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All Interested Parties and Statutory
Parties

Your Ref:

Our Ref: TR030007

Date: 6 December 2023

Dear Sir/Madam

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

Section 89(3) of the Planning Act 2008 (as amended) and The Infrastructure Planning (Examination Procedure) Rules 2010 (as amended) – Rules 8(3), 9 and 17

Procedural Decisions in respect of: 1) making comments in response to the Examining Authority's (ExA) recommended changes to the submitted draft Development Consent Order (dDCO) etc; and 2) the Applicant's change of application request

Procedural Decisions

We write in relation to procedural decisions the ExA has made in connection with the above-mentioned application.

1) Commenting on the ExA's recommended changes to the dDCO

The ExA issued its schedule of recommended changes to the draft Development Consent Order (dDCO) on 1 December 2023 [[PD-019](#)]. The extant Examination Timetable, included in [PD-009](#) and as amended by [PD-016](#), omitted an opportunity for the Applicant, other Interested Parties (IPs) and Other Persons to make comments about the ExA's recommended changes to the dDCO prior to the Applicant's submission of a final version of the dDCO at Deadline 7 (Monday 11 December 2023).

The ExA considers that the Applicant, IPs and Other Persons should have the opportunity to submit written comments relating to the ExA's recommended changes to the dDCO. Accordingly, the ExA has made the procedural decision to amend the Examination Timetable so that the Applicant, other IPs and Other Persons can, if they wish, submit comments about the ExA's recommended changes to the dDCO at Deadline 7 (Monday 11 December 2023). Given the need for the aforementioned change to the Examination Timetable it is also necessary that the deadline for the Applicant's submission of its final

version of the dDCO be varied from what had been Deadline 7 to Deadline 8 (Monday 8 January 2024).

2) The Applicant's change of application request

Background

On 29 November 2023 the Applicant formally submitted a request to change the submitted application [AS-045]. That request being made further to the Applicant giving notice of its intention to submit such a request on 19 October 2023 [AS-026 and other accompanying documents] and its undertaking of a “*comprehensive consultation (non-statutory)*” for a period of 31 days between 20 October and 19 November 2023.

The changes included in the formal change request, in summary are as follows:

- **Proposed Change 1:** Realignment of the approach jetty and associated works to the marine infrastructure;
- **Proposed Change 2:** Realignment and shortening of the Proposed Development's onshore internal bridge;
- **Proposed Change 3:** Rearrangement of the UK Border Force facilities; and
- **Proposed Change 4:** Enhanced operational marine controls and the possible provision of additional marine impact protection measures.

The Examining Authority's reasoning

The ExA has assessed the Applicant's request in line with paragraphs 109 to 115 of the Government's Guidance “*Planning Act 2008: examination of applications for development consent*” (the Guidance) and the Planning Inspectorate's Advice Note 16 National Infrastructure Planning.

The Guidance and Advice Note 16 both accept that applicants may need to change elements of a proposal after an application has been accepted. Further to the Applicant's original notification, dated 19 October 2023 [AS-026], of its intention to make changes to the application, a consultation exercise has been undertaken and amended documentation has been submitted by the Applicant [AS-045 and accompanying documents] (hereafter collectively referred to as ‘the proposed change documentation’).

The ExA has had regard to the nature and scale of the proposed changes and consultation responses as detailed in the information provided by the Applicant in the proposed change documentation. The ExA notes that the proposed change documentation includes sections of the Environmental Statement which have been updated to consider the proposed changes.

As regards the proposed changes the ExA considers that the nature and scale of Change 1 (jetty realignment), Change 2 onshore bridge), Change 3 (rearrangement for Boarder Force facilities) and Change 4 (enhanced operational marine controls and the possible provision of additional marine impact protection measures) either individually or collectively would not be so substantial as to constitute a materially new project.

Additionally, in considering whether or not the proposed changes are material, the ExA notes that none of the changes would cause the engagement of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010.

Although the ExA acknowledges the concerns raised by some Interested Parties regarding specific impacts upon their interests, these concerns do not alter the ExA's view that the changes would be capable of being accepted into the Examination.

For the reasons given above, the ExA is content to accept Changes 1, 2, 3 and 4 into the Examination provided that issues of fairness can be satisfactorily addressed. The ExA recognises that in considering whether or not to accept the proposed Changes 1 to 4 it needs to act reasonably and in accordance with the principles of natural justice. The ExA has regard to Advice Note 16 and must be satisfied that anyone affected by Changes 1 to 4 should have fair opportunities to make their views on them known and to have their views properly taken into account. In that regard the ExA notes that the Applicant consulted extensively, on a non-statutory basis, prior to the formal submission of its request to change the submitted application.

With some variations to the extant Examination Timetable the ExA considers that there would be sufficient time remaining in the Examination for Changes 1 to 4 to be accommodated as part of the Planning Act 2008 Examination process, most particularly to enable IPs and Other Persons to make comments on Changes 1 to 4 within the Examination should they so wish.

Accordingly, the ExA has made the procedural decision to accept Changes 1 to 4 (inclusive) for Examination. To accommodate the acceptance and Examination of those changes the ExA has also made the decision under Rule 8(3) that the extant Examination Timetable should be varied as follows:

- New Deadline 7A (20 December 2023) – The ExA's receipt of IPs' and Other Persons' comments on application Changes 1 to 4
- ExA's issuing of further written questions (ExQ4) 22 December 2023 (if required)
- Variation of Deadline 8 (8 January 2024) – The ExA's receipt of comments on any Deadline 7A submissions and responses to ExQ4 (if required)
- New Deadline 9 (15 January 2024) – The ExA's receipt of comments on any submissions made at Deadline 8

The variation to the Examination Timetable is set out in **Annex A**.

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

Yours faithfully

Grahame Gould

Grahame Gould
Lead Member of the Examining Authority

Annex A

Extant timetable with variations in **Red**

19	<p>Deadline 7 (D7)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none">• Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 21 to 23 November 2023 are required)• Comments on the Report on the Implications for European Sites (RIES)• Responses to the ExA's ExQ3 ExQ4 (if required)• Applicant's final dDCO to be submitted in the SI template with the SI template validation report. This version of the dDCO should be submitted in an editable format and it should also be accompanied by an editable copy showing any revisions to the preceding version shown using tracked changes (if required)• Comments on the ExA's recommended changes to the dDCO• Submission of an updated PADs Tracker by the Applicant• Final Statement of Commonality from the Applicant	Monday 11 December 2023
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	<ul style="list-style-type: none"> • An updated Guide to the Application documents to be submitted by the Applicant • Comments on any submissions received at D6 • Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	
20	<p>NEW Deadline 7A (D7A)</p> <p>Deadline for the receipt by the ExA of:</p> <ul style="list-style-type: none"> • Comments on the Application Changes 1, 2, 3 and 4 	23:59 on Wednesday 20 December 2023
21	<p>Publication by the ExA of:</p> <ul style="list-style-type: none"> • The ExA's Further Written Questions (ExQ4) (if required) 	Friday, 22 December 2023
20 22	<p>Deadline 8 (D8)</p> <p>Deadline for receipt by the ExA of:</p> <ul style="list-style-type: none"> • Applicant's final dDCO to be submitted in the SI template with the SI template validation report. This version of the dDCO should be submitted in an editable format and it should also be accompanied by an editable copy showing any revisions to the preceding version shown using tracked changes • Comments on any submissions made at Deadline 7A • Responses to ExQ4 (if required) • Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 • Comments on any further information requested by the ExA and received by D7 	Monday 8 January 2024

<p>23</p>	<p>NEW Deadline 9 (D9)</p> <ul style="list-style-type: none"> • Comments on any submissions received at D8 • Any further information requested by the ExA under Rule 17 of The Infrastructure Planning (Examination Procedure) Rules 2010 	<p>23:59 on Monday 15 January 2024</p>
<p>24 24</p>	<p>The ExA is under a duty to complete the Examination of the application by the end of the period of six months.</p> <p>Please note that the ExA may close the Examination before the end of the six-month period if it is satisfied that all relevant matters have been addressed and discussed.</p>	<p>Thursday 25 January 2024</p>

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