (if required) 	21 to 23 November 2023
17	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA's Further Written Questions (ExQ4) (if required) 	Friday 1 December 2023

	<ul style="list-style-type: none"> The ExA's draft Schedule of Changes to the dDCO (if required and if not issued on 15 November 2023) 	
18	<p>Deadline 7 (D7)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 21 to 23 November 2023 are required) Comments on the Report on the Implications for European Sites (RIES) Responses to the ExA's ExQ4 (if required) Applicant's final dDCO to be submitted in the SI template with the SI template validation report. This version of the dDCO should be submitted in an editable format and it should also be accompanied by an editable copy showing any revisions to the preceding version shown using tracked changes (if required) Submission of an updated PADs Tracker by the Applicant Final Statement of Commonality from the Applicant An updated Guide to the Application documents to be submitted by the Applicant Comments on any submissions received at D6 Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	Monday 11 December 2023
19	<p>Deadline 8 (D8)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	Monday 8 January 2024

	<ul style="list-style-type: none"> • Comments on any further information requested by the ExA and received by D7 	
20	<p>The ExA is under a duty to complete the Examination of the application by the end of the period of six months.</p> <p>Please note that the ExA may close the Examination before the end of the six-month period if it is satisfied that all relevant matters have been addressed and discussed.</p>	Thursday 25 January 2024

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