

# IMMINGHAM EASTERN RO-RO TERMINAL



Explanatory Memorandum to Draft DCO (tracked)

Document 3.2

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## **1. Summary**

- 1.1 This Explanatory Memorandum is designed to explain the purpose and effect of each of the articles of, and Schedules to, the draft Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order (“the DCO”).
- 1.2 The Memorandum forms part of a suite of application documents, prepared by the Applicant, Associated British Ports in compliance with Regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009<sup>1</sup> and submitted in support of its DCO application.

## **2. Purpose of the DCO**

### ***Project Summary***

- 2.1 Associated British Ports (“ABP”) is applying to the Secretary of State for Transport for a Development Consent Order (“DCO”) under the provisions of section 37 of the Planning Act 2008 (“the 2008 Act”). If the DCO is made, it will authorise the construction, operation and maintenance of a new three berth Roll-on/Roll-off (“Ro-Ro”) harbour facility together with associated landside development. The Project will be known as the Immingham Eastern Ro-Ro Terminal (IERRT).
- 2.2 The proposed development is located within the Port of Immingham which lies on the south bank of the River Humber and is described in detail below.
- 2.3 In terms of ownership, on the landside – apart from the proposed site access improvements on public highway at the Port’s East Gate– the proposed IERRT development falls entirely within the statutory port estate which is owned and operated by ABP or other land owned by ABP and which falls within the administrative boundary of North East Lincolnshire Council.
- 2.4 The marine infrastructure, namely an approach jetty, piers and three berths extend into the River Humber, the bed of which, apart from a small area immediately adjacent to the port, which is owned by ABP, is in the freehold ownership of The Crown Estate. ABP, in its capacity as the Humber Conservancy Commissioners (also known as Humber Estuary Services) enjoys the benefit of a 999 year lease (which commenced in January 1860) from The Crown Estate across the bed of the Humber.
- 2.5 None of the proposed marine infrastructure extends beyond the existing Port of Immingham harbour limits.

### ***Nationally Significant Infrastructure***

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<sup>1</sup> S.I. 2009/2264

2.6 The IERRT development is being promoted by ABP as a Nationally Significant Infrastructure Project under the provisions of the 2008 Act.

2.7 This is because the construction of the proposed additional port marine infrastructure on the bed of the River Humber constitutes “a harbour facility” as defined by sections 14(1)(j) and 24(2) and 24(3)(b) of the 2008 Act. The project meets the criteria prescribed by these sections in that it:

- comprises the “alteration of harbour facilities”;
- is located wholly within England and in waters adjacent to -England up to the seaward limit of the territorial sea; and
- the effect of the alteration is expected to be to increase by at least the relevant quantity per year the quantity of material the embarkation or disembarkation of which the facilities are capable of handling - the “relevant quantity” being 250,000 units per year.

As the Project is capable of handling in excess of the 2008 Act NSIP threshold, the development can only proceed if ABP has obtained the necessary consents and authorisations in the form of a DCO made by the Secretary of State, following the submission of an application for a DCO under the provisions of section 37 of the 2008 Act.

2.8 The proposed harbour facility will comprise three principal elements, namely the marine infrastructure, the landside development and finally, the proposed ~~off-site~~ environmental enhancement.

### ***The marine infrastructure***

2.9 This comprises the construction within the River Humber, of –

- an approach jetty extending from the landside supporting a two-lane vehicular carriageway to accommodate the passing of embarking and disembarking vehicular carried cargo (“wheeled cargo”); together with –
- two finger piers which will service three new berths – two on the northern most finger pier furthest from the shore and the third, on the northern side on the inner finger pier;
- impact protection measures – the application includes the provision of impact protection measures which are designed to protect existing marine infrastructure. These may in fact not be required but the Applicant has included them in its application so as to ensure that should circumstances demonstrate that they should be installed, the necessary consents will have been secured.

2.10 A capital dredge of the berth pocket will also be required to facilitate the safe arrival and departure of the ro-ro vessels together with the ability for ABP to undertake ongoing maintenance dredging.

## **Associated development**

2.11 **The landside development** – The DCO, if made by the Secretary of State, specifically authorises the construction of “associated development”. This is, in effect, development that forms an essential part of the NSIP and the Secretary of State is specifically empowered, under the provisions of section 115 of the 2008 Act, to grant consent for “associated development”.

2.12 Guidance on associated development has been issued by the Secretary of State for Communities and Local Government<sup>2</sup>. In this guidance, associated development is described as being –

2.13 *“typical of development brought forward alongside the relevant type of principal development or of a kind that is usually necessary to support a particular type of project” and “requires a direct relationship between associated development and the principal development. Associated development should therefore either support the construction or operation of the principal development or help address its impacts. Associated development should not be an aim in itself but should be subordinate to the principal development.”*

2.14 The associated development which forms part of the IERRT project, falls on the landside principally within the statutory port estate – although provision is being made for an element of off-site ecological enhancement (as noted below) and minor improvements to the East Gate access to the Port.

2.15 The associated development comprises –

- the provision of storage space, divided into four areas, namely the northern, the central, the southern and the western storage areas which will be used for the storage of disembarked cargo awaiting collection together with space to accommodate accompanied or unaccompanied wheeled cargo awaiting embarkation;
- a road bridge within the port estate and crossing ABP’s port infrastructure which will link the northern and southern storage areas;
- the construction of a new Terminal building and various ancillary buildings; and
- separately, the construction of a building and appropriate facilities for the UK Border Force; and
- improvements to the entrance to the Port’s East Gate.

## **Environmental enhancement**

<sup>2</sup> ‘Guidance on associated development applications for major infrastructure projects’ (Department for Communities and Local Government) (April 2013)

- 2.16 The third element of the development comprises an area of proposed environmental enhancement as summarised below = -
- 2.17 *Long Wood* – this is the name of a strip of land, owned by ABP, immediately adjacent and to the east of the port estate. The strip of woodland is protected by a Tree Preservation Order made by North East Lincolnshire Council. ABP’s proposal, subject to the agreement of the Council, is to enhance the site by means effectively of ground level management.
- 2.18 The works that will be undertaken to enhance this area of woodland have been agreed with the local authority and are embodied in a Woodland Enhancement Management Plan which is incorporated as part of the DCO as a certified document in Schedule 6 of the draft “Plans and Documents to be Certified”.

### 3. The Development Consent Order

- 3.1 The draft DCO is divided into six Parts, with a number of Schedules. Together, they comprise the following –
- 3.2 **Part 1: Preliminary** – This Part deals with general introductory matters, such as a glossary of terms (Interpretation), whilst also disapplying, solely for the purposes of this DCO, certain statutory provisions whilst also incorporating relevant local legislation.
- 3.3 **Part 2: Principal Powers** – This sets the basic parameters for the DCO in terms of the description of the development permitted, the development’s maintenance and permitted limits of deviation for construction.
- 3.4 **Part 3: Powers of Acquisition** – This Part empowers ABP as applicant to exercise powers of compulsory acquisition, should the exercise of such powers be necessary and unavoidable.
- 3.5 **Part 4: Operational Provisions** – This covers the steps required to be put in place during both construction of the development (lights on tidal works) and the operation and use of the development.
- 3.6 **Part 5: Supplemental Powers** – This Part details supplemental powers required by ABP both to construct and operate the development dealing with matters such as the power to dredge, to survey and investigate land (for the purposes of the development) and the power to enter into highway agreements with the local highway authority.
- 3.7 **Part 6: Miscellaneous and General** - This final Part deals with additional powers and obligations, referencing the deemed marine licence, the protective provisions, the service of notices and providing a defence to proceedings in respect of statutory nuisance.
- 3.8 **Schedules** – The Schedules support the body of the Order. Thus –
- a) **Schedule 1** details the various elements of the authorised development, referencing the relevant DCO plans.

- b) **Schedule 2** sets out the Requirements – which are to all practical intents and purposes very similar to conditions imposed on a planning permission, and detail certain obligations that must be satisfied by ABP.
- c) **Schedule 3** sets out the provisions of the deemed Marine licence, whilst
- d) **Schedule 4** provides Protective Provisions for various statutory undertakers and bodies with interest which may be affected by the development.
- e) **Schedule 5** details modifications made to compensation and compulsory purchase enactments, whilst **Schedule 6** list the Plans and Documents which form part of the application and which have to be certified.

## 4. The Draft DCO

- 4.1 The purpose and effect of the provisions of the draft DCO are explained below. Whilst the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009<sup>3</sup> has lapsed, the DCO is broadly based on those model provisions (general and harbours), as well as precedents in DCOs – specifically harbour facility DCO's such as The Able Marine Energy Park Development Consent Order 2014, The Port of Tilbury (Expansion) Order 2019, the Lake Lothing (Lowestoft) Third Crossing Order 2020 and Orders and made under the Transport and Works Act 1992 and the Harbours Act 1964.

## 5. Part 1 – Preliminary

### *Article 1 – Citation and Commencement*

- 5.1 Article 1 sets out the name of the Order and includes a placeholder for identifying the date on which, if made, the Order would come into force. This is a standard provision which is included in all DCOs.

### *Article 2 – Interpretation*

- 5.2 The purpose of article 2(1) is to define the terms used in the Order, effectively a glossary of terms.
- 5.3 The definition of “authorised development” encompasses the development authorised by the Order, both the principal and the associated development.
- 5.4 Whilst based on the model provisions, a number of amendments have been incorporated so as to reflect the circumstances of the IERRT Project. In addition, a number of definitions have been added which again are specific to the IERRT development, such as -

<sup>3</sup> S.I. 2009/2265



- “the 1847 Act”;
- “the 1904 Act”;
- ”the 2009 Act”;
- “tidal works” and;
- “ro-ro unit”.

5.5 The development site, on the landside, falls entirely within the administrative boundary of North East Lincolnshire Council, which is defined as the “Council” in the DCO.

5.6 Other definitions to note include:

- (a) “commence” which is defined as meaning and including the commencement of a material operation as defined in section 56 (4)(b) of the 1990 Act but which specifically excludes for the purpose of the authorised development operations consisting of environmental surveys and monitoring investigations for the purposes of assessing ground conditions, the receipt and erection of construction plant and equipment, the erection of any temporary means of enclosure and the temporary display of site notices or advertisement.

This definition has been included to enable certain works excluded from the definition to be carried out prior to the submission of pre-commencement details to the relevant local authority or regulator, for example, the undertaking of any additional ground investigations prior to development as may be required by the Council or the Environment Agency. This provision is preceded, as amended, in The Port of Tilbury (Expansion) Order 2019 and The Lake Lothing (Lowestoft) Third Crossing Order 2020.

- (b) “the Company” means Associated British Ports, abbreviated to “ABP”, the applicant for the DCO and also the owner and operator of the Port of Immingham. ABP is also, however, a “statutory undertaker” being the owner and operator of the statutory Port of Immingham. and operation of the Port of Immingham. As a consequence, to avoid potential confusion in terminology, ABP as the Applicant for the proposed development has been described in the DCO as the “Company” rather than the “Undertaker”. This approach is taken on other port-related NSIPs such as the Port of Tilbury (Expansion) Order 2019.
- (c) “maintain” which includes the power to “inspect, repair, adjust, alter, remove, reconstruct or replace”. These are all powers which will be required in order to maintain the IERRT facility and are based on the equivalent definition in the Port of Tilbury (Expansion) Order 2019 and in terms of the Port of Immingham have precedent in a series of local and nationally applicable Acts used by ABP and its predecessors on the Humber. These include the Humber Commercial Railway and Dock Act 1904 which effectively authorised the original construction of

the Port of Immingham and which, for example, at section 5 authorises ABP (as the successor port undertaker) to “*provide and maintain in connection with the dock and other works authorised by this Act all necessary and convenient lock gates opening and other bridges graving and other docks ....*” and to “*dredge scour and deepen the bed shore and soil of the River Humber at and near the entrance to the said dock and other works*”. The Harbours, Docks and Piers Clauses Act 1847, on the other hand, at section 51 authorises a port undertaker to appoint a Harbour and/or Dock Master whilst section 74 provides that an owner of a vessel “*shall be answerable to the undertakers for any damage done by such ..... vessel to the harbour, dock or pier*”. It should be noted that the inclusion of the words “remove, reconstruct or replace” – must be read in conjunction with the dictionary meaning of “maintain” (ie “*to continue to have; to keep in existence*” (Cambridge Dictionary)) and do not extend to works which do not fall within the definition of the authorised development and/or may create environmental effects not already assessed as part of the project.

- (d) “the Order land” refers to the land as shown on the Land Plans including Crown Land (Application Document 2.2) and as detailed in the Book of Reference (Application Document 4.1).
- (e) “the Order limits” which defines the limits within which the permanent works must be constructed.
- (f) “ro-ro unit” which reflects the definition of “ro-ro unit” provided in Section 24(6) of the Planning Act 2008.
- (g) “vessel” which is preceded in The Sizewell C (Nuclear Generating Station) Order 2022.

5.7 Article 2(2) defines measurements as approximate, generally in line with the model provisions. The purpose of this provision is to ensure that if it becomes apparent during construction that distances are marginally different to those written into the Order, there is no confusion over whether those works are permitted. The provision allows for a small tolerance in relation to any distances and points. That said, all works must still take place within the limits of deviation. Such a provision is common in made DCOs – see, for example, the Port of Tilbury (Expansion) Order 2019.

5.8 Article 2(3) explains that all areas described in square metres in the Book of Reference are approximate.

5.9 Article 2(4) provides that references to points identified by letters are references to points or letters on the works plans and Article 2(5) provides that references to numbered works are references to those works so numbered in Schedule 1.

### *Article 3 – Disapplication of legislative provisions*

5.10 Section 120(5) of the 2008 Act provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which

provision may be made in the Order and make such amendments, repeals or revocations of statutory provisions or local legislation. In reliance on this, Article 3 of the Order provides for the disapplication of certain requirements which would otherwise apply under public general legislation, as well as local legislation.

- 5.11 Article 3(1)(a) and Article 3(1)(b) disapply the need for consents which would otherwise be required from the local lead flood authority in respect of the Land Drainage Act 1991 and byelaws made under the Water Resources Act 1991. These disapplication provisions have been included, with the approval of the North East Lindsey Internal Drainage Board, so as to enable ABP to secure the necessary approvals from the Board in relation to drainage through the DCO process as opposed to having to proceed by the secondary process applied by the Land Drainage Act 1991.
- 5.12 Article 3(1)(c) provides for the disapplication of the consent required in relation to the carrying out of a relevant flood risk activity under the Environmental Permitting (England and Wales) Regulations 2016 (“the Environmental Permitting Regulations”).
- 5.13 This disapplication relates to consents for activities which may be a necessary part of constructing the authorised development and so, to provide certainty that the Scheme can proceed, the Order disapplies the requirement for a separate statutory consent. This will be replaced by protective provisions for the protection of the Environment Agency and the lead local flood authority in Schedule 4, part 2 and part 9 which will require certain works which could affect the interests protected by these consents to be approved by the relevant body before they are carried out.
- 5.14 The disapplication provisions have precedent in the recent Port of Tilbury (Expansion) Order 2019.
- 5.15 In accordance with section 150 of the 2008 Act, the consent of the Environment Agency, the local lead flood authority and the relevant planning authority to the inclusion of the relevant articles will be required and will be sought accordingly. Discussions have been undertaken with all three bodies and in agreeing the position, protective provisions have been included in the draft DCO for the benefit of the Environment Agency and the North East Lincolnshire Council as the local lead flood authority.
- 5.16 Article 3(3) refers to three local Acts, colloquially known as ‘local legislation’ in that they do not have general application but only apply specifically, in this case, to marine works in the River Humber and the Humber Estuary. These three Acts, if not modified for the purposes of the authorised development, would either require ABP to secure separate consents for works that are in fact already consented albeit by local legislation or, in terms of disapplication, lead to the imposition of penalties which should not be included in the Order.
- 5.17 In brief:

- a) sections 25 and 26 of The River Humber Conservancy Act 1852 relate to the imposition of penalties for - *“The improper deposit of hard materials in the River”* and *“No mud to be cast into the River except as the Admiralty may direct”*.
- b) Section 9 of the Humber Conservancy Act 1899 deals with the ability of the Commissioners to grant *“Licences for the execution of works”* which is not applicable to the proposed development; while
- c) Section 6(2) and section 8 of the Humber Conservancy Act 1905 are disapplied in that the former provides for *“No erections in Humber below river lines or without licence above river lines”* without a formal consent from the Commissioners whilst the latter provides *“Sand etc not to be removed from bed or foreshore of River Humber without licence of Commissioners”*. These specific powers are in fact incorporated within the authorisation powers in the draft DCO.

#### Article 4 – Incorporation of the 1847 Act

- 5.18 Article 4 specifically references the disapplication of certain provisions of the Harbours, Docks and Piers Clauses Act 1847 (“the 1847 Act”). This Act sets out common form provisions usually contained in legislation authorising the making, regulation and improvement of harbours, dock and piers. Those provisions act very much as did the originally provided model provisions, save those provisions that are relevant do not need to be recited in this DCO but merely incorporated by reference.
- 5.19 Incorporation of the 1847 Act is not mandatory. The rationale for incorporation, however, is to remove the need for promoters of harbour orders effectively to duplicate lengthy common form provisions already enacted expressly in their respective Orders.
- 5.20 Certain provisions of the 1847 Act have, therefore, been incorporated in the draft DCO so as to ensure that the relevant provisions apply to the proposed IERRT development. This approach is precedent, amongst others, by the Associated British Ports (Immingham Outer Harbour) HRO 2004, the Associated British Ports (Immingham Gas Jetty) HRO 2007 and the Associated British Ports (Grimsby Riverside Ro-Ro Terminal) HRO 2011 as well as the Able Marine Energy Park Development Consent Order 2014 and The Sizewell C (Nuclear Generating Station) Order 2022.
- 5.21 The provisions in this Article are made pursuant to section 120(5) of the 2008 Act, which allows a DCO to apply, modify or exclude a statutory provision necessary to give effect to the powers in the DCO.
- 5.22 The following sections of the 1847 Act have been incorporated as being required for the efficient and safe management of the proposed development: –
  - (a) The following sections which relate to the collection of rates –
    - (i) Section 26 which provides that a certificate under the hand of chairman of the quarter sessions in England shall be conclusive

evidence that the harbour, dock, or pier is completed and fit for the reception of vessels, or other the purpose intended;

- (ii) Section 27 which provides that for the purpose of ascertaining the tonnage rates payable upon vessels, the tonnage of British vessels duly registered shall be ascertained according to the certified tonnage in the register of such vessels and for the tonnage of all other vessels, this shall be ascertained according to the rules of admeasurement established regulating the admeasurement of the tonnage and burthen of the merchant shipping of the United Kingdom;
- (iii) Section 28 which exempts vessels belonging to or employed in the service of his Majesty, or any member of the royal family, or in the service of the Customs and Excise, or of the Corporation of Trinity House of Deptford Strond, or the Commissioners of Northern Lights from any charge or duties arising pursuant to the 1847 Act. It is an offence liable to a penalty to falsely claim and take the benefit of any such exemption;
- (iv) Section 29 which provides that any vessel which has paid rates that is obliged to return with the same cargo after leaving the harbour, dock, or pier due to stress of weather or other sufficient cause will not be liable to pay the rates again;
- (v) Section 31 which governs the rates chargeable on foreign vessels where treaties of reciprocity exist;
- (vi) Section 32 which provides an undertaker with the power to charge a fixed sum, payable in advance, as a composition for rates payable in respect of passenger or pleasure vessels;
- (vii) Section 33 embodies the "open port" duty effectively providing a general right to all persons, subject to the "payment of rates" to use the harbour. This section is caveated by article 22 of the Order which enables the undertaker – *"from time to time to set apart and appropriate any part of the authorised development for the exclusive or preferential use and accommodation of any trade, person, vessel or goods .....*";
- (viii) Section 34 which gives the collector of rates the power to enter into any vessel within the limits of the harbour, dock, or pier, in order to ascertain the rates payable in respect of such vessel or goods on such vessel;
- (ix) Section 37 which requires masters to provide the name of the consignee of goods to be unshipped, a copy of the bill of lading, or if only part of the cargo is intended to be unshipped, an account in writing of the goods to be unshipped, within 12 hours of arrival of the vessel;
- (x) Section 40 which provides that in case of dispute between a collector and master as to the weight or quantities of goods in

which rates are payable, the collector may cause all such goods to be weighed or measured and may detain the vessel until such goods have been weighed or measured, if necessary;

- (xi) Section 41 which sets out the respective obligations to pay the expenses of the weighing and measuring of goods;
  - (xii) Section 42 which provides that rates must be paid before shipment where goods are to be shipped or, for goods to be unshipped, before the removal of goods from the premises of the undertaker and before the expiration of two months next after they were unshipped;
  - (xiii) Section 44 which gives the collector of rates, in the event of non-payment of rates, the power to board such vessel and take, distrain or arrest the vessel (including the tackle, apparel and furniture) and provides the power to sell such matters and use the proceeds of such sale to satisfy the unpaid rates. Section 45 effectively provides the same but in relation to the recovery of rates on goods;
  - (xiv) Section 45 which provides the collector of rates powers to recover rates on goods; and
  - (xv) Section 46 which provides that any disputes concerning rates or charges occasioned by distressed will be settled by a justice in England;
- (b) Sections 51, 52, 56 – 58 and 65, which grant powers for the appointment of harbour masters, dock masters and pier masters and which make provisions governing their duties: –
- (i) Section 51 which gives the undertaker the power to appoint, and from time to time remove, such harbour master as they think necessary;
  - (ii) Section 52 which details the purposes for which the harbour master may give directions;
  - (iii) Section 56 which gives the harbour master the power to remove any wreck or other obstruction to the harbour, dock or pier or the approaches to them, including floating timber that impedes navigation, and reclaim the expense of doing so from the owner. It gives the harbour master the power to detain, and sell as necessary, such wreck or timber to secure such expenses in the event of non-payment;
  - (iv) Section 57 which gives the harbour master the power to remove any unserviceable vessel altogether from the harbour and summarily recover the expenses of doing so from the owner of such vessel;

- (v) Section 58 which gives the harbour master the power to remove vessels from the harbour, dock or pier as he sees fit and recover the expenses of doing so from the master of such vessel;
- (vi) Section 65 which gives the harbour master the power to remove a vessel if the master of such vessel neglects or refuses to do so in accordance with the notice given under section 64, and recover the expenses of doing so from the owner or master of such vessel, provided that three days' notice of the need for removal has been given;
- (c) Section 68 provides that goods cannot remain upon any piers or quays for a longer time than allowed by the byelaws of the undertaker and allows for the removal of such goods where goods remain without the undertaker's consent;
- (d) Section 70 provides that if such combustible goods remain after sunset, then they must be guarded by a sufficient number of persons from half an hour before sunset to half an hour after sunrise;
- (e) Section 74 makes the owner of a vessel or float of timber answerable to the undertakers for any damage done by such vessel or float of timber, or by any person employed about the same, to the harbour, dock, or pier, or quays or any works connected;
- (f) Section 75 allows the amount claimed for damages in respect of section 74 to be recovered before two justices if it does not exceed fifty pounds and gives power to the justices to distrain, keep or sell any part of the property if the amount of damages and costs are not paid within seven days after the distress or keeping;
- (g) Section 76 provides that where the owner of a vessel or float of timber has made payment for damage caused by the wilful or negligent act of another person, that person shall repay the owner with costs; and
- (h) Section 103 which provides that nothing in the 1847 Act exempts the undertakers from the provisions, regulations and conditions of any general Act relating to harbours, docks.

5.23 The following sections of the 1847 Act have not been incorporated: –

- (a) Sections 6 to 23, 97 and 101 are not relevant to the IERRT;
- (b) Section 25 relates to the collection of rates by an undertaker on vessels and members of the public until the works have been completed;
- (c) Sections 48-50 relate to the enforcement and accounting of rates and are not considered necessary;
- (d) Sections 35 – 36, 38 – 39, 43, 53 – 55, 59 – 64, 66 – 67, 69, 71 – 73 and 82 are not incorporated because they create offences and section

120(8) of the 2008 Act makes clear that these cannot be the subject-matter of an order granting development consent;

- (e) Sections 77 – 78 and 102 which grant and govern powers to erect lighthouses and lay down buoys with the consent of Trinity House and provide protection of Trinity House interests are not required as such provisions are provided in articles 37 to 39 of the Order;
- (f) Sections 79 and 80 which provide for the appointment and dismissal of special constables within the limits of the harbour, dock or pier – the appointment of such special constables is not considered to be necessary for the IERRT;
- (g) Section 81 which provides for the appointment of meters and weighers – this is not considered to be necessary for the IERRT;
- (h) Sections 83 – 88 and section 90 relate to the creation and governance of byelaws and do not need to be incorporated as article 42 provides that the Immingham Dock Byelaws 1929 apply to the IERRT;
- (i) Section 92 which incorporates the clauses of the Railways Clauses Consolidation Act 1845, with respect to the recovery of damages not specially provided for, and penalties, and to the determination of any other matter referred to justices;
- (j) Section 98 which makes it an offence for the undertaker not to keep a copy of the Order has not been included as this Order will be publicly available;
- (k) Section 99 and 100 which relate to protection of Crown interests are not included as these powers are already provided for under article 40 of the Order; and
- (l) Sections 5, 24, 30, 47, 89, 91, 93 to 96 and 104 have since been repealed and are not relevant.

## **Part 2 – Principal Powers**

### *Article 5 – Development consent etc. granted by the Order*

- 6.1 Article 5 grants development consent for the authorised development within the Order Limits. The various elements of the authorised development are set out in Schedule 1 of the Order which includes the associated development as also set out in Schedule 1.
- 6.2 The consent granted by this Article is subject to the Requirements which are detailed in Schedule 2 to the DCO. These correspond in general terms to the planning conditions that would be imposed on a planning permission granted under the Town and Country Planning Act 1990.

### *Article 6 – Maintenance of the authorised development*

- 6.3 This Article gives ABP a general power to maintain the authorised development at any time, subject to any contrary provision in the DCO or



in an agreement made under the DCO. “Maintain” is defined in Article 2(1) of the Order as referenced above.

- 6.4 The wording employed reflects generally the precedent provided by The Port of Tilbury (Expansion) Order 2019 and the Lake Lothing (Lowestoft) Third Crossing Order 2020, albeit amended to suit the specific circumstances of this proposed development.
- 6.5 In this context it should be noted that ABP, as the owner and operator of the Port of Immingham enjoys statutory powers of maintenance, repair etc to its marine infrastructure through, for example the Harbour Docks and piers Clauses Act 1874, as referenced in Article 4 of this draft DCO. Powers of continued maintenance are important in the circumstances of this project in that it is not the applicant’s intention to decommission and remove the marine infrastructure, the subject of this proposal, after a given set period but to continue its use as an integral part of the Port.

#### *Article 7 – Limits of deviation*

- 6.6 Article 7 sets down the degree of flexibility afforded to ABP in terms of its ability to deviate from the detailed works plans.
- 6.7 Article 7(a) enables the works undertaken to deviate laterally from the positions shown on the works plans within and up to the lines of deviation as are marked on the relevant numbered works plans.
- 6.8 Article 7(b) authorises vertical deviation from the levels that are identified in the engineering sections and plan to any extent upwards subject to a maximum deviation of two metres. As far as this deviation is concerned, there is no limit apart from the limit shown in Work No.2 (the dredged berthing pocket to a depth of 9 metres below Chart Datum) so as to enable the works of construction, essentially in terms of piling, to be adjusted should those works encounter unexpected or unknown ground conditions within the bed of the Estuary.
- 6.9 The purpose of Article 7 is to reduce the risk that the authorised development as approved cannot later be implemented. It provides ABP with a necessary level of flexibility during construction but this flexibility remains proportionate in that the only unrestricted limit is that noted in paragraph 6.8, thereby enabling unforeseen matters to be accommodated without comprising the overall development infrastructure.

#### *Article 8 – Benefit of Order*

- 6.10 Article 8 overrides section 156(1) of the 2008 Act, as permitted by section 156(2) of that Act by providing that the benefit of the Order has effect solely for the benefit of the company

#### *Article 9 – Transfer of benefit of Order etc*

- 6.11 This article makes provision for the powers granted by the DCO to be transferred to other parties – albeit only with the consent of the Secretary of State. This provision is commonly included in DCO’s, such as The Lake

Lothing (Lowestoft) Third Crossing Order 2020 and The A585 Windy Harbour to Skippool Highway Development Consent Order 2020.

- 6.12 Article 9(1)(a) excludes from this enabling provision the power to transfer the benefit of the deemed marine licence in that the requirement of that licence, as set out in Schedule 3, remain the responsibility of ABP as the operator of the Port of Immingham.

## **Part 3 – Powers of Acquisition**

### *Article 10 – Compulsory acquisition of rights*

- 7.1 This article permits ABP to acquire rights over the Order Land and includes the power to create new rights in connection with the authorised development.
- 7.2 Paragraph (1) enables ABP to acquire such rights over land as are described in the Book of Reference, the general nature and extent of those rights being shown in the land plans
- 7.3 Paragraph (2) limits ABP’s powers of compulsory acquisition to such rights or the creation of new rights as may be required for the authorised development.
- 7.4 Paragraph (3) applies Schedule 5 (Modification of compensation and compulsory purchase enactments for creation of new rights). The modifications made by this article and the schedule do not affect the entitlement to compensation but generally ensure that the compensation code applies equally to the additional categories of acquisition covered by the Order – essentially the creation of new rights. This is a consequence of the extension of land acquisition powers to these categories. For the purposes of section 126(6) of the 2008 Act, the relevant compensation provisions are modified only to the extent necessary to ensure that they apply properly to the acquisition of rights and not to affect the amount of compensation properly payable. This particular provision (and schedule) is preceded in the A585 Windy Harbour to Skippool Highway Development Consent Order 2020 and the Lake Lothing (Lowestoft) Third Crossing Order 2020.

### *Article 11 – Time limits for exercise of powers of compulsory acquisition*

- 7.5 This article gives ABP a maximum period of five years in which to serve a ‘notice to treat’ or to execute a ‘general vesting declaration’. These are the two instruments which, if the Order is made by the Secretary of State, can be applied by ABP to undertake the process of compulsory acquisition should it not have been possible to acquire the necessary rights and interests by agreement. The time limit is the same as that contained in the general model provisions article.

### *Article 12 – Private rights over land*

- 7.6 This article expands on the general model provisions so as to apply to private rights generally and not just to rights of way.

- 7.7 It also provides for the extinguishment of private rights on Order Land already owned by ABP in circumstances where an activity authorised by the Order interferes with or breaches those rights.
- 7.8 The article provides for the payment of compensation. The definition of private rights provided in paragraph (7) is based on the definition used in article 18(3) of the Rookery South (Resource Recovery facility) Order 2011 as since referenced in The Port of Tilbury (Expansion) Order 2019 and the Lake Lothing (Lowestoft) Third Crossing Order 2020.

*Article 13 – Power to override easements and other rights*

- 7.9 This article provides a power to override easements and other rights and reflects the terms of section 120(3) and (4) and paragraphs 2 and 3 of Schedule 5 of the 2008 Act.
- 7.10 The purpose of this provision is to enable ABP, when constructing or using the authorised development within the Order Limits and doing anything else authorised by the Order, to interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides for the payment of compensation should there be any such interference or breach.
- 7.11 This article has precedent in the Port of Tilbury (Expansion) Order 2019 and the Lake Lothing (Lowestoft) Third Crossing Order 2020.

*Article 14 – Modification of Part 1 of the 1965 Act*

- 7.12 This article modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the Act of 2008.
- 7.13 In accordance with section 126(2) of the 2008 Act these statutory provisions are modified only to the extent necessary to apply the provision to the compulsory acquisition of land authorised by this Order.
- 7.14 As provided by Section 126(3) of the 2008 Act, this article does not exclude the application of a compensation provision.
- 7.15 Precedent for this article is found in The Port of Tilbury (Expansion) Order 2019 and the Lake Lothing (Lowestoft) Third Crossing Order 2020.

*Article 15 – Application of the 1981 Act*

- 7.16 This article applies the provisions of the Compulsory Purchase (Vesting Declarations) Act 1981 to the exercise of any powers of compulsory acquisition that may be required to deliver the authorised development. A vesting declaration is one of the two ways available to acquire land that is subject to compulsory acquisition – the other course being the service of a notice to treat. A vesting declaration enables the acquiring authority to acquire the title to the land concerned more quickly than by the service of a notice to treat, the agreement as to the compensation payable being dealt with at a later date.

- 7.17 This article follows the approach adopted in The Southampton to London Pipeline Development Consent Order 2020 and the Port of Tilbury (Expansion) Order 2019.

*Article 16 – Statutory undertakers and operator of the electronic communications code network*

- 7.18 This article enables ABP, should it be necessary in order to deliver the authorised development, to extinguish rights enjoyed by statutory utilities (such as electricity and gas companies), and/or remove or reposition their apparatus.
- 7.19 Specific reference is made in sub-paragraph (b) to the ‘Order land’ to clarify that this power is not restricted to apparatus which has been specifically shown on the land plans and described in the Book of Reference. This is because in practice it is impracticable to show and describe all such apparatus and as a consequence a general power for the extinguishment of rights of removal or reposition of apparatus belonging to statutory undertakers over or within any of the Order land is required.
- 7.20 As the land over which this power may be exercised is shown on the land plans and the beneficiaries of such rights are described in the Book of Reference, the requirements of Regulations 5(2)(d) and 7(1)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 are satisfied.
- 7.21 This power has wide precedent, for example article 34 of the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, and article 34 of the Port of Tilbury (Expansion) Order 2019.

*Article 17 – Recovery of costs of new connection*

- 7.22 This article provides for a situation whereby if a gas, water, electricity or sewerage undertaker’s or public communications provider’s apparatus is removed and, as a consequence, that leads to the interruption of service to occupiers of premises, the cost of obtaining a new service can be recovered from ABP.
- 7.23 This article is based on the Model Provisions.

*Article 18 – Disregard of certain interests and improvements*

- 7.24 This article provides that the Tribunal is to disregard certain interests in and enhancement to the value of land if required to assess a claim for compensation with regard to its compulsory acquisition in circumstances where the creation of the interest or the making of the enhancement in value was designed with a view to obtaining compensation or increased compensation.
- 7.25 The article does not have the effect of modifying or excluding the application of an existing provision relating to compulsory acquisition and is, therefore, in compliance with section 126 of the 2008 Act.

- 7.26 As noted in the Lake Lothing (Lowestoft) Third Crossing Order 2020 and the Port of Tilbury (Expansion) Order 2019, the wording of this article mirrors section 4 (*Assessment of compensation*) of the Acquisition of Land Act 1981 (in this paragraph “the 1981 Act”). It is necessary specifically to apply the effect of section 4 of the 1981 Act in the Order because the 2008 Act only applies to a compulsory purchase to which any other statutory instrument has applied its provisions and the 2008 Act (nor the standard Order provisions) does not apply these. Sections 120(3) and 120(5)(a) and Schedule 5 (by virtue of section 120(3) of the 2008 Act) allow the application in a DCO of statutory provisions which relate to the payment of compensation.

*Article 19 – Set-off for enhancement in value of retained land*

- 7.27 This article makes provision for the situation that when assessing the compensation payable to any person the Tribunal can be asked to set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of construction of the authorised development.
- 7.28 This article is entirely in compliance with section 126(2) of the 2008 Act as it does not have the effect of modifying the application of an existing provision relating to compulsory purchase compensation.
- 7.29 As noted by the Explanatory Memorandum to The Lake Lothing (Lowestoft) Third Crossing Order 2020, the principle of this article was established in section 7 of the Land Compensation Act 1961 (*effect of certain actual or prospective development of adjacent land in same ownership*). That section has now been repealed and replaced by section 68 of the same Act – which needs to be applied by the Order. Sections 120(3) and 120(5)(a) of and Schedule 5 (by virtue of section 120(3) to the Act) allow the application in a DCO of statutory provisions which relate to the payment of compensation.
- 7.30 This article is preceded in The Lake Lothing (Lowestoft) Third Crossing Order 2020 as well as The Port of Tilbury (Expansion) Order 2019.

*Article 20 – No double recovery*

- 7.31 This article has been included in the Order so as to ensure that compensation cannot be payable both under the terms of the Order and in addition under other compensation regimes for the same loss or damage. Similarly, the article provides that there is not to be double recovery under two or more different provisions of this Order.
- 7.32 It is an acknowledged principle of equivalence that a claimant the subject of compulsory acquisition of land who has an interest in or a right across land should be compensated for no more than and no less than the loss suffered is long established and this provision does not conflict with the compensation code.

- 7.33 This article is preceded in the North London Heat and Power Generating Station Order 2017 and the Lake Lothing (Lowestoft) Third Crossing Order 2020.

## **Part 4 – Operational provisions**

### *Article 21 – Operation and use of development*

- 8.1 This article authorises ABP to operate and use the development as harbour facilities in connection with the embarkation and disembarkation of ro-ro units as defined in article 2 of the draft DCO – to include all forms of accompanied and unaccompanied wheeled vehicles.
- 8.2 The throughput threshold prescribed by section 24 of the 2008 Act in the case of facilities for ro-ro vessels is 250,000 units per year. When all three berths which form part of the authorised development are in operation, the effect of the consequent “alteration” to the existing “harbour facility” - i.e., the Port of Immingham - in terms of annual throughput will be to exceed the prescribed 250,000 units.
- 8.3 With a view to mitigating the environmental impact of the authorised development, ABP has restricted the authorised development to a maximum throughput limit of 660,000 ro-ro units per year and the impact of the Project has been assessed on this basis. Article 21(1), therefore, imposes the 660,000 units per year throughput limitation.
- 8.4 Article 21(2) also makes provision for occasional use by passengers travelling by vehicle (foot passengers will not be permitted) when capacity exists on a departing vessel. That use, however, is restricted to a maximum of one hundred passengers departing from the Port on any given day. Article 21(3) makes clear that the restriction on passenger numbers is only capable of extension or amendment if the Applicant can demonstrate to the Council’s satisfaction that the extension or amendment does not give rise to any significant adverse effects that have not been assessed in the environmental statement supporting the Proposed Development. This approach – qualifying consent to be granted by a body pursuant to a DCO by reference to the assessment in an environmental statement – has precedent in a number of made DCOs. For example – see paragraph 1(3) of Schedule 2 to The Sizewell C (Nuclear Generating Station) Order 2022.
- 8.5 The limit of one hundred passengers per day has been imposed in response to a requirement sought by the Health and Safety Executive (HSE) following pre-application discussions. HSE’s guidance on Land Use Planning states that Sensitivity Level 2 developments (developments for use by the general public) will not be advised against only when they are within the Middle/Outer Zone of any HSE consultation zones. In the context of the IERRT proposals, development Type DT2.5 (Outdoor Use by Public) details how ferry terminals, amongst other cited examples in the ‘Assembly and Leisure’ category, should adhere to the following development detail and size: *Principally an outdoor development for use by the general public i.e., developments where people will predominantly*

*be outdoors and not more than 100 people will gather at the facility at any one time.*

*Article 22 – Power to appropriate*

- 8.6 This article gives ABP the power to set apart and appropriate any part of the authorised development for the exclusive or preferential use and accommodation of any trade, person or goods – subject to such charges and the imposition of terms and conditions as ABP may consider fit.
- 8.7 The effect of the article is to impose a restriction on other trades or persons who may wish to make use of the harbour facility without the approval of the ABP Dock Master.
- 8.8 This article is not in the model provisions and is a qualification of the incorporated section 33 of the 1847 Act.
- 8.9 The rationale for this provision is that whilst the Applicant acknowledges and recognises the “open port” duty as prescribed by section 33 of the Act of 1947, there may be circumstances when the Applicant may wish to appropriate the use of all or part of the proposed development for the benefit of a specific operator. Without this provision, section 33 of the 1847 Act, (see paragraph 5.22(a)(vii) above) could to all practical intents and purposes require the Proposed Development to be open to all users – regardless of the needs of specific timed line operators.
- 8.10 This provision has precedent in the Able Marine Energy Park Development Consent Order 2014 and numerous orders made under the Harbours Act 1964.

*Article 23 – Planning legislation*

- 8.11 That part of the authorised development that is located on the landside within the Port of Immingham is operational land owned and operated by ABP in its capacity as a statutory port undertaker. Paragraph (1) of this article confirms that the authorised development, if approved by the Secretary of State, will be treated as operational land for the purposes of section 264(3) of the 1990 Act.
- 8.12 Paragraph (2) confirms that if ABP undertakes additional development within the Order Limits in accordance with a planning permission granted under the 1990 Act, which includes a deemed permission under the provisions of the Town and Country Planning (General Permitted Development) Order (England and Wales) Order 2015, it will not be in breach of the DCO.
- 8.13 If this provision were not to be included, its omission would effectively act as a constraint on ABP’s ability to construct and undertake works to its marine infrastructure within the Port of Immingham’s harbour limits save in accordance with the provision of this Order.
- 8.14 That said, ABP acknowledges that in such cases, should ABP wish to undertake works which would exceed EIA thresholds, then the normal provision regarding the need to secure full planning permission and the

requirements of article 3(10) of the Town and Country Planning (General Permitted Development) (England) Order 2015 would apply.

- 8.15 This article is preceded by the Port of Tilbury (Expansion) Order 2019 although it is noted that in the circumstances of that Order, the applicant was extending the port's harbour limits which is not the case in respect of the proposed IERRT development.

## **Part 5 – Supplemental powers**

### *Article 24 – Discharge of Water*

- 9.1 Article 24 details the circumstances in which ABP is permitted to discharge water into a watercourse or drain as a result of both the construction and operation of the authorised development. The article establishes a statutory authority for such discharges, but they must only be carried out with the consent of the owner of the watercourse, sewer or drain. Such consent must not be unreasonably withheld.
- 9.2 The principal watercourse which will be used for the authorised development is known as the Habrough Drain, which falls under the control of the North East Lindsay Internal Drainage Board – abbreviated to “the Board” in this DCO. Whilst the Board's byelaws in respect of that part of the Drain which may be impacted by the authorised development have been disapplied by article 3(1)(b) to the DCO, the purpose of Article 24(3) is to require ABP to secure the consent of the Board for its proposals insofar as they are likely to affect the Habrough Drain.
- 9.3 Article 24(5) requires ABP to take all necessary steps to ensure that any water discharged is as free as may be practicable from gravel, soil, or other solid substance, oil or matter in suspension.
- 9.4 Article 24(6) makes clear that it does not remove the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting Regulations where one would otherwise be necessary.
- 9.5 Article 24(7) states that if the Board receives an application for approval under this Article and does not notify ABP of a decision with 28 days, then approval will be deemed to be granted. The period of 28 days is considered both appropriate and reasonable in that ABP, as the port operator, is in regular discussion with the Board and is providing a protection provision for the Board in this DCO so that its interests are fully protected.
- 9.6 A similar provision was included in the recent A1 Birtley to Coal House Development Consent Order 2021 and the article has precedent in the Port of Tilbury (Expansion) Order 2019 and the Southampton to London Pipeline Development Consent Order 2020.

### *Article 25 – Powers to dredge*

- 9.7 Article 25 is based on a provision in the Port of Tilbury (Expansion) Order 2019. It provides ABP with a power to dredge, deepen, scour, cleanse,



alter and improve so much of river bed and foreshore of the River Humber as is within the Order Limits, but only for the purposes of constructing and maintaining Work No.2, a dredged berthing pocket. Such dredging must only be to the depth specified for the work in Schedule 1 for Work No.2.

- 9.8 The article also includes a power for ABP to use, deposit or otherwise dispose of the dredged materials as they think fit, provided that no materials are disposed of in the UK marine area other than in accordance with approval from the Marine Management Organisation (“the MMO”) under the deemed marine licence or under any other marine licence granted.
- 9.9 In this context it is noted generally that ABP already has consent to undertake regular maintenance dredging under the terms of its extant Marine Licence.

*Article 26 – Authority to survey and investigate the land*

- 9.10 This article enables ABP, should it be necessary, to enter land both within and adjacent to but outside the Order limits for the purpose of testing and surveying.
- 9.11 By virtue of paragraph (2), no land may be entered unless ABP has given at least 14 days’ notice to the occupier.
- 9.12 This provision has been included in a number of recent DCO’s including the Silvertown Tunnel Order 2018, the Port of Tilbury (Expansion) Order 2019 and the Southampton to London Pipeline Development Consent Order 2020.

*Article 27 – Protective work to buildings*

- 9.13 This article is designed to give ABP the power to undertake protective works to third party buildings within the Order limits.
- 9.14 Whilst the article itself is based on precedent contained in many DCO’s such as the Port of Tilbury (Expansion) Order 2019, the York Potash Harbour Facilities Order 2016, in practical terms the buildings that may require protective works in terms of the authorised development are small in number and apply effectively to buildings/structures/sub-stations owned and operated by the third party undertakers – subject to any existing buildings being retained as a result of ongoing discussions with tenants.
- 9.15 As the owner and operator of the port of Immingham, buildings within the site such as the substations and the existing water tower are owned by ABP. Article 27, however, has been included to enable ABP to undertake protective works, should they prove necessary to the Malcolm West buildings (office and shed), the Drury Buildings and the PK Construction office building.

*Article 28 - Agreement with highway authorities*

- 9.16 This article, which is generally preceded in a number of DCO’s including the Port of Tilbury (Expansion) Order 2019, the Able Marine

Energy Park Development Order 2014 and The Lake Lothing (Lowestoft) Third Crossing Order 2020 enables the Applicant and the relevant highway authority to enter into an agreement with the relevant highway authority.

- 9.17 The article has been incorporated in the Order so as to provide the Applicant with the necessary authority to enter into a section 278 agreement with the Council. The only highway agreement required in relation to the authorised development is an agreement with the Council in relation to proposed improvements to the East Gate, pursuant to Work No. 12.

## **Part 6 – Miscellaneous and General**

### *Article 29 – Defence to proceedings in respect of statutory nuisance*

- 10.1 This article, paragraphs (1) and (2) of which are based on the model provision, have precedent in a number of recent DCOs including the Port of Tilbury (Expansion) Order 2019, The A585 Windy harbour to Skippool Highway Development Consent Order 2020 and the A1 Birtley to Coal House Development Consent Order 2021. It provides a defence to proceedings brought under the provisions of the Environmental Protection Act 1990 in relation to noise emitted from premises.
- 10.2 The Article is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the 2008 Act and is a matter specifically identified in paragraph 11 of Schedule 5 to the 2008 Act, which states that a DCO can provide for the exclusion of liability in respect of acts or omissions.
- 10.3 The defence is only available where:
- a) the noise relates to premises used by ABP for the purposes of or in connection with the construction or maintenance of the authorised development and is created in the course of the carrying out of or maintenance of the authorised development in accordance with a notice given under sections 60 or 61 of the Control of Pollution Act 1974; or
  - b) the noise is a reasonably unavoidable consequence of the construction or maintenance of the authorised development; or
  - c) the noise is a reasonably unavoidable consequence of the use of the authorised development.
- 10.4 Paragraph (2) provides that section 61(9) of the Control of Pollution 1974 does not apply where the consent would relate to the use of premises by ABP for the purposes of or in connection with the construction or maintenance of the authorised development.
- 10.5 Following paragraph (2) of Schedule 27 of the High Speed (London – West Midlands) Act 2017, article 35(3) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 and paragraph (2) of Schedule 26 to the High Speed (West Midlands – Crewe) Act 2021,

paragraph (3) extends the provision to provide a defence against abatement proceedings brought by a local authority under section 80(4) of the Environmental Protection Act 1990.

#### *Article 30 – Deemed marine licence*

- 10.6 Section 149A of the 2008 Act permits a DCO to include a provision deeming a marine licence to have been issued under Part 4 of the Marine and Coastal Access Act 2009.
- 10.7 Article 30 constitutes such deemed consent. Schedule 3 to this DCO sets out the terms of the proposed deemed marine licence which, at the time of submission, is subject to final agreement with the Marine Management Organisation.
- 10.8 Whilst not a model provision it does have precedent in Transport and Works Orders as well as The Lake Lothing (Lowestoft) Third Crossing Order 2020.

#### *Article 31 – Trees subject to a Tree Preservation Order*

- 10.9 This Article is designed to enable ABP to deliver the Woodland Enhancement Management Plan. That Plan requires ABP to undertake certain works of enhancement within an area of woodland protected by the North East Lincolnshire Council No. 107 (Long Wood, Laporte Road, Stallingborough) Tree Preservation Order 2002 – which Order protects the woodland as an area of protected woodland as opposed to the identification of specific trees within the protected area itself.
- 10.10 Whilst this article is based lightly on the model provision it has been modified in that the Woodland Enhancement Management Plan does not in fact contemplate any radical works to the woodland, such as felling of trees but looks more to ground level management.
- 10.11 Article 31(4) provides that the authority given under this article constitutes a deemed consent to undertake the works to the area which is subject to the Tree Preservation Order. Specific protections have been incorporated included in the article so as to prevent any works that may cause unnecessary damage to any tree or shrub.
- 10.12 In addition, the Woodland Enhancement Management Plan requires ABP to secure the consent of the North East Lincolnshire Council before undertaking any of the works detailed in the Management Plan, such consent not to be unreasonably withheld.

#### *Article 32 – Application of Landlord and Tenant Law*

- 10.13 This Article is preceded by a number of DCO's, such as the Southampton to London Pipeline Development Consent Order 2020 and the Port of Tilbury (Expansion) Order 2019 as well as the model provisions. The article governs the leasing of land to other persons and allows the terms of the lease to override any statutory provisions relating to landlord and tenant law.

- 10.14 The effect is to ensure that any agreement entered into under the provisions of Article 9 (*Transfer of benefit of the Order*) will not be overridden by Landlord and Tenant law.

*Article 33 – Certification of plans etc.*

- 10.15 Article 33 is based on the model clause and requires ABP to submit copies of the documents listed in Schedule 6 to the Secretary of State for certification that they are true copies of the documents referred to in the Order.

*Article 34 – Service of Notices*

- 10.16 This Article has precedent in many DCOs including the Port of Tilbury (Expansion) Order 2019 and the A1 Birtley to Coal House Development Consent Order 2021. It details how any notices or documents required to be served under the Order are deemed to have been correctly served. It allows for email service, where consented by the recipient and provides for the situation of an unknown landowner.
- 10.17 This Article is necessary because the notice provisions of the 2008 Act (ss.229-231) apply only to notices served under that Act and not under DCOs made under it. The Article provides for certainty in relation to notices.

*Article 35 - Arbitration*

- 10.18 This Article is based on the arbitration provision included in the model provisions and is common in DCOs. It requires that disputes under the Order be referred to and settled by a single arbitrator. The arbitrator is to be agreed between the parties or, in the absence of such agreement, will be appointed upon the application of either party by the President of the Institution of Civil Engineers.

*Article 36 – Saving for Trinity House*

- 10.19 This Article, which is taken from the harbours model provisions and has been included in subsequent DCOs, such as The Port of Tilbury (Expansion) Order 2019, provides protection for the rights, duties and privileges of Trinity House.
- 10.20 Trinity House is the General Lighthouse Authority for England.

*Article 37 – Provision against danger to navigation*

- 10.21 This article which has been inserted in the body of the draft DCO at the request of Trinity House and is designed to ensure that in the case of any instance of damage, destruction or decay arising in relation to tidal works as defined in this Order, Trinity House and the relevant Statutory Harbour Authority must be informed as soon as is reasonably practicable and the necessary steps taken to prevent any danger to navigation arising as a result.

*Article 38 - Lights on tidal works during construction*

- 10.22 Article 38 requires the Company to ensure that for the whole time during construction, alteration, replacement or extension of the authorised development the relevant works are lit between sunset to sunrise and to take such additional steps as may be required by Trinity House or the relevant Statutory Harbour Authority.

*Article 39 – Permanent lights on tidal works*

- 10.23 This article looks to the position following completion of the authorised development and requires ABP to display lighting at the outer extremity of the marine infrastructure and take such other steps as may be required by Trinity House or the appropriate Statutory Harbour Authority to prevent any danger to navigation.

*Article 40 – Crown Rights*

- 10.24 Article 40 is designed to give the necessary protections to the interests, safeguarding the rights of the Crown in relation to The Crown Estate. The Crown is the freeholder of the bed of the Humber and this article will have to be approved by the Crown Estate.

*Article 41 – Protective Provisions*

- 10.25 This article, which is standard in form, introduces Schedule 4 which contains protective provisions, the purpose of which is protect the interests of third parties.
- 10.26 Part 1 of Schedule 4 provides a Protective Provision for the Statutory Conservancy and Navigation Authority for the River Humber, who acting through the Harbour Master, regulate the safe passage of vessels in the Humber, the Commissioners' duties extending to the regulation of ABP as undertaker to give notice of tidal works, discharges and obstructions, accumulation of sedimentation etc.
- 10.27 Part 2 of Schedule 4 provides a Protective Provision for the Environment Agency, requiring the Company to submit plans to the Agency prior to the commencement of works so as to ensure that none of the proposed works "*touch any existing flood management infrastructure*". This Protective Provision is designed to enable ease of inspection for the Agency and any future works required in the context of flood management.
- 10.28 Part 3 of Schedule 4 provides a Protective Provision for Exolum, a tenant of ABP within the port and whose infrastructure may be affected by the authorised works.
- 10.29 Similarly, Part 4 provides a Protective Provision for Humber Oil Terminal Trustees, also a tenant of ABP and whose marine infrastructure is located close to the proposed IERRT jetty and berths.
- 10.30 Parts 5, 6, 10 and 11 of Schedule 4 provide Protective Provisions for Northern Powergrid, Anglian Water, Cadent Gas Limited and the Operators of Electronic Communications Code Networks respectively in terms of the protections required for their existing utilities within the site

- 10.31 Parts 7 and 8 of Schedule 4 provide Protective Provisions for DB Cargo, and Network Rail. For DB Cargo the protections deal with an agreed change in access to the DB Cargo site whilst for Network Rail, the protections extend both to access to their land interests but also protections in relation to the proposed lighting of the IERRT site in the context of Network Rail's adjacent operational Network Rail train line.

*Article 42 – Byelaws relation to the authorised development*

- 10.32 The Immingham Dock Byelaws were made in 1929. This article simply confirms that those byelaws which regulate activities within the Port of Immingham will also regulate the authorised development and may be enforced by Associated British Ports.

## **SCHEDULES**

### **Schedule 1 – Authorised development**

- 11.1 This Schedule describes, by reference to numbered works, the totality of the authorised development the subject of this Order, both in terms of the harbour facility as proposed and the related associated development.
- 11.2 This schedule has to be read in conjunction with the Order plans which comprise the Works Plans, General Arrangement Plans, the Engineering Sections and the Land Plans – these last identifying the land within the Order limits that is subject to compulsory acquisition.

### **Schedule 2 – Requirements**

#### **Part 1**

- 12.1 Section 120 of the Act of 2008 provides that an Order granting development consent may impose Requirements in connection with the development for which consent is granted.
- 12.2 The requirements in Part 1 of Schedule 2 effectively correspond in type to conditions which could have been imposed on a planning permission under the Planning Act 1990.
- 12.3 As far as the requirement themselves are concerned, in brief they comprise the following –
- a) *R1 – Interpretation*: this provides a glossary of the terms used.
  - b) *R2 – Time limits*: this provides that construction of the proposed development must commence no later than 5 years from the date of the Order coming into force.
  - c) *R3 – Amendments to approved details*: this requirement provides that if it is necessary to secure the approval of details in

relation to draft or outline proposals in connection with the authorised development, those approvals will be sought from the appropriate body. In practice, the appropriate body will, on most occasions – but not all – be North East Lincolnshire Council.

D) *R4 – Construction hours: associated development:* this prescribes the times when construction will take place in terms of the ‘associated development’ – in effect the landside development.

e) *R5 – ~~[BLANK]~~Travel Plan:* this provides that a final version of the travel plan must be submitted to and approved by North East Lincolnshire Council prior to operation of the authorised development. The authorised development must then be carried out in accordance with the approved travel plan.

e) *R6 – Piling and marine construction works restrictions:* this requirement references the marine works construction restrictions as imposed by the terms of the deemed marine licence. It requires compliance with the provisions of the deemed marine licence under Schedule 3, which prescribes dates and times when no marine piling works can be undertaken.

f) *R7 – External appearance:* this imposes an obligation on ABP to secure approval from North East Lincolnshire Council as the local planning authority in relation to the details of the buildings to be constructed as part of the authorised development.

g) *R8 – Construction Environmental Management Plan:* this document, known as the “CEMP” is to be approved pursuant to the Order and prescribes required construction practices. The Requirement provides for the approval of a CEMP, which must be in accordance with the Outline CEMP submitted in support of the DCO application.

h) *R9 – Surface Water Drainage:* this Requirement deals with the methodology incorporated within the authorised development for removal of surface water – a methodology that will have to be approved by both the North East Lindsay Drainage Board as the responsible body and North East Lincolnshire Council in its capacity as Lead Flood Authority.

i) *R10 – Noise insulation:* by this requirement, ABP is obliged to offer and if the offer is accepted, install noise insulation measures for the owner/occupiers of the residential dwellings on Queen’s Road.

j) *R11 – Off-site mitigation:* this requirement sets out ABP’s undertaking to secure the Council’s approval, prior to the operation of the authorised development, of the Woodland Enhancement Management Plan in relation to Long Wood.

k) *R12 – East Gate improvements:* prior to the commencement of operations at the authorised development, ABP is required to have completed works of improvement to the entry to the Port at the East

Gate – being Work No. 12 in Schedule 1 of the draft DCO – with the approval of the local highway authority.

L) *R13 – [BLANK].*

m) *R14 – Lighting strategy:* ABP is required to secure the approval of North East Lincolnshire Council to the submitted Lighting Strategy.

p) *R15 – Construction and operational plans and documents:* this requirement sets out the various plans with which ABP must comply when constructing the development.

q) *R16 – Contaminated land:* no works of construction in relation to the authorised development can commence until ABP has submitted to and obtained the approval of North East Lincolnshire Council and the Environment Agency as to how it will deal with any contaminated land – should such be present within the Order limits.

R) *R17 – Material Management Plan:* this requirement encompasses the need for the preparation and approval of a material management plan dealing with the safe management of materials arising as part of the construction process.

s) *R18 – Impact protection measures:* the ‘authorised works’ include the provision of impact protection measures should the Harbour Master or Dock Master recommend that such measures are required. This Requirement sets out the procedure to be followed by the Company.

## Part 2

- 12.4 ***Procedure for discharge of Requirements*** – Part 2 of Schedule 2 contains a procedure for the discharge of these requirements by a relevant discharging authority. It includes time limits for applications under the requirements to be decided, including for minor amendments to approvals already given under the requirements. It also provides for situations where a discharging authority requests further information it considers necessary for it to be able to consider the application.
- 12.5 Paragraph 24 makes clear that where, prior to the Order coming into force, steps have been taken towards compliance with the requirements, they may be taken into account when determining compliance with that requirement after the Order has been made. This avoids such steps having to be taken again unnecessarily.
- 12.6 Part 2 of the Schedule also contains an appeals process. It is based on the standard drafting found in Appendix 1 to the Planning Inspectorate’s Advice Note Fifteen as modified in a number of recent DCOs including the Port of Tilbury (Expansion) Order 2019.



## Schedule 3 – Deemed Marine Licence

- 13.1 Schedule 3 contains the details of the Deemed Marine Licence, including the conditions applying to the licensable activities, which has been agreed with the MMO.

## Schedule 4 – Protective Provisions

- 14.1 This Schedule sets out the provisions that have been agreed with statutory undertakers and parties that may be affected by the authorised development, as outlined above.
- 14.2 The protective provisions included within the Order are for the protection of the following
- 14.3 **Part 1** of Schedule 4 provides a Protective Provision for the **Statutory Conservancy and Navigation Authority for the River Humber**, who acting through the Harbour Master, regulate the safe passage of vessels in the Humber, the Commissioners' duties extending to the regulation of ABP as Company to give notice of tidal works, discharges and obstructions, accumulation of sedimentation etc.
- 14.4 **Part 2** of Schedule 4 provides a Protective Provision for the **Environment Agency**, requiring the Company to submit plans to the Agency prior to the commencement of works so as to ensure that none of the proposed works "*touch any existing flood management infrastructure*". This Protective Provision is designed to enable ease of inspection for the Agency and any future works required in the context of flood management.
- 14.5 **Part 3** of Schedule 4 provides a Protective Provision for **Exolum**, a tenant of ABP within the port and whose infrastructure may be affected by the authorised works.
- 14.6 Similarly, **Part 4** provides a Protective Provision for **Humber Oil Terminal Trustees**, also a tenant of ABP and whose marine infrastructure is located close to the proposed IERRT jetty and berths.
- 14.7 **Parts 5, 6, 10 and 11** of Schedule 4 provide Protective Provisions for **Northern Powergrid, Anglian Water, Cadent Gas Limited** and the **Operators of Electronic Communications Code Networks** respectively in terms of the protections required for their existing utilities within the site.
- 14.8 **Parts 7 and 8** of Schedule 4 provide Protective Provisions for **DB Cargo**, and **Network Rail**. For DB Cargo the protections deal with an agreed change in access to the DB Cargo site whilst for Network Rail, the protections extend both to access to their land interests but also protections in relation to the proposed lighting of the IERRT site in the context of Network Rail's adjacent operational Network Rail train line.

## **Schedule 5 – Modifications of compensation and compulsory purchase enactments**

- 15.1 This Schedule details the necessary modifications that are made in respect of compensation in the case of a compulsory acquisition under the DCO of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

## **Schedule 6 – Plans and documents to be certified**

- 16.1 This Schedule contains a list of the plans and documents which are to be certified by the Secretary of State in accordance with Article 33 of the DCO.