

**IMMINGHAM EASTERN RO-RO TERMINAL DCO APPLICATION**

**PINS REFERENCE TR030007**

**SUMMARY OF CASE MADE AT ISH6 BY DFDS**

**Introduction**

1. This document is a summary of the case that DFDS Seaways plc (**DFDS**) made at Issue Specific Hearing 6 that took place on the 23 November 2023.

**Item 3. Discussion of the draft Development Consent Order (dDCO), involving the Applicant, other Interested Parties and the Statutory Harbour Authority for the Humber/ Harbour Master Humber**

2. DFDS are not so concerned about the definition of 'maintain' as it is limited to what has been assessed. It is more concerned about 'construct', which is not so limited. The Applicant did not fully address Action Point 4 of ISH4 where it was to review the definition of 'construct'.

**a) The drafting and provisions of the Articles, including consideration of:**

**Article 33 and Schedule 6 (Certification of plans and documents etc)**

3. No comment.

**b) The drafting and provisions of the Requirements in Schedule 2, including:**

- **Requirement's 7 (external appearance etc), 9(1) (surface water drainage), 11 and (environmental enhancement/WEMP) – the need for the approval method to fully specified and/or the inclusion of explicit compliance clauses further to the approval of details (anatomy points)**

4. No comment.

- **Requirement 4 (construction works hours) and Requirements 6**

5. No comment.

- **Requirement 7 (external appearance)**

6. DFDS has previously mentioned the buildings schedule which contains heights and can be used; either way more precision is needed.

- **Requirement 8 (Construction Environmental Management Plan [CEMP]), including:**

□ **Consistency between the proposed procedure for the approval of an entire CEMP by the Council under Requirement 8 and the approval of a CEMP pursuant to condition 11 of the deemed Marine Licence (Schedule 3) by the Marine Management Organisation (MMO);**

7. DFDS supports the provision of outline documents referred to in the Outline CEMP, as is common practice. The two CEMPs should be clearly demarcated to correspond with the MMO and LPA's respective areas of jurisdiction (although noting that these potentially overlap between high and low tide).

• **Requirement 9 (surface water drainage)**

8. No comment other than support for the ExA's remarks.

• **Requirement 11**

No comment.

• **Requirement 15 (Construction and operational plans and documents)**

9. DFDS is concerned that the NRA is now not mentioned in the DCO and so the (very unclear, but committed to being revised) mitigation measures contained therein have no guarantee or even conditions as to their implementation.

• **Requirement 16 (contaminated land) – the means by which any need for undertaking additional ground investigations would be identified**

10. No comment.

• **Requirement 18 (impact protection measures for the Immingham Oil Terminal [IOT]) including how it is intended that the Requirement would operate and the relationship between this requirement with Protective Provisions for IOT Operators.**

11. In Schedule 1, and for the attention of NELC, DFDS may be requesting highway works to mitigate the effects of the project on the highway network as the Applicant comes closer to DFDS' view. There are also National Highways and NLC junctions.

12. On requirement 18, DFDS' case is that there is no established 'soft start' process that can be adopted, which might be the impression that has been given by the Applicant, this would be a purely ad hoc measure.

13. DFDS considers that the impact protection measures should be implemented before construction of Work No. 1 commences, as there is a risk that construction vessels may allide with the IOT and cause severe disruption to the port. If the ExA is satisfied that the risk of construction vessel allision is sufficiently low, then the impact protection measures should be

implemented before Work No. 1 becomes operational. It cannot be left to the recommendation of the Harbour Master (and now the Dock Master following the Change Request amendment to the dDCO) and even then, the Applicant's current draft DCO leaves the implementation of impact protection measures to the discretion of the Applicant so it would be free to disregard the recommendation of the Dock Master. It is entirely unclear what would trigger any such recommendation from the Dock Master (e.g. a near miss), which would leave an unacceptable level of risk.

14. Independently of the provision of impact protection measures, DFDS consider that an initial set of operational controls should be specified and secured through the DCO, which the HMH could then vary at a later date, as necessary, so that the ExA and IPs can be satisfied that the project is capable of being operated safely.
15. Parties should also remember that the Applicant is seeking to allow up to 200 passengers per day to transit through this terminal, which requires additional comprehensive safeguards.
16. In essence, DFDS is yet to be satisfied that the project can be implemented safely and in a way that does not present unacceptable risks to DFDS' existing operations at Immingham. It is essential for DFDS to understand the nature of any proposed control measures so as to inform its understanding of the likely impacts on port operations.
17. It remains unclear whether the proposed impact protection measures are 'sacrificial', i.e. single use and would need to be replaced in the event of an allision. The Applicant appeared to suggest that they would be sacrificial in the case of a vessel alliding at the design speed of the measures or above. In that case, the DCO should make appropriate provision for restricting operations to/from IERRT until such time as the impact protection has been replaced.
18. DFDS noted the particular concerns with this application which mean it is essential for the ExA to carefully scrutinise the navigational safety impacts and ensure that appropriate controls are secured prior to the grant of any consent, namely:
  - a. Structural independence issues - all parties are ABP bodies - DFDS agree with IOT and CLdN that an independent arbiter is essential; and
  - b. The heightened nature of the risk particularly to the IOT - two shadow NRAs have been commissioned and support the necessity of impact protection measures. Their implementation cannot be left to later discretion.

#### **d) Drafting of Protective Provisions (Schedule 4)**

19. At the time of the hearing, DFDS had just received a response from the Applicant to the protective provisions it had sent to the Applicant at the start of September. DFDS has now

responded and included an additional provision about impacts on scheduled services following the 'agent of change' principle.

20. The Applicant's response removes many of the important parts of the proposed PPs.
21. In line with other parties, DFDS wish to be consulted on tidal works under paragraph 3(4) of Schedule 4.
22. DFDS made further brief comments on the draft DCO, as follows:
  - c. Article 21 has the annual cap – the Applicant appeared to concede a daily cap of 1800 in ISH5 and this is where it should go;
  - d. DFDS may request highway mitigation works either to be added to schedule 1 or to be delivered via a s.278 agreement with the relevant highway authority/ies.
  - e. Noise protection (R10) - be amended so that a specified maximum noise level is to be achieved through the insulation that is provided – at present there is no control on what is offered;
  - f. ISH5 re vessel sizes: DFDS would wish to see an additional requirement to limit the vessel sizes to those which have been assessed rather than for which the project has been designed; this would ensure that the Secretary of State would approve any increase in vessel size by means of an amendment to the DCO.

## APPENDIX – SIGNPOSTING

Provision	Old draft	Issue	When raised	Outcome
Article 2	Definition of 'construct'	Limit to what has been assessed in the environmental statement (itself being defined to include any subsequent documents submitted during the examination)	ISH1 and ISH4	No change yet
Article 2	Definition of 'order limits'	Tie in with plans	RR	Amended at D1
Article 2	Definition of 'order limits'	There is an area outside the works limits with no explanation	ISH1	No change yet
Article 2	Definition of 'relevant planning authority'	Should include NLC because west gate is in their area	ISH1	No change yet
Article 6	Maintenance extent	Has maintenance been assessed in the ES?	RR	No change yet
Article 7	Downward variation	Shouldn't apply to Work No. 2 (dredging)	RR	Amended at D1
Article 10(1)	Rights being sought	Very vague	RR	Amended at D1
Article 16	Ref to para (2)	There is no para (2)	RR	Amended at D1
Article 21	Passenger variation	Tailpiece	RR	Amended at D1
Article 21	Cap on ro-ro units	Change 660,000 to a daily cap of 1,800 or an annual cap of 525,000	ISH4	Former now accepted by Applicant

Article 24(4)(b)	Watercourses	Duplicate wording	RR	Amended at D1
Article 25	Dredging power	Not linked to DML	RR	Amended at D3
Schedule 1: Work No. 2	Berthing pocket	Area too large	RR	No change yet
Schedule 1	Ancillary works	Does not apply to all works	RR	No change yet
New requirement	Construction and operation	Ban on simultaneous construction and operation while unassessed in the ES	ISH4	Now accepted by DFDS that it has been assessed
New requirement	Pure car carriers	Ban on such vessels until assessed	Response to D3 submissions (Q NS.1.19)	No change yet
New requirement	Restriction to assessed vessel sizes	Ban on such vessels, requiring DCO amendment to vary	ISH6	No change yet
Requirements 5 and 8	Piling restrictions	Duplicated but not identical	RR	Amended at D1
Requirement 7	Heights	No restriction, add reference to building schedule	ISH4	No change yet
Requirement 10	Noise insulation	Commitment too weak	RR	Insufficient changes made
Requirement 11	Environmental enhancement	Not required to be implemented	RR	Amended at D1
Requirement 15	Control documents	Conflicts with requirement 8	RR and ISH4	Amended at D5
Requirement 15	Approval of mitigation measures	External approval should be added	ISH4	NRA now removed; mitigation should be specified more precisely and committed to in dDCO

Requirement 18	Impact protection	Make obligatory, introduce operational controls and require replacement once 'sacrificed'	RR, ISH1, ISH4 and ISH6	Drafting is now weaker
Requirement 19	Use of arisings	Tailpiece	RR	Amended at D1
Requirement 23	Appeal process	Third parties not involved	RR	No change yet
Schedule 3	DML	Licensed work not sufficiently specified	RR	No change yet
Schedule 4	Protective provisions	None for DFDS	RR	Applicant's version is inadequate