

8 November 2023

Dr Chris Mumby (BSc. PhD MInstP)
Principal Specialist Inspector of Predictive Risk Assessment & Team Leader
Health and Safety Executive
CEMHD 5C : Chemical Explosives Microbiological Hazards Division
Unit 5C
Redgrave Court 1.2
Merton Road
Bootle
Merseyside
L20 7HS

Dear Dr. Mumby





Proposed Immingham Eastern Ro-Ro Terminal, Port of Immingham

HSE's Relevant Representation – PINS ref:TR030007

1. **Rule 17 letter** - You may have seen the Rule 17 letter which was issued by the Examining Authority (ExA) on 27 October in relation to Associated British Ports' (ABP) proposals for the Immingham Eastern Ro-Ro Terminal (IERRT). In essence – and I have attached a copy of the letter for your assistance - the ExA has asked the HSE (at para. 2(a)) to comment on the consideration it has given to the operation of the IERRT “*having the potential to cause an incident affecting the safe use of any adjoining COMAH sites*” – specifically referencing the adjacent marine infrastructure, namely the Immingham Oil Terminal and the Eastern Jetty.
2. **Statement of Common Ground** - The ExA has also repeated its request for ABP, as the Applicant, to enter into a Statement of Common Ground with the HSE to be submitted by Monday 13 November 2023. I hope our letters to you of 9 and 23 October effectively set out our position in this respect, but the following additional comments may assist.
3. The ExA, in its letter, note that the HSE have indicated that there would be no need to prepare and submit a SoCG, given that their concerns have been largely addressed. Despite this, the ExA have nevertheless repeated their request for such a document to be produced. Subject entirely to your views, in light of the ExA's request, we have drafted a SoCG for your approval, which will simply reflect the thrust of our correspondence – and is relatively short.
4. **Changes application** - In the context of our proposals generally, you may also have seen that ABP has recently submitted an application to make certain non-material changes to the IERRT proposals as originally submitted. I can confirm that in land use planning terms this will not affect the proposal at all, as our proposed changes essentially represents an optimisation of the existing design, although I have provided a brief summary below.

Statement of Common Ground

5. Dealing first with the SoCG, we would see it taking the form of three principal subject headings covering the following areas:

6. **Implications of marine operations adjoining COMAH sites** - The ExA has requested that the HSE explain what consideration has been given – or by extension legally needs to be given – by the HSE to the potential implications of a vessel allision with adjacent COMAH site marine infrastructure.
7. The question focuses specifically on marine activity, thus falling outside of the land use planning process. As part of the pre-application consultation process with the HSE, the HSE confirmed that the geographical extent of the provisions of the Town and Country Planning Act from which the HSE's regulatory powers are derived does not extend to vessels in the marine environment – ie beyond the extent to which LPAs have jurisdiction, which is typically the low water mark. In essence, a ship in motion, even if it is due to dock at or has just sailed from a port facility, does not form an active part of that marine infrastructure.
8. As a consequence, we believe it is the case that any operational safety issues that may arise in this context, fall to the regulatory responsibility of the appropriate marine body, as dictated by maritime legislation. Presumably, any potential concerns would be identified by COMAH operators in their COMAH reports. 
9. **Implications of impact on COMAH sites by IERRT terrestrial operations** - The ExA has focused on the 100 passenger limit and we are conscious that the HSE has considered the issue of IERRT activity with relation to land use planning distances in more general terms - your email of 10 October refers. In this context, and by reference to the attached general arrangement drawings, we can confirm the following -
 - a) **Northern Storage Area** - This is situated partly inside a DPZ which surrounds the Exolum tank farm, as can be seen in the attached image. The layout as presented indicates slots for trailer and container laydown points (the small rectangles). No buildings will be constructed in that area which will simply remain in use for the storage of cargo in transit – as is the case today. We trust you agree from the plan that the DPZ around the Immingham Oil Terminal's tank farm, seen to the southeast, does not overlap the IERRT boundary in any meaningful way. 
 - b) **Terminal through road** – As far the DPZ areas are concerned, the through road, effectively linking three of the four cargo storage areas falls principally within in the combined inner zones which are the most prevalent zoning within the port estate. We have, however, deliberately routed the main access route through the gap between the two DPZs so there are no associated land use planning issues. 
 - c) **Passenger waiting area** – This area has been located in the far south-eastern corner of the proposed new terminal area – immediately south of the Southern Storage Area. As you can see from the Plan, the area presents as curved waiting lanes (labelled as marshalling lanes) with a small welfare building. This area will accommodate separately, lorry drivers who are accompanying their cargo and a maximum number (as prescribed in the draft DCO) of 100 passengers in cars or recreational vehicles – as when there is available capacity. This passenger waiting area falls within a Middle Zone which we understand is acceptable subject to that strict limitation of no more than 100 passengers. In practical terms, car passengers will drive through Inner Zones to get to the terminal. They will stop at the main terminal office for a short duration to check-in for the sailing and will then be instructed to proceed to the 'in-gates' leading to the passenger waiting area. This area includes a passenger welfare building and marshalling lanes where passengers 

will await instruction to board the vessel. As you will appreciate, apart from checking-in, passengers will necessarily spend the vast majority of their time waiting within the delineated waiting area, inside the middle zone – which will be enclosed by a fence.

10. The annotated image included as Appendix 1 focusses specifically on the southern trailer park and the position of the passenger waiting area with relation to the land use planning distances.
11. As you are no doubt aware, the layout (and indeed design) of an NSIP project becomes largely 'fixed' in the sense that General Arrangement plans submitted as part of the application become 'certified documents' when the DCO comes into effect. This means that ABP cannot materially deviate from the layout as certified without securing the approval of the Secretary of State. That is in addition to the fact that regardless of the DCO approval, ABP as owner and operator of the Port of Immingham has to ensure compliance with the relevant rules and regulations as required by the HSE. Certainly, no change to the approved application could be made without the HSE being formally consulted.



ABP's recent change application to the ExA

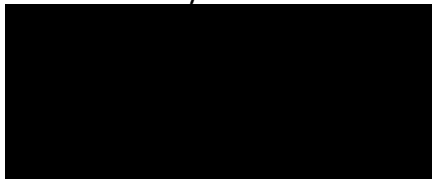
12. Dealing briefly with our proposed changes, we propose to make some changes to the scheme as submitted, those changes including a minor realignment of the approach jetty, the shortening of the internal link bridge and improvements to the UK Border Force facilities. In land use planning terms, however, all remains effectively as it was before, in accordance with your helpful initial advice.



Conclusion

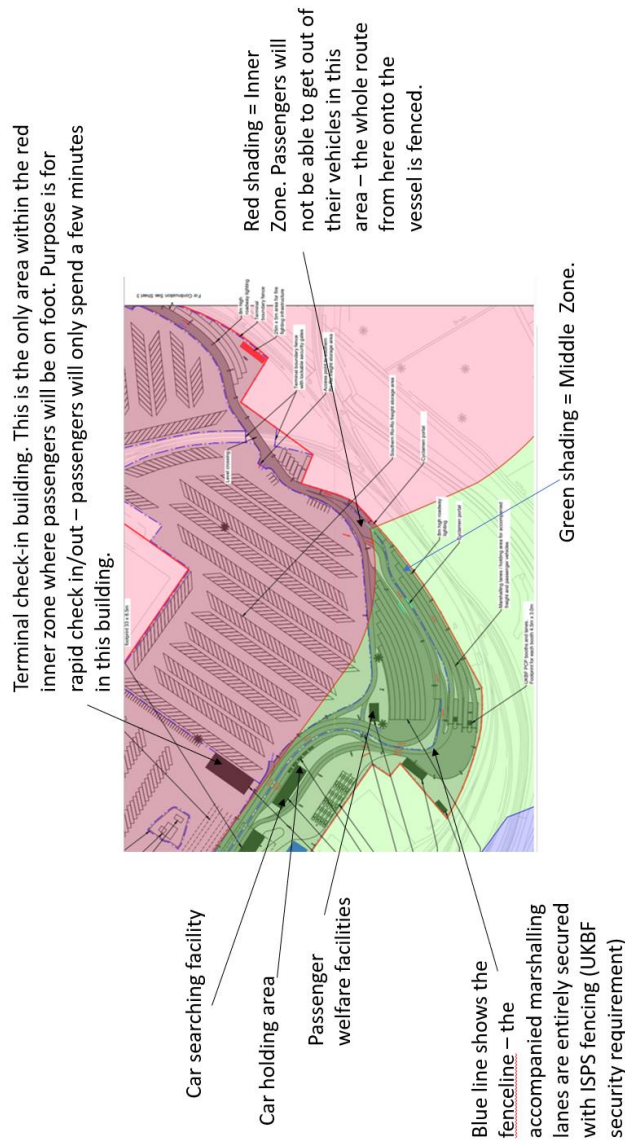
13. We hope the above clarifies the current position. In view of the ExA's Monday 13 November deadline for a SoCG, we have prepared a draft for your review. If in the meantime, you have any concerns, or indeed wish to discuss this matter further, please do not hesitate to contact me.

Yours sincerely



Tom Jeynes
Sustainable Development Manager

Appendix 1



Associated British Ports constituted under the Transport Act 1981. Reference No ZC000195
Principal Office: 25 Bedford Street, London WC2E 9ES



ABP KEEPING BRITAIN TRADING

- Ayr
- Hull
- Port Talbot
- Barrow
- Hams Hall
- Silloth
- Barry
- Immingham
- Southampton
- Cardiff
- Ipswich
- Swansea
- Fleetwood
- King's Lynn
- Teignmouth
- Garston
- Lowestoft
- Tron
- Goole
- Newport
- Grimsby
- Plymouth

National Infrastructure
Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN
(BY EMAIL ONLY)

imminghameasternroroterminal@planninginspectorate.gov.uk

Reference: Your Ref: TR030007
Our Ref: 4.2.1.6886.

Dr Christopher Mumby

Chemicals, Explosives and
Microbiological Hazards Division
5
1.2 Redgrave Court
Merton Road
Bootle
L20 7HS

 [@hse.gov.uk](mailto: [REDACTED]@hse.gov.uk)

<http://www.hse.gov.uk/>

Date: 13 November 2023

For the attention of Grahame Gould,

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)

1. Thank you for your recent correspondence¹ on 27 October 2023 about Immingham Eastern Ro-Ro Terminal and for the opportunity for HSE to respond to the requests for further information under [Rule 17](#).
2. I will address the two requests for further information under request 2 a) and b) which start on page 3 of your letter. This letter also benefits from a letter from ABP, received by me on 8 November 2023, adding clarity to HSE's considerations.

2a) Potential to cause an incident affecting adjoining sites

3. This query relates what consideration HSE has given, as a NSIP statutory consultee², to the Proposed Development's operation having the potential to cause an incident to affect the safe use of any adjoining COMAH sites including the Eastern Jetty and the wider port.
4. HSE's statutory NSIP role is for land-use planning purposes which is made under planning legislation only. HSE is the national regulator of workplace health and safety and notes that the fundamental principle of health and safety legislation is that those who create risks are best placed to control them. Designers, installers, and operators all have a duty to ensure this is the case. Further, HSE does not have a role in the development, delivery, or review of a site's safety plans. For the marine activity, this falls outside of the land use planning process; HSE's regulatory

¹ [TR030007-000879-IERRT R83 R17.pdf \(planninginspectorate.gov.uk\)](#)

² For reference, HSE's role as a statutory consultee for NSIPs is outlined in [Advice Note Eleven, Annex G – The Health and Safety Executive | National Infrastructure Planning \(planninginspectorate.gov.uk\)](#)

powers do not extend to vessels in the marine environment, typically defined as beyond the low water mark³.

5. Under health and safety legislation, HSE would expect, that each site (including COMAH notified site) consider the potential impact on their operation of external events caused by the IERRT Proposed Development. Further, they should liaise with IERRT to address any issues and implement any necessary risk reduction control measures such that their site has all measures necessary to reduce the risk to as low as reasonably practicable. This also extends to emergency planning where the legislation expects COMAH sites to review their emergency planning arrangements and liaise with the emergency service and the local authority. COMAH sites would be expected to look at the impact on their operations and activities should a vessel hit part of their site and whether that can lead to a major accident.
6. HSE does regulate COMAH sites (health and safety legislation and not planning legislation) through its Chemicals, Explosions, Microbiology Hazards Division (CEMHD) however, COMAH is not a permissioning regime.
7. I trust this is a helpful outline explanation of how HSE regulates for your considerations.

2b) Defining lorry drivers and passengers

8. This query relates to whether lorry drivers should be considered passengers who depart by vessel from the Proposed Development each day and contribute to the maximum number of 100 passengers.
9. In 2021 HSE was asked by the applicant to give its opinion on the question of whether passengers in a ferry terminal building or an outdoor area waiting to board a ferry should be considered to be members of the public or workers. This was in relation to HSE's [land use planning](#) advice (which aims to mitigate the effects to people from major accidents at nearby major hazard sites). HSE's view was that in the Proposed Development, commercial lorry drivers ("accompanied freight") should **not** be considered to be members of the public, but should be considered to be at work⁴. Thus, there is no limit to how many people **at work** can depart by vessel, only members of the public.
10. With regards to taking into account provision/article 21 in the draft DCO [[SI/SR Template \(planninginspectorate.gov.uk\)](#)], it would appear to be beneficial to define who a passenger is. Consideration may be given to further defining that drivers of cargo units are taken to be commercial HGV drivers at work.

Additional Details from ABP Letter Received 8 November 2023

11. The applicant, ABP, wrote to me on 8th November 2023 outlining their response to the ExA Rule 17 questions asked of the HSE that this letter clarifies HSE position.
12. The letter also, helpfully, demonstrates how the application defines where members of the public will be located. I have previously emphasised that along with the limit of 100 passengers, it is important to control where the passengers are located. This is because of the level of risk presented by the surrounding major hazard sites (e.g. COMAH sites) and there are only certain areas of the Proposed Development that HSE would not advise against. The 100 passengers, members of the public, need to be located in what is called the "middle zone" of HSE's land-use planning zones and this is only possible on parts of the Proposed Development.

³ Any safety issues that may arise in the marine context would fall to the regulatory body responsible as defined in legislation.

⁴ This would not prejudice other considerations; for some purposes (such as onboard safety assessments) lorry drivers would be expected to be considered to be included in the total number of passengers.

13. ABP's confirmation on the locations of people is in three parts a) to c), screenshots reproduced as follows:
- a) **Northern Storage Area** - This is situated partly inside a DPZ which surrounds the Exolum tank farm, as can be seen in the attached image. The layout as presented indicates slots for trailer and container laydown points (the small rectangles). No buildings will be constructed in that area which will simply remain in use for the storage of cargo in transit – as is the case today. We trust you agree from the plan that the DPZ around the Immingham Oil Terminal's tank farm, seen to the southeast, does not overlap the IERRT boundary in any meaningful way.
 - b) **Terminal through road** – As far the DPZ areas are concerned, the through road, effectively linking three of the four cargo storage areas falls principally within in the combined inner zones which are the most prevalent zoning within the port estate. We have, however, deliberately routed the main access route through the gap between the two DPZs so there are no associated land use planning issues.
 - c) **Passenger waiting area** – This area has been located in the far south-eastern corner of the proposed new terminal area – immediately south of the Southern Storage Area. As you can see from the Plan, the area presents as curved waiting lanes (labelled as marshalling lanes) with a small welfare building. This area will accommodate separately, lorry drivers who are accompanying their cargo and a maximum number (as prescribed in the draft DCO) of 100 passengers in cars or recreational vehicles – as when there is available capacity. This passenger waiting area falls within a Middle Zone which we understand is acceptable subject to that strict limitation of no more than 100 passengers. In practical terms, car passengers will drive through Inner Zones to get to the terminal. They will stop at the main terminal office for a short duration to check-in for the sailing and will then be instructed to proceed to the 'in-gates' leading to the passenger waiting area. This area includes a passenger welfare building and marshalling lanes where passengers will await instruction to board the vessel. As you will appreciate, apart from checking-in, passengers will necessarily spend the vast majority of their time waiting within the delineated waiting area, inside the middle zone – which will be enclosed by a fence.
14. I also attach two drawings from ABP that they have referenced in their response. These show overlays of HSE's land-use planning zones on the plans of the Proposed Development where yellow, red, green, and blue are the DPZ, inner, middle and outer zones respectively (in order of descending risk). HSE would not advise against 100 passengers in the green shaded areas.
15. ABP points out that these General Arrangement plans are submitted as part of the NSIP application and become 'certified documents' when the DCO comes into effect. This means ABP cannot materially deviate from the layout such as changing the location of the members of the public.
16. HSE confirms that the clarity provided from ABP's letter and drawings, which will form part of the NSIP application, that applying HSE's land-use planning methodology would **not** advise against the Proposed Development in this configuration.

17. Finally, ABP's letter informs me that *"ExA has also repeated its request for ABP, as the Applicant, to enter into a Statement of Common Ground with the HSE to be submitted by Monday 13 November 2023"*. Attached to ABP's letter was a draft SoCG. However, due to being so close to the deadline of 13th November I have not been able to obtain legal advice on this (my job role is technical in nature and SoCG's are outside standard HSE policy). I sent this for legal advice on 10th November. I can reassure you this will not harm your consideration of HSE's advice as there is no disagreement – I will provide a fuller response on this when I obtain it.

18. I trust this addresses your questions and is helpful for your considerations.

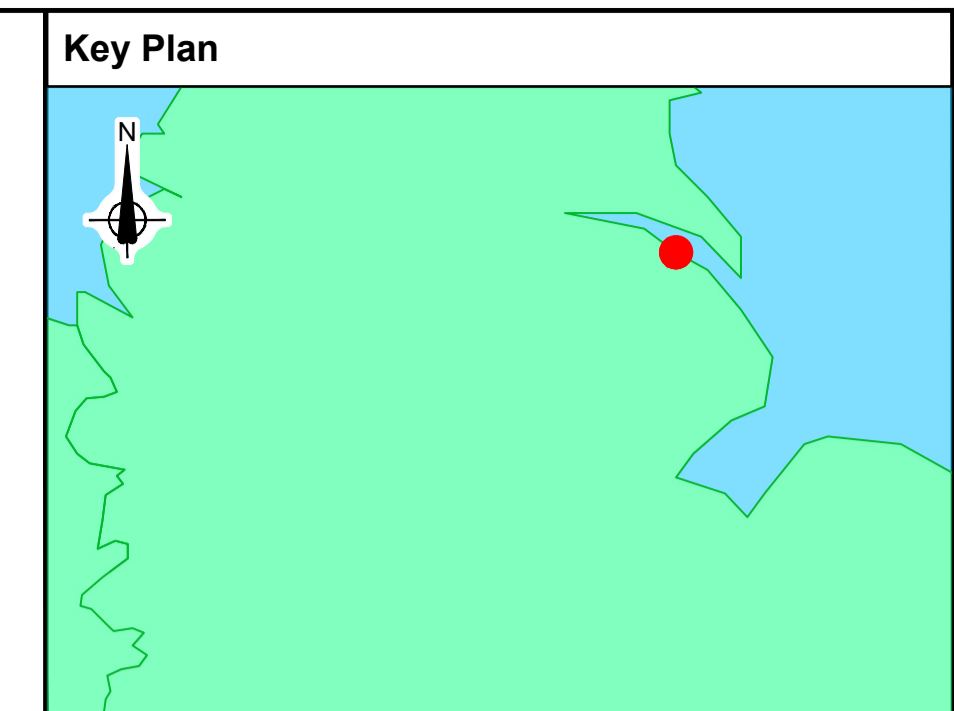
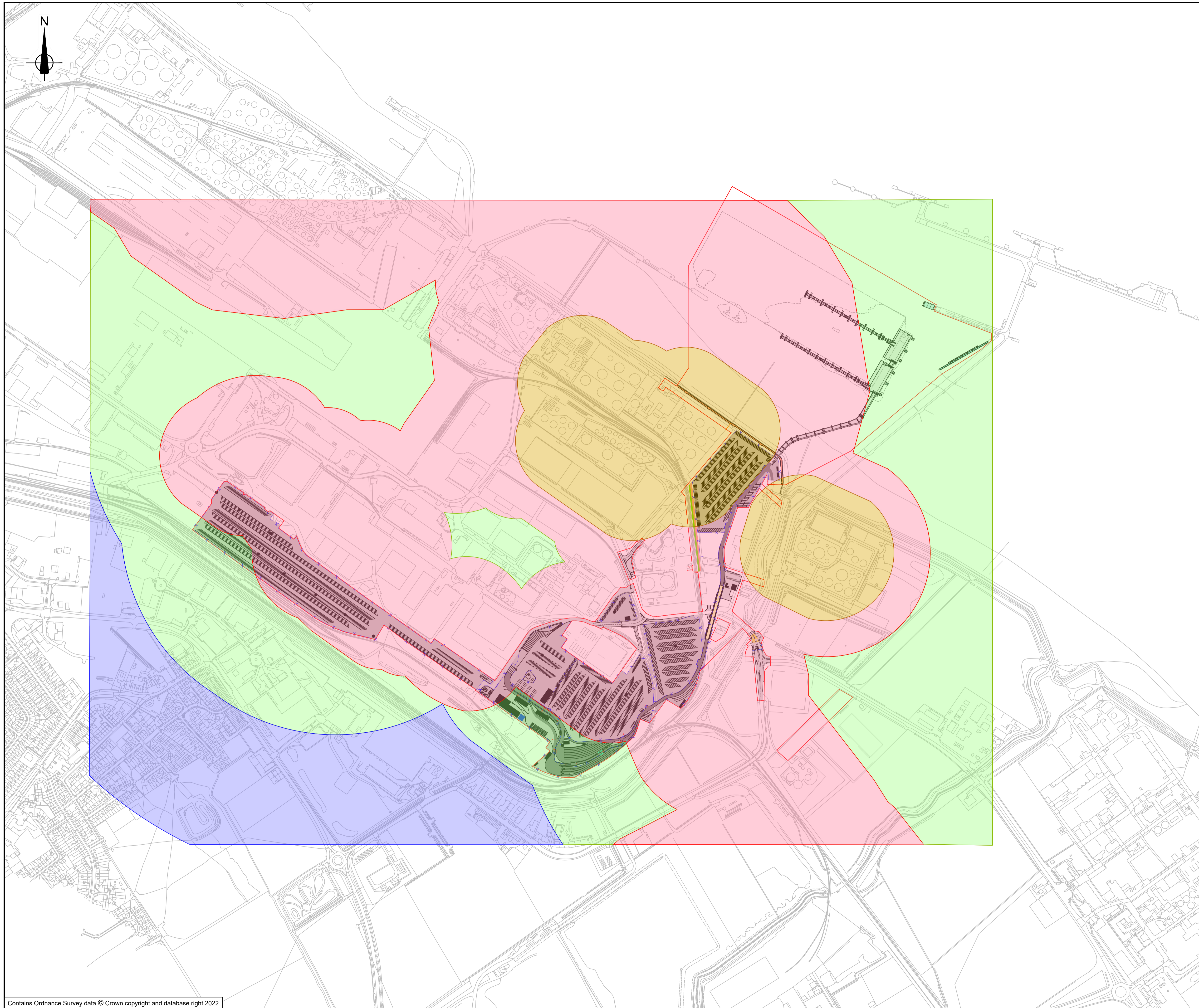
Yours sincerely,

Dr Chris Mumby
Principal Specialist Inspector of Major Accident Risk Assessment | Chemicals, Explosives and
Microbiological Hazards Division 5C

Attachments:

- [1.] Overall Scheme General Arrangement, "IEERT Full GA with Overlaid Hazardous Substance Consent Zones.pdf", ABP, B2429400-JAC-00-ZZ-DR-ZZ-0110, Rev P03.1 September 2023, Submission Version.
- [2.] General Arrangement Plans South & Central Areas & Workshop Area Regulation 5(2)(o) & 5(2)(k), "IEERT Southern Area with Overlaid Hazardous Substances Consent Zones.pdf", ABP, B2429400-JAC-00-ZZ-DR-ZZ-0205, Sheet 4, Rev P03.4 October 2023.
- [3.] ABP's letter 8 November 2023, Tom Jeynes, "HSE letter 8 Nov mc.pdf".

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- General Notes:**
1. This plan should be read alongside other plans and documents in the development consent order application.
 2. Design and location of each element of the scheme shown here for illustrative purposes only.
 3. Location of parking and storage shown here for illustrative purpose only and do not indicate any minimum or maximum capacity

Legend

- Order limits
- Terminal fence
- Terminal bridge
- Above ground pipes
- New buildings
- New pipeline access track
- New terminal storage areas
- External roads
- Box junction
- New UKBF facilities
- ✱ New 30m high mast lighting



PO3.1	September 2023	Client approval	DT	RH	RH	CN
PO3	August 2023	Client review	DT	ID	RH	CN
PO2	February 2023	Submission Version	AJM	RH	RH	CN
PO1	January 2023	Submission Version	AJM	RH	RH	CN
Rev	Rev. Date	Purpose of revision	Orig	Check	Rev	Aprv

95 Bothwell St, Glasgow, G2 7HX
Tel: +44(0)141 243 8000 Fax: +44(0)141 226 8109
www.jacobs.com

Client

Project

**IMMINGHAM EASTERN
RO-RO TERMINAL**

Drawing title

**OVERALL SCHEME
GENERAL ARRANGEMENT**

Drawing status	SUBMISSION VERSION	Suitability	S4
Scale	1:5000 @ A1		
Jacobs No.	B2429400	Rev	
Client No.			PO3.1
Drawing number	B2429400-JAC-00-ZZ-DR-ZZ-0110		

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