

IMMINGHAM EASTERN RO-RO TERMINAL



Written Summary of the Applicant's Oral Submissions at Issue Specific Hearing 6
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1 Executive Summary and Purpose

- 1.1 Issue Specific Hearing 6 ('ISH6'), during which consideration was given to the issue specific topic of the **Draft Development Consent Order (dDCO)**, was held on the afternoon of Thursday 23 November 2023. In the Examination Timetable as appended to the Rule 8 Letter, the Applicant is required to prepare written submissions of oral cases made during ISH6.
- 1.2 At **Table 1** below, this document provides a summary of the submissions and responses made by the Applicant, Associated British Ports during ISH6 to questions which were raised by both the Examining Authority ('the ExA') and those interested parties which were present at the hearing.
- 1.3 At **Table 2** below, this document provides a summary of the action points arising from ISH6 and, where these action points fell to Associated British Ports as the Applicant ('the Applicant'), how these have been addressed.

2 Table 1: Summary of the Issue Specific Hearing 6

Item	ExA Question / Context for discussion	Applicant’s Response
Agenda Item 1 – Welcome, Introductions and arrangements for the hearing		
1.	The Examining Authority (‘ExA’) opened the hearing, introduced themselves and invited those parties present to introduce themselves.	Mr James Strachan KC and Mr Brian Greenwood introduced themselves as acting on behalf of Associated British Ports (‘the Applicant’). Mr Strachan KC introduced Dr Jamie Oaten, who will be assisting on environmental matters relating to Natural England and the MMO.
Agenda 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.	The ExA asked, in the context of the definition of ‘maintain’ in Article 2 of the dDCO, for the Applicant to explain what it considers ‘reconstruct’ to mean.	<p>Mr James Strachan KC, on behalf of the Applicant, stated that reconstruct encompasses both minor works (such as replacing damaged infrastructure) but also goes further to include total renewal of large elements of the proposed infrastructure. The position of the Applicant is that the ES assesses construction, and the environmental effect of any reconstruction is the same.</p> <p>Embedded in the general proposition of these wordings is that maintenance is permitted in any event, and this may in fact not constitute ‘development’ at all. However, any alteration beyond the scheme as assessed would require consent if it is substantial or if this departed from what has been authorised. Mr Strachan KC clarified that the Applicant does not intend to use maintenance powers to go beyond what is assessed.</p> <p>Mr Strachan KC adds that ‘reconstruct’ is a commonly used word in DCOs, and there is precedent from Tilbury2 and Able Green Energy Port (‘Able’). Both</p>

		<p>Tilbury 2 and Able viewed reconstruction as within the same environmental envelope as the original construction – therefore, neither of these examples provided an assessment of reconstruction in a way that was distinct from the initial construction, let alone articulate what additional environmental effects are being postulated on reconstruction which are different from construction.. That is the principle of an environmental envelope. This is explained on behalf of the Applicant in [REP5-034].</p> <p>Mr Strachan KC emphasised that Article 6(2) of the dDCO caveats that maintenance works which give rise to new material environmental effects that have not been assessed in the ES are not authorised. Mr Strachan clarified that therefore no further assessment of reconstruction was needed, and that, in any event, the reconstruction work would involve similar activities as the original construction, particularly because there are no powers to go beyond what has been assessed in the ES.</p>
<p>3.</p>	<p>The ExA stated that the NRA is referred to in Article 2 and Schedule 6 (as a document to be certified). The ExA asked the Applicant whether this is a drafting error, or if the NRA has a role to play in the draft order.</p>	<p>Mr James Strachan KC, on behalf of the Applicant, confirmed that these references are hangovers from an earlier draft. Instead, the NRA forms part of the ES, which is in itself a document that is intended to be certified as identified in Schedule 6.</p> <p>Mr Strachan KC offered to amend this to clarify that the ES includes the NRA. The ExA stated that they will pick this up in their suggested changes to the dDCO.</p>
<p>4.</p>	<p>The ExA invited the Applicant to consider amending requirements with various steps to become self-contained requirements.</p>	<p>Mr James Strachan KC, on behalf of the Applicant, confirmed that this can be done. The ExA stated that they will pick this up in their suggested changes to the dDCO.</p>

<p>5.</p>	<p>The ExA asked for the Applicant to provide word versions of the dDCO and the Protective Provisions with DFDS, CLdN and IOT.</p>	<p><u>Post hearing submission</u> The Applicant has provided these.</p>
<p>6.</p>	<p>The ExA stated that every part of the ES needs to be listed in Schedule 6 as it currently appears that the NRA and the Transport Assessment will need separate approval.</p>	<p>Mr James Strachan KC, on behalf of the Applicant, stated that the reference to the ES in Schedule 6 is intended to refer to the entire ES – this is made clear by referring to ‘The environmental statement, figures and appendices contained in document References 8.2, 8.3 and 8.4’ subject to set out substitutions. As the Transport Assessment is substituted by a later version, that is why that is explicitly set out as a substitution.</p>
<p>7.</p>	<p>The ExA invited the Applicant to consider whether Requirement 4 should be renamed to clarify that it is only covering onshore works to differentiate it from Requirement 6.</p>	<p>Mr James Strachan KC, on behalf of the Applicant, stated that while this can be done, the fact that Requirement 4 only applies to onshore works is addressed by the reference to ‘associated development’, which is defined to cross-refer to the relevant landside works. Mr Strachan KC, however, stated that this can be done if the ExA would prefer. The ExA stated that they will pick this up in their suggested changes to the dDCO.</p>
<p>8.</p>	<p>The ExA stated that the engineering drawings are unclear as to whether they show finished levels or existing levels. This should be clarified in Requirement 7. The ExA invited the Applicant to consider how this can be resolved.</p>	<p>Mr James Strachan KC, confirmed his understanding that heights in the plans are set by reference to ordnance datum for the landside. In principle, there is no issue with ensuring that there is clarity. Mr Strachan KC, on behalf of the Applicant, showed these drawings as submitted in [REP4-004]. Mr Strachan KC stated that the Applicant will review these. The ExA stated that they will pick this up in their suggested changes to the dDCO. <u>Post Hearing Submission</u></p>

		The Applicant has provided updated Engineering Sections [AS-050] which provide heights set by reference to ordnance datum for the landside.
9.	The ExA stated that Section 1.4 of the CEMP refers to numerous management documents that are not included in the draft CEMP. The ExA asked if these need to be submitted.	<p>Mr Brian Greenwood, on behalf of the Applicant, stated that Mr Graeme Cowling from AECOM has been co-ordinating the CEMP and would be best place to advise on this.</p> <p>Mr Cowling, for the Applicant, confirmed that the outline site waste management plan has been included in the outline CEMP. He added that outline documents only need to be incorporated as proportionate. The question is whether or not what is proposed within the outline CEMP as currently provided is of assistance to the local authority. A more detailed version of the CEMP can then be issued at the appropriate time for approval.</p> <p>Mr James Strachan KC, on behalf of the Applicant, stated that it would be possible to provide some skeleton outline documents and that the Applicant would be able to split the CEMP into two documents for landside and marine side works. He added that the remediation strategy, site work management plan and drainage strategy were submitted respectively at [APP-093], [APP-100] and appended the CEMP itself.</p> <p>Mr Cowling, for the Applicant, stated that the Applicant would endeavour to try to provide these skeletal documents as soon as reasonably possible. He stated that he would provide a response later today with respect to the timeline for separating the CEMP.</p>
10.	The ExA also asked if the CEMP should be split into separate landside and marine outline CEMPs.	Mr James Strachan KC, on behalf of the Applicant, stated that it would be possible to provide some skeleton outline documents and that the Applicant would be able to split the CEMP into two documents for landside and marine side works. He added that the remediation strategy, site work management plan

		<p>and drainage strategy were submitted respectively at [APP-093], [APP-100] and appended the CEMP itself.</p> <p>Mr Cowling, for the Applicant, stated that the Applicant would endeavour to try to provide these skeletal documents as soon as reasonably possible. He stated that he would provide a response later today with respect to the timeline for separating the CEMP.</p> <p>Post-Hearing Submission</p> <p>The Applicant confirms that a separated CEMP will be submitted no later than Friday 15 December.</p>
11.	The ExA invited the Applicant to consider the necessary consultees for the split CEMPs once they have been provided.	Mr James Strachan KC, for the Applicant, stated the Applicant will consider who needs to be consulted. The ExA stated that they will include this in their list of recommendations.
12.	The ExA queried the arrangement that the Drainage Board is consulted and then subsequently asked to approve the surface water drainage strategy in Requirement 9.	<p>Mr James Strachan KC, for the Applicant, stated that the Applicant agrees that this consultation is not necessary.</p> <p>Mr Brian Greenwood, for the Applicant, stated that the Applicant is in discussions with the drainage board on this provision, and will pick this up in those discussions.</p>
13.	The ExA queried the caveat that the Drainage Board's approval under Requirement 9 is not to be unreasonably withheld.	Mr Brian Greenwood, for the Applicant, agreed that this is an unusual provision for a requirement and is more suited to a protective provision. This is a subject of the discussions with the Drainage Board.
14.	The ExA invited the Applicant to indicate a timeframe for the	Mr Brian Greenwood, for the Applicant, noted that the Applicant has been trying to get a response from the Drainage Board for some time.

	conclusion of discussions with the Drainage Board.	<p><u>Post hearing submission</u></p> <p>The Drainage Board has since responded to the Applicant and the Applicant is discussing the proposed amendments to the dDCO – including new protective provisions – with the Drainage Board. The Applicant intends for these discussions to be settled and presented in the updated dDCO to be submitted at Deadline 8.</p>
15.	The ExA asked the Applicant to retitle Requirement 11 to deal exclusively with woodland and suggested that this requirement be simplified by requiring that a final version of the WEMP is submitted to the Council in writing for approval and delivered in accordance with the approval.	<p>Mr Brian Greenwood, for the Applicant, confirmed that the Applicant will discuss the Council’s requirements in relation to the WEMP with the representative from the Council during the course of the day.</p> <p><u>Post-hearing submission</u></p> <p>Mr Greenwood confirmed at Item 20 below that he engaged in a discussion with the representative from the Council during the break, and that they will continue discussions following the hearing.</p>
16.	The ExA stated there is no need to refer to the CEMP, WEMP or the Drainage Strategy in Requirement 15. This means that the only document left is the flood risk assessment, and thus this requirement can become a flood risk assessment requirement.	Mr James Strachan KC, for the Applicant, agreed with this. The Applicant will redraft the requirement accordingly.
17.	The ExA invited the Applicant to respond to CLdN’s submission that many DCOs include a requirement	Mr James Strachan KC, for the Applicant, stated that this is unnecessary. He added that Tilbury2, for example, did not include this requirement – however the Applicant will review this further to consider whether this is necessary.

	to build the scheme in accordance with the submitted drawings and sections.	<p><u>Post-hearing submission</u></p> <p>The Applicant notes that there is also no such requirement included in the approved DCOs for the Lake Lothing Third Crossing 2020 and The Drax Power (Generating Stations) Order 2019.</p>
18.	The ExA stated that Requirement 16 refers to additional ground investigations that 'may' be required, but there is no detail within this as to how that is triggered. The ExA invited the Applicant to consider this.	<p>Mr James Strachan KC, for the Applicant, stated that the provision was included to allow for the potential for any necessary ground investigations. There is currently no need, but this simply accounts for the possibility.</p> <p>Mr Graeme Cowling, for the Applicant, had no comments to add.</p>
19.	The ExA suggested that Requirement 16 is redrafted so that it only governs approvals, and a right to request further information in the event that any submissions by the Applicant under this Requirement are defective.	<p>Mr James Strachan KC, for the Applicant, agreed with this.</p> <p>Mr Strachan KC added, in response to comments from the Council, that unexpected contamination is covered in the CEMP, so does not need to be incorporated into Requirement 16.</p> <p>Mr Limmer, from the Council, confirmed that he was content with this approach.</p>
20.	The ExA invited Mr Limmer from the Council to leave the hearing.	Mr Greenwood, for the Applicant, stated that he had a discussion with Mr Limmer, from the Council, and they have agreed that they will engage in discussions on the dDCO.
21.	The ExA invited the Harbour Master to respond to IOT's question regarding the impact of the IERRT on IOT vessels.	Mr Andrew Firman, Harbour Master Humber, stated that he could not foresee a situation where, as a result of the operational requirements, an IOT vessel would be held up for a long period of time at the finger pier because of IERRT vessels.

		Mr Brian Greenwood, for the Applicant, noted that the issue of priority for IOT vessels will dealt with in the protective provisions.
22.	The ExA invited DFDS to respond to the Harbour Master’s point that the Port will operate on an almost business as usual basis with an overlay of difficulty whilst the Applicant is learning about safety controls that will be needed.	<p>Mr James Strachan KC, for the Applicant, noted that DFDS was concerned that there is not a manual for soft start procedures. The approach of soft start has been adopted in the introduction of the Jinling vessel and so there is precedence for this approach. He explained that there is no ‘manual’ as such, but rather there is competent management from the Harbour Master.</p> <p>Mr Andrew Firman, Harbour Master Humber, added that this approach had also been used at Grimsby River Terminal, Humber Sea Terminal Berths 2, 3, 4, 5 and 6 and Green Port Hull. A precautionary start to operations is normal where new facilities are being opened.</p>
23.	The ExA invited the Applicant to respond to CLdN’s question about whether the NRA would fall away upon the granting of the DCO on the basis that there is no requirement within the DCO to comply with the NRA.	<p>Mr James Strachan KC, for the Applicant, stated that in relation to the NRA, there is a requirement within the DCO to comply with the NRA given that it forms part of the ES, which would be a certified document pursuant to the dDCO. Control of navigation in this location is the subject of a statutory regime, and the Harbour Master Humber has given a lot of detail in this hearing on how this would work in practice.</p> <p>The basic principle is that the Port Marine Safety Code offers guidance as to the safe operation of the Harbour and Dock that guidance being supplemented in practice by the powers, duties and controls of the statutory harbour authorities. Such an environment requires an ability for these controls to evolve. The Applicant is not breaking new ground – the dDCO sets the principle of permitting the construction and then the day-to-day safe operation is governed by the numerous tiers of authorities and safety principles.</p> <p>This is always the case with Harbour Revision Orders (‘HROs’) and Marine DCOs – the Secretary of State should not supplant the powers of the relevant</p>

		<p>harbour authorities. The criticisms that are being made are premised on the notion that these two things cannot co-exist - but this is not well founded. There are numerous examples of different bodies with different functions and these must be exercised responsibly.</p> <p>Mr Strachan KC gave the example of when the Harbour Master Humber exercised his statutory functions when approving the use of the Jinling class vessel for DFDS being brought into operation at the Outer Harbour. The same exercise would have to take place in respect of the IERRT. Those in charge of safe operations will exercise their statutory functions in the same way, and there was no evidence that the relevant statutory authorities had not fulfilled their duties in respect of the IERRT.</p>
24.	The ExA asked the Applicant if they would be prepared to provide a paper on the issues discussed this morning, including the issues of congestion, for Deadline 7.	Mr James Strachan KC, for the Applicant, stated that more information would be provided on congestion to assist the ExA.
25.	The ExA invited the Harbour Master Humber to make additional submissions on the matter of exercise of statutory functions.	<p>Ms Victoria Hutton, for the Harbour Master Humber, emphasised that the SHA is an independent authority as a matter of law. This will be clarified in a note prepared by the Harbour Master and the Applicant. She added that if the SHA acts contrary to its statutory duties, it would be acting unlawfully, and it is not open to the Secretary of State to make a decision on the basis that the SHA is not independent as it is as a matter of fact, and it is also not open to the Secretary of State to make assumptions that the SHA would act unlawfully.</p> <p>Ms Hutton added that the dDCO gives an additional layer of control to the SHA in Part 1 of Schedule 4. Paragraphs 3 and 16 both introduce mechanisms to</p>

		entitle the SHA to look at the development and make decisions. This is entirely consistent with the legal regime in place for the SHA.
26.	The ExA invited the Applicant to make additional submissions	<p>Mr James Strachan KC, for the Applicant, agreed with the legal submissions brought forward by Ms Hutton.</p> <p>NRA in requirement 15 – the Applicant has no objection to the NRA being reflected in requirement 15, and the original draft of the dDCO was put forward with the NRA included. It was removed on reflection after the ExA invited the Applicant to consider its role in this requirement. This was done for two reasons:</p> <ul style="list-style-type: none"> (1) The NRA forms part of the ES and is a document for certification as such. (2) As a matter of principle, the NRA is identifying measures that are secured through the other regulatory regime that we have identified. <p>Mr Strachan KC added that this is consistent with other DCOs and HROs, with the exception of Tilbury2 where it was reflected in a specific requirement. In the Tilbury2 NRA, the continuation of operational controls that would be exercised by the SHA is taken as a given.</p> <p>Mr Strachan KC compared the Applicant’s NRA to Tilbury2, noting that the Applicant’s NRA is much longer and more comprehensive. He explained that the Tilbury2 NRA specifically envisioned that future design changes to the scheme would be required (unlike the Applicant’s NRA which only envisions operational measures). Therefore, because of the nature of the Tilbury2 NRA, it required to be certified.</p> <p>Mr Strachan KC, noted that the Tilbury2 NRA did not specify operational controls. Mr Strachan KC opined that this was because of the separate regulatory regime in respect of operational controls, which as previously stated</p>

		<p>in the hearing (see above) are, therefore, not ordinarily included in DCOs or HROs.</p> <p>Adaptive NRA – Mr Strachan KC stated that the NRA was carried out for the purposes of the ES to assess the effects on navigation. This was carried out by independent consultants, and then endorsed by the HASB and the Applicant maintains that this properly assesses the relevant risks. The ExA identified other NRAs that have been produced during the examination process and requested that the HASB review the subsequent information that has arisen. Mr Strachan KC confirmed that the Applicant has been happy to do this.</p> <p>Mr Strachan KC stated the IERRT NRA is not an adaptive NRA, as suggested by Mr David Elvin KC, for the IOT Operators, but part of a responsible approach to the underlying duty in the Port Marine Safety Code where there is an ongoing duty (outside of the scope of an EIA) on behalf of the Duty Holder. This is a duty that will continue outside the DCO process, and irrespective of the outcome of the Secretary of State’s decision.</p> <p>Mr Strachan KC emphasised that though the Applicant has shown a willingness to review the views of Interested Parties on risk, this should not be confused with the notion that there was a defect in the NRA produced in the ES. Mr Strachan KC added that the HASB’s willingness to review this additional information is recognition of their Port Marine Safety Code obligations and not a recognition of any defects within the original NRA.</p> <p>Mr Strachan KC confirmed that there was not a ‘new’ NRA for EIA purposes, but rather supplementary information that will be considered, and any conclusions reached will serve to inform the ExA.</p> <p>Secretary of State as decision maker for harbour authority matters – Mr Strachan KC stated that this notion is posited on a false matter of law which</p>
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		<p>requires presupposing some lack of independence or conflict of interest. Neither of these things exist here. Mr Strachan KC fundamentally rejected that there is any legal foundation for a submission to question the Harbour Master Humber or SHA’s independence in the exercise of their statutory functions.</p> <p>Mr Elvin KC, for IOT Operators, recognised that there are lots of situations where one body has multiple functions.</p> <p>Mr Strachan KC posited the example of a local authority, which is also a highway authority, putting forward a planning application for a local school. The interest of the authority in developing the school does not compromise the local authority as the relevant highway authority from being able to consider matters of ensuring that the road used to access the school is safe for children. The legal principle itself is the same in the context of the IERRT and it is clear and well established that there can be statutory separation of powers. Therefore, no alternative decision maker to the harbour authorities is required. Mr Strachan KC submitted that, in principle, it would be an extraordinary step to assume that the Secretary of State is in a better position to make judgments on the safety of a harbour than the relevant Harbour Master(s).</p> <p>Moreover, this would require the Secretary of State to take the role of a Duty Holder under the Port Marine Safety Code and consequently the liabilities involved with this. The SHA is vested with exercising those functions safely and properly, but they also have liabilities that flow from this responsibility.</p>
<p>27.</p>	<p>The ExA stated the safety of the oil terminal is not within the SHA’s jurisdiction. The ExA invited the Applicant to consider whether this</p>	<p>Mr James Strachan KC, for the Applicant, stated that the safety of the oil terminal is within the jurisdiction of the SHA as it regulates the traffic of vessels in and around the oil terminal. The HSE would be the overseer for COMAH issues relating to the oil terminal. Mr Strachan KC emphasised that while there is an overlap, the marine elements remains the duty of the SHA.</p>

	creates a gap that needs to be addressed in the dDCO.	Mr Strachan KC added that the Harbour Master Humber has made it clear that he is aware of his responsibility in relation to the IOT.
28.	The ExA noted that the HSE has not been involved in looking at safety issues of the IOT infrastructure.	<p>Mr James Strachan KC, for the Applicant, stated that this is consistent with other marine examples. The NRA process has risk matrices etc, and these are not the same as the risk approach taken by the HSE which deals with landside issues.</p> <p><u>Post-hearing submission</u></p> <p>This is confirmed in the draft Statement of Common Ground between the Applicant and the HSE [REP6-015]. The HSE state their position as follows:</p> <p><i>'The geographical extent of the HSE's regulatory powers do not extend to vessels in the marine environment. In essence, a ship in motion, even if it is due to dock at or has just sailed from a port facility, does not form an active part of that marine infrastructure.</i></p> <p><i>Any operational safety issues that may arise in the marine environment fall to the regulatory responsibility of the appropriate marine body, as dictated by maritime legislation. Any potential concerns would be identified by COMAH operators in their COMAH reports.'</i></p>
29.	The ExA asked the Applicant whether the IOT trunkway and its piers would be landside or marine.	Mr James Strachan KC, for the Applicant, responded that these are marine. He added that the HSE have not taken a position on the NRA, but there is no reason they would as this remains the function of the SHA to assess navigational risk. This is common for the continued operation of the IOT and the continued operation of controls around the IOT. The HSE is not expected to have views on this, but the SHA does.

		Mr Strachan KC added the Applicant understands that the COMAH characterisation of the IOT infrastructure includes the trunkway and the finger pier. However, the question is to do with HSE’s jurisdiction on risk.
30.	<p>The ExA asked the Applicant to consider whether HSE would investigate an accident on the IOT finger pier, and if this means that they do have jurisdiction over this.</p> <p>The ExA added that the HSE has opined on the potential for COMAH sites surrounding the proposed development to have effects on the proposed development.</p>	<p>Mr James Strachan KC, for the Applicant, stated that the HSE’s approach to the assessment of risk is identified by reference to the effect of those events.</p> <p>Mr Strachan KC stated that the Applicant would review how the HSE have expressed their opinions on the proposed development.</p> <p><u>Post-hearing submission</u></p> <p>Please refer to the post-hearing submission at Item 27 above, which evidences the HSE’s position as set out in the draft Statement of Common Ground between the Applicant and the HSE [REP6-015].</p>
31.	<p>The ExA asked whether the Port of Immingham SHA has the power or duty to impose impact protection, and if the dDCO needs to be amended</p>	<p>Ms Victoria Hutton, for the Harbour Master Humber, stated that they will look at this more closely. However, the legislative regime is set up for the potential for directions and bye-laws. This means that there could be a direction to only operate in certain conditions or operational parameters, but there is nothing in the legislation where the Dock Master has the power to recommend someone to build a certain piece of infrastructure. This is equally true for the Harbour Master Humber.</p> <p>Mr James Strachan KC, for the Applicant, stated that the Port of Immingham SHA could require the impact protection measures to be implemented.</p> <p><u>Post hearing submission</u></p> <p>The version of the dDCO submitted with the Changes Application [AS-053] – as accepted by the ExA – amends Requirement 18 such that either the Dock Master or Harbour Master Humber (as the Statutory Conservancy and</p>

		Navigation Authority) can recommend the implementation of the impact protection measures.
32.	The ExA asked the Applicant to consider who would arbitrate between the SCNA and the Port of Immingham SHA in the event of a disagreement.	<p>Mr James Strachan KC, for the Applicant, stated that in principle it would be the HASB. Mr Strachan KC further noted that he was not aware of any examples of such a conflict arising as between the SCNA and the Dock Master in the context of Requirement 18. Even if there was a difference of view, the arbitrator would effectively be the HASB.</p> <p><u>Post Hearing Submission:</u></p> <p>The version of the dDCO submitted with the Changes Application [AS-053] contains an amended Requirement 18, which allows either the SCNA or the Dock Master to make a recommendation that impact protection measures are required.</p>
33.	The ExA asked for further information regarding the mechanics of Requirement 18 with respect to how a decision can be made.	<p>Mr James Strachan KC, for the Applicant, stated that Requirement 18 operates at the moment with no requirement to construct the impact protection measures as a result of the conclusions that have been reached to date. However, the intention is to reserve the ability to build these measures if the risk profile changes and no other measures can manage this new risk profile.</p> <p>In the event that the Harbour Master Humber would recommend the implementation of such impact protection measures, then Requirement 18 governs how the Applicant implements the construction of these measures. The underlying principle of this is that the Harbour Master Humber has the ability to direct vessels not to use the IERRT absent some change in the safety (in this case, impact protection measures). The underlying power that the Harbour Master Humber holds is the ability to issue a general direction that vessels</p>

		cannot berth at the Port. Under the relevant regime, it is a criminal offence not to comply with a special direction of the Harbour Master.
34.	The ExA questioned whether it would be possible to amend Requirement 18 to include a Grampian condition to caveat that some form of control measures would have been identified and published prior to the operation of the development.	Mr James Strachan KC, for the Applicant, stated that there is no in principle objection to this. The ExA stated that they will pick this up in their suggested changes to the dDCO.
35.	The ExA asked the Applicant about the role of judicial review as a mechanism to challenge the decision of the SCNA.	Mr James Strachan KC, for the Applicant, stated that there is law to the effect that judicial review is an adequate remedy for addressing a perceived lack of independence where it involves the review of an exercise of judgement.
36.	The ExA asked about a potential typo at paragraph 3(2) of the SCNA Protective Provision.	Mr James Strachan KC, for the Applicant, agreed that there is a missing 'and' here.
37.	The ExA asked for any comments from the Applicant regarding protective provisions.	<p>Mr Brian Greenwood, for the Applicant, stated that DFDS were provided with a set of protective provisions several days ago and they have confirmed that they will respond tomorrow.</p> <p>Mr Greenwood added that he will send a draft of the protective provisions shortly after the hearing.</p> <p>Mr Greenwood confirmed that a draft has been sent to the Applicant from IOT, however this is held up by other factors.</p> <p><u>Post Hearing Submission:</u></p>

		<p>Revised draft protective provisions were sent as follows:</p> <ul style="list-style-type: none"> • To DFDS on 22 November 2023, • to CLdN on 28 November 2023, and • IOT Operators on 29 November 2023.
<p>38.</p>	<p>The ExA asked the Applicant about DFDS’ original draft protective provision, and particularly to explain any instances where suggested provisions were not accepted.</p>	<p>Mr Brian Greenwood, for the Applicant, emphasised that the initial response was that no protective provision was necessary, so things have progressed a lot from that.</p> <p>The draft protective provisions provided by DFDS have been amended, and it is likely that DFDS have not had time to consider these amendments in detail. However, Mr Greenwood is hopeful that this provision isn’t too far away from being agreed.</p> <p><u>Post Hearing Submission:</u></p> <p>The Applicant is providing its latest draft protective provision for DFDS, as well as commentary explaining why it has made the amendments that it has, at Deadline 7.</p>
<p>39.</p>	<p>The ExA asked the Applicant to provide an update regarding CLdN’s protective provision.</p>	<p>Mr Brian Greenwood, for the Applicant, again emphasised that the initial response was that no protective provision was necessary, so things have progressed from that. The Applicant has agreed to offer some protective provisions in favour of CLdN.</p> <p>Mr Greenwood explained that CLdN provided a draft set of protective provisions, and the Applicant had accepted some of these.</p> <p>However, he noted that there were three provisions that are not accepted. Two of these relate to a requirement that the Applicant gives an undertaking for non-interference with through vessels going to the Port of Killingholme. This is for</p>

		<p>the Harbour Master Humber and is not under the control of the Applicant. CLdN also asked for protective provisions in respect of its railway lines – this was not accepted on the basis that nothing is being put on the railway lines, and the railway that CLdN uses is on the other side of the Port of Immingham from the IERRT development site.</p>
<p>40.</p>	<p>The ExA asked the Applicant to provide an update regarding IOT’s protective provision</p>	<p>Mr James Strachan KC, for the Applicant, stated that the Applicant provided protective provisions in the original dDCO and also noted that the IOT Operators had subsequently provided counter protective provisions., Mr Strachan KC noted that the Applicant would respond to the counter proposals.</p> <p><u>Post Hearing Submission:</u></p> <p>The Applicant is providing its latest draft protective provision for IOT Operators, as well as commentary explaining why it has made the amendments that it has, at Deadline 7.</p>
<p>41.</p>	<p>The ExA invited the Applicant to respond to DFDS’s comments regarding the draft DCO, in particular:</p> <ul style="list-style-type: none"> • Article 21 – DFDS is of the view that the Applicant has conceded that they will accept a daily cap of 1,800 ro-ro units, and this should be included here. • Junction works – if we consider that junction 	<p>Mr James Strachan KC, for the Applicant, stated that the best recourse would be to provide a written response to this.</p> <p><u>Post-hearing submission</u></p> <p>The Applicant has provided a response to DFDS’ Deadline 6 submissions at document reference 10.2.67 – Applicant’s Response to DFDS’ Deadline 6 Submissions. Any further amendments required to the dDCO will be addressed in the version to be submitted by the Applicant at Deadline 8.</p>

	<p>improvements are necessary then these should be included in either Schedule 1 as works or made subject to a 278 agreement.</p> <ul style="list-style-type: none"> • Requirement 10 – DFDS is of the view that Requirement 10 does not commit to a particular level of noise protection and should be amended accordingly. • Additional requirement requested limiting the maximum size of vessels to the size of those which had been environmentally assessed. 	
<p>42.</p>	<p>The ExA asked the Applicant to confirm whether the 1,800 daily cap had been accepted.</p>	<p>Mr James Strachan KC, for the Applicant, confirmed this.</p>
<p>43.</p>	<p>The ExA asked the Applicant for an update on discussions with the MMO.</p>	<p>Mr James Strachan KC, for the Applicant, stated that there is an outstanding point with the MMO in relation to piling restrictions in relation to the effects on migratory fish. Mr Strachan KC explained that there was a meeting on 7 November 2023 with the MMO in which the Applicant explained its position .</p>

		<p>There was not yet a formal response from the MMO, but they appeared to be receptive to the and these remain ongoing.</p> <p>Mr Brian Greenwood, for the Applicant, added that there is also an outstanding point in respect of the period stipulated in the deemed marine licence ('DML') for the MMO to approve any details submitted pursuant to the DML. The Applicant has asked for the MMO to give the Applicant a decision as to determine the application as soon as is reasonably practicable and, in any event, no later than 6 weeks. The MMO have asked for a longer period, and the Applicant is currently seeking to resolve this.</p> <p>The ExA noted that it sounds as though the DML is being progressed.</p>
<p>44.</p>	<p>The Applicant requested to provide the ExA with an update regarding Natural England.</p>	<p>Mr James Strachan KC, for the Applicant, stated that there have been further discussions with Natural England. He added that Natural England has reviewed the updated HRA that was provided at Deadline 5 and provided further responses at Deadline 6. Almost all of the issues with Natural England are resolved, as shown in the Statement Of Common Ground [REP6-010].</p> <p>One residual issue is in relation to noise and disturbance during construction on SPA/Ramsar bird species. In respect of that, the Applicant is experiencing some difficulty in understanding Natural England's position. Natural England have identified 200m as an acceptable disturbance distance for most construction activities within a port environment. The Applicant has provided evidence specific to this port to support this as being the appropriate disturbance distance. However, Natural England want a 300m distance for works at a 40-70 decibel level, when the Applicant has previously had specific advice from Natural England that it is only work that exceed 70 decibels or max that would require this.</p>

		<p>The Applicant does not agree with this 300m distance, and the Applicant has provided evidence that the 200m distance is acceptable at this location. Natural England has not provided any counter evidence for this.</p> <p>Mr Strachan KC stated that the Applicant is working to identify whether this is a small matter of opinion or if there is a more substantive issue that requires resolving.</p> <p>Natural England also raised some concerns regarding air quality impacts of the Hartford Chase SSSI and Piling Restrictions on the Lamprey and these are being responded to by the Applicant.</p> <p>Mr Strachan KC also added that there is the outstanding issue of cumulative and in combination effects, and these will be addressed at Deadline 7.</p>
<p>Hearing closed at 16:58</p>		

3 Table 2: Issue Specific Hearing 6 Action Points

Action	Description	Action by	Deadline	Applicant's Comment/where has the action been answered
1	Submit to ExA as soon as possible a Microsoft Word version of the dDCO.	Applicant	(Already actioned)	Actioned in accordance with the ExA's Procedural Letter.
2	Update and re-issue engineering sections drawings and plans to show existing ground levels and proposed finished levels.	Applicant	D7	The Applicant submitted updated engineering sections drawings and plans with its Changes Application that has since been accepted by the ExA. The updated plans are provided at [AS-050] .
3	Consider how the Schedule 6 documents address potential impact of navigational risk control on social/economic and transportation and traffic receptors	Applicant	D7	<p>The socio-economic assessment in Chapter 16 of the ES [APP-052] assessed impacts of marine congestion. The ES will be a certified document under Schedule 6. Chapter 16 of the ES explains that whilst there will be an increase in vessel movements on the Humber Estuary and to and from the Port of Immingham during operation, these are not anticipated to impact the business operations of other users of the estuary because of the existing well proven processes and procedures that are in place to manage vessel movements.</p> <p>The Applicant refers to the further detail contained in its response to BGC.3.02 of the ExA's Third Written Questions (document reference 10.2.64).</p>

<p>4</p>	<p>Requirement (R) 8: outline Construction Environmental Management Plan (oCEMP) draft management plans to be submitted at least in “skeletal” form so as to form elements of the draft CEMP which will be considered as the baseline for discharging R8 should a DCO be made.</p>	<p>Applicant</p>	<p>D7</p>	<p>Following the discussions at ISH6 on the 23 November 2023 and at the request of the ExA within Action 4 and 5 of the ISH6, the Applicant can confirm that it will separate the outline Construction Environment Management Plan [AS-067] into two distinct outline CEMPs.</p> <p>One will present the mitigation and control measures for the landside construction activities.</p> <p>The other will present the mitigation and control measures for the marine construction activities. Both outline CEMPs will include outline management plans in skeletal form relevant and applicable to the geographical area to which they respectively relate.</p> <p>These two outline CEMPs – including the “skeletal” form management plans will be submitted into the Examination no later than 15 December 2023.</p>
<p>5</p>	<p>Submit separate Onshore and Marine oCEMPs for matters for final approval respectively by the Council and the Marine Management Organisation (MMO). With respect to the marine CEMP provide a note of the relationship between the marine</p>	<p>Applicant</p>	<p>D7, if possible. If submission is not possible at D7, advise of the date when the</p>	<p>As explained at Action Point 4 above, the Applicant will separate the oCEMP [AS-067] into two separate oCEMPs for marine and onshore works, and will submit these no later than 15 December 2023.</p> <p>With regard to the Harbour Works Consent, the Applicant and Harbour Master Humber</p>

	CEMP with any Harbour Works Consent.		separate oCEMPs will be submitted	<p>respectively provided responses at [REP4-009] and [REP4-031] to ISH3 Action Point 25.</p> <p>[REP4-031] explains that Harbour Works Consent has been replaced by the protective provisions for the Statutory Conservancy and Navigation Authority for the Humber in Part 1 of Schedule 4 to the draft DCO. Paragraph 3 (Tidal Works – approval of detailed design) of the protective provision provides for the prior approval by the SCNA of certain matters, including detailed method statements and programmes for those works.</p> <p>The Applicant’s updated oCEMP for the marine works will make clear in Table 3.4 that the Contractor must submit the necessary detailed design information (including method statements and programmes) to the HMH in accordance with Paragraph 3 of the PPs for the SCNA.</p>
6	Establish and advise on which of the Statutory Harbour Authorities (SHAs) would need to be consulted with respect to matters covered by the marine CEMP.	Applicant and Harbour Master Humber (HMH)	D7	It is anticipated that both SHA’s will be involved with the implementation of the CEMP – although the ExA will have noted the response by the SCNA in this respect.
7	R18 (Impact Protection Measures): Advise on the role, if any, that the Dock Master, as distinct from the	Applicant and HMH	D7	The role of the Dock Master is being considered in the light of the ExA’s Schedule of proposed changes to the dDCO. The Applicant’s current view, however, is that

	HMH, would have in the operation and discharging of this requirement.			both the Dock Master and the Humber Harbour Master, either independently or together, will be able to recommend to the Applicant that impact protection measures should be provided.
8	Confirm whether the submitted application documentation upon which the Health and Safety Executive will have been relying on to assess the Proposed Development clearly shows the full extent of the adjoining Control of Major Accident Hazards sites	Applicant	D7	<p>Chapter 18 of the ES [APP-054] clearly evaluates the risk to IERRT of COMAH sites in the immediate vicinity. As a tool to ensure compliance with the HSE’s Land Use Planning guidance – which effectively arbitrates whether aspects of a proposed development or operation can be viewed as being an acceptable risk or not, depending upon proximity to those neighbouring COMAH sites – the HSE’s own Land Use Planning Zones have been used. These are the coloured lines denoting Development Proximity Zones (where applicable – specifically dealing with the potential for petroleum vapour), inner, middle and outer zones. In the ES, the Applicant has ensured that the layout of the IERRT terminal complies with the activity and use restrictions – as applied by the HSE – for those different zones.</p> <p>A COMAH site operator may consider that jetty infrastructure – including topside pipelines or liquid bulk loading arms – might form part of their overall site in terms of how it is operated and how their COMAH Safety report is written. The salient characteristic</p>

				that needs to be considered by the Applicant for EIA purposes, however, and with which the HSE will be concerned, is the Land Use Planning Zones imposed by the HSE. These are based on an assessment of societal risk that the HSE has undertaken when considering how the IOT operates. Whilst the Applicant has not reviewed – and would not be able to review – the HSE’s assessment work in devising how those LUP zones have been devised, it can be assumed that the HSE focussed on the risk of fuel storage rather than the risk of fuel transfer over the jetty. The absence of land use planning zones around the jetty would support this supposition. So whilst the HSE – who will in any case have access to the IOT operator’s COMAH Safety Report and other confidential background information that the Applicant does not – have confirmed that the IERRT is acceptable in planning terms when considered against adjacent COMAH site LUP zones, the IOT Operator has a corresponding legal duty under COMAH to review and adapt its operation to accommodate any changes in lawful activity which will take place in its vicinity.
9	Submit a plan showing the full extent of the IOT COMAH site.	IOT Operators	D7	
10	Confirm whether the responsibilities of the Statutory Harbour Authority for	Applicant	D7	Ensuring the safety of port marine infrastructure – including jetties and

	<p>the Port of Immingham include the safety of port marine infrastructure including jetties and trunkways.</p>			<p>trunkways – is a duty that falls to a number of different parties under different pieces of legislation – but certainly fall within the remit of the Port of Immingham SHA.</p> <p>In the case of the Immingham Oil Terminal the jetty infrastructure is licensed by ABP to the IOT Operators. ABP has a duty of care to ensure that the jetty itself is maintained, however the topside infrastructure (pipelines etc) remains within the operational and maintenance ambit of the IOT Operators.</p> <p>In terms of the safety of navigation, ABP as the SHA for the Port of Immingham, working in partnership with the Harbour Master Humber/SCNA, is responsible for navigational safety as part of a wider management process which has been previously discussed.</p> <p>Under the PMSC, the MSMS – or in the case of new development, the NRA – is used to determine if new infrastructure and the navigational implications of new infrastructure would, in risk terms, be classified as ALARP with any residual risks being tolerable.</p>
11	<p>Submit to ExA, as soon as possible, Microsoft Word versions of the</p>	<p>CLdN, DFDS, IOT Operators</p>	<p>(Already Actioned)</p>	

	respective proposed Protective Provisions.			
12	With respect to Protective Provisions (PP) in favour of the Statutory Conservancy and Navigational Authority (SCNA), consider whether arbitration by the President of the Institution of Civil Engineers (PICE) would be appropriate (Article 35 and paragraph 18 of Part 1 of Schedule 4) and identify an alternative arbitrator if the PICE is considered to be inappropriate.	HMH	D7	
13	Consider for the purposes of PP paragraph 3(4) of Part 1 of Schedule 4 whether the MMO should be a consultee? Should Port of Killingholme as a Statutory Harbour Authority also be a consultee as submitted by CLdN?	Applicant and HMH	D7	The Applicant aligns itself with the response submitted by the HMH. In brief, however, for the reasons provided, the Applicant is strongly of the view that neither the MMO nor the port of Killingholme should be a statutory consultee and the Applicant would resist any proposal to the contrary.
14	Clarify Schedule 6 layout and wording such that NRA is expressly noted as part of the Environmental Statement.	Applicant	D7	The Applicant is reviewing Schedule 6, which will be updated in the version of the dDCO to be submitted by the Applicant at Deadline 8.

4 Glossary

Abbreviation/ Acronym	Definition
ABP	Associated British Ports
ALARP	As Low As Reasonably Practicable
APT	Associated Petroleum Terminals
CEMP	Construction Environment Management Plan
CLdN	CLdN Ports (Killingholme) Limited
COMAH	Control of Major Accident Hazards
dDCO	Draft Development Consent Order
DFDS	DFDS Seaways Plc
DML	Deemed marine licence
EIA	Environmental Impact Assessment
ES	Environmental Statement
ExA	Examining Authority
HASB	Health and Safety Board
HES	Humber Estuary Services
HOTT	Humber Oil Terminal Trustees Limited
HSE	Health and Safety Executive
IOT	Immingham Oil Terminal
IP	Interested Party
ISH6	Issue Specific Hearing Six
NPSfP	National Policy Statement for Ports
NRA	Navigational Risk Assessment
PEC	Pilotage Exemption Certificate
SCNA	Statutory Conservancy and Navigation Authority
SHA	Statutory Harbour Authority