CLdN PORTS KILLINGHOLME LIMITED

RESPONSES TO THE APPLICANT'S DEADLINE 5 SUBMISSIONS

1. INTRODUCTION

1.1 This document comprises the responses by CLdN Ports Killingholme Limited (**CLdN**) to documents submitted at Deadline 5 of the examination of the application for a Development Consent Order (**DCO**) (**the Application**) for the Immingham Eastern RoRo Terminal (**IERRT** or **the Proposed Development**).

1.2 At Deadline 4, CLdN submitted a summary of its Post Hearing Submissions regarding Issue Specific Hearing 3 (**ISH3 Summary**) **[REP4-017]** and Issue Specific Hearing 4 (**ISH4 Summary**) **[REP4-018]**, alongside a note providing details in relation to various matters relating to the Port of Killingholme **[REP4-021]** (together, **CLdN's DL4 Submissions**). It is CLdN's view that CLdN's DL4 Submissions, together with its previous submissions, have already addressed the majority of the points raised by Associated British Ports (**the Applicant**) in its Deadline 5 submissions. Therefore, CLdN does not consider that it will assist the Examining Authority to duplicate those submissions by responding to each point made by the Applicant in its Deadline 5 submissions.

1.3 Instead, CLdN has produced this document to address certain points raised in the Applicant's Deadline 5 submissions that CLdN wishes to provide particular commentary on. In doing so, where CLdN has not specifically responded to a point in the Applicant's Deadline 5 submissions, that does not mean that it is accepted. Rather, it is CLdN's view as stated above that its previous submissions have already addressed and established CLdN's position, which remains unchanged, on that point.

1.4 As explained by CLdN at ISH3 and in its ISH3 Summary **[REP4-017]**, CLdN's participation in this Examination arises because the Applicant has chosen to present its case for the Proposed Development on the basis that there is an urgent need for additional port capacity arising from capacity constraints at the Port of Killingholme (**Killingholme**) (see paragraph 1.6 below). As Examination is an evidence-based process, CLdN has presented evidence to the Examination to demonstrate that the central premise of the Applicant's case fundamentally misunderstands the present capacity at Killingholme and the ability of existing facilities at Killingholme to meet realistic market growth assumptions.

1.5 Throughout the Examination, CLdN has questioned the Applicant's characterisation of capacity at Killingholme and the key assumptions underlying its need case. While CLdN has sought to provide the Examination with evidence and data which sets out why the Applicant's assumptions are incorrect, this has not been matched with equal evidence, data and verification from the Applicant. This lack of substance and clarity has not assisted in making meaningful progress for any party in the Examination. CLdN also considers that the Applicant's approach continues to raise material concerns about the validity and credibility of the Applicant's underlying analysis of these assumptions, in particular:

1.5.1 the Applicant did not seek to obtain relevant dwell time evidence from either CLdN or DFDS Seaways Plc (**DFDS**) in the Humber, or indeed use data from Stena Line Limited (**Stena**) for the purposes of explaining the capacity at IERRT. It was only at Deadline 5 that the Applicant finally engaged over dwell times, but CLdN has still not received any explanation from the Applicant on how the dwell times data provided from Stena, CLdN and DFDS affects the Applicant's assessment;

1.5.2 the Applicant has not presented an explanation of the figure for dwell times used in the Application and the Environmental Statement (**ES**) in a coherent and applied manner. It now refers to various figures for dwell times across its recent

submissions, but the precise status of these new dwell times is not clear nor are these dwell times adequately supported by underlying evidence and assessment;

1.5.3 in relation to capacity, curiously the Applicant appears to be making submissions that suggest it is better placed to assess Killingholme's throughput and existing storage capacity than CLdN;

1.5.4 it is telling that the Applicant is willing to accept Killingholme's higher throughput figures provided previously by CLdN (and mentioned in the Applicant's Response to CLdN's DL4 Submissions **[REP5-032]** (**the Applicant's DL5 Response**)) without challenge, given it aids the Applicant's case in estimating a higher level of future demand, yet it will not similarly accept the corrected capacity figures provided by CLdN, which demonstrate higher capacity on the Humber;

1.5.5 in any event, the Applicant's continuous altering of the figures in relation to IERRT throughput, with limited explanation of the basis upon which these figures are changing and an overarching lack of clarity as to which dwell time figure the Applicant is adopting, renders it difficult for any trust or reliance to be placed in the adequacy of the key assessments for the Proposed Development;

1.5.6 the Applicant's revised demand forecasts have been presented without sufficient explanation of how these will impact capacity assessments, and therefore has consequences for the Applicant's justification of the case for IERRT; and

1.5.7 the Applicant's original case for the Proposed Development was based on there being no other way to meet the alleged urgent and imperative need for IERRT. Whilst the Applicant has moved away from this reasoning (towards reasoning relating to competition and resilience) at ISH3 and in subsequent submissions, the Applicant has still not accepted that the information produced in the Examination clearly shows that there is no such urgent need.

1.6 These examples of the Applicant's tendency towards inconsistency in its approach are expanded on in the corresponding sections of this response document.

1.7 Some examples of where the Applicant has referenced this alleged urgent and imperative need throughout the Examination are set out below:

1.7.1 Statement of Reasons **[APP-017]** – paragraph 5.7.7 states that "*there is an imperative need to provide additional appropriate Ro-Ro freight capacity within the Humber estuary*" and paragraph 6.2.4 states that "*the IERRT development will provide port capacity in a location where the industry, operating within a free market environment, urgently needs additional capacity to be provided*";

1.7.2 Planning Statement **[APP-019]** – paragraph 4.22 states that "*there is a clear and urgent need for the provision of a new Ro-Ro facility of the appropriate kind on the Humber Estuary to meet both the current and future needs of Stena Line*", paragraph 4.27 states that "*these objectives are to provide the Humber Estuary with the ability to meet the urgent needs of an existing Ro-Ro freight operator, Stena Line, with an established customer base*" and paragraph 5.10 states that "*there is a very clear and urgent need for the type of infrastructure that the IERRT Project will provide*";

1.7.3 Funding Statement **[APP-018]** – paragraph 2.5 states that "*ABP recognises that it may not be possible to secure all of the required interests and rights within the timescale that meets the urgent need to deliver the IERRT development*"; and

1.7.4 Environmental Statement, Volume 1 Chapter 4 **[APP-040]** – paragraph 4.2.67 states that "*there is a clear and urgent need for a new facility of the appropriate kind somewhere on the Humber Estuary – namely an appropriately located facility with the ability to accommodate large Ro-Ro vessels in a suitably unconstrained way, with sufficient storage / cargo handling areas in close proximity to the berths and where the necessary control in terms of operations can be achieved – to meet the current and future needs of Stena Line*".

2. RECENT DEVELOPMENTS

2.1 CLdN considers that it would assist the Examining Authority to set out the latest developments in relation to the Applicant's Change Request dated 19 October 2023 and the implications of this on the Applicant's case for the Proposed Development.

2.2 Before doing so, CLdN notes that it has entered into the following Statements of Common Ground (**SoCG**) and refers the Examining Authority to these for a summary of the agreed position on various matters:

2.2.1 terrestrial transport SoCG between: (1) the Applicant; (2) DFDS; and (3) CLdN, signed on 13 November 2023 (**Transport SoCG**);

2.2.2 SoCG on dwell times between: (1) CLdN; (2) DFDS; (3) Stena; and (4) the Applicant, signed on 9 November 2023 and submitted at Deadline 6 (**Dwell Times SoCG**); and

2.2.3 SoCG on matters requested to be covered in the Examining Authority's Procedural Decision **[PD-005]** between: (1) CLdN; and (2) the Applicant, signed on 13 November 2023 (**ABP/CLdN SoCG**).

<u>Dwell Times SoCG</u>

2.3 To assist the Examining Authority, this section provides a short explanation of the Dwell Times SoCG and how the Dwell Times SoCG fits in with the cases advanced by the Applicant and CLdN.

2.4 The time period used to calculate the dwell times for: (1) all shipping lines at Killingholme; and (2) DFDS and Stena at the Port of Immingham (**Immingham**), was January to October 2023, as agreed by the parties to the Dwell Times SoCG.

2.5 Throughout the Examination, figures provided in relation to dwell times have been blended figures comprising data on both imports and exports. Whilst the principle of averaging the data for imports and exports to create a single figure for dwell times is agreed, the Dwell Times SoCG splits these figures for imports and exports in relation to CLdN / Killingholme, and DFDS and Stena's services at Immingham, so as to provide transparency over how the blended figure has been calculated. However, for the avoidance of doubt, the parties have used the blended figure as the basis for assessments of capacity at the relevant terminals. CLdN does not understand it to be in dispute that this is an acceptable approach for the purposes of the Examination.

2.6 While it has not been clearly stated, the Applicant's dwell time of 2.25 days (which it uses to define capacity) should have been an average of figures for imports and exports. The Applicant has now used a blended figure in Appendix 4 (provided by Stena) of the Applicant's DL5 Response, in which a revised dwell time for IERRT amounting to 2.45 days for imports and 0.35 days for exports is provided, which is equivalent to an average of 1.4 days across all throughputs.

2.7 It is unclear which dwell time the Applicant now relies on. As the Examining Authority will be aware, the Applicant's figure of 2.25 days for dwell times is disputed. CLdN remains of the view that this dwell time has never been adequately explained or substantiated. The Dwell Times SoCG shows that the figure for dwell times across all of the operators, when calculated using an average of the figures for imports and exports, is significantly lower than the 2.25 days presented by the Applicant throughout the Examination.

2.8 This has implications for the Applicant's assessment of capacity and in the context of the assessment of environmental information relating to the Proposed Development. As a result, the Applicant has had to alter its proposals in order to address this deficiency in its original assessments, which CLdN comments on below.

2.9 The Applicant has referred to a new figure for dwell times in the Applicant's DL5 Response (per paragraph 2.6 above, see Appendix 4 to the Applicant's DL5 Response). It is unclear and unexplained whether the Applicant now adopts that dwell time in relation to the Proposed Development and CLdN notes that:

2.9.1 if the Applicant has adopted a revised dwell time, this is not expressed clearly and the Applicant has not updated all of its assessments of IERRT by reference to this new figure, in relation to existing capacity at Killingholme (the absence of such explanation has led CLdN to carry out its own analysis, which is found in the later sections of this response document); or

2.9.2 if the Applicant has not done so, no explanation has been given for why this more accurate figure (per the Dwell Times SoCG) for dwell times has not been used.

2.10 CLdN also notes that the Applicant selectively refers to a paper (The Design of Terminals for RoRo and RoPax Vessels (MarCom Working Group (Report No 167, 2023)) by PIANC (the World Association for Waterborne Transport Infrastructure)) in order to justify its original figure of 2.25 days for dwell times (see paragraph 7.73 of the Applicant's DL5 Response). CLdN has requested that the Applicant submits this document into the Examination, to which it has not had a response, but in the meantime makes the following comments in relation to it:

2.10.1 this paper, in fact, further serves to discredit the 2.25 day original dwell time assumption, rather than support it;

2.10.2 this paper is a design manual. It does not provide a real-world, 'gold standard' reference for dwell times;

2.10.3 this paper was published in September 2023, so is therefore clearly not the source of the Applicant's original figure of 2.25 days for dwell times because it post-dates the Applicant's assessment;

2.10.4 in any case, the apparent reliance on this paper is inconsistent with the use of a figure of 1.4 days for dwell times by Stena in Appendix 4 (provided by Stena) of the Applicant's DL5 Response. The underlying data in this paper is: (i) based on limited and historic examples; and (b) not as relevant as the up to date real-world data on dwell times provided by the operators (namely CLdN, DFDS and Stena), which is now agreed in the Dwell Times SoCG; and

2.10.5 as a result, it is surprising that the Applicant continues to reference and seek to justify the use of a figure of 2.25 days for dwell times, whilst also implicitly accepting it does not reflect actual operators on the Humber.

2.11 Lastly, to assist the Examining Authority, CLdN has produced the table below which sets out, in a clear format, the average dwell times across the relevant operators and services, as confirmed in the Dwell Times SoCG.

2023* Average dwell days

		by direction	overall
Applicant original		2.25	
Applicant revised	export	0.35	1.40
	import	2.45	
PIANC report Sep 2023**	export	0.25	1.13
	import	2.00	
CLdN KGH port	export	0.47	0.93
	import	1.38	
Stena Hoek	export	0.32	0.63
	import	0.93	
Stena Eur	export	0.33	1.33
	import	2.33	
DFDS RTM	export	0.52	1.01
	import	1.50	
DFDS Germany	export	0.82	1.42
	import	2.02	
DFDS Denmark	export	0.76	1.33
	import	1.90	
DFDS Sweden	export	1.02	1.66
	import	2.30	

Stena/ABP data
DFDS data
CLdN data
** Jan-Oct*
*** recommended dwell (page 250)*

Outline of the Applicant's changes to the Application and to the case for the Proposed Development

2.12 As set out above, the Applicant has produced a revised estimate for landside storage capacity of IERRT, as summarised in paragraph 6.6 of the Applicant's DL5 Response, of 1,674 trailer bays, 65 container ground slots and 25 trade bay slots.

2.13 The Applicant has produced, at Appendix 4 (provided by Stena) of the Applicant's DL5 Response, a revised dwell time for IERRT amounting to 2.45 days for imports and 0.35 days for exports, which is equivalent to an average of 1.4 days across all throughputs (see Appendix 2 to this response document for an explanation of this). CLdN has commented on this revised dwell time above, which is markedly lower than the figure of 2.25 days for dwell times used in the Applicant's original Environmental Statement Chapter 4 and Environmental Statement: Volume 3, Appendix 4.1: Market Forecast Study Report **[APP-079]** (**Market Study**), and importantly below the lowest of its sensitivity scenarios (1.75 days, per Table 8-3 of the Market Study). The revised dwell time sits within the range put forward by Volterra Partners LLP (**Volterra**) and supported by CLdN (1-1.5 days, per paragraph 4.8 of the report produced by Volterra appended to CLdN's Written Representation at Deadline 2 **[REP2-031]** (**Volterra Report**)).

2.14 The Applicant has also revised its demand forecasts to include more recent data and present a wider range of scenarios, resulting in higher demand forecasts for the Humber.

2.15 The result of the implicitly accepted revised dwell time has a fundamental impact on the Applicant's case for the Proposed Development. The capacity and demand scenarios now clearly demonstrate (per CLdN's analysis in the section below) that the Applicant's previous reasoning of an 'urgent and imperative' need is not and has never been substantiated. The Applicant now appears to be making the case in relation to 'competition and resilience'. CLdN comments on this potential change in position in section 3 below.

Implications of these changes for the Applicant's case

2.16 CLdN and Volterra do not believe that it would be beneficial to the Examining Authority to respond to every point that the Applicant makes in the Applicant's DL5 Response. The Applicant has spent a lot of effort providing detailed rebuttals to minor points of challenge,

whilst not giving an adequate response to the more substantive and central issues. More detailed analysis and responses to the key issues are detailed in Appendix 2 to this response document. To aid the Examining Authority, however, the following paragraphs outline the key points and conclusions from this analysis.

2.17 First, Volterra did not materially challenge the Applicant's demand forecasts originally, instead querying how specific assumptions quantitatively fed into the demand model. These issues have still only been addressed qualitatively in the Applicant's response.

2.18 Secondly, the Applicant provides at Table 2 of the Applicant's DL5 Response its shortsea traffic growth rates for the period 2025-2050, and uses this to conclude that the figures on average across the period are not dissimilar to using the ONS's 1.8% average growth rate put forward by Volterra. The material omission here is the lack of transparency over the growth rate for the missing period 2022-2025. This is puzzling, considering the Applicant has persistently made the case that the Proposed Development is required to address an urgent need; for such a case, it seems unusual that an explanation of the short term growth rate should be omitted, given it would correspond to the most immediate and urgent need.

2.19 Thirdly, as set out above, despite the access to real-world data (which, at least in the case of Stena, could have been available to the Applicant from the outset) the Applicant continues not to respond to the most substantive point of challenge made by CLdN and Volterra, namely the use of a 2.25 days dwell time when calculating existing capacity. This is contrary to the data provided by CLdN, DFDS and Stena in the Dwell Times SoCG and contradicts the Applicant's own analysis in Appendix 4 to the Applicant's DL5 Response.

2.20 Fourthly, and most importantly, the Applicant does not show the Examining Authority what the implications of these changes are in terms of need. This is demonstrated in the text and annotated chart (Figure B) below.

2.20.1 First, the revised capacity on the Humber is markedly higher than the Applicant initially estimated, with the initial estimate appearing to be an underestimate of approximately 834,000 units from 2025 (an upward revision of 187%[1] to the Applicant's initial position – a very material error/revision);

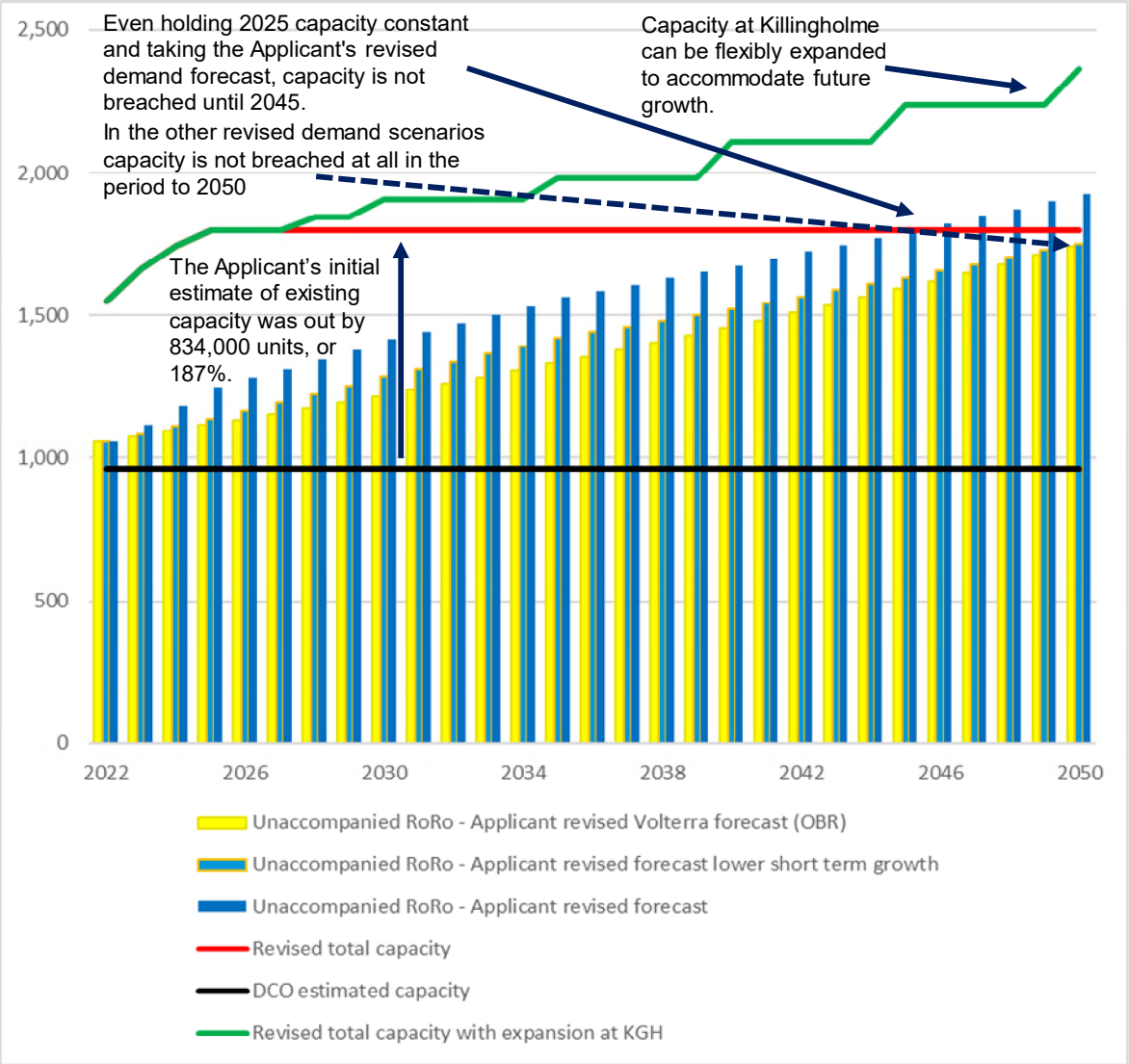
2.20.2 Secondly, even under the Applicant's revised forecast it is estimated that the existing capacity of the Humber would not be breached until 2045, whilst under the two more conservative scenarios of demand the revised capacity is not even breached by 2050; and

2.20.3 Thirdly and finally, the potential expansion of capacity at Killingholme, which can be brought forward flexibly in response to future increases in demand as demonstrated in the Killingholme Note, can maintain a healthy buffer to ensure that there is resilience in the Humber market to cope with future uncertainty and variations from average or normal situations.

2.21 Fundamentally this shows very clearly that there is no 'urgent and imperative' need for the Proposed Development.

[1] 834 / 962 = 87%. 1,796 / 962 = 187%.

Figure B – Humber revised unaccompanied RoRo demand and capacity comparison ('000s units)



Source: Volterra calculations, November 2023, utilising all data provided by different parties up to Deadline 5

3. ISSUES FOR THE EXAMINING AUTHORITY'S CONSIDERATION

3.1 CLdN considers that it would assist the Examining Authority to set out the key issues which need to be assessed to ensure the proper consideration and examination of the Application.

Need

Policy

3.2 As a general point, CLdN refers to its previous submissions in relation to the 'need' for the Proposed Development, most particularly to Agenda Item 2(a) of its ISH3 Summary in the context of the National Policy Statement for Ports (**NPSfP**). Briefly, CLdN notes that the Applicant, per paragraph 3.9 of the Applicant's DL5 Response, agrees with CLdN that the presumption in the NPSfP of granting consent for relevant applications is "*the starting point*", and generally that the Examining Authority must consider the weight to be given to that presumption.

3.3 The Applicant's case for the Proposed Development was previously justified by reference to an alleged urgent and imperative need, as per the examples given in paragraph 1.6 above.

3.4 Given the way the Applicant's case was initially advanced, with specific focus on the capacity at Killingholme, CLdN was entitled to participate in the Examination, question the case for the Proposed Development and present evidence of the true picture on this matter. As a result, CLdN provided evidence that this aspect of the Applicant's case for the Proposed Development was both fundamentally misconceived and contradictory and therefore flawed. Accordingly, no weight should be given to any alleged "urgent and imperative need" and instead the Application should be assessed on the basis of what it really is, as set out in CLdN's previous submissions.

Capacity

3.5 In summary, it is clear that the Applicant's original case arguing that there was an urgent and imperative need for more capacity on the Humber was factually inaccurate and fundamentally wrong. Whilst demand forecasts – particularly the general conclusion on expected growth in demand on the Humber – are broadly agreed between by the Applicant and CLdN (within the realms of uncertainty and differences in opinion on some key assumptions that cause some variation in different scenarios), it is clear that estimates of capacity are an issue for the Examining Authority's consideration.

3.6 Whilst the Applicant has focused the majority of its responses disputing Killingholme's ability to expand in the future, it does not acknowledge that the Application (through the Market Study) put forward an estimate of existing capacity that significantly underestimated the Humber's ability to accommodate future demand growth. The Application originally estimated that capacity on the Humber amounted to approximately 962,000 units annually. Yet the use of real data – provided by not just CLdN, but also other relevant parties (Stena and DFDS) – demonstrates that the actual capacity on the Humber amounts to 1,664,000 units in 2023, when using the dwell times based on real data provided and agreed by the operators in the Dwell Times SoCG, rising to 1,795,000 units a year by 2025. The Application's estimate therefore appears to have underestimated capacity by approximately 834,000 units from 2025.

3.7 Even under the Applicant's revised forecast, it is estimated that the existing capacity of the Humber would not be breached until 2045, whilst under the two more conservative scenarios of demand the revised capacity is not even breached by 2050.

Competition and resilience

3.8 The Applicant has now altered its position on the case for the Proposed Development to instead focus on 'competition and resilience'. CLdN has covered its position in relation to competition and resilience in CLdN's DL4 Submissions, and in its Response to the Applicant's Deadline 4 Submissions **[REP5-041]**, but considers it would assist the Examining Authority to set out the key points on this below:

3.8.1 competition between shipping lines on similar/equivalent routes is largely cost-driven (i.e. pricings) – building additional capacity via IERRT, therefore, does not provide competition in that sense, and this remains the case even if one operation is moved to another location;

3.8.2 the economic efficiency of IERRT is in question, given that there is substantial existing capacity which is not forecast to be met until significantly later down the line;

3.8.3 IERRT is, at best, competition neutral, as set out in paragraph 2.4 of **[REP5-041]**; and

3.8.4 in relation to resilience, there is no clear analysis provided by the Applicant on why IERRT would provide this. The one example given by the Applicant is Brexit, however the conditions around Brexit were a unique set of circumstances, which affected all terminals and operators. The Applicant has not addressed what levels of resilience should be provided in normal operating circumstances and how IERRT would provide these.

3.9 As a further point, CLdN notes that the similarity in dwell times of unaccompanied RoRo trailers, agreed between CLdN, DFDS and Stena in the Dwell Times SoCG, is another indicator that the existing market is already acting competitively (contrary to the suggestion made in the Applicant's DL5 Response).

3.10 The Applicant appears to conflate 'resilience' with economic inefficiency. In paragraph 5.52 of the Applicant's DL5 Response it says:

"The NPSfP is clear that there is an established need for additional development of the type proposed through the IERRT facility regardless of any alleged spare capacity at Killingholme and that extra capacity is supported, even if there were sufficient capacity at Killingholme. Even if CLdN could deliver the claimed capacity at Killingholme, that clearly and self-evidently would not be a reason for not permitting the IERRT facility. To the contrary, additional capacity (if indeed it can be delivered by CLdN) would simply be a welcome addition under the NPSfP in terms of delivering competition and resilience".

3.11 This argument is inherently flawed, as it implies that there is an infinite benefit to continually building more and more capacity, even if there is insufficient market demand for this. There is no acknowledgment by the Applicant of the facts that: (1) this would be an economically inefficient use of land; and (2) there would be diminishing benefits to building more and more capacity, when there is insufficient demand to justify doing so, which would also be increasingly outweighed by the harms of doing so.

3.12 Given the points made above, CLdN invites the Examining Authority to find that there is no objective need (other than purely the commercial preferences of one operator) for IERRT, let alone an urgent and imperative need for IERRT, given that this is not supported by the factual conclusions drawn above in relation to current capacity at Killingholme. As set out above, this conclusion then drives two important questions: (1) does the IERRT benefit from the NPSfP policy presumption at all, because IERRT is not sustainable development; and (2) what weight, if any, should be given to the policy "starting point" in circumstances

where there is no “urgent and imperative need” as alleged and IERRT in any event is a disproportionate response to the true forecast growth.

Sustainable Development

3.13 CLdN refers to its Response to the Applicant’s Deadline 4 Submissions **[REP5-041]**, specifically at section 3 in relation to the Applicant’s response to BGC.2.02, for a summary of CLdN’s position in relation to IERRT being a ‘sustainable development’.

3.14 CLdN wishes to make two additional points on this matter, in light of the Applicant’s Deadline 5 Response:

3.14.1 per paragraphs 7.6-7.7 of the Applicant’s DL5 Response, the Applicant alleges that it does not need to prove that the Proposed Development can cater for long-term forecast growth. CLdN disagrees – the question of how well the Proposed Development caters to forecast growth is clearly relevant. The ability of the Proposed Development to respond to growth is relevant to the weight given to the ‘need’ case and the presumption of the NPSfP in favour of development (if such presumption applies); and

3.14.2 CLdN previously submitted that the Proposed Development does not make a significant contribution to the other matters in paragraph 3.3.1 of the NPSfP. All the Applicant has noted in response, per paragraph 7.12 of the Applicant’s DL5 Response, is that the “*policy does not require any specific or particular level of contribution to local employment, regeneration and development to be made for the development to be sustainable*”. It is not in dispute that some level of contribution is required. It is then a matter of judgment for the Examining Authority to decide if the Proposed Development can be considered to be sustainable development. CLdN queries how the presumption in favour of development in the NPSfP can apply to IERRT if there is no specific reference to the other matters in paragraph 3.3.1 of the NPSfP.

Alternatives

3.15 Again, as a general point, CLdN refers to its previous submissions in relation to alternatives to the Proposed Development, most particularly to Agenda Item 2(a) of its ISH3 Summary.

3.16 Briefly, but crucially, the Examining Authority is reminded (per the above) that the Applicant’s original case for the Proposed Development was based on there being no other way to meet the urgent and forecast imperative need for IERRT (see paragraph 3.3 above). Whilst the Applicant has moved away from this reasoning at ISH3 and in subsequent submissions, the Applicant has still not accepted that the information produced in the Examination shows that there is in fact no such need.

3.17 In those circumstances, it is relevant and lawful to consider alternatives. As this is not an urgently required development, the Examining Authority is not balancing this against a ‘do nothing’ scenario; rather, the Examining Authority is balancing a development, which CLdN submits is (at best) neutral when responding to the desired features of the NPSfP, against the continuation of a perfectly acceptable status quo. This is a matter of planning judgement – it is not correct, as the Applicant claims in Appendix 1 of the Applicant’s DL5 Response, that the NPSfP prevents the consideration of alternatives, if the Examining Authority considers them to be a relevant consideration. There are no express words to that effect in the NPSfP. It is well-established that alternatives can in exceptional circumstances be a relevant consideration and lawfully taken into account, particularly where a need for the particular scheme in the particular location is relied upon to justify other harms. The NPSfP does not purport to set any different test.

Transport

3.18 CLdN's outstanding points in relation to transport matters are summarised as follows.

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

3.19 The Applicant's calculations for the operational capacity of automatic check in, manual check in, pre-gate parking area, automated entrance gates/lanes and marshalling lanes are all based on the assumption of maximum annual throughput being 1,800 units per day / 660,000 units per annum, as utilised in the Transport Assessment **[AS-008]**. The maximum daily throughput has been consistently challenged by CLdN as being, in reality, a daily average (derived from maximum annual throughput) and not representative of maximum activity. Therefore, the capacity assessments presented cannot be considered valid. The Transport SoCG contains agreement of peak daily demand being an average daily figure of 1.25. Therefore, the basis for the capacity calculations should be a maximum daily throughput of 2,250 units, if the annual throughput of 660,000 units is to be maintained.

Sensitivity test and agreed splits

3.20 Discussions on terrestrial transport matters are ongoing between the transport consultants of CLdN and the Applicant. The Transport SoCG clarifies the current position and confirms that the key parameters of Solo Tractor Ratio and split between the East and West Gates, that will inform the sensitivity test of the Applicant's Transport Assessment **[AS-008]**, are agreed.

3.21 Notwithstanding the above, CLdN continues to recommend that a sensitivity test is undertaken to establish the maximum parameters that would cause significant impacts on the highway network, for a further review by interested parties. The Applicant's agreement to this request is captured in the Transport SoCG.

Accompanied and unaccompanied unit ratio

3.22 The Transport SoCG clarifies the current position in relation to this matter and confirms:

3.22.1 agreement of the ratios adopted by the Applicant; and

3.22.2 that, in isolation to other factors, the split of accompanied and unaccompanied units does not have a material impact on the Transport Assessment.

3.23 The key wording in relation to the above is "*in isolation*" – this parameter, in combination with other key parameters still to be agreed, could have a material impact on the Transport Assessment, hence the Applicant's commitment to undertake a sensitivity test.

Appendix 2 of the Applicant's submission in relation to ISH3 for Deadline 5 [REP5-027] and [REP5-028]

Annexes A-B

3.24 CLdN does not accept the statement in Annex A, at paragraph 5.4, that "*[the sensitivity test of queuing at the West Gate] remains well within the capacity of the road network and the capacity of the West Gate is not materially affected by inbound HGV movements*". Generally, although sensitivity has been applied, it is noted that the gate capacity calculations basis is still rooted in the daily throughput figures utilised in the Transport Assessment **[AS-008]** (which CLdN continues to dispute) and predates the notified changes to the Proposed Development.

3.25 CLdN's position (as set out in the Transport SoCG) is that the assumptions in the Transport Assessment have no validity until either an appropriate sensitivity test is undertaken; or controls are secured by the draft DCO to contain traffic demand to those assessed. Any such sensitivity test should include the Applicant's proposed changes to the Proposed Development and, particularly, the implications of changes to yard operations to gate and highway capacity.

Annexes D-E

3.26 To assist the Examining Authority by minimising the material being entered into the Examination, CLdN has deferred its detailed traffic modelling comments to DFDS and its transport consultants.

3.27 Generally, CLdN notes that the revised assessments contained in Annexes D and E are based on the disputed assumptions of the Transport Assessment **[AS-008]**, and therefore have no relevance until a sensitivity test is applied with agreed transport parameters.

3.28 It is noted that the highways assessment contained in Annex D indicates that five junctions would be exceeding capacity during peak IERRT operations. This is prior to any sensitivity being applied to the underpinning assumptions, which would exacerbate these impacts.

Ecology

3.29 CLdN notes the production of the Applicant's updated Habitats Regulations Assessment (**HRA**) **[REP5-020]** and Construction Environmental Management Plan (**CEMP**) **[REP5-018]**. CLdN confirms that its previous comments on these documents still apply, and, in any event, it will not be presenting any different case to that presented by Natural England.

3.30 CLdN has also reviewed the Applicant's Environmental Statement Addendum (**ES Addendum**), at Appendix 1 to the Proposed Changes Notification Report **[AS-028]**, and notes that its initial concerns in relation to the ES have not been addressed. In particular, CLdN's concerns in relation to cumulative loss of habitat still stand.

Draft DCO including Protective Provisions

3.31 CLdN's comments on the latest DCO produced by the Applicant **[REP5-004]** are contained in Appendix 1 to this response document.

3.32 In relation to protective provisions, CLdN's position remains the same as in its ISH4 Summary **[REP4-018]** and it still awaits the Applicant's response to CLdN's letter of 9 October 2023.

Future Capacity at Killingholme and Permitted Development Rights

3.33 CLdN notes that, in paragraphs 5.11-5.50 of the Applicant's Deadline 5 submissions, there are lengthy submissions from the Applicant in relation to CLdN's ability to expand its capacity at Killingholme, particularly in the context of permitted development rights.

3.34 This analysis of CLdN's position, under the North Killingholme Haven Harbour Empowerment Order 1994 and the Humber Sea Terminal (Phase III) Harbour Revision Order 2006, is fundamentally flawed and not accepted by CLdN. The use of permitted development rights at Killingholme is well established and lawful and has been accepted as such – CLdN has good recent and regular experience of utilising these rights and fully understands how they operate.

3.35 In any event, the expansion that CLdN has referred to is not proposed to operate 'under the radar' of relevant planning consents – what the Applicant's analysis of the position fails

to grasp is that the proposed expansion of capacity on existing operational land at Killingholme requires minimal works and would largely be facilitated through efficiencies, rather than being 'new development'; or, where it does involve new development, being within CLdN's operational land, it would be Permitted Development.

3.36 Additionally, CLdN and Volterra's assessment of current available capacity set out above (and also in Appendix 2) does not depend on the expansion of Killingholme beyond its current operational land. Volterra's assessment of future potential available capacity at Killingholme assumes development on land owned by a CLdN affiliated company, on part of which CLdN has consent to develop (the point made in paragraph 2.20.3 above is only in the context of the Applicant's 'resilience' argument).

3.37 CLdN's ability to obtain any future planning consents is, therefore, not a matter which the Examining Authority needs to determine in its consideration of the Application.

13th November 2023

APPENDIX 1

RESPONSE TO THE APPLICANT'S UPDATED DRAFT DEVELOPMENT CONSENT ORDER AND EXPLANATORY MEMORANDUM

Article 6 (maintenance of the authorised development) and the definition of "maintain" in article 2(1)

1. At Issue Specific Hearing 4 and in its ISH4 Summary **[REP4-018]** CLdN queried the extent to which the Applicant's Environmental Statement had assessed the activities included within the definition "maintain" contained in article 2(1) of the draft DCO, given effect through article 6. CLdN outlined that the discussion contained in paragraphs 3.2.22- 3.2.25 of its Environmental Statement **[APP-039]** merely contained some useful background information on a historic approach to "maintenance". It did not explain how the Applicant has assessed those activities for which it now seeks development consent.

2. The Applicant's response, contained in paragraphs 8.4 to 8.7 of the Applicant's Deadline 5 Response, appears to be somewhat confused.

3. First the Applicant says that "maintenance" powers "*are not intended to give rise to the reconstruction of the works as a whole but refer to 'maintenance' within its ordinary meaning*". That may be the Applicant's intention, but that is not what the Applicant's draft DCO says.

4. Article 2(1) defines "maintain" as "*includes, repair, adjust, alter, remove or reconstruct and any derivative of "maintain" is to be construed accordingly*". Article 6 expressly includes a power to reconstruct, in addition to the other matters recited in the definition of "maintain".

5. Secondly, the Applicant refers to the same paragraphs of its Environmental Statement as were referred to by CLdN in its ISH4 Summary and which do not provide any assistance in explaining how the Applicant has approached assessing the power to maintain that its draft DCO seeks (irrespective of what the Applicant may intend). It is difficult to escape the conclusion, reinforced by the Applicant's own submissions in the Applicant's Deadline 5 Response, that it has not assessed the full scope of "maintenance" for which it seeks authority under article 6 to carry out.

6. Thirdly, and perhaps in response to the inadequacies of its own Environmental Statement, the Applicant refers to an Environmental Statement for another project that has received development consent. The Environmental Statement for another project (for the Port of Tilbury Expansion Order 2019) has no bearing on the matter. In any event, even the excerpt of that Environmental Statement selected by the Applicant highlights its inconsistency on this issue. The extract notes that the exercise of the power to maintain would be subject to measures contained in an Operational Management Plan. The Applicant has proposed no such equivalent measure.

7. CLdN considers that the Applicant ought to consider, in the light of the environmental impact assessment it has carried out, an appropriate scope for the power to "maintain" with corresponding environmental controls.

Article 21 (operation and use of the authorised development)

8. The Applicant's Deadline 5 Response, when seeking to justify the absence of a maximum daily throughput figure for RoRo units in article 21, refers to section 6 of that document, which contains a discussion as to how the Applicant considers the Proposed Development would be capable of servicing the maximum annual throughout for which it seeks develop consent. This somewhat misses the point.

9. The issue is whether article 21 ought to include an 1,800 unit daily limit to align with what, as the Applicant explains in paragraph 6.2.6 of the Applicant's Deadline 5 Response, it considers it has assessed in its Environmental Statement. The concern being that with an annual limit the project could operate significantly in excess of 1,800 daily units that the Applicant says it has assessed in its Environmental Statement over a period of time giving rise to adverse effects that have not been assessed in its Environmental Statement and for which no appropriate mitigation is secured in the DCO. In particular, CLdN is concerned to understand the potential implications for its operations during periods of the Proposed Development operating beyond the peaks assessed. Paragraph 6.2 of the Applicant's Deadline 5 Response does not address this issue. The Applicant merely asserts in the Applicant's Deadline 5 Response its view that such a limitation is not required.

10. In relation to the tailpiece in article 21(2) that would permit more than 100 passengers per day to depart by vessel; again the Applicant's Deadline 5 Response does not address the issue. The Applicant has not explained to what "*...and subject to obtaining all necessary consents and approvals*." refers, which clearly lacks the precision necessary in a statutory instrument. More pressingly, the Applicant's Deadline 5Response does not engage with the Planning Inspectorate's advice referred to in CLdN's ISH4 Summary. Instead, the Applicant's updated Explanatory Memorandum **[REP5-007]** merely refers to a provision in the *requirements* to the Sizewell C (Nuclear Generating Station) Order 2022 as purportedly setting a precedent. Again, this does not respond to the point raised by the Planning Inspectorate's advice. That Advice says:

    "17.5 on the other hand, a requirement might make the development consent conditional on the discharging authority approving detailed aspects of the development in advance (for example, the relevant planning authority approving details of a landscaping scheme). Where the discharging authority is given power to approve such details it will be acceptable to allow that body to approve a change to details they had already approved. However, this process should not allow the discharging authority to approve details which are outside the parameters authorised within any granted DCO".

11. The provision of the Sizewell C (Nuclear Generating Station) Order 2022 referred to by the Applicant as precedent does not offend this advice; it is a provision that enables a discharging authority to approve changes to matters it has already approved (for example, a landscaping scheme) under the requirements to that DCO.

12. The issue with the Applicant's tailpiece in article 21(2) is that it purports to allow the discharging authority to approve a change to the scope of the development consent, where that scope would be approved by the Secretary of State by making the Order (if the Order is made). This tailpiece is not a provision that allows a discharging authority to approve different details to that which it has already approved. The local authority could alter details (i.e. the daily passenger limit) that the Secretary of State has approved by making the Order.

13. While CLdN remains of the view that the tailpiece is inappropriate, it is surprising that the Applicant has not included express provision requiring consultation with the Health and Safety Executive before the tailpiece is exercised given that the Applicant explains at paragraph 8.5 of its updated Explanatory Memorandum **[REP5-007]** that this 100 daily passenger limit is included to avoid receiving "advise against" advice from the Health and Safety Executive as a consequence of its land use planning guidance. But for this limit, the Applicant says that the Health and Safety Executive, applying its land use guidance, would have advised against the grant of development consent due to the risks associated with more than 100 persons being regularly in proximity to an existing hazardous land use.

Requirement 4 (construction hours – associated development)

14. The Applicant has amended requirement 4 in its Deadline 5 revision to the draft DCO **[REP5-004]** by simply changing the order in which particular provisions appear. The revised requirement still contains all of the flaws outlined in CLdN's ISH4 Summary:

    14.1 in sub-paragraph (b):

        14.1.1 it remains unclear what the "maximum permitted levels of noise" are;

        14.1.2 it remains unclear with whom the monitoring locations are to be "agreed"; and

        14.1.3 it remains the case that it is subject to a tailpiece that would allow this unclear provision to be disregarded; and

    14.2 in sub-paragraph (c), it remains the case that whatever restrictions are contained in this requirement can in any event be disregarded for:

        14.2.1 works that cannot be interrupted; or

        14.2.2 emergency works; or

        14.2.3 works that are carried out with the prior approval of the Council.

Requirement 8 (construction and environmental management plan)

15. CLdN welcomes the Applicant acknowledging that its CEMP is an outline document and welcomes the fact that the Applicant has updated requirement 8 accordingly.

16. However, it is not clear why the Applicant considers it to be appropriate to add yet another tail-piece to this requirement. The tail-piece is of concern because (i) it would allow departures from the approved CEMP without a positive decision being made that to do so would not give rise to materially new or materially different environmental effects than those reported in the Environmental Statement; and (ii) it would circumvent any consultation with the consultees that are required to be consulted in relation to the approval of the CEMP. The Applicant is again referred to section 17 of the Planning Inspectorate's Advice Note 15.

Requirement 15 (construction and operational plans and documents)

17. It is not clear why the Applicant has deleted the Navigational Risk Assessment from this requirement, such that it is no longer required to construct and operate the authorised development in accordance with it.

18. This is a serious concern to CLdN as there is now no means of securing compliance under the Order, with the important mitigation contained in that Navigational Risk Assessment to maintain safe navigation.

APPENDIX 2

RESPONSE TO THE APPLICANT'S COMMENTS ON DEMAND AND CAPACITY

Growth and demand considerations

1. CLdN and Volterra do not believe that it would be beneficial to the Examining Authority to respond to every point that the Applicant makes in the Applicant's Deadline 5 Response. Fundamentally, Volterra did not strongly challenge the Applicant's demand forecasts originally, instead querying how specific assumptions quantitatively fed into the demand model and highlighting the fact that demand forecasts are inherently uncertain and sensitive to specific assumptions (such as the predicted level of GDP growth).

2. In the Applicant's Deadline 5 Response, the Applicant focuses on demand considerations by outlining why it does not agree that its model represents a black box. A lot of qualitative detail is provided on how the demand model functions, with several cross references to the Market Study. Whilst substantial text is provided on how different factors are considered, there is still relatively little detail provided on how each of these factors quantitatively feeds into the overall model. It remains difficult to ascertain how each of these factors (such as 'hinterland demand' or 'logistic cost' modelling) impacts the overall output of the model. A review of specific tables and figures in the Market Study that are referred to by the Applicant shows that there are still some unexplained assumptions and weighting factors that feed into the estimated 23% shortsea demand share for the Humber. Whilst the continued lack of quantitative transparency makes it difficult to comment in detail, the general principle of growth in demand in the Humber is not disputed.

3. CLdN's responses on this issue are instead focused on the Applicant's demand consideration submissions provided from page 14 onwards of the Applicant's Deadline 5 Response, titled 'Comparison of Demand Projections'. The Applicant concludes in paragraph 4.17 that the starting point should be higher in the Humber due to a number of factors, including 2022 data, uplifted DfT statistics for Killingholme and a revised GDP forecast used.

4. It is important for CLdN to respond to the Applicant's criticism of Volterra not using 2022 as the starting point for Volterra's revised forecasts, despite acknowledging (and making the Applicant aware in doing so) that this later data was now available. It should be stressed that the Volterra Report utilised 2021 data simply because the aim was to produce outputs on a like-for-like basis with the Market Study, to easily highlight to the Examining Authority areas of agreement and areas of disagreement in the demand modelling.

5. Volterra is comfortable with using the 2022 DfT data as a starting point for the forecasts now that the Applicant has revised its forecasts, acknowledging the error in the reporting that the Applicant highlights in paragraph 4.17. The uplift for Killingholme is also accepted. This is due to the manner in which DfT requests data to be recorded for this category, whereby DfT counts the MAFIs/cassettes used to move containers, with the assumption that one MAFI/cassette carries one container. However, as demonstrated to the Examining Authority during the Killingholme terminal visit, CLdN moves between one and four container/tanks on one cassette, resulting in a higher throughput or 'demand' figure at Killingholme, which was provided transparently by CLdN in previous submissions.

6. It is welcomed that the Applicant has provided the growth rates for its revised growth scenarios in Table 2 of the Applicant's Deadline 5 Response. However, it is unclear why the short term rates are stated as beginning from 2025. Indeed, this is more puzzling in the context of Figure 2, when the period between 2022-2025 clearly appears to have a higher growth rate than the later periods which have been presented in Table 2 for the Applicant's core revised forecast. As Volterra has reiterated throughout the Examination, and as is repeated by the Applicant, the overall level of growth is not fundamentally challenged. What has been challenged previously, and remains unaddressed by the Applicant, is the

plausibility of high levels of growth in the short term, which are likely due to a number of unexplained (at least quantitatively) demand factors inherent with the Applicant's model. The Applicant has persistently made the case that the Proposed Development is required to address an urgent need; for such a case, it seems unusual that an explanation of the short term growth rate should be omitted, given it would correspond to the most immediate and urgent need.

7. In the absence of further information being provided, based on Table 2 and the information presented in paragraph 4.20 of the Applicant's Deadline 5 Response, Volterra has estimated the implied growth of the different scenarios for 2022-2025. For the purposes of comparison, three forecasts for unaccompanied RoRo on the Humber are presented here.

   7.1 The first seeks to replicate the Applicant's revised forecast. As stated above, the 2022-2025 growth rate is not provided by the Applicant, so this has been calculated by Volterra from the stated 2022 demand, 2050 forecast demand, and the growth rates provided for the periods 2025-2050 per Table 2 of the Applicant's Deadline 5 Response. Based on this, the compound annual growth rate for this scenario between 2022-2025 would need to be 5.8%. This is considerably higher than the growth rates for the 2025-2050 period presented in Table 2 (reproduced below – 2.5%, 2.0% and 1.4%). It is noted that from viewing the Applicant's Figure 2, the growth is not linear over this early period. However, in the absence of further information, the most accurate replication that could be produced with the data provided is presented. It is ironic that in seeking to rebut Volterra's claim that the Market Study's forecasts are a black box, the Applicant's response appears to transparently present the shortsea traffic growth rates assumed (which is welcomed) but in doing so misses out a crucial (short term) time period, and which would appear (through the application of simple maths) to be attempting to hide a considerably more bullish assumption around rates of short term growth in demand.

   7.2 The second scenario revises the Applicant's latest core forecast with a slower short term growth rate by applying the stated 2025-2030 growth rate of 2.5% to the unstated 2022-2025 period. This is considered an appropriate yet still conservative step when considering that the OBR forecasts short term GDP growth to be 1.4%, 0.2% and 2.1% in 2022/23, 2023/24 and 2024/25 respectively, below the growth rates anticipated in the longer term forecasts. Whilst on the face of it, changing a growth rate for 3 years of the forecast term might seem a minor adjustment, it is worth highlighting that even this modest change to their model – reducing from 5.8% growth over the period 2022-2025 to instead 2.5% (in line with the Applicant's stated assumed growth for 2025-2030, and still higher than the OBR's estimates for the same period) – reduces demand from 1,925,000 units in 2050 to 1,750,000 units. This is a reduction in demand by 2050 of 175,000 units, which is a material difference given it constitutes a third[2] of the Applicant's proposed throughput of IERRT.

   7.3 The third and final scenario seeks to replicate the Applicant's revised version of the Volterra OBR forecast. Whilst the Applicant has incorrectly assumed this to be a linear 1.8% growth rate from 2025-2050, for the sake of clarity and ease of comparison to aid the Examining Authority, this version is presented rather than correcting it to follow the actual methodology used originally (for which details of this methodology are provided in paragraph 5.23 of the Volterra Report). Again, this replication does not appear to exactly match that of the Applicant's in Figure 2, but is the best approximation given the available information. The assumed growth rates and the resulting forecasts are presented in Table A and Figure A respectively. As can be seen, the impact of reducing the Applicant's (unstated) early growth rate for the period 2022-2025 is to bring the final demand in 2050 to an almost identical figure

[2] A third is based on the Applicant's new stated throughput of 528,000. It would be a quarter if compared to the Applicant's original maximum capacity of 660,000.

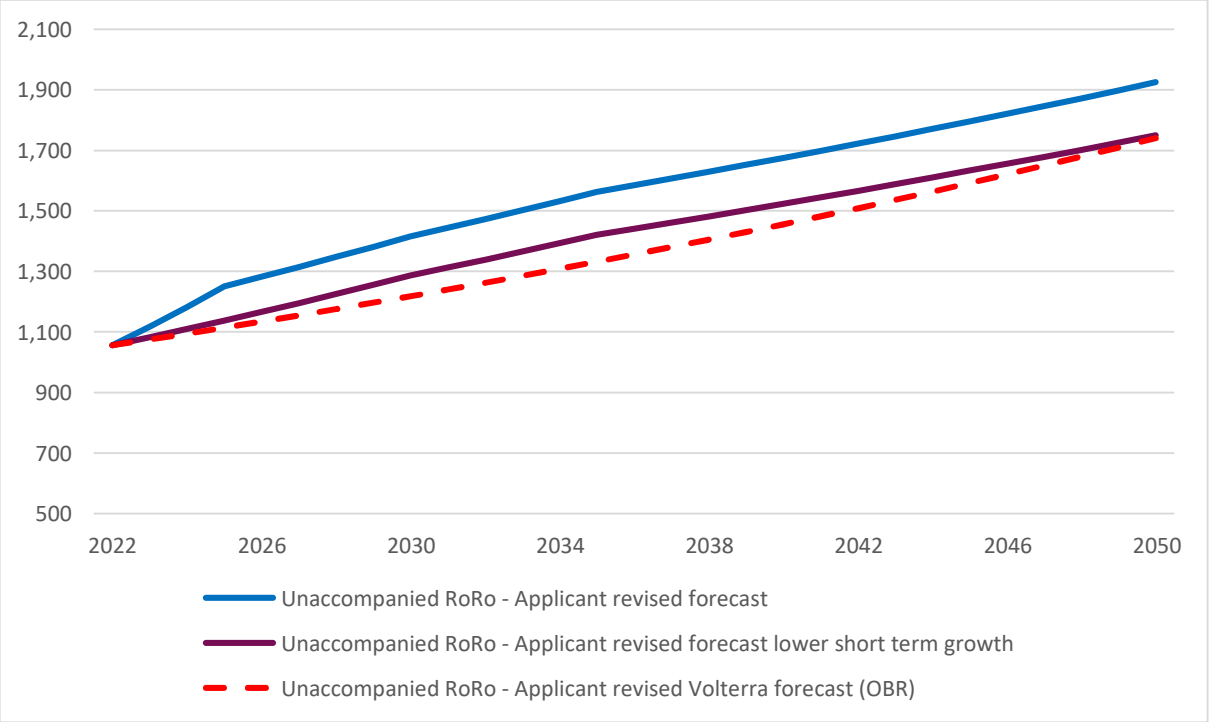
to the Volterra (OBR) scenario – namely 1,740,000 or 1,750,000 units in 2050 in the two scenarios.

Table A – Shortsea traffic growth rates, and resulting Humber unaccompanied Ro-Ro units estimated in 2050

Demand forecast scenario	2022-2025	2025-2030	2030-2035	2035-2050	Demand 2050 ('000s units)
Unaccompanied RoRo – Applicant revised forecast	5.8%*	2.5%	2.0%	1.4%	1,925
Unaccompanied RoRo – Applicant revised forecast lower short term growth	2.5%	2.5%	2.0%	1.4%	1,750
Unaccompanied RoRo – Applicant revised Volterra forecast (OBR)	1.8%				1,740

Source: Volterra calculations, November 2023. Based on information from Applicant's Deadline 5 Response [REP5-032]
** growth rate 2022-2025 inferred by Volterra from the start and end demand numbers and growth rates stated by the Applicant for the later periods 2025-2050*

Figure A - Humber unaccompanied Ro-Ro units forecast ('000s)



Sources: Volterra calculations, November 2023. Based on information from Applicant's Deadline 5 Response [REP5-032]

Dwell times

8. With respect to dwell times, CLdN provides the following responses to the Applicant's submissions on 'Dwell time criticism':

   8.1 at no point did the Applicant ask CLdN for existing capacity or dwell time estimates at Killingholme, nor it appears, the dwell times for DFDS;

8.2 CLdN has demonstrated, through the provision of real data on dwell times, the provision of the Killingholme Note, and during the site visit to Killingholme by the Examining Authority, that the Applicant's estimates of existing capacity and dwell times are factually incorrect;

8.3 CLdN has provided the actual data for Killingholme, which the Applicant does not acknowledge. Instead, the Applicant seeks to dispute or avoid acknowledging by obfuscating with tangential observations that transparently are an effort to avoid engaging with the facts / actuals; and

8.4 it is noted that the Applicant does not dispute CLdN's dwell time, nor even acknowledge it in the Dwell Times SoCG. Instead, agreement has now been reached on dwell times for unaccompanied RoRo trailers by the three parties that possess that information on the Humber – CLdN, DFDS and Stena – per the Dwell Times SoCG.

9. The fact that the Applicant had Stena as part of its team for the Application, yet has at no point decided to draw on their knowledge on real life dwell times on the Humber, is surprising. In fact, now that CLdN has finally pushed the Applicant to engage with Stena over dwell times, Stena have made it clear that: (i) their existing dwell time for the Europoort service at Immingham is 1.33 days (across imports and exports); and (ii) the anticipated dwell time is 1.4 days (across imports and exports) at IERRT, far below the 2.25 days put forward in both existing capacity and IERRT assessments in the Application. This transparency, and provision of actual data which aligns with the evidence submitted by CLdN and Volterra, is welcomed.

10. The second of these points is shown in Appendix 4 of the Applicant's Deadline 5 Response where the Applicant has presented its calculations for the theoretical and capped operating capacity at the Proposed Development. Within these calculations it has utilised dwell times of 2.45 for westbound (import) and 0.35 for eastbound (export) services, averaging an overall dwell time for imports and exports of 1.4. Using a flat average in this way gives a more accurate reflection than solely using either imports or exports given the variation in dwell times between the two; a flat average is considered appropriate due to the ratio between exports and imports being approximately 50:50 (units that come in also go out).

11. These revised calculations are welcomed as they clearly demonstrate that the Applicant has now accepted that the 2.25 dwell times figure was far too high. What is not clear is why the Applicant has not been clearer in its acceptance of this fact. Indeed, the matter remains obscured by the Applicant's apparent continuation in its defence of the 2.25 days dwell time in paragraphs 7.70 – 7.74 in the main body of the Applicant's Deadline 5 Response. Whilst it is true that the analysis presented in Appendix 4 to the Applicant's Deadline 5 Response is considering the capacity of the IERRT itself rather than the Humber, it appears at the very least contradictory to use an average dwell time of 1.4 within these calculations but not acknowledge the implications that such a notable change to an assumption would have in their assessment of overall capacity in the Humber.

12. The existing overall capacity in the Humber is a direct function of the existing operators' dwell times. Within the Dwell Times SoCG, the operators have all provided actual dwell times, and it is only right to therefore reflect these in revised estimates for existing capacity on the Humber, which Volterra has done in Figure B and described the implication of in paragraph 2.20.1 (an understating of capacity, by the Applicant, of 187%).

13. The Applicant providing a source for the original dwell time assumption (2.25) used within the Market Study is also welcomed, but this does not detract from the fact that this dwell time is fundamentally wrong. In fact, the Examining Authority is encouraged to read the paper (The Design of Terminals for RoRo and RoPax Vessels (MarCom Working Group (Report No 167, 2023)) by PIANC (the World Association for Waterborne Transport Infrastructure)) – which CLdN has requested that the Applicant submit into the Examination,

with PIANC's approval – referenced in paragraph 7.73 of the Applicant's Deadline 5 submission. It is CLdN's view that this paper, in fact, further serves to discredit the 2.25 day original dwell time assumption, rather than support it. The paper itself is intended to inform design so it is misleading to use it as evidence to support the dwell time of 2.25 and it is still not clear from the Applicant where the 2.25 figure has come from. Notwithstanding this, when real data would have been available, it is unclear why the Applicant would rely on a paper such as this when calculating capacity. The fact that, as stated in previous submissions, the Applicant's consultants' sensitivity testing was upwardly biased, suggests that the Applicant sought to demonstrate capacity constraints which are not evidenced by the real world data for the Humber. To recap, a variation of only 0.5 days lower dwell was tested against a variation of 1.25 days higher in Table 8-3 of the Market Study. For context, this range of 1.75 days to 3.5 days tested does not come close to capturing the Applicant's now expected dwell time at IERRT (1.4 days), Stena's existing Europoort dwell time of 1.33 days, or CLdN's stated unaccompanied RoRo trailer dwell time of 0.92 days. The Dwell Times SoCG provides clear evidence that the original dwell time assumed can be disregarded.

Existing capacity on the Humber

14. In Section 5 of the Applicant's Deadline 5 Response ('Capacity Considerations'), the Applicant continues to mischaracterise the existing capacity available at Killingholme. It is unclear why the Applicant feels it is better placed to assess Killingholme's throughput and existing storage capacity than CLdN. In fact, it is telling that the Applicant is willing to accept Killingholme's higher throughput figures provided previously (and mentioned in paragraph 4.17 of the Applicant's Deadline 5 Response) without challenge, given it aids the Applicant's case in estimating a higher level of future demand, yet will not similarly accept the corrected capacity figures provided by CLdN, which demonstrate higher capacity on the Humber. This is a fundamental inconsistency in the Applicant's approach and an example of the Applicant seeking to utilise different figures and whichever better serve each element of its own case – namely, in this regard, to put forward a case demonstrating an alleged compelling and urgent need for more capacity on the Humber.

15. CLdN continues to believe that, through CLdN's DL4 Submissions, it has been completely clear about capacity at Killingholme both now and in the future; how capacity is managed at the port; and how additional capacity can be delivered in the future. Table 4.1 of the Volterra Report provides the factually correct number of trailer bays (1,176) and container ground slots (893) at the time of writing of that report. CLdN stores a lot of containers on cassettes as well as stacks. CLdN has provided Volterra with the counts of the number of container ground slots through images, to independently verify this figure.

16. Whilst the number of landside storage capacity slots remains factually correct, the estimated existing capacity at Killingholme has been updated to more accurately reflect the latest dwell times that are achieved at the port. The Volterra Report conservatively assumed a dwell time of between 1.25 days and 1.5 days at Killingholme initially. Real data provided by CLdN to Volterra (and since agreed in the Dwell Times SoCG) shows that Killingholme operates an average 0.92 day dwell time for unaccompanied RoRo trailers, across imports and exports. Unaccompanied RoRo trailer dwell times were agreed by the three parties in the Dwell Times SoCG for ease of comparison, given that: (i) this is mainly the type of cargo Stena carries; and (ii) this is the majority of cargo that will be served at IERRT. CLdN and DFDS do also have a higher proportion of their throughput as containers, which typically have a slightly higher dwell time. The average dwell time at Killingholme, once the dwell times of containers are considered in the calculation, is 1.16 days. This has been verified by Volterra through a review of CLdN's operational data.

17. Utilising this confirmed dwell time at Killingholme, and holding all other factors presented in Table 4.1 of the Volterra Report as the same, the most accurate estimate of existing capacity at Killingholme is 675,764 units in 2023, rising to 807,931 by 2025. This is higher

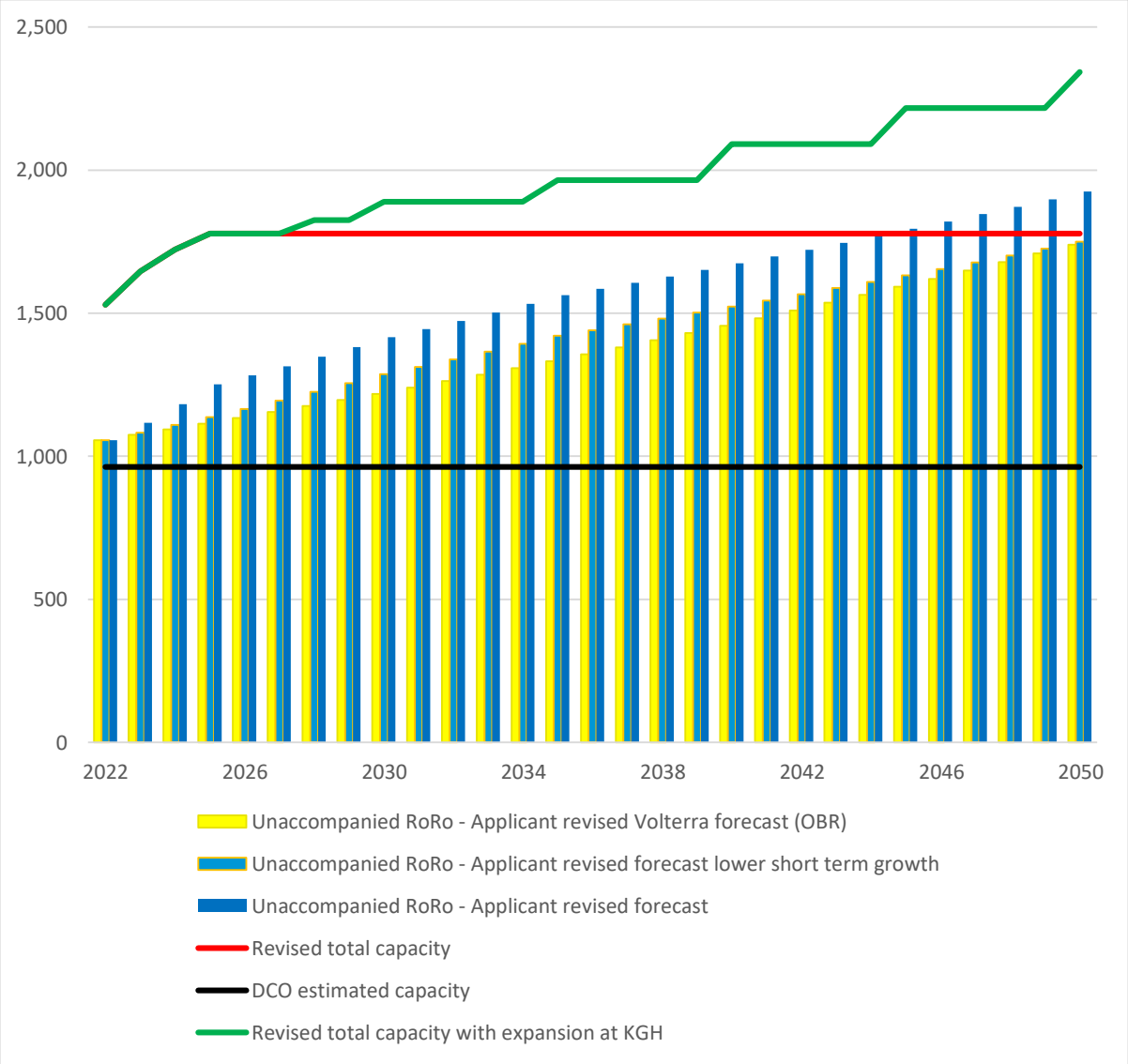
(not lower, as suggested by the Applicant) than the 625,861 units in 2023 provided in Table 4.1 of the Volterra Report.

The implications for the revised market demand assessment of the Humber

18. As well as a re-assessment of Killingholme's capacity presented above, DFDS and Stena providing accurate existing dwell time figures at Immingham in the Dwell Times SoCG allows for a re-calculation of Humber capacity as a whole. A weighted average is calculated for DFDS' dwell time, utilising DfT data on origins of their throughput (i.e. the proportional split across the four origins), with a similar upwards adjustment to the stated DFDS unaccompanied RoRo trailer dwell time, conservatively made to factor in slightly longer dwell times for containers. This recalculation exercise serves to show the extent to which existing capacity was materially underestimated in the Applicant's original case. The Applicant originally estimated that capacity on the Humber amounted to approximately 962,000 units annually. This is revised to 1,664,000 units in 2023 when using the dwell times based on real data provided in the Dwell times SoCG, rising to 1,796,000 units a year by 2025 when factoring in Killingholme's already confirmed increase in trailer bays and container slots over the next two years.

19. The revisions presented and transparently explained above result in the following implications for the overall 'need' case in the Humber. Figure B provided below clearly demonstrates this revised position for the Examining Authority to consider. It factors in the new (and higher) demand forecasts put forward by the Applicant, as well as revised capacity estimates based on the real data provided by the relevant parties.

Figure B – Humber revised unaccompanied RoRo demand and capacity comparison ('000s units)



Source: Volterra calculations, November 2023, utilising all data provided by different parties up to Deadline 5

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

20. It is interesting, but not surprising, that the Applicant has chosen to amend the design of IERRT (outlined in paragraph 6.6 of the Applicant's Deadline 5 Response) to accommodate more trailer ground slots (1,674) and container ground slots (65), after CLdN has repeatedly pointed out to the Applicant that its original design of landside storage capacity combined with its original dwell time (2.25 days) meant that IERRT was not well designed functionally and could not support its stated throughput.

21. It is also noted that Stena has provided an indication of how it expects IERRT to operate in Appendix 4 of the Applicant's Deadline 5 Response. Having reviewed this new information, it is considered very convenient that when combining the following two factors there is an average dwell time of 1.4 days across all throughput:

21.1 the new landside storage capacity, namely 1,674 trailer bays, 65 container ground slots and 25 trade bay slots; and

21.2 the revised dwell time provided by Stena in Appendix 4 of the Applicant's Deadline 5 Response, amounting to 2.45 days for imports and 0.35 for exports.

22. The Applicant now just manages to achieve its stated annual throughput of 380,160 unaccompanied Ro-Ro units per annum. In CLdN's opinion, this is another indication of the Applicant choosing to utilise numbers that conveniently suit its arguments that: (i) there is a need for further capacity; and (ii) that IERRT can meet this stated need. It serves to undermine the credibility of the Application given that its original numbers were markedly different, and the Applicant had not realised that the implication of using its own originally stated assumptions was to demonstrate that IERRT was not deliverable.

23. In paragraph 6.7 of the Applicant's DL5 Response, it is simply stated that a greater number of trailer bays and ground slots is achieved by a "*more efficient layout out the various trailer and container slots within the identified storage areas. Ongoing detailed design work could further increase the number of notional storage slots deliverable within the proposed storage areas. The number of slots, therefore, remain subject to the ongoing detailed design process*". It does appear hypocritical that on the one hand, the Applicant is happy to criticise the flexibility in Killingholme's existing operations that allows it to expand capacity and ground slots quickly (as demonstrated to the Examining Authority during the site visit), yet the Applicant is happy to apply the same principle of flexibility at IERRT to justify increasing the number of ground slots to make IERRT just about deliverable under a new set of assumptions put forward.

24. Furthermore, whilst based on the new information provided, IERRT can now in theory achieve its stated throughput, a number of concerns and inconsistencies arises from this new design of IERRT. Specifically, these are:

24.1 first, to achieve its stated throughput with the amount of storage capacity and dwell time indicated, IERRT would need to achieve a 72% unaccompanied RoRo, 28% accompanied RoRo split. Whilst it is not disputed that this represents a reasonable split of existing cargo (as agreed in the Transport SoCG), significant doubt remains over whether this can be achieved in practice for the higher overall throughput targeted at IERRT. A 28% split of accompanied RoRo would amount to an estimated 147,840 accompanied units at IERRT each year. For context, Stena's estimated throughput of accompanied RoRo units in the year of 2022 across the Hoek and Europoort services was approximately 77,000 units. This shows that there would need to be a near doubling of accompanied RoRo demand to accommodate this split at IERRT's higher levels of throughput. This is at odds with the findings of the Market Study, which shows in paragraph 177, point (b) that accompanied RoRo traffic in the Humber has declined by an average of 1.6% per year over the period 2012 to 2021, with the category forecast to lose market share. This paragraph also notes that the truck driver shortage will "continue to limit growth in the next few years". Whilst the Market Study does then go on to inexplicably forecast future growth in accompanied RoRo demand (despite the fact there has been a historic decline), this shows that achieving a doubling in accompanied RoRo throughput is likely to be very difficult in reality;

24.2 secondly, achieving the stated throughput would involve the running of exclusively the largest vessels (i.e. those with the most capacity), which is clearly not common practice (nor is it feasible) amongst operators. CLdN refers to paragraph 2.54 of CLdN's Written Representation at Deadline 2 **[REP2-031]**; and

24.3 thirdly, the lower dwell times will invalidate the Transport Assessment as there would be a change to the arrival/departure profiles and a greater concentration of HGVs movements during peak hours.