

Immingham Eastern Ro-Ro Terminal (“IERRT”)

PINS Ref: TR030007

Deadline 7 submissions of the IOT Operators

The following table indicates where specific matters identified in the Examining Authority’s examination timetable, action points, or other relevant matters are addressed in these submissions on behalf of the IOT Operators:

Reference	Submission / matter	Location
Deadline 7	Post-hearing submissions, including written summaries of oral cases made by the Applicant and IPs (if hearings on 21 to 23 November 2023 are required)	The following submissions comprise the IOT Operator’s post-hearing submissions. Written summaries of the IOT Operators’ oral case are at APPENDIX 7 .
Deadline 7	Responses to the ExA’s ExQ3 (if required)	It is noted that there were no specific questions raised of the IOT Operators
Deadline 7	Comments on the ExA’s Recommended changes to the dDCO	The IOT Operators’ position on the dDCO and their preferred protective provisions are set out at paragraphs 17 to 21 below and APPENDIX 1 .
Action points	The ExA has raised a series of action points from ISH5 and ISH6 [EV10-016] and [EV11-010]	The IOT Operators’ position on those action points is set out in the table at paragraph 80 onwards below.
N/A	Protective provisions	The IOT Operators’ position on their preferred protective provisions are set out at paragraphs 17 to 21 below.
N/A	Statement of Common Ground	The IOT Operators’ response to the latest draft SoCG provided by the Applicant is included as APPENDIX 2 .

Introduction and summary

1. The proposed Immingham Eastern RoRo Terminal (IERRT) being promoted by Associated British Ports (ABP) poses a significant risk to the ongoing operation of the Immingham Oil Terminal (IOT). The IOT Operators' concerns regarding the prospect of a potentially catastrophic allision between vessels associated with the IERRT and the IOT were first raised with ABP in February 2022 when the IOT Operators were first made aware of and consulted on the proposals. Various mitigation measures were then identified as being necessary by the IOT Operators in their Section 42 Consultation Response of 22 February 2022 and in the Supplementary Consultation Response of 25 November 2022 [**REP2-063**], including the delivery of vessel impact protection to reduce the risk of that allision occurring to be as low as reasonably practicable.
2. Due to a lack of engagement from ABP prior to submission of its application for a development consent order (DCO) for the IERRT (which was eventually accepted for examination in March 2023), the IOT Operators commissioned independent maritime experts to carry out a shadow Navigation Risk Assessment (sNRA). That was provided to the examining authority (ExA) conducting the examination of the DCO application in early September 2023 [**REP2-064**]. A cost benefit analysis was provided to support the mitigation measures identified as being required at Section 12.4 of the sNRA.
3. On receipt of that report, ABP indicated (on 28 September 2023 [**AS-020**]) that it would work with the IOT Operators to develop a scheme of impact protection to address its concerns. That commitment was expressed to be "without prejudice" to its position that impact protection was not necessary. ABP subsequently indicated that it intended to make a "change request" to its DCO application to incorporate the potential for further impact protection and / or the provision of operational controls on the IERRT.
4. The change request was formally submitted on 29 November 2023 [**AS-045**] and accepted into the examination on 6 December 2023 [**PD-021**]. However, the change request fails to adequately address the IOT Operators' concerns. It provides insufficient impact protection, a lack of detail about what is proposed, and continues to be subject to ABP's primary contention that the impact protection is not required. The IOT Operators have detailed these concerns in their consultation responses, which are appended to the Deadline 6 Submissions [**REP6-046**].
5. No cost benefit analysis supporting the ABP position has been presented, as identified in the ExA's examination of the proposals during the Issue Specific Hearing 5 on 21 November 2023 (ISH5). The Applicant's position is awaited.
6. The Applicant has pointed to a December 2022 Harbour Authority Safety Board (HASB) meeting as the forum in which the decision was taken that impact protection was not justified.¹ Any written materials considered by the HASB at that meeting are to be submitted by ABP in response to Action Point 4 from ISH5. Action Point 2 from ISH5 also requires ABP to submit notes of project governance meetings held in October 2022, including details of the inputs on costs and benefits for the potential controls that were being considered and conclusions drawn.
7. It is not clear whether any proper cost benefit response will be received in response to the IOT Operators' evidence or how it would relate to the apparently non-existent cost benefit analysis for the development as a whole.²

¹ As stated for the Applicant at ISH5 (Line 1461 of the ISH5 Part 5 Transcript [**EV10-011**]).

² The ExA has previously asked the Applicant for this information, including for example in response to ExQ2 NS.2.04 [the Applicant's response at **REP4-008**] and then more recently during ISH5

8. It remains the case that at the time of writing, nearly five months into the DCO's examination, that no written material has been provided by the Applicant to justify its position that the mitigation measures identified by the IOT Operators 20 months ago (February 2022) are not necessary. The measures are not trivial, they are required to protect a top-tier COMAH site identified as Critical National Infrastructure. The impacts the measures are intended to avoid are potentially catastrophic (as concluded at paragraph 381 of the sNRA [REP2-064]). Even when directly asked about the standard those broader societal risks should be judged against, the Applicant fails to provide a direct response,³ in contrast to the clear methodology and evidenced assessment provided by the IOT Operators [REP2-064].
9. The IOT Operators' principal concern is therefore that the DCO application, even with the change request incorporated, will continue to present an unacceptably severe risk of a potentially catastrophic event which causes damage to the IOT and presents an unacceptable risk to loss of life (see [REP2-064] as above).
10. There would also be very significant impacts on fuel supply at a national level of such an event, at a time when Government has recently introduced statutory measures directly aimed at securing the security of supply for the core fuel sector⁴ (within which the IOT Operators fall). The risks posed by the Proposed Development are directly opposed to the functions of the Secretary of State under those newly introduced provisions. S.267 of the Energy Act 2023 provides that the general objective of the Secretary of State, and their functions under Part 12, must be exercised with a view to:
 - (a) *ensuring that economic activity in the United Kingdom is not adversely affected by disruptions to core fuel sector activities, and*
 - (b) *reducing the risk of emergencies affecting fuel supplies.*
11. Even if the DCO is to be granted, the secondary concern of the IOT Operators is that adequate "protective provisions" are not being offered as part of the DCO by ABP, despite an express commitment from ABP [AS-020] that they would be provided "substantially in accordance" with the provisions submitted in [REP1-039]. The Applicant has since resiled from that commitment, as outlined further below.
12. Even in the absence of an acceptable design of impact protection (as the IOT Operators see it), the impact protection which is being suggested should be subject to the IOT Operators (reasonable) approval to ensure that it is both delivered, and delivered to an adequate standard (despite the IOT Operators' design reservations).
13. Until 28 November 2023, some four months into the examination, and despite multiple attempts, the developer ABP had failed to respond substantively to the suggested protective provisions sought by the IOT Operators. Despite the prior express indication from ABP [AS-020] that protective would be provided "substantially in accordance" with the provisions submitted in [REP1-039], the Applicant has now resiled from that agreement.
14. The present position is therefore that:

[resulting in action point 4 ISH5 EV10-016]. The "detailed presentation" referred to in the Applicant's response to NS.2.06 [REP4-008] has not been provided, and it was confirmed during ISH5 that no written materials were provided or retained from that October 2022 meeting of the HASB.

³ See the Applicant's response to ExQ2 NS.2.17 [REP4-008].

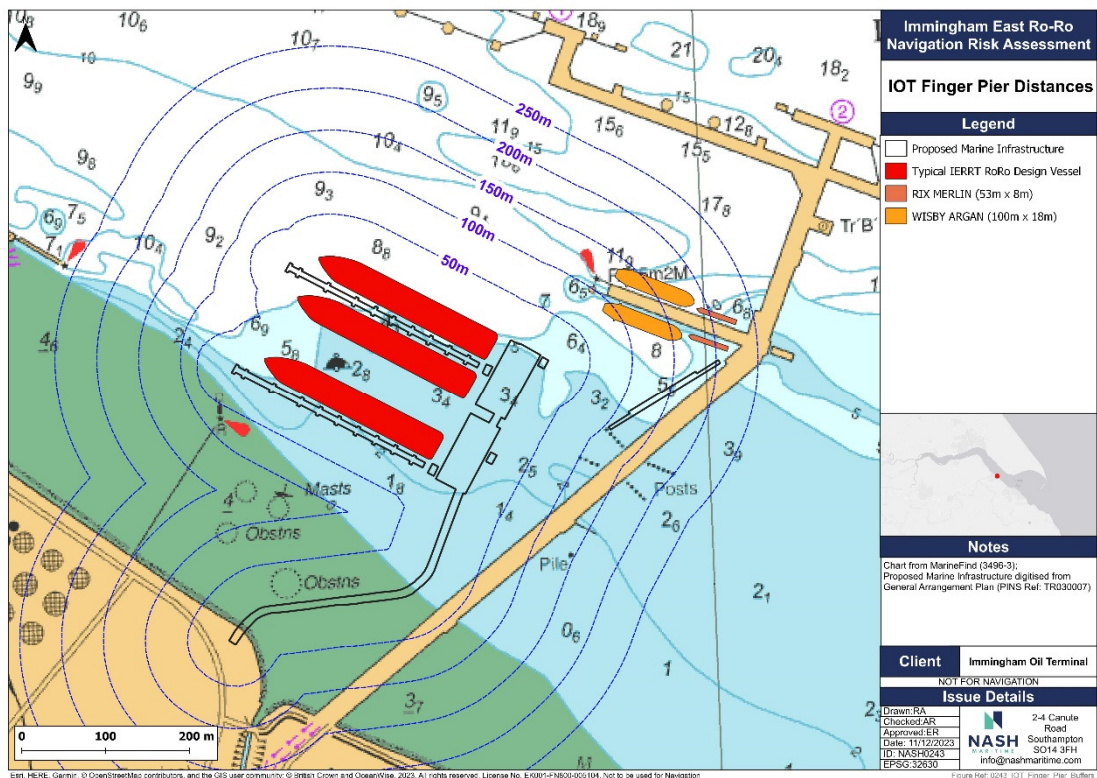
⁴ Part 12 of the Energy Act 2023, which received Royal Assent on 26 October 2023, albeit the provisions of Part 12 are yet to be brought into force.

- a. ABP's current proposal is that the Harbour Master Humber is responsible for deciding whether impact protection is necessary. His position is that no impact protection is necessary. However, this position has been reached without a written risk assessment having been carried out by the Harbour Master Humber;⁵ and
 - b. Entirely inadequate protective provisions are being offered by the Applicant ABP.
15. Matters summarised in the preceding paragraphs, together with other relevant matters, are expanded on below.
16. The IOT Operators' current submissions to the ExA and the Secretary of State for Transport are that in the absence of adequate mitigation measures, the DCO should be refused on account of the adverse impact of the proposed development outweighing its benefits (pursuant to s.104(7) of the Planning Act 2008).

Protective provisions for the IOT Operators

17. The IOT Operators submitted the most recent version of their preferred Protective Provisions to the ExA on 1 December 2023 [**AS-043**]. The commentary on these protective provisions subsequently submitted by ABP [**AS-044**] is dismissive and provides no reasoned justification for the refusal to provide the protective provisions sought by the IOT Operators.
18. ABP's commitment to provide protections "substantially in accordance" with the provisions submitted in [**REP1-039**] is sufficiently clear that any deviations from that form must be justified and well-reasoned. Where the IOT Operators have made amendments to this form there has always been an accompanying justification, including the reasonable requirement for ABP to be sufficiently insured. The justifications for all amendments to the protective provisions are restated and expanded on in places in the appended table [**APPENDIX 1**].
19. While ABP's ownership and existing licence agreements currently provide a baseline for certain responsibilities, these do not address the complexities and increased risks associated with the IERRT. Those agreements were not entered into with the parties contemplating the delivery of a new RoRo terminal at a distance of less than 100m from the IOT (as shown in the image below). It is notable in that regard that the Applicant has failed to provide any specific reference to provisions within the existing licence agreements which they rely on. It is the IOT Operators' case that the introduction of the very significant risks posed by the Proposed Development warrant, and require, the inclusion of adequate protection provisions to limit those risks to a standard which is as low as reasonably practicable within the design envelope proposed by the Applicant.

⁵ As stated on behalf of the Harbour Master Humber by their representative at ISH6 (Line 753 of the ISH6 Part 3 Transcript [**EV11-007**]).



20. The DCO application significantly affects the existing risk profile of the IOT to such an extent that express protections are necessary as protective provisions. That is a common place approach for Nationally Significant Infrastructure Projects, including analogous pipeline infrastructure in locations where it is affected by port projects⁶.
21. ABP's assertion that the IOT Operators hold a right of veto over the proposed development is also incorrect. The IOT Operators must always act reasonably (under their proposed drafting) and any conditions attached to approvals must be reasonably necessary to protect the IOT Operators' assets. Insurance, indemnities and reasonable approvals are all very common requirements in protective provisions where there are significant works in proximity to the protected party's infrastructure, as will be apparent from the explanation provided in the **APPENDIX 1**.

Need for vessel impact protection identified by IOT Operators

22. Vessel impact protection is necessary to make the development acceptable in planning terms. Without it, the risk of catastrophic consequences outweighs the benefits of the scheme. This position is justified and evidenced by the sNRA and cost benefit analysis [REP2-064]. The Applicant has failed to provide any evidence of the competing cost benefit analysis it assures the ExA has taken place – but for which to date no written evidence has been provided.
23. The IOT Operators' primary case is that a significant level of vessel impact protection is required. The details of that vessel impact protection and consequential changes to the IOT infrastructure were outlined in a letter sent to the Applicant on 16 October 2023 as included in the IOT Operators' D5 submission appendices [REP5-036].
24. The level of impact protection identified as being necessary by the IOT Operators, together with consequential changes to the IOT Infrastructure, ought to have been

⁶ An example would be Schedule 9 of the York Potash Harbour Facilities Order 2016 – a DCO affecting the Central Area Transmission System (CATS) which transports natural gas from the North Sea to a reception and processing facility on Teeside.

apparent to the Applicant from at least the date of the IOT Operators' Section 42 consultation response in February 2022 [REP2-063]. The justification for that level of impact protection is clearly demonstrated by the IOT Operators' sNRA [REP2-064].

25. However, the Applicant chose to advance its project without engaging with the IOT Operators on such matters. Belatedly, it committed on 28 September 2023 [AS-020] to engage with the IOT Operators and to provide the level of impact protection sought by the IOT Operators. Subsequently, and as part of its change request notification report [AS-027], the Applicant has resiled from that position on account of project constraints (see para 3.27 in particular). None of the project constraints advanced by the Applicant rely on a cost benefit analysis.
26. Those project constraints are a result of the Applicant's failure to have proper regard to the impacts on the safe operation of the IOT during its project development. It is now proposing a scheme which does not offer adequate mitigation, and the IOT Operators' primary case is therefore that the adverse impact of the proposed development would outweigh its benefits, and accordingly pursuant to s.104(7) of the Planning Act 2008 the ExA ought to recommend the refusal of the applicant. It follows that the Secretary of State ought subsequently to refuse development consent.
27. The IOT Operators have no commercial interest in the proposals. The conclusion outlined above is reached reluctantly following extended attempts to persuade the Applicant to properly mitigate the impacts of its proposals.

Cost benefit analysis – project viability

28. The IOT Operators are surprised and particularly concerned at the admission by ABP that a written and detailed cost benefit analysis has not been undertaken. The IOT Operators have been requesting evidence of whether this analysis has been undertaken since their Supplementary Consultation Response in November 2022 [REP2-063].
29. A cost benefit analysis is a standard practice for any large infrastructure project and its absence raises many questions, particularly how the Applicant has reached the conclusions that the IOT Operators' requested physical protection measures were too expensive - despite the IOT Operators providing their own transparent cost benefit analysis for ABP.
30. Despite the written requests of the ExA exploring the Proposed Development's viability with the delivery of the impact protection sought by the IOT Operators [see ExAQ2 NS2.26 and the Applicant's response in REP4-008], the Applicant had not previously pointed to viability as a basis for failing to provide the impact protection measures (amongst others) identified by the IOT Operators as being necessary to ensure the risks of the Proposed Development are as low as reasonably practicable. It is therefore noteworthy, and concerning, that in the draft Statement of Common Ground received by the IOT Operators from the Applicant on 10 November 2023, and on which comments were returned on 4 December 2023, as attached at APPENDIX 2, to see viability referred to as a reason for the those measures not being provided. In that draft SoCG the Applicant states:

ABP and its experts do not consider the scheme now required by IOT Operators to be feasible due to navigational, engineering, environmental and scheme viability reasons.

31. It of course remains the case that no viability evidence has been adduced by the Applicant, compared to the clear benefits identified by the IOT Operators' sNRA [REP2-064].

Risk assessments

32. The IOT Operators remain concerned that, while no risk assessment has been carried out by the Harbour Master Humber⁷, he has nevertheless reached the conclusion that no vessel impact protection measures are needed. It is also not clear what the Dock Master Immingham's position on the matters is given that they were not present at ISH5 or ISH6 during discussions on these matters.
33. Without these assessments it is impossible for the IOT Operators to understand how conclusions on the apparent safety (or otherwise) of the Proposed Development have been reached by those statutory harbour authorities. It bears repeating that the IOT Operators are responsible for the safe operation of a piece of Critical National Infrastructure, which is also an upper tier COMAH site.

Vessel impact protection offered by ABP

34. The vessel impact protection being offered by ABP as part of its change request is inadequate to address the concerns outlined above. In particular, it is not designed to withstand the size and displacement of vessels that will visit the IERRT, as anticipated by design vessel specified in the Applicant's ES [**APP-038**].
35. Without prejudice to the IOT Operators' primary case that the DCO application should be refused, if the Secretary of State is minded to grant development consent for the scheme on the basis of the mitigation measures identified, but not offered, by ABP, it is the IOT Operators' case that there remain a series of matters to address regarding how the measures are to be secured.
36. In a letter to ABP dated 4 December 2023, attached to these submissions [**APPENDIX 2**], the IOT Operators raised further queries including questions regarding the design parameters of the IERRT infrastructure and / or ABP's proposed vessel impact protection measures. This letter appended a memo entitled "Design Basis Review" prepared by Beckett Rankine – expert marine consulting engineers – which identifies a series of omissions or further queries which emerge from the information provided by ABP.
37. ABP were asked to provide a complete response to that "Design Basis Review" by Wednesday 6 December to enable the IOT Operators to comment on ABP's proposed change request at Deadline 7 (11 December 2023). At the time of writing, ABP has chosen not to provide any response detailing the extent to which the measures will be effective and as such the IOT Operators remain in the dark with regards to the specific parameters of the measures and therefore whether they afford any level of protection to IOT.
38. Adequate vessel impact protection requires a scheme of physical infrastructure beyond that offered by ABP change request, despite the indication that an adequate scheme would be provided. The IOT Operators have worked constructively with ABP to seek to reach an acceptable design. The without prejudice discussions, the privilege for which was waived by the parties at ISH5, are also appended [**APPENDIX 3**].

Without prejudice discussions

39. During ISH5 and ISH6 the Applicant placed reliance on without prejudice (since waived) communications with the IOT Operators in two regards:

⁷ As stated for the Harbour Master Humber at ISH6 (Line 753 of the ISH6 Part 3 Transcript [**EV11-007**]).

- a. The first being that the IOT Operators had changed their position on the extent of the works required to deliver the necessary impact protection as part of the Beckett Rankine proposal (labelled “indicative”) appended to the Applicant’s letter of 28 September [AS-020]; and
 - b. The second being that the IOT Operators had indicated to the Applicant that its emerging change request and the proposed procedural controls adequately addressed their concerns.
40. In respect of the first of those, the IOT Operators would repeat what has been said previously in submissions, namely that it is for the Applicant to provide adequate accommodation works for its own development. The IOT Operators first raised the need for accommodation works in February 2022, and were then approached by the Applicant at the eleventh hour before ISH3 to discuss the potential for those works being provided. In the limited time available the IOT Operators co-operated, through their consultants Beckett Rankine, to provide an “indicative” sketch to demonstrate the effect of moving a coaster berth to the northern part of the IOT Finger Peir.
41. The IOT Operators then engaged in a series of design meetings which explored the detail of what that indicative design would look like in practice. The objectives / parameters of the design were clearly and expressly outlined in the text of the letter of 28 September [AS-020]. Those did not change, but the IOT Operators were able to identify what those objectives would involve following those design meetings, as communicated to the Applicant in a letter of 16 October 2023 [REP5-036].
42. The Applicant has been invited to waive privilege over exchanges between the parties prior to 28 September, but has declined to do so.
43. In respect of the second point, the IOT Operators assume it is the email of 10 November (included in **APPENDIX 3**) that is referred to in this regard. The terms of that email ought to speak for themselves; all that is said is that the IOT Operators were prepared to look at the (incomplete) proposals put forward by the Applicant for procedural controls. There is no statement or indication that those proposals would be acceptable or adequate. Until complete details are provided (and they continue to be awaited), the IOT Operators remain willing to consider them. However, on the basis of the cost benefit analysis relied on by the IOT Operators, and the lack of control offered by the Applicant over any procedural controls, it seems unlikely that they will be sufficient to address the risks identified.

COMAH Impacts

44. There was discussion during ISH6 of the extent of the IOT as an upper tier COMAH site. The Applicant’s position was that the COMAH site excludes the IOT Trunkway.⁸ That is incorrect.
45. Appended to this submission are excerpts from the APT *COMAH Safety Report of the IOT (2019)* (IOT COMAH Report) [APPENDIX 4] which was shared with ABP on 25 July 2022 (see paragraph 180 of the sNRA [REP2-064]. The IOT COMAH Report describes the main activities of the IOT as the loading and discharge of hydrocarbon products carried by vessels, the discharge of crude oil from vessels to refinery storage and the storage of hydrocarbon products in atmospheric storage tanks.
46. The extent of the COMAH site is then illustrated in annotated photographs before describing the site as:

⁸ As stated by the Applicant at ISH6 (Line 589 of the ISH6 Part 3 Transcript [EV11-007]).

“IOT comprises of three main berths for large vessels and a Finger Pier with four berths designed for smaller vessels, mainly coastal traffic and barges. In addition, there is a terminal area, which includes an office block, oil storage tanks, an oil pump bay together with associated pipework, de-ballasting unit and a steam generating boiler house.”

47. The IOT COMAH Report then includes at Section 8.5.1 that one of the key risks is identified as vessel allision.
48. It is clear from the extracts of the IOT COMAH Report appended to these submissions that:
- a. The extent of the upper tier COMAH notification covers all aspects of the IOT’s marine-side infrastructure (i.e. all operating berths, including the Finger Pier, and all connecting pipework); and
 - b. The risk of allision with that marine-side infrastructure is a key known risk.

Inadequacy of EIA

49. The IOT Operators oppose the use of any vessel other than the design vessel for simulations to assess the development. This negates the ability of the simulations to accurately model the ship manoeuvring constraints and the flow around the IERRT (reference inaccurate pontoon design).
50. Under the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regs):
- a. It is unlawful to grant “*development consent or ... unless an EIA has been carried out in respect of that application*” (reg. 4(2)). Whilst not all errors in an ES are such as to render the process of consent unlawful, a significant omission is likely to lead to illegality especially if it relates to a key element in the scheme for which consent is sought.
 - b. The EIA process in reg. 5(2) includes the following requirements -
 - (2) The EIA must identify, describe and assess in an appropriate manner, in light of each individual case, the direct and indirect significant effects of the proposed development on the following factors—
 - (a) population and human health;
 - (b) biodiversity, with particular attention to species and habitats protected under any law that implemented Directive 92/43/EEC and Directive 2009/147/EC;
 - (c) land, soil, water, air and climate;
 - (d) material assets, cultural heritage and the landscape;
 - (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).
 - (3) The effects referred to in paragraph (2) on the factors set out in that paragraph must include the operational effects of the proposed development, where the proposed development will have operational effects.
 - (4) The significant effects to be identified, described and assessed under paragraph (2) include, where relevant, the expected significant

effects arising from the vulnerability of the proposed development to major accidents or disasters that are relevant to that development..."

- c. Schedule 4 also sets out what must be included in an ES which is broad enough to cover the issues arising in respect of the risk to health and property in the issue of the adequacy of the NRA and the protective measures proposed. It includes-

"7.A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-project analysis). That description should explain the extent, to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases."

- d. It should go without saying that the measures identified should address the effects of the proposed scheme sought to be consented and not something different or lesser in effect (as has been the case here with the errors over the failure of assess the design vessel).
- e. Reg. 14(2) requires an ES to accompany all applications for development consent and which must include "at least"

(a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;

(b) a description of the likely significant effects of the proposed development on the environment;

(c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment..."

Case law on what is required by way of compliance with reg. 14

51. While it is possible to have flexibility in a consent process so, e.g. as here the likely vessels using IERRT will be Stena T class types and then change to much larger (as yet unbuilt) vessels, this is only lawful if the maximum parameters of the consent sought are assessed – effectively the worst case should be assessed. This ground is well-trodden in the context of outline planning permissions. In ***Rochdale ex parte Milne*** [2001] Env. L.R. 406, Sullivan J. approached the issue in terms that have been accepted and applied since and which is specifically said to apply by the ES here in Chapter 2.

52. In ***Rochdale***, Sullivan J held (emphasis added) especially at §§92 and 122:

"90. If a particular kind of project, such as an industrial estate development project (or perhaps an urban development project) is, by its very nature, not fixed at the outset, but is expected to evolve over a number of years depending on market demand, there is no reason why "a description of the project" for the purposes of the directive should not recognise that reality. **What is important is that the environmental assessment process should then take full account at the outset of the implications for the environment of this need for an element of for flexibility.** The assessment process may well be easier in the case of projects which are "fixed" in every detail from the outset, but the difficulty of assessing projects which do require a degree of flexibility is not a reason for frustrating their

implementation. It is for the authority responsible for granting the development consent (in England the local planning authority or the Secretary of State) to decide whether the difficulties and uncertainties are such that the proposed degree of flexibility is not acceptable in terms of its potential effect on the environment.”

“93. In my judgment, integrating environmental assessment into the domestic procedure for seeking outline planning permission, which acknowledges this need for flexibility for some kinds of building projects, is not contrary to the objectives of the Directive. **Provided the outline application has acknowledged the need for details of a project to evolve over a number of years, within clearly defined parameters, provided the environmental assessment has taken account of the need for evolution, within those parameters, and reflected the likely significant effects of such a flexible project in the environmental statement, and provided the local planning authority in granting outline planning permission imposes conditions to ensure that the process of evolution keeps within the parameters applied for and assessed,** it is not accurate to equate the approval of reserved matters with “modifications” to the project. The project, as it evolves with the benefit of approvals of reserved matters, remains the same as the project which was assessed.”

“104. If one asks the question “how much information about the site, design, size or scale of the development is required to fall within ‘a description of the development proposed’ for the purposes of paragraph 2(a)?”, the answer must be: sufficient information to enable “the main”, or the “likely significant” effects on the environment to be assessed under paragraphs 2(b) and (c), and the mitigation measures to be described under paragraph 2(d).

105. In addition, the development which is described and assessed in the environmental statement **must be the development which is proposed to be carried out and therefore the development which is the subject of the development consent and not some other development.** An assessment of an illustrative masterplan, accompanying a “bare outline” application, which is not tied by condition to the resulting outline planning permission could not meet these requirements: see page 99C to E (cited above).”

“108. It is for the local planning authority to decide whether it has sufficient information in respect of the material considerations. Its decision is subject to review by the courts, but the courts will defer to the local planning authority’s judgment in that matter in all but the most extreme cases. Regulation 4(2) reinforces this general obligation to have regard to all material considerations in the case of a particularly material consideration; “environmental information” which has been provided pursuant to the assessment regulations.”

“122. Mr Howell criticised this approach, even though, as Mr Gilder explained, it is regarded as a “proper professional approach”, which is regularly used by those engaged in the process of environmental assessment. Both the directive and the regulations recognise the uncertainties in assessing the likely significant effects, particularly of the major projects, which may take many years to come to fruition. The assessment may conclude that a particular effect may fall within a fairly wide range. In assessing the “likely” effects, it is entirely consistent with the objectives of the directive to adopt a cautious “worst case” approach. Such an approach will then feed through into the mitigation measures envisaged under paragraph 2(c). It is important that they should be adequate to deal with the worst case, in order to optimise the effects of the development on the environment.”

53. These principles do not embody a counsel of perfection, as Sullivan J. later held, nor does it require an unduly legalistic approach and remains a matter for the decision maker whether environmental information adequate and the consequences of omissions: see *R (Blewett) v Derbyshire CC* [2004] Env. L.R. 29 (followed in numerous cases).

54. However, ABP has not complied with these requirements in a critical respect and has not complied with its own stated objective in ES Chapter 2 [APP-038]:

“2.3.4 **Rochdale Envelope** – In assessing the impact of the IERRT proposals, full account has been taken of the “Rochdale Envelope” process, as detailed in PINS Advice Note Nine.

2.3.5 In brief, the “Rochdale Envelope” is based on legally decided cases which determined that in order to provide certainty in terms of the assessment of Immingham Eastern Ro-Ro Terminal Associated British Ports ABPmer, February 2023, 8.2.2 | 2.5 impacts of a given project/development, the details of a project can be described by the adoption of maximum, or minimum, parameters – in effect the ‘worst case’ scenario. By so doing, whilst the detailed design of the scheme may vary as it evolves, provided that variation is within the assessed ‘envelope’ – the environmental assessment of the project will not be invalidated.

2.3.6 For the purposes of this IERRT DCO application, therefore, with a view to defining a ‘worst case’ scenario, the marine infrastructure and landside buildings have been assessed, as detailed below, on the basis of their maximum parameters.

2.3.7 By so adopting the Rochdale Envelope, the potential impacts of the Project **have been assessed on the basis of the maximum parameters of the scheme as a whole and its individual components** – thereby providing certainty as to potential worst- case impacts.”

55. The ES assessment of likely significant effects includes consideration of impacts on commercial operations in Chapter 10 [APP-046] at §10.8.83-10.8.121 and the NRA is part of Chapter 10 process (Appendix 10) intended to show that the likely significant effects of the proposal have been assessed and factored into the project mitigation if necessary.

56. However, the ES has simply failed to assess the impact of the design vessel: see ES Chap 3 §3.2.5 [APP-039] & [REP 5-036] pp. 9-11 (APT 23.10.23). It has not done what is stated at §10.8.83 i.e.

“The assessment first sets out the assessment of the ‘worst credible’ scenario and the ‘most likely’ scenario”,

since it has not assessed the likely significant effects arising from the maximum parameters as stated to be necessary at §§2.3.4-2.3.7 i.e. the design vessel described in §3.2.5.

57. The NRA simulations (as was accepted in ISH 5) have only been carried out in respect of smaller vessels – there are significant differences between vessels used to model impacts especially greater draft, beam and significantly greater displacement (see REP5-036, 23-10-23):

- a. Stena Class T has 212m length overall (LOA), 26.7m beam and displacement of 21,451 tonnes;
- b. DFDS Jinling has 237m LOA, 33m beam, a displacement of 35,000 tonnes, and draught 7.4m;

- c. DV 240m length overall, 35m beam and with a draught of 8.0m, and displacement of 48,431 tonnes – significantly greater displacement than either Class T or Jinling.
58. It is not lawful to leave assessment to a future date after DCO made. See **R. v Cornwall CC Ex p. Hardy** [2001] Env. L.R. 25 esp. [56] to [62] – contrary to ABP's submission at ISH 5 this was not about reserved matters approvals so much as the fact there had been a failure at the outline stage that could not be cured at the RMA stage. The environmental information should be taken into account *before* the decision to grant consent: reg. 4(2).
59. This is not a case where a deficiency in assessment excluding DV has been provided in consultation on the ES by others. As made clear at ISH 5 the IOT witnesses consider the DV can be modelled though the ABP consultants said it was difficult.
60. Whether or not that is correct does not matter. What matters is that the ES does not do what it must do and what it stated it was going to do and assess likely significant effects by reference to the worst case maximum parameter. If the larger DV is used, it will not have been assessed under Chapter 10 or the NRA. Undoubtedly there has not even been an attempt by ABP/HRW to model the DV even though goes to key issues of risk and impact protection measures as well and manoeuvrability and efficacy of towage given much greater displacement and thus kinetic energy of DVs than those modelled.
61. Added to the obvious failure to undertake a **Rochdale** compliant EIA, this is in the context that the IERRT is without precedent:
- a. There is no other example in the UK where it is proposed to locate a ferry terminal (still less one proposed for vessels of the scale and mass of the DV) in such close proximity to oil infrastructure.
 - b. The HMH confirmed that this area of the port had not previously been used to manoeuvre for vessels of the proposed size and mass and any experience he has claimed he will apply must be of limited scope given the above facts.⁹
62. Applying the authorities and reg.4 (2) of the EIA Regs, the DCO should be refused unless a condition is imposed limiting the use of the berths only to vessels no larger than the Stena Class T or Jinling ferries modelled in the NRA to reflect the maximum parameters *actually* assessed.

Priority for IOT Vessels

63. It has been accepted by the Applicant that Humber Passage Plan Vessel (PPV) movements to the IOT will be respected and offered priority by the Harbour Master Humber during the operation of the IERRT¹⁰.
64. The Applicant as Action Point 5 from ISH5 is preparing a comparison of vessel congestion in the vicinity of the Port of Immingham on a worst-case day prior to the IERRT against a worst-case day with IERRT traffic added. The IOT Operators fed into that process by email on 21 November but it would seem that the Applicant had not passed that information onto its project team on 7 December 2023 [**APPENDIX 5**]. Within those email exchanges the Applicant has received a very clear explanation of

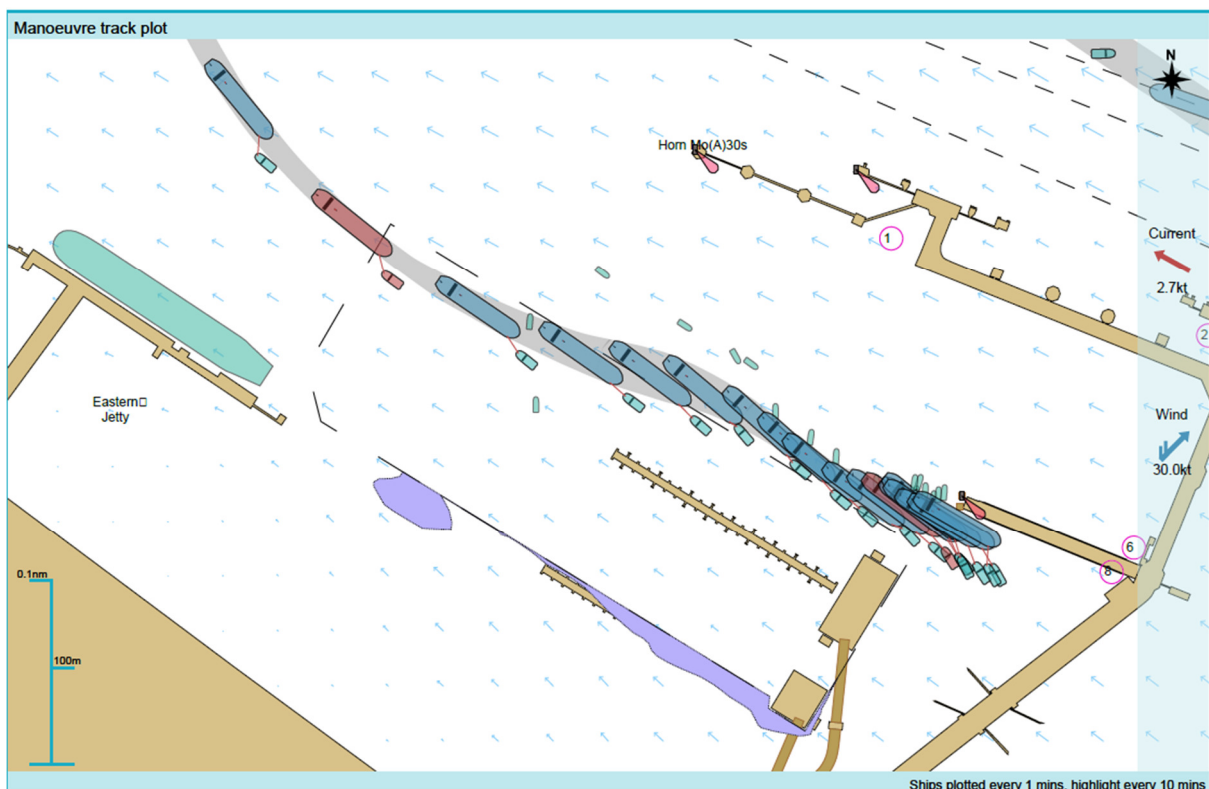
⁹ As stated for the Harbour Master Humber at ISH6 (Line 666 of the ISH6 Part 2 Transcript [**EV11-005**]).

¹⁰ As stated for the Harbour Master Humber at ISH6 (Line 672 of the ISH6 Part 2 Transcript [**EV11-005**]).

movements to and from the IOT, which it is expected will be incorporated into the Applicant's response to Action Point 5.

Simulations

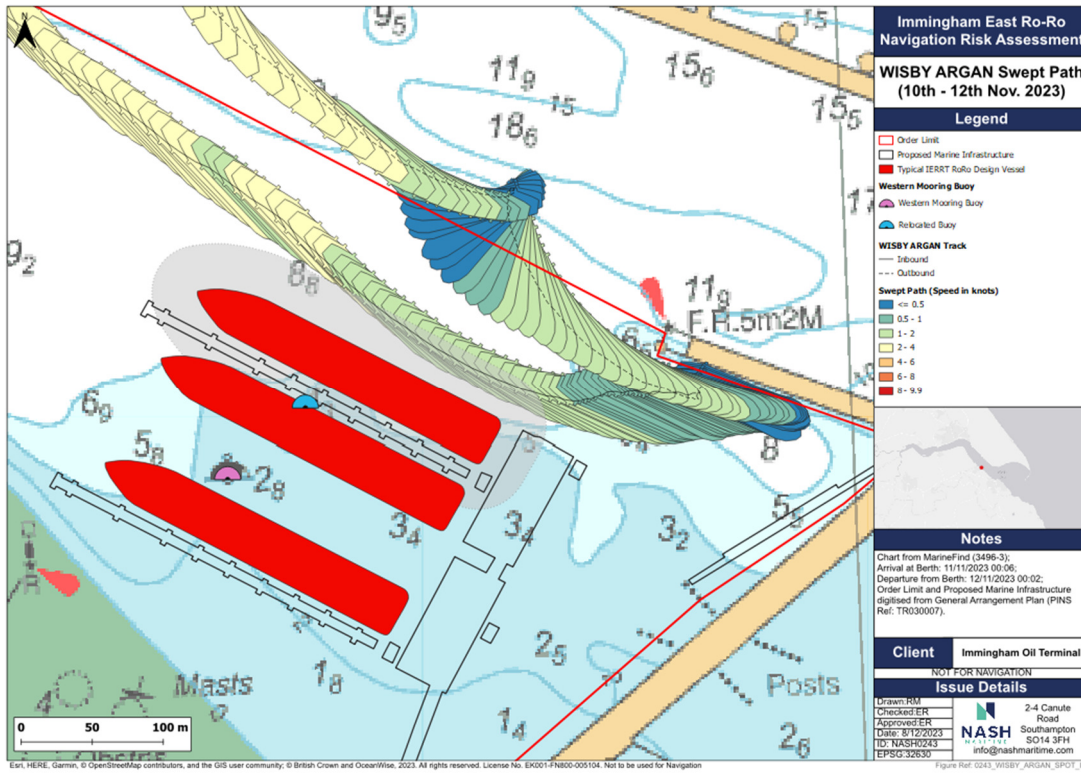
65. The IOT Operators share concerns regarding poor engagement by the Applicant regarding the lack of opportunity to understand and comment on the November simulations. This is strongly underscored by the failure to assess the likely significant effect of the design vessel which has a materially greater mass than those modelled in the simulations, as outlined above.
66. During ISH5, run 30 was raised with respect to the simulated run inward to IOT8 in SW 30 knots wind (figure below).



67. In response to these questions, ABP indicated that having conducted the simulation run at 30 knots wind, it 'emerged' that there was an IOT hard cut off for on berth wind of 30 mph or 26 knots. The IOT Operators wish to provide clarity on this to avoid the mistaken assumption that the simulation run wind was therefore 'out of limits', and so not give sufficient weight to the run. The wording of text attached from IOT SMS paragraph 2 shows that an arrival in 30 knots or 36 mph of mean wind is perfectly feasible, does occur and also mentions the use of a tug forward.
68. Additionally, guidelines refer to mean wind and the reality is that in such wind conditions there would be a likely variance (gusting) of around 10 knots. Therefore, operating in gusts exceeding 40 mph would be commonplace. This has not been simulated. Rather, only flatline mean wind was simulated which cannot and does not represent reality.
69. The IOT Operators consider that, with or without a ferry in place at IERRT1, an upwind approach is required to keep a tanker sufficiently far south of the line of IOT8 to deal with the sudden exposure to the full force of the wind, at exactly the worst time, when reducing speed on the final approach to the berth. It must also be considered that a

forward 40-50t tug needs room to work perpendicular to the bow of the vessel with a suitable length of line allowed to be able to deliver lift without adding to the tanker's headway. In this scenario, as the ship reduces speed at the point indicated by the first 10-minute red ship shape above, the immediate effect of the wind is demonstrated by the significant northerly set.

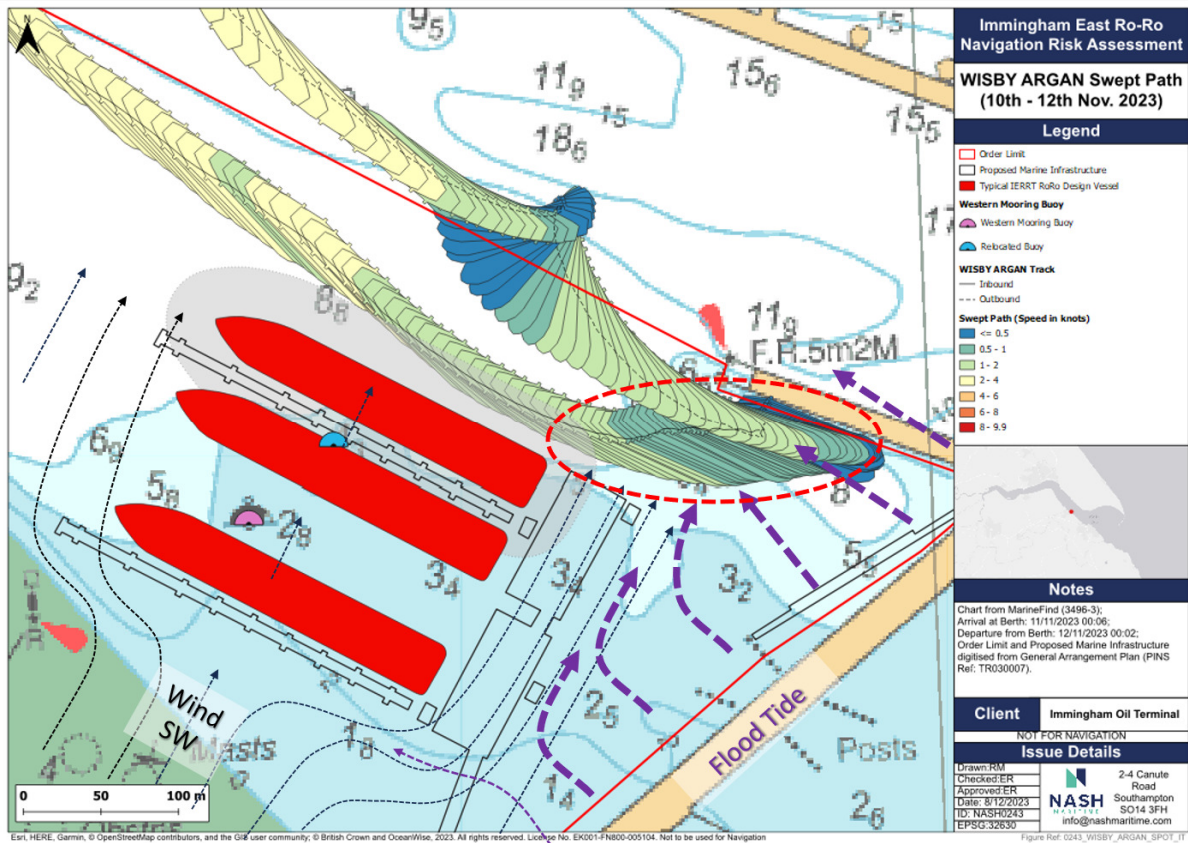
70. Further, this does not take into account the resultant blocking and diverting effect of flood tidal flow caused by the true layout of the pontoons as submitted in the Application. Restricting tidal flow can only increase the rate and angle of tidal set onto IOT8 during berthing. Neither does this take into account any additional blocking and tidal diversion caused by the presence of 3 x 8m draft ship hulls in position on the IERRT berths. The IOT Operators note that the tidal flow modelling provided in simulations to date, does not consider the ES IERRT design, with ABP preferring to present a less onerous previous IERRT design which would have a smaller effect on tidal flows.
71. Navigating onto the IOT Finger Pier currently is not without its challenges (despite restrictions on berthing related to tidal direction, and vessel impact protection being in place) as evidenced in a recent ABP near miss report. On 12 November 2023, an ABP pilot raised concerns with the proximity of the IOT Western Barge Mooring buoy hampering available sea room when berthing and departing IOT berth 8 on a coastal tanker - WISBY ARGAN – a regular visitor to IOT Finger Pier. The position of the mooring buoy was reported approximately 75m out of position to the NE, a location slightly inshore of the proposed outer IERRT jetty (see track plot of Wisby ARGAN below). The wind and visibility at the time was reported as slight to moderate with good visibility.
72. With the IEERT and a moored RoRo in place the required approach path width and angle is critically reduced (much more so than with the IOT Western Barge Mooring buoy being out of place – which it is understood has been like this for several years), as Masters and Pilots of Coastal tankers would typically require two beams widths clearance from other objects such as a moored vessel (the figure below shows a 32m buffer in grey for the IERRT RoRo vessel indicating the necessary minimum searoom buffer for safe seamanship).



73. With the IERRT in place and IERRT RoRo vessels alongside, the complexity and difficulty of berthing is significantly increased due to:

- increased tidal flow speeds and a more acute tidal flow onto the IOT berth (noting that IOT Coastal Tankers only berth on the flood tide); and
- wind fluctuations (lulls and gusts) from shielding brought about by IERRT vessels alongside IERRT.

74. In the annotated figure below, wind (dashed black arrows) and tidal arrows (dashed purple arrows) clearly demonstrate confluence of these forces would be on a coastal tanker in the final stages of berthing on IOT Finger Pier berth 8 (see dashed red ellipse). This is the very point that a bow tug would be hindered the most by the limited searoom with the IERRT pontoon and needed the most.



75. As such the magnitude of risk brought about by the IERRT on tankers vessels bound to and from the IOT Finger pier has not yet been adequately assessed. In essence, no tanker berth would ever be designed with an approach prescribed by ABP with the IERRT infrastructure in place and as such until it can be categorically determined that the increase in risk remains at an acceptable level, then IOT Operators remain concerned with navigation safety of IOT tankers berthing with the IERRT in place.

76. To date IOT Operators do not believe that these complex aspects have been adequately captured in the simulations undertaken by ABP for coastal tankers bound for IOT Finger Pier berths 6 and 8 and have not been captured at all for estuarial barges bound for berth 9. Indeed modelling of tidal flows presented by ABP for the IERRT pontoons presented so far for an earlier design which would have had a lower impact on tidal flows and directions.

Future Use of the IERRT

77. The Applicant confirmed during ISH3 that, in addition to short sea RoRo ferries, deep sea RoRo ships (also known as Pure Car Carriers – PCCs - or Pure Car & Truck Carriers – PCTCs) would use the IERRT. These vessels are generally heavier and much less manoeuvrable than RoRo ferries, therefore always require a pilot and 2 or 3 tugs for arrival and departure. The navigational risks posed by these vessels have not been simulated or assessed. The IOT Operators believe the demand for use of IERRT by such ships will be augmented by the close proximity of existing car compounds, such as a planned 227 acre port expansion at the adjacent

Stallingborough Interchange,¹¹ and automotive industry trends to import many new electric vehicle car brands into UK from Asia.

Senior Safety Forum Meeting

78. In response to concerns raised regarding certain safety issues and challenges regarding the location and operation of the new terminal ABP invited The IOT Operators, the IOT Operators' parent company refineries, DFDS and Stena to a forum to discuss transparency for the key stakeholders around how ABP intend to incorporate the IERRT into Humber operations [**APPENDIX 6**].

79. However, this meeting was then cancelled by ABP due to availability restrictions. The IOT Operators have since conferred with the parent company refineries and DFDS and confirmed that their availability remains open for this meeting so it must be inferred that the availability restrictions leading to the cancellation of this forum lie with ABP or Stena.

Action points from ISH5 and ISH6

80. The IOT Operators' responses to the Examining Authority's actions points from the recent hearings are set out in the following table:

Ref	Action	IOT Operators' position
ISH5 - 5	<p>Provide, with commentary including temporal and spatial information, graphic representations of the arrival and departure of vessels throughout a day with challenging met-ocean conditions for:</p> <ul style="list-style-type: none"> • the existing Port of Immingham; and • the existing port plus projected vessel movements to and from the Proposed Development. <p>DFDS: Make available to the Applicant data on scheduled services for the Inner Dock (with lock usage information) and the Outer Harbour, with AIS tracks of vessel movements.</p> <p>IOT Operators: Make available data on vessel movement to and from the IOT, to assist the Applicant's preparation of the graphic representations.</p>	<p>As outlined above at paragraph 64, the IOT Operators provided data to the Applicant on 21 November 2023. The Applicant has failed to provide a draft document for commentary by the IOT Operators, who remain willing to do so once available.</p>
ISH5 - 11	<p>Give examples of any instances when IOT Operators have found it difficult to operate the IOT because of the</p>	<p>The IOT Operators are not aware of any examples where operation of the IOT has been impeded by the operation of other parts of the Port of Immingham.</p>

¹¹ ABP press release on 04 December 2023 <https://www.abports.co.uk/news-and-media/latest-news/2023/abp-invests-in-major-port-expansion/>.

	operation of other parts of the Port of Immingham.	As explained at paragraphs 17 and 21 above, it had been understood that the Applicant had committed to a protective provision to secure operational priority for the IOT. However, the Applicant has since resiled from that position. The protective provision sought by the IOT Operators is that identified as paragraph 6 in APPENDIX 1 .
ISH5 – 16	Submit the results of the tidal modelling update which takes account of the new pontoon arrangements. To be provided as joint note with IOT Operators to the extent possible. (The results and a draft note will need to be available of IOT Operators in advance of D7 to enable it to comment.)	An update was received from the Applicant late in the evening on Friday 8 December. The IOT Operators are reviewing that information.
ISH6 - 9	Submit a plan showing the full extent of the IOT COMAH site.	Paragraphs 44 to 48 above and APPENDIX 4 provide details of the IOT COMAH site.
ISH6 - 11	Submit to ExA, as soon as possible, Microsoft Word versions of the respective proposed Protective Provisions.	There were submitted during the course of ISH6 and have been reproduced by the ExA in their proposed changes to the dDCO [PD-019].

Conclusions on acceptability of development

81. The development, both as proposed and with the incorporation of the amendments to outlined in the change request (but in relation to vessel impact protection not mandated), remains inadequate. Consequently, it is the IOT Operators' submission that the DCO must be refused.
82. The DCO must in any event be refused (or limited by condition) due to the failure to undertake an ES fit to assess the likely significant effects of the design vessel described in the ES Chapter 3: see reg. 4(2) of the EIA Regs.
83. Should the development be found to be acceptable such that the DCO is granted, and without prejudice to its primary case, the IOT Operators would insist that the scheme be subject to the following:
 - a. Protective provisions, requiring the delivery of appropriately designed vessel impact protection offered by ABP in its change request; and
 - b. Additional operational controls, secured together with those other protective provisions sought by the IOT Operators.
84. At the very least, and again without prejudice to the IOT Operators' primary case, the scheme should be subject to all protective provisions the Secretary of State considers appropriate as well as a requirement which specifies the operational controls to be imposed.

85. In all instances, the IOT Operators support the suggestion by DFDS that a requirement be imposed limiting the size of vessels able to use the development to that tested, i.e. the Stena T.

APPENDICES

Appendix	Contents
1	Justification table for amendments made to the Protective Provisions for the protection of the IOT Operators
2	Letter to ABP, RE: further enquiries including design parameters, vessel impact protection and SOCG, including - Attached Beckett Rankine, Memo, Design Basis Review; - Attached IOT Operators Draft Statement of Common Ground, 4 December 2023
3	IOT Operators / ABP – Without Prejudice email exchanges a. ABP to APT, RE: Without Prejudice – IERRT Control Measures – Pre-read, 4 November 2023 (Attachment: Humber Control Measures and Potential IERRT Control Measures – 26 October 2023) b. APT to ABP, RE: IERRT Control Measures, 10 November 2023 c. APT to ABP, RE This weeks simulation runs, 14 November 2023 d. ABP to APT, RE: Without Prejudice – ABP Reply to APT Emails (10-14 Nov), 15 November 2023 (Attachment: Memorandum IOT Vessel Impact Protection Structures – Design Basis – 14 November 2023) e. APT to ABP, RE: Without Prejudice – ABP Reply to APT Emails (10-14 Nov), 22 November 2023
4	IOT Operators, IOT COMAH Report (2019) (excerpts)
5	IOT Operators / ABP – Without Prejudice email exchanges re Action Point 5 from ISH5
6	ABP Correspondence regarding Senior Safety Forum meeting
7	IOT Operators, Oral Summary of Submissions at ISH5 and ISH6