

## CLdN PORTS KILLINGHOLME LIMITED

### RESPONSES TO THE APPLICANT'S DEADLINE 6 SUBMISSIONS

#### 1. INTRODUCTION

- 1.1 This document comprises the response by CLdN Ports Killingholme Limited (**CLdN**) to documents submitted by the Applicant at Deadline 6 of the examination of the application for a Development Consent Order (**DCO**) (**the Application**) for the Immingham Eastern RoRo Terminal (**IERRT** or **the Proposed Development**).
- 1.2 The Applicant's submissions at Deadline 6 are noted, in particular the Applicant's Response to CLdN's Deadline 5 Submission [**REP6-027**] (**the Applicant's DL6 Response**). CLdN considers that the majority of the submissions made at Deadline 6 was discussed during Issue Specific Hearing 5 (**ISH5**), held on 21 and 22 November 2023, and Issue Specific Hearing 6 (**ISH6**), held on 23 November 2023. CLdN refers to its summary of oral submissions and post hearing notes for both ISH5 and ISH6. Therefore, CLdN does not consider that it will assist the Examining Authority to duplicate those submissions by responding to each point made by the Applicant in the Applicant's DL6 Response.
- 1.3 Instead, CLdN has produced this document to address certain points raised in the Applicant's DL6 Response that CLdN wishes to clarify and to provide particular commentary on.
- 1.4 Where CLdN has not specifically responded to a point in the Applicant's DL6 Response, that does not mean that it is accepted. Rather, it is CLdN's view as stated above that its previous submissions have already addressed and established CLdN's position, which remains unchanged, on that point.
- 1.5 CLdN has also included in this document comments on developments since ISH5 and ISH6 in relation to its proposed Protective Provisions and the Applicant's Change Request.

#### 2. COMPARABLE RO-RO BERTHS AND FUEL IMPORT/EXPORT BERTHS SITING RELATIONSHIPS

- 2.1 Regarding the Applicant's submissions in relation to CLdN's response to ExQ2 NS.2.07 on comparable Ro-Ro berths and oil jetty proximities (paragraphs 3.4 – 3.7 of [**REP6-027**]), CLdN considers that the Applicant has fundamentally misunderstood the relevant point. CLdN is not berthing Ro-Ro vessels at Purfleet behind or adjacent to any oil terminal in the same way that the Applicant is proposing for IERRT – there is no manoeuvring in the vicinity of oil jetties and there are no related impact protection measures as proposed for IERRT. Therefore, the operating conditions at CLdN Ports London are not at all comparable to the situation proposed at the Port of Immingham (**Immingham**) as a result of the Proposed Development, and are therefore irrelevant to the consideration of the Application.
- 2.2 Further, and as CLdN has already submitted in its Deadline 5 Submission [**REP5-041**], the Applicant cannot rely on any comparison between the Proposed Development and Immingham as it currently is. It is not clear to CLdN how such a comparison is possible, given that IERRT has not been built and there is nothing at Immingham in its existing condition that can be comparable with IERRT, or indeed elsewhere currently in the United Kingdom.
- 2.3 Therefore, it is CLdN's view that the Applicant has not, and cannot, provide the Examining Authority with an example of a port layout in the United Kingdom where Ro-Ro berths and

fuel import/export berths have comparable siting relationships with what is being proposed for Immingham.

- 2.4 In paragraph 3.6 of the Applicant's DL6 Response, the Applicant states that "*the image below shows the eastern jetty of the Esso Oil Purfleet Terminal*". This is the oil jetty that the Applicant has claimed is 130m from CLdN's RoRo berths. As CLdN stated in its Deadline 5 submission **[REP5-041]**, the jetty shown is in fact owned by CLdN. It is a redundant jetty, which previously served as a lubes oil facility, that has not been in use for many years. The site of the lubes oil facility and the berth are both owned by CLdN, and the lubes oil site is used for port storage – no petroleum products are handled here.
- 2.5 CLdN notes the Applicant's acknowledgment, at paragraph 3.7 of the Applicant's DL6 Response, that the 'Oil Storage and Terminal' shown 70m downriver from CLdN's berths in figure 1 of the Applicant's Written Summary of Issue Specific Hearing 3 **[REP4-009]** handles vegetable oil. However, it is unclear to CLdN whether the Applicant appreciates the difference between vegetable oil and petroleum when relying on its significance as a comparable factor in terms of impact protection – the former is significantly less hazardous and less detrimental to the marine environment than the latter.

### 3. **PROTECTIVE PROVISIONS**

- 3.1 CLdN received a response to its letter of 09 October 2023 in respect of its proposed Protective Provisions from the Applicant on 29 November 2023. As explained in its post hearing notes for ISH6, CLdN was disappointed that the Applicant delivered its response 5 days later than the deadline it had promised during ISH6.
- 3.2 CLdN provided a letter of response to the Applicant on 08 December 2023, meeting the deadline CLdN volunteered in its post hearing notes for ISH6. A copy of this letter is appended to this submission, at **Appendix 1**, which shows that CLdN has provided a full explanation of its position in respect of its response to the amended version of the Protective Provisions received from the Applicant.
- 3.3 It is noted that the Examining Authority requested, in its schedule of proposed changes to the draft DCO **[PD-019]**, that the Applicant provides a detailed explanation as to why it does not accept any particular Protective Provisions. Whilst this request came after the Applicant sent its response letter to CLdN, CLdN was nevertheless disappointed that the Applicant provided no explanation (beyond Mr Greenwood's brief summary during ISH6) as to why it has refused to accept certain elements of CLdN's requested Protective Provisions – CLdN only received a clean copy of the Applicant's version of the Protective Provisions, without any explanation of the amendments made and without a comparison against CLdN's previous version of 09 October 2023. CLdN would welcome a written explanation from the Applicant as to how and why it has reached its conclusions on the various matters in the Protective Provisions, akin to the explanation CLdN has provided throughout the examination, most recently on 09 October and then on 08 December 2023.

### 4. **CHANGE REQUEST**

- 4.1 CLdN notes the Examining Authority's decision to accept for examination the Applicant's Change Request, along with the alterations to the Examination Timetable, in its Procedural Decision Letter dated 6 December 2023 **[PD-021]**. CLdN was surprised not to have received any documentation for the Change Request from the Applicant, prior to it being published on 06 December 2023, despite the commitment given by the Applicant in ISH5 and reflected in Action Point 20 **[EV10-016]**. CLdN will consider the documents that have now been published and will provide any comments it feels necessary by Deadline 7A on 20 December 2023.

**08 December 2023**

## **APPENDIX 1**

**CLDN's RESPONSE (08 DECEMBER 2023) TO THE APPLICANT'S AMENDED  
PROTECTIVE PROVISIONS (29 NOVEMBER 2023)**

BY E-MAIL

**STRICTLY PRIVATE AND CONFIDENTIAL**

Mr B Greenwood  
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EC3A 7AR

Your Ref: BG/10276966  
Our Ref: 143071462.2\700642.07000  
Pinsent Masons LLP  
30 Crown Place  
Earl Street  
London  
EC2A 4ES

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08 December 2023

Dear Brian,

**CLDN PORTS KILLINGHOLME LIMITED  
IMMINGHAM EASTERN RO-RO TERMINAL – PROTECTIVE PROVISIONS**

I refer to your email of 29 November 2023 which attached Associated British Ports' (the **Applicant**) revised protective provisions for the benefit of CLdN Ports Killingholme Limited (**CLdN**) in relation to the application for development consent for the Immingham Eastern Ro-Ro Terminal (**IERRT or the Proposed Development**). This was in response to my letter of 09 October 2023, which set out CLdN's proposed protective provisions and was accompanied by a detailed explanation and justification for these. I also refer to your submissions at Issue Specific Hearing 6 (**ISH6**) on 23 November 2023 in relation to this matter.

Given your letter dated 07 September 2023, in which the Applicant rejected the entirety of CLdN's proposals for protective provisions, CLdN is pleased to hear that the Applicant has reconsidered its position on these. However, we would like to draw your attention to the Examining Authority's request, in its schedule of proposed changes to the draft DCO [**PD-019**], that the Applicant should provide a detailed explanation as to why it does not accept any of the proposed protective provisions. Whilst we appreciate this request came after your email was sent to us, CLdN was nevertheless surprised and disappointed that the Applicant provided no explanation (beyond your brief summary during ISH6) as to why it has refused to accept certain elements of the requested protective provisions, alongside our only receiving a clean copy of the Applicant's version of the protective provisions with no comparison with our 09 October 2023 version or any explanation of the amendments made.

We have reviewed the revised protective provisions but due largely to the Applicant having provided minimal justification as to why it has refused to agree to certain protective provisions, CLdN's position remains much the same as set out in my letter of 09 October 2023.

**Paragraph 1 (now 127) – Application**

CLdN has included wording to ensure that the protective provisions for its benefit apply during the operation of the authorised development (as well as during construction), as it is imperative that its statutory undertaking is protected and continues to be uninterrupted throughout the lifetime of the authorised development.

Pinsent Masons LLP

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### **Paragraph 2 (now 128) – Interpretation**

We have removed the limitation in the definition of 'specified work' which restricted this concept, in the context of notification of vessel movements, to only those works which have been assessed in the environmental statement (and supplementary environmental information). It is unacceptable to CLdN that any obligations relating to specified works could be avoided by the Applicant simply because the impacts were not assessed in the environmental statement. Across the protective provisions included for various bodies in the latest draft DCO [REP6-003] there is no such limiting of specified works to any assessment (and approval) of the environmental statement – we do not see, therefore, why CLdN's protective provisions should be framed any differently. In any event, even if specified works were linked to the environmental statement across the draft DCO, CLdN would not agree with this approach – the assessments in question are the Applicant's own, whereas the definition of specified works must instead solely relate to an objective judgement made at the time of construction as to what works or operations are likely to affect CLdN's undertaking.

As a result, we have removed the definition of 'environmental document' from the protective provisions.

The definition of 'Vessel Traffic Services' you added has also been removed, as it is not used in the protective provisions.

### **Paragraphs 6 and 7 (now 132 and 133) – Notice of and consultation on works and vessel movements**

CLdN does not agree with the Applicant's decision to delete paragraphs 6 and 7 (now 132 and 133) of the proposed protective provisions. We refer to your submissions during ISH6, in which you stated that the Applicant cannot provide protection with regard to non-interference with CLdN vessels passing by the Port of Killingholme as this, you say, is the responsibility of the Harbour Master Humber and not the Applicant. CLdN does not understand or accept this reasoning – the Applicant is the organisation developing IERRT and is therefore in control of construction activities and any interference with CLdN vessels, and so it is capable of proactively managing the construction activities to avoid such interference. The fact that the Harbour Master Humber has a conservancy role does not change the Applicant's level of control – and furthermore it is not clear from the protective provisions agreed between the Applicant and the Harbour Master Humber that the Harbour Master Humber will approve the construction programme. But even if he does he will not have responsibility for managing or supervising the precise construction programme for the Proposed Development or directions given to construction contractors; that will, of course, be in the Applicant's control, so CLdN requires the assurance of these paragraphs that its vessels will not be interfered with more than is necessary during the construction period, so that the Applicant takes practical steps to ensure that such interference is minimised and proactively managed.

CLdN does not understand why paragraph 6(2) (now 132(2)) has been removed – given that the Applicant is content with the wording in paragraph 5 (now 131), it is not clear why the Applicant would not want CLdN to provide it with a schedule of movements, in order to ensure non-interference with CLdN's operations.

It bears repeating that CLdN does not consider that the protections it has sought in relation to the Proposed Development are unreasonable or out of the ordinary for the protection of a statutory port undertaker affected by a neighbouring (and nationally significant) new development. As explained in my letter of 09 October 2023, there is precedent in the Able Marine Energy Park DCO 2014 where protective provisions of this nature were provided to CLdN in order to mitigate against potential impacts of that project. Therefore, CLdN fails to see why the Applicant does not accept these comparable provisions.

### **Paragraph 8 (now 134) – Railways**

As explained in my letter of 09 October 2023, and also during my submissions in ISH6, CLdN of course understands and accepts that the DCO is not proposed to facilitate the delivery of freight by rail. The Applicant does not seem to appreciate, however, that it is entirely foreseeable that the Applicant may choose to revive its rail rights in the future, including by the potential use of permitted development rights to do so, which would potentially have an adverse effect on CLdN's rights. We refer the Applicant to the detailed reasoning for this protective provision that is set out on page 14 of my letter of 09 October 2023 and request the Applicant to reconsider its approach here.

### **Paragraphs 9 and 10 (now 135 and 136) – Highway access**

In order to accept the deletion of these paragraphs, CLdN will want to be consulted by the Applicant on the development of the Construction Environmental Management Plan. This consultation can either be secured by adding CLdN to the list of consultees in Requirement 8(1) of the draft Development Consent Order (**DCO**), or via a paragraph in the protective provisions. CLdN notes that Requirement 8(1), as currently drafted, references consultation with various bodies "*on matters related to their respective [statutory] functions*". Given that CLdN is a statutory undertaker (unlike DFDS and IOT) it considers that it has justification for this request.

We have drafted a paragraph into our new version of the protective provisions (see below) to this effect, but CLdN would be happy to remove this paragraph if such a consultation requirement is instead secured in Schedule 2 to the draft DCO.

In addition, and in order for CLdN to be comfortable with the deletion of the existing provision relating to highway access during operation of IERRT, we have inserted a paragraph in our new version of the protective provisions requiring the Applicant to develop a Freight Management Plan, in consultation with CLdN, to apply to the operation of IERRT. Again, this paragraph could be removed if the Applicant includes such a provision as an additional Requirement in Schedule 2 to the draft DCO.

### **Paragraph 11 (now 137) – Indemnity**

We have made some minor amendments to paragraph 11 (now 137) to ensure the consistent use of 'Undertaker' (rather than 'Company') throughout the protective provisions and to clarify that the obstruction exception found in sub-paragraph (1)(a) only applies to the lawful actions of the Statutory Conservancy and Navigation Authority (**SNCA**), rather than including in addition reference to any direction from the SCNA, as the latter is included within the former and it is inappropriate in a statutory instrument to include an oblique dash.

We have also amended the wording of sub-paragraph (3) for consistency with sub-paragraph (1).

### **Paragraphs 12 and 13 (now 138 and 139) – Statutory powers**

With the absence of any reasoning provided by the Applicant, CLdN does not understand why paragraphs 12 and 13 (now 138 and 139) of the proposed protective provisions have been rejected. Again, CLdN does not feel that these particular provisions requested are unreasonable or unusual in the circumstances of affording protection to a statutory port undertaker affected by a neighbouring new development. In fact, CLdN is concerned by the Applicant's refusal to provide protection to CLdN's statutory rights, powers and privileges in paragraph 12 (now 138) and questions what duties or liabilities may be imposed on CLdN to the extent that paragraph 13 (now 139) cannot be accepted. CLdN requests the Applicant reconsiders the rejection of these provisions and, at the very least, provides an explanation as to the Applicant's position.

We have therefore reinstated those provisions CLdN thinks are necessary to protect CLdN from the risk of disruption and the consequences it may suffer from the Proposed Development. In other respects, CLdN has accepted your amendments to the protective provisions Please find a clean revised version of the protective provisions at **Appendix 1** and a redline comparison against the Applicant's version received on 29 November 2023 at **Appendix 2**.

We ask the Applicant to consider my letter of 09 October 2023 and reconsider its position with respect to the above-mentioned paragraphs. If the Applicant maintains its current stance, we ask that full justification is provided on each matter, in a way that properly engages with CLdN's position as set out in this letter and my letter of 09 October 2023.

I look forward to hearing from you shortly.

Yours sincerely

Robbie Owen  
Partner  
for Pinsent Masons LLP

This letter is sent electronically and so is unsigned.

## **APPENDIX 1: REVISED DRAFT PROTECTIVE PROVISIONS FOR THE BENEFIT OF CLDN**

### **PART 13**

#### **FOR THE PROTECTION OF CLDN PORTS KILLINGHOLME LIMITED**

##### **Application**

127. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Undertaker and CLdN, for the protection of CLdN during the construction and operation of the authorised development.

##### **Interpretation**

128. (1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.

(2) In this Part of this Schedule—

“CLdN” means CLdN Ports Killingholme Limited, company number 00278815, whose principal office is at 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU as statutory harbour authority for and operator of the Port and any successor in title or function to the Port;

“the CLdN disposal site” means Humber 3A/Clay Huts (HU060) disposal site situated adjacent to Clay Huts and Holme Ridge in the river Humber;

“the Port” means any land (including land covered by water) at Killingholme for the time being owned or used by CLdN for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls or works held in connection with that undertaking; and

“specified work” means any work, activity or operation authorised by this Order, by the Town and Country Planning Act (General Permitted Development) Order 2015 or by any planning permission given under the Town and Country Planning Act 1990, and any vessel movements, which may interfere with:

- (a) the Port or access (including over water) to and from the Port;
- (b) CLdN’s ability to carry out disposal activities at the CLdN disposal site; or
- (c) the functions of CLdN as the statutory harbour authority for the Port.

##### **Co-operation**

129. The Undertaker and CLdN must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to each other as may be required to give effect to the provisions of this Part of this Schedule.



### **Notice of and consultation on works and vessel movements**

130. The Undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of any specified work at least 20 days prior to the commencement of the specified work.
131. Any operations for the construction of any specified work, once commenced, must be carried out by the Undertaker so that CLdN does not suffer more interference than is reasonably necessary.
132. (1) The Undertaker must not allow vessels associated with the construction of any specified work to obstruct or remain in the main navigation channel when vessels are sailing to or from the Port.  
  
(2) CLdN must provide the Undertaker with a schedule of movements to which sub-paragraph (1) applies and must give the Undertaker reasonable notice of any changes to scheduled sailings or other vessel movements of which it has informed the Undertaker.
133. Where CLdN notifies the Undertaker that there is disruption to navigation to or from the Port as a consequence of construction of a specified work, the Undertaker must immediately cease construction of the relevant specified work until such time as it can be resumed without causing disruption to navigation to or from the Port, or otherwise with the consent of CLdN as to how construction of the specified work may resume in a way that will cause minimal disruption to navigation to or from the Port.

### **Railways**

134. The construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use by CLdN of the railway network to which the Port is connected.

### **Highway access management**

135. The Undertaker must consult with CLdN, on matters related to its statutory functions, in relation to the development of the construction environmental management plan under paragraph 8(1) of Schedule 2 to this Order, as if CLdN was listed as a consultee under that paragraph.
136. No part of the authorised development may commence operation until a freight management plan governing the operation of the authorised development has been submitted to and approved by the Council, following consultation with CLdN on matters related to its statutory functions. The authorised development must be carried out in accordance with the approved freight management plan.

### **Indemnity**

137. (1) During the construction of the authorised development, the Undertaker must indemnify CLdN against all financial losses, costs, charges, damages, expenses, claims and demands which may reasonably be incurred or occasioned to CLdN by reason or arising in connection with:
  - (a) any obstruction which prevents or materially hinders access into or out of the Port, which is caused by or attributable to the Undertaker or its agents or contractors in exercising the power of this Order, save for where such an obstruction is as a result of the lawful actions of the Statutory Conservancy and Navigation Authority;
  - (b) the undertaking by CLdN of works or measures to prevent or remedy a danger or impediment to navigation or access to or from the Port arising from the exercise by the Undertaker of its powers under this order; and

(c) any additional costs of disposal of dredging arisings from the Port incurred by CLdN as a result of the Undertaker's use of the CLdN disposal site.

(2) Nothing in sub-paragraph (1) imposes any liability on the Undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of CLdN, its officers, servants, contractors or agents.

(3) Without limiting the generality of sub-paragraph (1), the Undertaker must indemnify CLdN from and against all financial losses, costs, charges, damages, expenses, claims and demands arising until the commencement of the operation of the authorised development.

#### **Statutory powers**

138. Save to the extent expressly provided for, nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in or enjoyed by CLdN at the date of this Order coming into force.

139. With the exception of any duty owed by CLdN to the Undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon CLdN either directly or indirectly, any duty or liability to which CLdN would not otherwise be subject and which is enforceable by proceedings before any court.

#### **Arbitration**

140. Unless otherwise agreed in writing, any dispute arising between the Undertaker and CLdN under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).

APPENDIX 2: REDLINE DRAFT PROTECTIVE PROVISIONS FOR THE BENEFIT OF CLDN (08 DECEMBER 2023 CLDN'S VERSION COMPARED WITH 29 NOVEMBER 2023 APPLICANT'S VERSION)

## PART 13

### FOR THE PROTECTION OF CLDN PORTS KILLINGHOLME LIMITED

#### Application

141. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Undertaker and CLdN, for the protection of CLdN during the construction and operation of the authorised development.

#### Interpretation

142. ~~(1)~~ (1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.

(2) In this Part of this Schedule—

“CLdN” means CLdN Ports Killingholme Limited, company number 00278815, whose principal office is at 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU as statutory harbour authority for and operator of the Port and any successor in title or function to the Port;

“the CLdN disposal site” means Humber 3A/Clay Huts (HU060) disposal site situated adjacent to Clay Huts and Holme Ridge in the river Humber;

~~“environmental document” means the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement;~~

“the Port” means any land (including land covered by water) at Killingholme for the time being owned or used by CLdN for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls or works held in connection with that undertaking; and

“specified work” means any work, activity or operation authorised by this Order, by the Town and Country Planning Act (General Permitted Development) Order 2015 or by any planning permission given under the Town and Country Planning Act 1990, and any vessel movements, which ~~has been assessed in any environmental document as being likely to~~ may interfere with:

- (d) the Port or access (including over water) to and from the Port; ~~or~~
- (e) CLdN's ability to carry out disposal activities at the CLdN disposal ~~site;~~ site; or
- (f) the functions of CLdN as the statutory harbour authority for the Port.

~~“Vessel Traffic Services” means the vessel management system and staff as operated and controlled by the harbour master.~~

## Cooperation

### Co-operation

143. The Undertaker and CLdN must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to each other as may be required to give effect to the provisions of this Part of this Schedule.

### **Notice of and consultation on works and vessel movements**

144. The Undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of any specified work at least 20 days prior to the commencement of the specified work.
145. Any operations for the construction of any specified work, once commenced, must be carried out by the Undertaker so that CLdN does not suffer more interference than is reasonably necessary.
146. (1) The Undertaker must not allow vessels associated with the construction of any specified work to obstruct or remain in the main navigation channel when vessels are sailing to or from the Port.
- (2) CLdN must provide the Undertaker with a schedule of movements to which sub-paragraph (1) applies and must give the Undertaker reasonable notice of any changes to scheduled sailings or other vessel movements of which it has informed the Undertaker.
147. Where CLdN notifies the Undertaker that there is disruption to navigation to or from the Port as a consequence of construction of a specified work, the Undertaker must immediately cease construction of the relevant specified work until such time as it can be resumed without causing disruption to navigation to or from the Port, or otherwise with the consent of CLdN as to how construction of the specified work may resume in a way that will cause minimal disruption to navigation to or from the Port.

### Railways

148. The construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use by CLdN of the railway network to which the Port is connected.

### Highway access management

149. The Undertaker must consult with CLdN, on matters related to its statutory functions, in relation to the development of the construction environmental management plan under paragraph 8(1) of Schedule 2 to this Order, as if CLdN was listed as a consultee under that paragraph.
150. No part of the authorised development may commence operation until a freight management plan governing the operation of the authorised development has been submitted to and approved by the Council, following consultation with CLdN on matters related to its statutory functions. The authorised development must be carried out in accordance with the approved freight management plan.

### **Indemnity**

151. ~~132.~~(1) During the construction of the authorised development, the Undertaker must indemnify CLdN against all financial losses, costs, charges, damages, expenses, claims and demands which may reasonably be incurred or occasioned to CLdN by reason or arising in connection with:

- (d) any obstruction which prevents or materially hinders access into or out of the Port, which is caused by or attributable to the Undertaker or its agents or contractors in exercising the power of this Order, save for where such an obstruction is as a result of the lawful actions/~~direction~~ of the Statutory Conservancy and Navigation Authority;
  - (e) the undertaking by CLdN of works or measures to prevent or remedy a danger or impediment to navigation or access to or from the Port arising from the exercise by the ~~undertaker~~ Undertaker of its powers under this order; ~~or~~ and
  - (f) any additional costs of disposal of dredging arisings from the Port incurred by CLdN as a result of the ~~Company's~~ Undertaker's use of the CLdN disposal site.
- (2) Nothing in sub-paragraph (1) imposes any liability on the Undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of CLdN, its officers, servants, contractors or agents.
- (3) Without limiting the generality of sub-paragraph (1), the Undertaker must indemnify CLdN from and against all financial losses, costs, charges, damages, expenses, claims and demands arising ~~out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph~~ until the commencement of the operation of the authorised development.

#### Statutory powers

- 152. Save to the extent expressly provided for, nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in or enjoyed by CLdN at the date of this Order coming into force.
- 153. With the exception of any duty owed by CLdN to the Undertaker which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon CLdN either directly or indirectly, any duty or liability to which CLdN would not otherwise be subject and which is enforceable by proceedings before any court.

#### **Arbitration**

- 154. ~~133.~~ Unless otherwise agreed in writing, any dispute arising between the Undertaker and CLdN under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).