

IMMINGHAM EASTERN RO-RO TERMINAL DCO APPLICATION

PINS REFERENCE TR030007

SUMMARY OF CASE MADE AT ISH5 BY DFDS

1 Introduction

- 1.1 This document is a summary of the case that DFDS Seaways plc (**DFDS**) made at Issue Specific Hearing 5 that took place on 21 and 22 November 2023.

2 Agenda Item 2: Navigation and shipping

2a. The assumptions that the Applicant has made concerning the use of the parts of the Inner Dock at Immingham and Port of Killingholme that would be vacated by Stena Line, and any interpretation that other Interested Parties have made of those assumptions.

- 2.1 DFDS does not believe that the parts of Immingham to be vacated by Stena will remain unused.
- 2.2 DFDS have been told at several meetings with the Applicant, most recently on 16 November 2023, that DFDS could not occupy the landside area to be vacated by Stena at the Port of Immingham, because it was unavailable as the Applicant had plans for it.
- 2.3 Furthermore, it is understood the Applicant invested in the region of £50million in 2018 to upgrade their container terminal at Immingham (i.e. the area now in part occupied by Stena). The Applicant will inevitably seek a return on that investment and so it is unrealistic to expect them to leave the berths and landside facilities currently available to Stena unused should the project be consented and Stena move to the Proposed Development.
- 2.4 If the Inner Dock and Killingholme areas vacated by Stena are taken up by other operators, that will affect navigational congestion – it is unclear whether the Applicant has assumed that the Stena-vacated area will be reoccupied in either the Navigation Risk Assessment (**NRA**) or Chapter 16 (socio-economic) of the ES [[APP-052](#)] or if it has accounted for the vessels associated with the Proposed Development together with vessels taking over the inner dock berths vacated by Stena.
- 2.5 A consistent narrative from the Applicant has been that DFDS are only objecting for commercial reasons. DFDS have explained that is not the case. Indeed, if the Proposed Development will simply accommodate Stena's relocated operations from the Inner Dock and Killingholme, it is entirely unclear why DFDS would have any commercial interest in objecting to that. In fact, DFDS has expressed to the Applicant an interest in acquiring the land-side facilities to be vacated by Stena (which has been rebuffed by the Applicant) so in fact it has a commercial interest in Stena relocating.

2b. Questions to DFDS and Harbour Master Humber, in particular, on the passage of the Britannia Seaways vessel into Immingham Lock observed during the course of the Accompanied Site Inspection (26 September 2023).

- 2.6 Harbour Master, Humber (**HMH**) noted that there were favourable conditions on the day of the ASI and he had no comments or concerns regarding the manoeuvre of the Britannia Seaways vessel into the Immingham Inner Dock.
- 2.7 DFDS agreed and in response to the Examining Authority's (**ExA**) query as why the Britannia took as long as it did to manoeuvre on that day, DFDS explained that the PEC holder was carrying out the manoeuvre 'by the book' and was stemming the tide on 137 degrees in a safe and controlled manner. This supports DFDS' consistent position throughout this examination as to the tidal direction in the area around the Proposed Development. The manoeuvre into the Inner Dock was not considered to be unduly slow – timings can vary for a number of reasons. In response to the ExA's query as to whether the PEC holder was aware of the ExA's presence at the Port for the ASI that day, DFDS confirmed that the PEC holder was unaware of the ExA's presence. In fact, the Britannia Seaways was delayed by 30 minutes on its arrival into Immingham that day. We understand the ASI was running ahead of schedule. If both the Britannia Seaways and ASI were running to their respective schedules, the ExA would not have witnessed the Britannia Seaways stemming or manoeuvring into the Inner Harbour as it should have been berthed in advance of the ASI.
- 2.8 DFDS offered to provide an image taken from the software onboard the Britannia Seaways from that day, noting this supports DFDS' view of the tide data (see **Appendix 1** to this document).
- 2.9 At the ISH5, DFDS noted it could provide details of the size of the Britannia, these are: she is 197.5 meters long and 26 meters wide. Her draft varies but is around 7 meters. In length and width she is significantly smaller than both the design vessel and the Stena T class which has been used in the Applicant's most recent simulations.

2c. Navigational Risk Assessment matters, including stakeholder engagement and the additional simulation of berthing/unberthing manoeuvres for the Proposed Development adjacent to the Eastern Jetty.

Stakeholder Engagement

- 2.10 DFDS have provided a summary of engagement between the Applicant and DFDS in its Written Representation [[REP2-040](#)] including a schedule of correspondence (Appendix 3) [[REP2-049](#)]. This has been updated in the Summary of Engagement within the Statement of Common Ground [[REP6-040](#)] and key pieces of correspondence provided at Appendix 4 to the Written

Representation [\[REP2-048\]](#) which reveal the concerns DFDS had been raising, including on the simulations, since 2022. DFDS considers the correspondence reveals a history of inadequate engagement by the Applicant.

- 2.11 In particular, as DFDS have previously noted, at a meeting on 17 October 2022 between the Applicant and DFDS, the Applicant's Humber Regional Director offered DFDS a 'commercial and operational workshop' to afford DFDS the opportunity to explain its concerns relating to navigational congestion resulting from the Proposed Development and the implications for its operations at Immingham. This meeting never took place. In its Deadline 6 submissions, the Applicant suggests that the commercial workshop would have had 'little merit' [\[REP6-029, para 12.4\]](#), which begs the question of why it was ever offered to DFDS. DFDS does not consider it appropriate for the Applicant to unilaterally decide that there is no merit in a commercial workshop, given the very real concerns DFDS has about the impact of the Proposed Development on its Immingham operations.
- 2.12 On 24 February 2023, the CEO of ABP offered DFDS a 'senior safety workshop' (see **Appendix 2**) that was later scheduled for 22 May 2023. This was cancelled by the Humber Regional Director a couple of days before it was due to take place with no explanation – after DFDS members had booked their flights to attend. The Applicant said it would reschedule the workshop for another date but, again, this never happened.
- 2.13 DFDS requested Protective Provisions in its Relevant Representation [\[REP-008\]](#) dated 19 April 2023. DFDS submitted a draft Protective Provisions at Deadline 2 on 5 September 2023 [\[REP2-042\]](#). DFDS was informed via email from the Applicant's representatives on 18 September that the Applicant was prepared to agree Protective Provisions with DFDS, albeit the drafting would likely differ from those DFDS submitted at Deadline 2. Despite numerous requests for updates, DFDS only received comments on DFDS's draft Protective Provisions on 22 November 2023, almost 3 months later. DFDS sent further comments back to the Applicant and ExA on 29 November [\[AS-042\]](#) and 6 December. DFDS awaits the Applicant's response to DFDS' latest drafting.
- 2.14 At ISH3 on 27 September 2023, the Applicant was directed to engage with DFDS and other stakeholders to seek "*to agree parameters for the undertaking of additional simulations*". The deadline for this action was Monday 23 October 2023. The Applicant only contacted DFDS on Friday 20 October, one working day before the deadline, to engage on the additional simulations (see Appendix 1 of DFDS's D6 submissions [\[REP6-039\]](#)). Unfortunately, the Applicant was not willing to agree appropriate parameters with DFDS or IOT. DFDS has consistently requested the Applicant to simulate a vessel with characteristics comparable to the proposed design vessel, rather than using the highly manoeuvrable and smaller Jingling class or the Stena T class which is much smaller than the design vessel (see DFDS's Relevant

Representation [[RR-008](#), paras 3.30 – 3.33]; Written Representation [[REP2-040](#), para 71]; Summary of ISH3 [[REP4-025](#), para 3.21]; response to the Applicant's invitation to additional simulations [[REP6-039](#), Appendix 2]).

- 2.15 The Proposed Development has been designed to handle vessels of 240m LOA (length overall); 35m beam (width, at its widest point), with a draught (maximum depth) of 8m (see Applicant's NRA [[APP-089](#), para 4.5.2]). Given that the purpose of the simulations was to demonstrate that the terminal was safe and fit for the purpose for which it was designed, they should use a vessel with comparable specifications to the design vessel. However, the most recent simulations on 7 and 8 November used a much smaller Stena T class vessel, which has a LOA of 212 (compared to 240m in the design vessel); beam of 26.7m (compared to 35m in the design vessel) and draught of 6.3m (compared to 8m in the design vessel). DFDS does not understand why it should be so controversial to simulate a vessel for which the Proposed Development has been designed and has suggested that the Delphine class vessel would be more representative of the design vessel, yet the Applicant refused to simulate this vessel.
- 2.16 On the SoCG, DFDS sent a draft to the Applicant on 27 October 2023 and then sent chasers requesting a response on 31 October; 3 November; 6 November and 10 November. The Applicant only responded after working hours on Friday 10 November, when the deadline for submission was the next working day – Monday 13 November 2023.
- 2.17 In its submissions to the examination, the Applicant's attitude continues to be one of aggression and attack rather than engagement: it has repeatedly dismissed DFSDS' concerns as motivated by commercial rivalry; derided the combined experience of DFDS and its mariners and characterised the DFDS submissions as misleading; disingenuous; obtuse; uninformed and even untrustworthy. Just a cursory glance at the language adopted by the Applicant in its most recent draft SoCG illuminate the way that it treats and disparages those who disagree [[REP6-008](#)]. The Applicant appears entirely unwilling to accept the contributions of, at the very least, equally experienced professionals with undisputable expertise in navigating vessels in and around the Port of Immingham.

Navigation Risk Assessment

- 2.18 In light of the ExA's questions to the Applicant, DFDS was surprised and concerned to hear that the Applicant does not have minutes of key meetings in which risks and the costs and benefits of various controls were discussed.
- 2.19 In response to questioning from the ExA, the Applicant first explained that there was work carried out to inform the costs benefit workshop on 6 October 2022, in the form of an assessment of both costs and benefits. On further pressing from the ExA, it was then said by the Applicant that the work was in fact a "dynamic discussion" of the costs and benefits of

various control mechanisms at the workshop itself. When pressed to submit the costs benefit assessment to the examination, Mr Hodgkin demurred and said the “information” used to inform the discussions (whatever information that may have been, which remains entirely unclear) was adequate because of all the control mechanisms identified, the only one that was not being taken forward was the relocation of the IOT finger pier and that no other control mechanism was discounted, as such the requirement for cost benefit was said to be “relatively narrow and reasonably clear cut”. That is plainly not correct. The Applicant’s NRA makes it clear that impact protection was also rejected, apparently on the basis of a cost benefit analysis [[APP-089](#), para 9.9.24], the details of which nobody – not even the ExA, has seen.

- 2.20 Like the ExA, DFDS finds it difficult to comprehend a situation where costs and benefits are said to have been considered and yet there is no set of notes; no report and no minutes setting out what the costs and benefits actually are, so as to inform the decision. It is almost inconceivable to believe that parties were able to undertake an adequate assessment of costs and benefits, leading to the rejection of impact protection to the IOT trunkway, with nothing committed to paper and no minutes of the meeting apparently taken.
- 2.21 When asked about the costs of impact protection (Work No.3) in the ExA’s first written questions, the Applicant’s response was to refuse to provide any information at all, apparently on the basis of commercial confidentiality [[REP4-008](#), question NS2.26]. Like the ExA, DFDS considers this response to be less than helpful. Even if some parts of the assessment required redaction, all parties need to understand the basis upon which impact protection has been rejected as a control mechanism, particularly in the light of the concerns raised by the IOT operators as to the risks and potential consequences of an allision between IERRT vessels and the IOT trunkway and the conclusions of the NRAs submitted by both DFDS and the IOT. DFDS welcomes the ExA’s request that the Applicant submit any information that informed its costs benefit analysis so that all parties can understand the basis of the Applicant’s decision that risks are ALARP.
- 2.22 DFDS also welcomes the ExA’s request to review and resubmit sections 9.7; 9.8 and 9.9 of the Applicant’s NRA [[APP-089](#)] to ensure that they are clear and coherent. DFDS has long raised concerns about the lack of transparency in the Applicant’s NRA [see [RR-008](#) and [REP2-040](#)]. It shares the view expressed by the ExA that the NRA does not make clear which are the embedded controls and which are additional proposed controls to address the risks generated by the proposed development. Like the ExA, DFDS also considers that there is inadequate connection between sections 9.8 (risk assessment: applied controls) and 9.9 (risk assessment outcomes: applied controls) of the NRA.
- 2.23 If, as here, parties are unable to understand the basis upon which judgments have been made as to the tolerability of risk in the NRA, the Applicant cannot be said properly to have strived to

maintain consensus about safe navigation. As the Maritime and Coastguard Agency has made clear, it expects “every attempt to be undertaken by the Applicant to resolve the concerns raised by interested parties, with more detailed justification where consensus cannot be achieved” [REP1-021]. The Applicant has failed to take every effort to resolve DFDSs’ concerns but rather, as explained above, has adopted an unnecessarily aggressive stance in response to genuine concerns as to safe navigation raised by interested parties.

- 2.24 As to absence of assessment of the proposed design vessel, the NRA and the simulations are appendices to and form part of the Applicant’s Environmental Statement (see, for example, ES Chapter 10 [APP-046], paragraph 10.1.2 which explains that the chapter has been informed by the NRA). As such, they are governed by the EIA Regulations.¹ The Applicant’s ES explains that assessments have been based on parameters which are considered to result in the worst-case environmental effects, adopting the “Rochdale Envelope” approach (ES Chapter 3 [APP-039] para 3.2.1)). The Planning Inspectorate’s Advice Note Nine: Rochdale Envelope makes it clear that assessments should be based on a “cautious worst case” approach (The Planning Inspectorate’s Advice Note Nine, para 2.3); be based on “maximum adverse effect” (The Planning Inspectorate’s Advice Note Nine, para 4.9) and establish “robust worst case scenario(s) for the purposes of assessment” (The Planning Inspectorate’s Advice Note Nine, para 4.12).
- 2.25 Section 10.11 of ES Chapter 10 [APP-046] sets out predicted risk profiles for various foreseeable accidents including allisions of vessels with port infrastructure, mooring issues etc. The risk presented by these types of hazards cannot properly be assessed, in terms of both likelihood of occurrence and magnitude of consequence, without defining the envelope of the size/tonnage of vessels that are intended to be used at the Proposed Development and then assessing the risks associated with the relevant design vessel. The NRA does define the design vessel for the Proposed Development at paragraph 4.5.2 [APP-089] but neither the NRA; the simulations nor the ES appropriately assess the risks of operating such a vessel. DFDS does not understand why it should be controversial that the NRA and simulations, which are part of the ES, should simulate and assess vessels of a comparable size and tonnage to the proposed design vessel. The ExA needs to be satisfied at this stage that the Proposed Development is capable of operating safely in the manner in which it is intended. Instead, the ExA is being invited by the Applicant to consent a scheme, the operating impacts of which have not properly been assessed on the basis that it can leave decisions as to safety to some future decision. That is not appropriate, for the reasons set out below under the heading ‘Simulations’.

¹ The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017

- 2.26 DFDS welcomes the ExA's request that the Applicant provide further clarity on the Applicant's governance arrangements. The ExA must be able to clearly convey to the Secretary of State the governance structure in relation to the Proposed Development. Whilst it was noted that the Applicant provided a note titled 'The Port of Immingham and River Humber- Management, Control and Regulation' at [\[REP1-014\]](#), as DFDS noted in its Comments on Deadline 1 Submissions document [\[REP2-039\]](#), the navigation-related governance arrangements relevant to the Proposed Development remain opaque. DFDS remains concerned that there is a complete lack of independent scrutiny of the Proposed Development's navigational risk assessment process. The Applicant and HMH have failed to provide a clear explanation of the practical (as opposed to legal) separation between them given that the HMH's direct line manager is a member of ABP's commercial board. DFDS endorses the submissions made by IOT as to the lack of structural independence between the Applicant and the HMH (for example at [\[REP4-035\]](#), paras 9.1 – 9.3). Regardless of the discharge of statutory functions, all persons tasked with overseeing safety at the Port of Immingham are employees of and remunerated by the Applicant, which makes it particularly important for the ExA to subject their evidence to careful scrutiny and to ensure that navigational safety is properly assessed and appropriately controlled through the DCO.
- 2.27 Brocque Preece of NASH maritime explained the key differences in methodology and conclusions between the Applicant's NRA and DFDS NRAs, addressing the criticisms from the Applicant in its interim response to DFDS' NRA [\[REP3-009\]](#) and its full response [\[REP6-030\]](#). Brocque Preece noted the focus of DFDS' concerns with the Applicant's NRA relates to the lack of clarity; transparency and detail in the Applicant's NRA and throughout the stakeholder engagement, of how acceptability and tolerability have been defined. An example of the latter is the Applicant's tolerability toward people where two hazards each with a likelihood of "unlikely", in which one has a consequence to people of "a single fatality" and the other "multiple fatalities", would both would be equally tolerable.
- 2.28 DFDS considers that there has been inadequate consultation with stakeholders on tolerability which DFDS believes should take into consideration the stakeholders views and allow stakeholders to have a fully informed perspective when considering risk. Consultation regarding navigational safety is critical and is a matter for all users of the Port. DFDS flagged concerns regarding the lack of detail in the minutes of the HASB meeting of 12 December 2022 and absence of reference to the risks and concerns raised by stakeholders being reported to that Board [Appendix 4 of [REP4-009](#)]. The Minutes record only passing references to the concerns raised by DFDS, which are not elaborated upon in any detail. Those present were not made aware of the nature and seriousness of DFDS' concerns which could not have informed their conclusions as to the robustness of the simulations; issues raised in the HAZID workshops or serious implications for safe navigation. DFDS note that the Designated Person, whose role is

to advise the Duty Holder, is not recorded as having spoken at the meeting. Indeed, as DFDS has explained at previous hearings, the Designated Persons did not even attend the HAZID workshops or simulations, so it is entirely unclear how he could have assured the Duty Holder of the rigour of the process or that concerns raised by stakeholders had been appropriately addressed.

- 2.29 The Applicant's NRA does not make reference to fact that there could be 200 passengers per day on IERRT RO-PAX vessels. Nor was there any discussion of the use of RO-PAX vessels during the HAZID workshops attended by DFDS and given the sensitive and potentially hazardous setting of the Proposed Development this is considered to be a significant omission at workshop that is intended to garner experience-based consensus on risk. It is DFDS' current understanding for its own operations that there is no approval for the operation of passenger vessels at the Port of Immingham which is an industrial port, nor has there been passenger services operating from the Port for over 20 years.
- 2.30 DFDS rejects the notion presented by the Applicant that navigational safety is not an issue for the ExA, but rather for the Designated Person. That cannot be right in light of marine policy statements (discussed further below) and the fact that the Applicant accepts in principle the introduction of control measures in the DCO through its change request, so it will obviously be vital for the ExA to understand the extent to which those measures are likely to be effective.

Simulations

- 2.31 DFDS has consistently raised concerns about the simulations undertaken by the Applicant:
- 2.31.1 DFDS Relevant Representation [[RR-008](#)], (paragraphs 3.19 – 3.40) raised concerns about the tidal flow direction used in the Applicant's simulations (paragraphs 3.21– 3.29) and that the vessels used in the simulations were not representative of the vessels that the berths are designed to accommodate (paragraphs 3.30 – 3.33): DFDS raised concerns with the Applicant's use of the DFDS Jingling class, which is highly manoeuvrable and the use of the Stena T class, which is much smaller than the design vessel.
- 2.31.2 At ISH2 (26th July 2023) [[REP1-028](#)] DFDS again raised concerns about the tidal data and vessels used in the simulations, which were not representative of the actual conditions or the proposed design vessel.
- 2.31.3 DFDS Written Representation [[REP2-040](#)]: DFDS submitted a full schedule of correspondence [Appendix 3 of [REP2-049](#)] and key pieces of correspondence [Appendix 4 of [REP2-048](#)] which revealed the concerns DFDS had been raising on the simulations since 2022. DFDS' Written Representation raised concerns that the east jetty tug barge had been omitted from the simulations (paragraph 51); the tidal direction was wrong (paragraph 71); and with the use of unrepresentative vessels in the simulation (paragraph 71).

- 2.31.4 In DFDS' Deadline 3 submission [REP3-022](#) it again raised concerns with the direction of the tide in the simulations (paragraph 19).
- 2.31.5 The Applicant has repeatedly dismissed DFDS' criticisms of the tidal direction and even in its Deadline 6 submissions, it dismissed DFDS's position as to the correct tidal direction as 'anecdotal' [[REP6-029](#), paragraph 6.4]. It is not simply anecdotal. It reflects the combined experience of DFDS mariners as well as published information and charts. There has been some ambiguity as to whether the HMM agrees with DFDS that the tidal information used in the simulations was incorrect (most recently in the Applicant's comments in the draft SoCG, [REP6-040](#)). The HMM has never, prior to ISH5 openly supported DFDS' views as to the tidal data. At ISH5, HMM finally clarified that he agrees with DFDS' view of the tidal data.
- 2.31.6 In DFDS' summary of ISH3 [[REP4-025](#)] we made it clear that new simulations would give the Applicant the opportunity to correct previous errors in tidal direction north of IOT and to simulate a vessel that was representative of the proposed design vessel (paragraph 3.21).
- 2.32 DFDS note that Action 17 from the ExA arising from ISH3 was for the Applicant to engage with DFDS and other stakeholders to seek "*to agree parameters for the undertaking of additional simulations*". Unfortunately, that has not happened.
- 2.33 Even though the direction was made at ISH3 (on 27 September 2023) and the action was to be completed by Deadline 5 on Monday 23 October, the Applicant only wrote to DFDS on Friday 20 October: the working day before the deadline, to engage about further simulations (see Appendix 1 of DFDS Deadline 6 submissions, [REP6-039](#)).
- 2.34 DFDS responded in a letter dated 26 October (see Appendix 2 of [REP6-039](#)) raising concerns about the proposed vessel to be used in the simulations. Given that the purpose of the simulations was to demonstrate that the terminal was safe and fit for the purpose for which it was designed, DFDS explained that the simulations should use a vessel with comparable characteristics to the design specification. The vessel proposed by the Applicant, which was ultimately used in the simulations, was the Stena Transporter, which is much smaller than the design vessel.
- 2.34.1 DFDS explained the problems with using the Stena T-class:
- (a) Being of smaller dimensions it does not represent the proportions of the design specification for the terminal and therefore does not reflect the actual complexity of manoeuvring in the constrained location of the IERRT.
 - (b) Being of smaller dimensions gives a much-reduced windage area meaning the vessel is influenced less by the prevailing winds and this reduces the challenge of manoeuvring in the IERRT area.

- (c) Being of a lesser draft (6.3m) compared to the design specified vessel (8.0m) means the underwater cross section is reduced and therefore the effect of the tidal flow on the ship's hull is significantly reduced again reducing the challenge of manoeuvring in this area of fast flowing tidal streams. Shallower draft also results in larger under keel clearance (distance between the keel and the river bed) which will ignore the adverse effect that low UKC has on the manoeuvrability of the vessel.
- (d) Having a higher length to beam ratio than the design specified model makes this vessel easier to turn and easier to stop turning (directional stability).
- (e) Having a smaller displacement results in lower inertia, momentum, and kinetic energy which results in a vessel that is easier to change direction (slow, stop or rotate).
- (f) The maximum sized design vessel should also be used to simulate the other IERRT berths being occupied. Using a smaller and narrower vessel (narrower by 8.3m) would allow considerably more space for navigating to/from IERRT berths than their intended operation.

2.35 The Applicant responded on 29 October (Appendix 3 of **REP6-039**) to say that the simulations would use the Stena-T class because it was representative of the vessels that would use the facility at the start of the operation and rejecting the invitation to simulate the Delphine class, which DFDS considered to be more representative of the design vessel. DFDS are unable to understand why the Applicant refused to simulate a vessel with the dimensions of the proposed design vessel. Broque Preece explained that it is perfectly possible to develop a model or modify an existing model to adequately reflect the characteristics of the design vessel for the purposes of the simulations and the Applicant has had over a year to do so..

2.36 As to the tidal direction, in the most recent simulations, HR Wallingford used a device of applying a vector in a tidal diamond to the simulator to increase or reduce the tide between the proposed development and the IOT. Given the time constraints which have arisen as a result of the Applicant's refusal to acknowledge the issues with its tidal information, it was agreed that this was the only possible work-around in the time available but DFDS continues to have concerns that accurate tidal conditions are not reflected in the simulation model. The effect is that the simulations underestimate the extent to which vessels either set on or set off the proposed berths. This remains a significant concern that has not been alleviated through the most recent simulations.

2.37 DFDS have also raised concerns previously that the tug berth had been erroneously omitted from the earlier simulations. The Applicant responded by saying that they knew it was there even if it was not shown on the simulations [[REP3-008](#) (para 2.12) and [REP6-029](#) (para 10.5)]. DFDS has now analysed some of those earlier simulations by superimposing the tug barge and the analysis shows that in at least two of the simulations that were classed as successes, the

tugs assisting vessels off berth 2 would have collided with the tugs on the barge (runs 10 and 55) (see **Appendix 3** to this document). DFDS contends that those runs should have been classed as failures and this casts doubt on the Applicant's suggestion that it was always aware, and took account of, the presence of the tug berth. If it knew of the presence of the tug jetty, it is difficult to understand why it would have classified those runs as successes. It should be noted that it would be even harder to swing a vessel out of the tide and away from the tug barge from berth 3, but the Applicant has not simulated a vessel of a comparable size to the design vessel from berth 3 so there is no analysis of that before the ExA.

- 2.38 There has also been no simulation of any of the additional impact protection measures that the Applicant has contemplated: either that shown at ISH3 or the different impact protection now subject to the proposed change request. It is understood the Applicant has scheduled further simulations for 13 and 14 December 2023, one the objectives of these simulations is to 'consider the effect of the proposed impact protection on operations at IERRT and for coastal tankers at the IOT finger pier', DFDS has requested further information regarding these simulations, such as the agenda/ proposed runs and confirmation of which vessel(s) will be used in these simulations. DFDS indicated that there was now very little time left in the examination to properly understand the implications of the impact protection proposed through the Applicant's intended change request.
- 2.39 Given the time constraints between the simulations on 7 and 8 November 2023 and Deadline 6 (13 November), DFDS submitted a summary response on the most recent simulations [[REP6-039](#)]. It explained that it would provide a more detailed response following receipt of the Applicants' simulation report. DFDS confirmed that the November 2023 simulations had not allayed DFDS' concerns for several reasons, including the vessel type used and the tidal direction. Mr Jonathan Bush attended the simulations on behalf of DFDS and has extensive experience of piloting vessels around the Port of Immingham having been a senior Humber Pilot for over 12 years. He has provided a statement explaining his views of the simulations run on 7 and 8 November (see **Appendix 4** to this document), which reinforce the concerns that DFDS has been raising throughout the examination. In his considerable piloting experience the tides as modelled by the Applicant's consultants are not reflective of the tidal flows within the Eastern Immingham area and that this makes the simulated berthings and departures significantly easier than they would be in 'real world' scenarios
- 2.40 During the ExA's questioning of Mr Parr of HR Wallingford regarding the additional simulations on 7 and 8 November 2023, Mr Parr confirmed that the Delphine class vessel had been simulated for 'sensitivity testing' but said that no report had been compiled and that they considered the Jinling class more sensitive. DFDS is disappointed that the Applicant refused to simulate the Delphine class at the November 2023 simulations when it was clearly in a position to do so or to share any information of the previous Delphine simulations. DFDS does not

consider the Jingling class to represent a worst case as against the Delphine class due to its highly manoeuvrable nature. If the Applicant is truly striving for consensus, it is unclear why it is unwilling to simulate a Delphine class vessel in stakeholder simulations given that it has undertaken such simulations (without the presence of stakeholders) in the past and stakeholders have made a reasonable request that it do so again, with the benefit of stakeholder input.

- 2.41 The ExA queried with the HMH what the process would be for approving the use of a larger vessel than those which had been simulated. HMH explained that simulations would be required before consent would be given and a 'soft start' approach would be applied. When questioned whether there was a written manual explaining a 'soft start', the HMH confirmed there is not. DFDS have not heard of such a 'soft start' approach. Furthermore, if the DCO is granted, there will be no further ES or NRA to assess the impacts of operating a larger vessel. It is this application that will determine whether the Proposed Development can be consented. The ExA must be satisfied prior to granting consent that it can be safely operated for its design vessel.
- 2.42 DFDS remains of the view that it is incumbent on the Applicant to demonstrate at this stage in the process, that the bigger design vessel is capable of being safely operated at the Proposed Development. If the Applicant is designing infrastructure to cater for a certain type and size of vessel, their environmental and navigational assessments should demonstrate that it can feasibly and safely accommodate a vessel of the design specifications. If the Applicant is unable or unwilling to do that, then DFDS consider that it is appropriate to impose a new Requirement in Schedule 2 to the draft DCO which restricts the size of vessels which can use the Proposed Development to that which has been assessed. Representatives for the Applicant suggested at ISH5 that the only intention for IERRT was to use the Stena Transit (Mike Parr, 12:09 minutes into Part 3 [EV10-006](#)).
- 2.43 By imposing such a restriction, the Secretary of State would ensure that any future proposal to accommodate larger vessels would be subject to appropriate independent control by requiring a modification to the DCO which would be subject to appropriate environmental and safety assessments prior to consent. DFDS are also concerned that the Proposed Development might be used for car carriers, particularly in light of recent press releases (see **Appendix 5**) and it would wish that to be prevented as they have very different navigational impacts which have not been simulated or assessed.
- 2.44 The Applicant and HMH have suggested that the assessment of the safety implications of operating a design vessel can be deferred because any attempt to operate larger vessels would be subject to simulations at some future stage. However, by consenting a scheme that proposes to cater for a particular size and tonnage of vessel, the DCO would authorise the

principle of such use and so the decision-maker must be satisfied that it can safely operate. If it were acceptable to simply defer the decision as to larger vessels, that begs the question why an applicant should ever be required to submit an NRA if it is entitled to rely instead on a separate regulatory regime to ensure navigational safety. DFDS does not agree that matters of navigational safety can be postponed to later consideration post-DCO consent. DFDS refers the ExA to its written summary of oral representations at ISH3 [[REP4-025](#), paras 2.4 – 2.15] which make it clear that s.104(2)(aa) of the Planning Act 2008 require the Secretary of State to have regard to appropriate marine policy documents, which in turn require decision-makers to take into account and seek to minimise negative impacts on navigational safety; be compatible with the need to maintain space for safe navigation; and anticipate and provide for future safe navigational requirements.

- 2.45 DFDS notes that in a recent DCO for Keadby 3 power station, the applicant originally argued that it was unnecessary and unworkable to impose a restriction on output from the power station as this would appropriately be controlled through another regulatory regime, namely the Environment Agency's environmental permitting regime. Notwithstanding the existence of another regulator and the inability of the power station to operate without an environmental permit, the ExA and Secretary of State considered it appropriate to control the gross output capacity of the power station through the DCO given that a permit had yet to be issued by the Environment Agency (see ExA's report, para 4.14.63; Secretary of State's decision letter, para 4.20 at **Appendices 6 and 7** of this document). This confirms the principle that it is acceptable for a DCO to (a) consider and (b) limit the environmental effects of a proposed development, even if it is subject to a later consent and control by another regulatory body.
- 2.46 Furthermore, the Applicant's Proposed Development includes the potential for impact protection measures (identified as Work No.3 in Schedule 1 to the DCO) and it is incumbent on the ExA to consider whether the proposed impact protection measures are necessary or sufficient to mitigate any safety impacts of the Proposed Development. The ExA cannot discharge that duty without knowing how a vessel for which the infrastructure is designed would operate in this area or whether the protection measures would be sufficient to mitigate any safety risk. The ExA need to appraise those measures to determine if the contemplated protection measures are adequate, suitable and necessary, but for what size vessel? What force are the impact protection measures to be designed to withstand? The ExA can only answer those questions if it has an understanding of the design vessel; its manoeuvrability to the Proposed Development; its risks of allision with the IOT trunkway or collision with IOT vessels and the protection that would be offered by the infrastructure proposed by the Applicant under Work No.3 or that proposed in the Applicant's change request.
- 2.47 The ExA queried the process and timescales for the design, build and commission of a new vessel to meet the design specification and the Applicant indicated that it would take some time

but would provide a more detailed note at Deadline 7. DFDS would like to draw attention to the fact that it would be possible for the Applicant or user of the Proposed Development to charter a vessel which is larger than those simulated, in a relatively short time frame. Thus the suggestion that this would be a long process could be circumvented by this approach and this reinforces DFDS' view that a restriction should be included in the draft DCO to limit the size of vessel which can use the Proposed Development to those successfully simulated and assessed in the Environmental Statement.

2d Risk controls and any proposed changes to the application - including progress made since 28 September 2023 for identifying proposals for the application of additional risk controls, such as the provision of impact protection measures and preparing and implementing a marine construction stakeholder liaison and plan.

2.48 At ISH3 on 27 and 28 September 2023, the Applicant tabled an amendment to the proposed impact protection as reflected in [AS-020](#). The Applicant had agreed to work with IOT with a view to developing a scheme of marine infrastructure protection based on the Beckett Rankine high level proposals, albeit with possible refinements suggested by the IOT Operators' maritime advisers and final engineering design to be subject to approval by IOT. Without prejudice to its position, the Applicant was prepared to commit to delivery of these measures as part of the Proposed Development. The impact protection was to be implemented prior to the commissioning of any berth in the IERRT facility (unless agreed in writing), i.e. it would not be conditional on some future decision as to whether it was necessary. If the proposed changes were accepted, the Applicant confirmed that the dDCO would be amended to reflect those additional commitments.

2.49 On 19 October 2023, the Applicant notified the ExA of a proposed change request in respect of 4 changes [\[AS-026\]](#), On 19 November, DFDS responded to the change consultation (see [AS-060](#), pages 86-90 of 101). In summary, DFDS' position is that:

2.49.1 DFDS does not understand rationale for the proposed change to impact protection: the Applicant say it is unnecessary and IOT say it is inappropriate / insufficient so DFDS is unclear in the circumstances why the Applicant is promoting it as a change request.

2.49.2 As per the ES Addendum (ESA) [\[AS-028\]](#), the design of impact protection is still being finalised, so consultation is premature. ESA, para 2.5.3 explains that "*The exact layout and form of these measures is still being finalised; however, the above parameters are considered to be the worst case which has informed the assessment set out in Chapters 7 – 20 in this ESA*". It is unclear whether the proposed impact protection would be able to withstand a vessel the size of the design vessel. DFDS will analyse the change now accepted by the ExA and provide its comments at the next deadline.

- 2.49.3 It is not clear if the impact protection measures are intended to be sacrificial (i.e. would only survive one collision). If so, what are the circumstances in which they would be replaced and what is intended for IERRT operations until they are replaced remains unclear, especially given the limited explanation of proposed works in ESA [\[AS-028\]](#) para 2.5.3.
- 2.49.4 The impact protection remains conditional on a recommendation by SHA (requirement 18) and even then it remains at the discretion of the Applicant. It is not clear what would trigger their implementation. This is entirely unacceptable: adequate protection should be required prior to IERRT works commencing. DFDS does not understand why the Applicant has rowed back from the position it presented, albeit on a without prejudice basis, in [AS-020](#), which was that impact protection would be delivered upfront rather than being conditional on some future decision by the HMH or Dock Master or both as to whether it deemed it necessary.
- 2.49.5 The additional impact protection to the finger pier may itself have an impact on navigation. Further simulations of movements to IERRT and the finger pier should be carried out; these are apparently now being scheduled for 13 and 14 December but details are as yet unknown.
- 2.49.6 As to operational controls, DFDS welcome them in principle but they do not provide a suitable or adequate replacement for physical protection measures. It is unclear to DFDS what the additional operation controls are likely to be: the Applicant says it is still seeking to agree them with IOT (see change report [\[AS-027\]](#), para 3.37) but DFDS has not been party to those discussions.
- 2.49.7 DFDS note that the Applicant previously said that operational controls could not be secured in the DCO as this would interfere with the independence of the HMH (see the Applicant's summary of ISH3 – [REP4-009](#), entry 26: “*The ExA asked whether it would be appropriate for operating limits to be secured through the DCO. JS...stated that this would not be appropriate. There are pre-existing regulatory requirements to ensure navigation and operational safety which are in place on the Humber...it is not appropriate to replicate or interfere with that regulatory process that is already in place*”. HMH's position was also it would be inappropriate and hazardous to prescribe operational controls through the DCO [\[REP6-042\]](#), p.5] or to stipulate towage requirements [\[REP4-032\]](#), paragraph 4.2] which seems to us to be exactly what the Applicant is now proposing. When the Applicant resisted the imposition of such controls at ISH3, the HMH adopted the consistent position that they were inappropriate. Now that the Applicant contemplates the imposition of such controls through the DCO, the HMH's position has fallen into line with him also now accepting that they may be appropriately included.
- 2.49.8 The Applicant on the one hand, has said that impact protection does not need to be able to withstand vessels of a certain speed, because there will be an operational control requiring tugs for all ebb arrivals to IERRT berth 1, however, on the other hand, the Applicant says that operational controls are not necessary or appropriate. DFDS request the Applicant provides clarity on what those operational measures will be and confirmation of the HMH's acceptance of or opposition to them.

- 2.49.9 DFDS support enhanced navigational controls for the Eastern Jetty given that it cannot be protected by physical measures.
- 2.49.10 As to a construction stakeholder liaison group, DFDS would be willing to participate in such a group but it does not overcome DFDS' concerns about the need for adequate impact protection and appropriate operational controls.
- 2.50 The Applicant submitted its change request to the ExA on 29 November and it was accepted by the ExA on 6 December. DFDS will review the documents relating to the Applicant's change requests and provided any further comments ta Deadline 7A.

2e The process for reviewing any revised risk assessment by the Designated Person and Harbour Authority and Safety Board, including further consideration of stakeholder representations and the cost-benefit analysis for risk controls

- 2.51 The ExA noted that this subheading would be left for written representations.

2f Potential for marine congestion as a consequence of the construction and/or operation of the Proposed Development, including tidal constraints and any passage planning implications.

Policy

- 2.52 DFDS does not consider that the Proposed Development complies with some key aspects of the marine policy documents, which seek to ensure not just safe navigation but to mitigate and minimise impacts on current shipping activities, including economic effects.
- 2.53 Paragraph 3.4.7 of the UK Marine Policy Statement (2011) says: "*Increased competition for marine resources may affect the sea space available for the safe navigation of ships. Marine plan authorities and decision makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation and navigational safety and ensure that their decisions are in compliance with international maritime law. Marine Plan development and individual decisions should also take account of environmental, social and economic effects and be in compliance with international maritime law. Marine plan authorities will also need to take account of the need to protect the efficiency and resilience of continuing port operations, as well as further port development.*"
- 2.54 Of note is:
- 2.54.1 the requirements to seek to minimise any negative impacts on shipping activity;
- 2.54.2 the fact that economic effects must be taken into account which include commercial impacts on existing port operations; and
- 2.54.3 the need to protect the efficiency and resilience of continuing port operations.

- 2.55 East Inshore and East Offshore Marine Plan explains at para 248 that: “*Decision-makers should take into account and seek to minimise any negative impacts on shipping activity, freedom of navigation, and navigational safety and ensure that their decisions are in compliance with international maritime law.*”
- 2.56 Policy PS2 provides that: “*Proposals should: a) be compatible with the need to maintain space for safe navigation, avoiding adverse economic impact b) anticipate and provide for future safe navigational requirements where evidence and/or stakeholder input allows and c) account for impacts upon navigation in-combination with other existing and proposed activities*”
- 2.57 Para 358: “*The East marine plan areas are home to nationally significant levels of coastal, short-sea and international shipping. As other activities seek to capitalise on the resources of the area, these should be carried out in such a way as to afford protection of safe and competitive shipping*”.
- 2.58 Para 359: “*It should be demonstrated that the outcomes of consultation with harbour and other navigation authorities, public authorities and commercial shipping have informed the application proposed. This requires insight from navigation and shipping representatives to be gained that materially informs proposals where development that might impede navigation [or expected growth in navigation in the future]*”.
- 2.59 Policy PS3: Proposals should demonstrate, in order of preference:
- 2.59.1 *That they will not interfere with current activity and future opportunity for expansion of ports and harbours*
- 2.59.2 *How, if the proposal may interfere with current activity and future opportunities for expansion, they will minimise this*
- 2.59.3 *How, if the interference cannot be minimised, it will be mitigated*
- 2.59.4 *The case for proceeding if it is not possible to minimise or mitigate the interference*
- 2.60 Para 367 discusses the “*need to minimise negative impacts on shipping activity, freedom of navigation and navigational safety, as well as protecting the efficiency and resilience of continuing port operations, and further port development.*”

Impacts

Stemming

- 2.61 The new berths will interfere with the eastern stemming area because the HMM will inevitably have to control the space around the proposed IERRT berths when vessels are manoeuvring to and from it. Typically, that area is used for stemming on the ebb tide so that a vessel can sit

head-to-tide and use the engine to counteract the tide and maintain its position. DFDS does not see how the eastern stemming area could be used when vessels are moving to or from the Proposed Development. In DFDS' Deadline 4 submissions, the stemming areas were superimposed on some of the Applicant's simulations to demonstrate that it would not be safe for vessels to stem to the east [REP4-024 Appendix 1].

- 2.62 This means vessels would either have to stem to the west of the lock even on the ebb tide or at the No.9 Holme Ridge buoy each of which can only accommodate a single stemming vessel, or 20 nautical miles away in the North Sea. Each of those possibilities is likely to cause delays and inefficiencies to the DFDS operations. Vessels stemming off the western jetty would inhibit vessels from entering the Immingham Outer Harbour (IOH). Given that Stena and DFDS vessels are likely to be arriving in similar windows given Ro-Ro scheduling imperatives, the eastern stemming area is likely to be unavailable at times when DFDS vessels need to enter the IOH but vessels stemming off the western jetty preparing to enter the lock would inhibit and delay movements to the IOH.
- 2.63 Stemming at the Holme Ridge buoy or out in the North Sea would mean inefficiencies and delay in the lock operation given that they are further away. Lock slots are heavily subscribed and require efficient movements into and out of the lock.
- 2.64 The HMH acknowledges that additional vessel movements will have some impacts on operational flexibility [REP5-037, p.3] but this has not been modelled or assessed in any meaningful way in the Applicant's ES. Chapter 10 of the ES [APP-046] does not include any assessment of impacts such as increased access times for vessels using the existing port due to the increase in number of vessels from the construction and operation of this project.
- 2.65 DFDS remain convinced that manoeuvres to and from the Proposed Development will result in lost lock productivity and therefore impact materially on inner dock operations and customers. DFDS remain disappointed that the Applicant offered a commercial workshop to discuss these issues but it was never held, for reasons DFDS does not understand.

Tug availability

- 2.66 Delays in tug vessel availability are already common, contrary to what the Applicant's indication at ISH5, it is not DFDS' experience that tug operators are able to respond quickly. A recent example of this was on the evening of Thursday 23 November 2023, a DFDS vessel, the Hollandia Seaways (a Jinling Ro-Ro) was operating the scheduled overnight service from Vlaardingen, Rotterdam to Immingham Outer Harbour (IOH), the vessel experienced problems with one engine and requested in advance for 2 tugs to assist with berthing at IOH the following morning (Friday 24 November). Both tug operators at Immingham indicated they would not be

able to provide the required 2 tugs on the morning of Friday 24 November: SMS Towage stated they could not provide any tugs until Sunday 26 November; and Svitzer initially stated that they could not provide any tugs, later that evening that was revised to indicate that 1 tug could be provided. On the morning of 24 November Svitzer confirmed they could provide the required 2 tugs and the Hollandia Seaways safely berthed at IOH. Whilst the Hollandia Seaways was able to safely berth, it is an example of the current constraints on tug availability at the Port of Immingham.

- 2.67 The Proposed Development will only exacerbate the situation. The challenging manoeuvres required at the new terminal will result in higher tug occupancy resulting in lower tug availability and increased waiting times for other users. This will impact schedule performance, fuel consumption and CO2 emissions.
- 2.68 Relying upon 'market forces' to ensure adequate towage provision is in place will and has been insufficient in the past as tug operators have to balance need against the reality of a fully manned tug sitting idle when the weather is benign. Towage has always been a 'feast or famine' industry in which in certain weather conditions, every vessel wants a tug simultaneously and when the weather is benign they sit redundant. Towage firms have found over the years the 'sweet spot' of tug provision but this invariably leaves ships without towage when the weather deteriorates and decisions being made about which customers get towage and which do not.

Passage planning

- 2.69 DFDS has committed to robust sustainability targets of carbon neutrality by 2025 and reducing CO2 emissions from its ferries 45% by 2030 (relative CO2 emission from vessels from 2008 baseline, measured as CO2 per gross tonnage per nautical mile). A key strategy to achieve reduction in CO2 is schedule optimisation. Given that the only real way to achieve significant CO2 reduction is through the vessel arriving later and departing earlier allowing for slower steaming on the sea which burns less fuel. To achieve this, it is vital that the terminals perform efficiently, and that there is resilience in the operation to continually allow vessels to optimise their schedules. Any delays caused by changes to how the river operates in terms of stemming or reduced manoeuvring windows because of the Proposed Development will impact DFDS' ability to reduce CO2 in line with its global strategy.

3. Agenda Item 3: Onshore transportation

3a. Salient matters on the freight handling capacity of the Proposed Development and 'dwell time' assumptions.

- 3.1 DFDS position is set out in the Deadline 6 submissions, in particular:

- a. In the DFDS comments on D5 submissions [[REP6-038](#)], at paras 3 – 133;
 - b. Dwell times SoCG [[REP6-020](#)]; and
 - c. Traffic and transport specific SoCG [[REP6-011](#)].
- 3.2 The Applicant's change request increases the number of RoRo bays to 1,674 and the number of container slots to 65 but DFDS still consider that the yard does not have sufficient capacity for this proposal. DFDS' calculations are that the yard will exceed capacity under peak conditions and exceed operational capacity (i.e. 80%) for normal operations (both for UK imports alone) [REP5-032]. This is generally when stored freight units overlap with a new batch of incoming units. The consequence is that vehicles will have to wait elsewhere, most probably on the internal and external highway network.
- 3.3 A 0.35 day export dwell rate would mean there aren't not enough slots in the yard for unaccompanied exports, be they RoRo or Containers; it will be worse if sailings are delayed due to bad weather. This will also cause vehicle congestion within the terminal that may flow out onto the internal and external roads.
- 3.4 DFDS' concern with the terminal exceeding capacity is that vehicles which cannot be held within the yard will need to be held within other locations, potential adversely affecting DFDS and other port user operations, and having adverse impacts on the safety on the local road network by increasing the probability of congestion.

3b. Distribution of vehicular traffic entering and exiting the Port of Immingham in association with the operation of the Proposed Development, including wayfinding and the location of facilities for HGV drivers in the vicinity of Immingham.

- 3.5 As part of DFDS's Deadline 6 submissions [p.13 of [REP6-038](#)], DFDS prepared a map of the local facilities within the Port of Immingham region which show that 60% of facilities associated with the RoRo industry are to the west of the Port and 40% to the east. DFDS' understanding of normal operations of hauliers within the area is that freight will consistently utilise these facilities and therefore their presence and location must be factored into the traffic distribution assessment and indicates a likely preference for the West Gate.
- 3.6 By contrast, the Applicant has not assessed the influence of local facilities. Rather it has stated in response to ISH2 Action Point 15 [[REP2-010](#)] that it believes the majority of journeys to comprise longer distance movements and in their view that there is no reason why these movements would want (or indeed need) to stop locally. The Applicant has not provided any evidence or justification to support this claim, whereas DFDS have provided volumes of traffic that use DFDS logistics. As such, DFDS disagree based on current experience. This means the assumptions about most new drivers using the East Gate are likely to be wrong.

- 3.7 Wayfinding i.e. signage telling drivers which gate to use is not secured as part of this application. The Applicant simply telling haulier companies to use a particular gate is unlikely to filter down to drivers and the Applicant is yet to provide evidence of any system that could be implemented to achieve these goals. There is no mitigation for what happens if too many drivers use the West Gate.
- 3.8 The Applicant has undertaken to model 60/40 West/East as a sensitivity test, which has yet to be carried out. DFDS do not consider this to be a sensitivity; rather it is the correct baseline that should be used.

3c Inputs to the Transport Assessment, including assumptions regarding the reuse of facilities currently used by Stena Line at the Ports of Immingham and Killingholme and the PCU conversion factor. Sensitivity testing and modelling updates, including solo tractor movement ratios.

- 3.9 Paragraph 12 of the DFDS comments on Deadline 5 submissions [REP6-038] set out DFDS' understanding of the additional modelling that the Applicant has agreed to undertake.
- 3.10 The Applicant has agreed to provide an assessment of the key junction capacities so that the various scenarios can be compared with those capacities to define the materiality of impact (Traffic SoCG REP6-011). DFDS have made it clear that it will require that assessment by Deadline 7 at the latest, to enable DFDS to comment before the end of the Examination.
- 3.11 DFDS explained the significance of the Applicant's PCU error, which was using a factor of 1 car = 1 HGV instead of 2.3 cars = 1 HGV. The Applicant's correction to that error is in a technical note which is difficult to find in the examination library: the Applicant's response to Actions from ISH3, (which is 868 pages long), REP5-028. It is not clear that the error in PCU conversion has specifically been drawn to the attention of the highway authorities. The technical note now identifies 5 junctions operating at/above 0.85 RFC whereas the original Transport Assessment showed all junctions operating well within practical capacity. The Applicant subsequently submitted (REP6-034) which shows 4 junctions operating over capacity. DFDS have noted errors (inconsistencies from REP5-028: the Applicant has input data from the wrong arms of junctions into their table in REP6-034). DFDS are currently preparing a note for DTA so they can correct these errors.
- 3.12 The PCU error was not immediately obvious because of the lack of clarity in the Transport Assessment [AS-008] and the use of different data sources in different places. It was first flagged to the Applicant by DFDS on 15 September 2023. The Technical Note (REP5-028) which provides the updated assessment with the corrected PCU factor does not acknowledge that the Applicant had made an error in the PCU conversion factor, so a reader who had not taken part in the relevant hearing sessions would likely be unaware of this.

- 3.13 DFDS are concerned that National Highways and the local highways authorities may not have been made aware of this PCU error, two of the SoCGs between the Applicant and those authorities were concluded before this came to light – North Lincolnshire Council and National Highways have only been consulted 2 weeks before Technical Note 2 [REP6-034] and have not been consulted since the Technical Note was issued. North East Lincolnshire Council have noted the existence of an updated Technical Note and are waiting until sensitivity tests are undertaken to comment further.
- 3.14 DFDS consider that tractor-only figures should be a minimum of 19% outside the port and 36% inside. DFDS accept this would be an appropriate baseline. The Applicant has agreed to sensitivity test 36%. DFDS agree this would be a sensitivity.
- 3.15 DFDS understand that the Applicant's transport consultant has agreed to seven additional sensitivity tests – but DFDS queries if there is sufficient time for the Applicant to prepare these and allow time for Interested Parties to meaningfully respond within the examination timetable. DFDS have made it clear that the tests are needed by Deadline 7 (11 December), so DFDS can review and comment by Deadline 8 (8 January 2024). Sensitivity testing should cumulate all these changes rather than looking at each one separately.
- 3.16 These are all fundamental parameters. DFDS has highlighted these issues from the start: tractor only numbers; assignment; peak day volumes.

3d. Any other onshore transportation matters of concern to IPs.

- 3.17 DFDS position on the appropriate approach to assessing needs for mitigation is as set out with our Deadline 6 submission [REP6-038].
- 3.18 Both National Highways and North Lincolnshire Council SoCGs note that all communications were conducted prior to the recent PCU revision. It is not clear if the Applicant has advised National Highways or North Lincolnshire Council regarding the revision to the PCU factor and subsequent impacts on the Transport Assessment [AS-008].
- 3.19 The Applicant needs to appropriately consult all Interested Parties regarding any amendments to the Transport Assessment, including any changes such as those currently identified in REP5-027.
- 3.20 Even the Applicant's 'corrected' figures contain further errors (albeit non-material, as noted in REP6-038).
- 3.21 Previous East Gate drawings showed an HGV lane and a car lane, which is not what has not been considered within the capacity assessment. The Applicant had stated at ISH5 that the drawings need to be updated to show two lanes of access that can be universally utilised for

passenger vehicles, light goods vehicles and heavy goods vehicles. This has now been completed as part of the 29 November 2023 change request [\[AS-049\]](#).

- 3.22 DFDS does not agree with the Applicant's conclusion that the impact of the Proposed Development does not materially impact the operation of the surrounding public highway network to the detriment of existing port users and the surrounding communities. DFDS consider the recent changes brought about by the PCU error have created a material discrepancy for the current results presented within the Transport Assessment and that the Transport Assessment, and other associated documents, must be revised.
- 3.23 DFDS do not consider an addendum to the Transport Assessment is appropriate as key information within the Transport Assessment (AS-008) is incorrect, providing a high potential for inconsistencies throughout the Application documents, and future errors in data reference for those referencing the works after the Examination. DFDS await the Applicant's response to Action Point 27 (EV10-016) which relates to this concern.
- 3.24 DFDS request that the Applicant update and reissue a revised Transport Assessment [AS-008] inclusive of the revision to the PCU factor and outcomes of the sensitivity analysis and consult with all Interested Parties, including National Highways, North Lincolnshire Council, North East Lincolnshire Council, and any other relevant parties, clearly noting the changes and implications of the updates to the Transport Assessment, and agreeing appropriate mitigation.