

IMMINGHAM EASTERN RO-RO TERMINAL



Explanation of the Applicant's Position in Respect of Protective Provisions CLdN

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Explanation of the Applicant's Position in Respect of Protective Provisions

CLdN

On 1 December 2023, the Examining Authority ("ExA") issued its Schedule of Proposed Changes to the draft Development Consent Order ("dDCO"). In respect of the protective provisions included in Schedule 4 of the dDCO in favour of Humber Oil Terminal Trustees Limited, DFDS Seaways Plc and CLdN Ports (Killingholme) Limited the ExA stated that:

"The ExA has not made any comments about the content of this set of protective provisions and it is included in this schedule of changes to the dDCO so that the Applicant can advise on the provisions that it does or does not accept and put forward any revised wording. In the case of any provisions that are not accepted by the Applicant, it should provide a detailed explanation of why that is the case."

This document has been produced in response to this request in respect of CLdN's protective provisions.

As the ExA is aware, CLdN's competing commercial ro-ro operation is situated at the Port of Killingholme, with CLdN's marine infrastructure located over 5km further upriver from the proposed IERRT. On that basis, the Applicant is of the view that protective provisions for the benefit of CLdN are not required and for that reason has resisted the provision of protective provisions for CLdN. The impact of the proposed IERRT on CLdN's operation will be so limited as to have no effect whatsoever and despite the correspondence that the Applicant has received from CLdN's lawyers, that remains the Applicant's view. Nonetheless, in recognition of the ExA's request that the parties collaborate, the Applicant is prepared, albeit with considerable reluctance, to provide limited protective provisions provided the protections –

- i) Are for only for a limited period, namely during construction;
- ii) They are proportionate; and
- iii) They relate solely to CLdN's statutory undertaking as opposed to its competitive commercial benefit.

In the Table below, Column 1 sets out the latest iteration in turn of first the CLdN proposed protection provisions. The second column contains the Applicant's comments and response. A full copy of the Applicant's draft protective provisions for CLdN is annexed to this document.

CLdN's draft PP	Applicant's Comments
<p>127. Application The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and CLdN, for the protection of CLdN in relation to the construction, and operation of the authorised development.</p>	<p>The protections afforded to CLdN in the protective provision will not be required following completion of construction, when operations at the IERRT have begun under the regime of risk controls required by the Harbour Master Humber. At this time, the Humber will be operating 'as normal' under the control of the independent Vessel Traffic Service, with no need for ongoing protections for other operators.</p> <p>The wording 'until the commencement of operation' has been agreed by CLdN in relation to the indemnity (see paragraph 137 below).</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>127. Application The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Undertaker and CLdN, for the protection of CLdN until the commencement of operation of the authorised development.</p>
<p>128. Interpretation</p> <p>(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.</p> <p>(2) In this Part of this Schedule—</p> <p>“CLdN” means CldN Ports Killingholme Limited, company number 00278815, whose principal office is at 130 Shaftesbury Avenue, 2nd Floor,</p>	<p>Amendments to this paragraph are made as a result of amendments to other paragraphs contained in this protective provision.</p>

London, W1D 5EU as statutory harbour authority for and operator of the Port and any successor in title or function to the Port;

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

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

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

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

The Applicant considers that it is appropriate for the definition of ‘specified work’ to be limited to those which have been assessed in the Environmental Statement (and supporting documents) as being likely to interfere with CLdN’s operation. The Environmental Statement has been prepared by a specialist team of experts and reviewed extensively as part of the examination process. The reasonable worst-case scenario it contains, therefore, is a reliable and predicable baseline for engagement between the parties at a later stage. The Applicant does not consider it appropriate for CLdN, a commercial competitor, to decide for itself away from the public scrutiny of the examination the operations which are likely to affect it.

The Applicant, therefore, proposes the following alternative wording:

128. Interpretation

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

(2) In this Part of this Schedule—

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

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

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

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

“specified work” means any work, activity or operation authorised by this Order, by the Town and Country Planning Act (General Permitted Development) Order 2015 or by any planning permission given under the Town and Country Planning Act

	<p>1990, and any vessel movements, which has been assessed in any environmental document as being likely to interfere with:</p> <p>(a) the Port or access (including over water) to and from the Port; or</p> <p>(b) CLdN’s ability to carry out disposal activities at the CLdN disposal site; or</p> <p>(c) the functions of CLdN as the statutory harbour authority for the Port.</p>
<p>129. Cooperation</p> <p>The Undertaker and CLdN must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.</p>	<p>The Applicant and CLdN agree on this wording.</p>
<p>130-133. Notice of and consultation on works and vessel movements</p> <p>130. The Undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of any specified work at least 30 days prior to the commencement of the specified work.</p> <p>131. Any operations for the construction of any specified work, once commenced, must be carried out by the Undertaker so that CLdN does not suffer more interference than is reasonably necessary.</p> <p>132. (1) The Undertaker must not allow vessels associated with the construction of any specified</p>	<p>The Applicant considers that any potential issues of marine congestion are for the Harbour Master Humber and the Dock Master Immingham, in</p>

work to obstruct or remain in the main navigation channel when vessels are sailing to or from the Port.

(2) CLdN must provide the Undertaker with a schedule of movements to which sub-paragraph (1) applies and must give the Undertaker reasonable notice of any changes to scheduled sailings or other vessel movements of which it has informed the Undertaker.

133. Where CLdN notifies the Undertaker that there is disruption to navigation to or from the Port as a consequence of construction of a specified work, the Undertaker must immediately cease construction of the relevant specified work until such time as it can be resumed without causing disruption to navigation to or from the Port, or otherwise with the consent of CLdN as to how construction of the specified work may resume in a way that will cause minimal disruption to navigation to or from the Port.

conjunction with Vessel Traffic Services, who will be responsible for managing all vessel movements including the movements of those vessels involved in the construction of the IERRT. It would not be appropriate for the protective provision to attempt to contradict these statutory jurisdictions, or for the Applicant to be required to provide commitments over which it does not have ultimate control.

It will be for the Harbour Master Humber, the Dock Master Immingham, and Vessel Traffic Services to manage any shipping movements – not the Applicant. On that basis, the Applicant does not require CLdN's scheduling information.

The Applicant, therefore, proposes the following alternative wording:

130-131. Notice of and consultation on works and vessel movements

130. The Undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of any specified work at least 20 days prior to the commencement of the specified work.

131. Any operations for the construction of any specified work, once commenced, must be carried out by the Undertaker so that

	<p>CLdN does not suffer more interference than is reasonably necessary.</p>
<p>134 Railways</p> <p>The construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use by CLdN of the railway network to which the Port is connected.</p>	<p>The proposed development will have no impact on the local railway network outside the Port of Immingham, and there is no potential for disruption to CLdN’s railway operations. As it is not appropriate for the dDCO to control operational and development considerations which are entirely independent of the IERRT development and entirely beyond the Applicant’s control, the Applicant cannot understand why CLdN would require the protections it has requested in this paragraph.</p> <p>As the ExA will be aware, movements on the national rail network are the responsibility of Network Rail – not the Applicant.</p> <p>The Applicant, therefore, proposes the deletion of CLdN’s wording.</p>
<p>135-6. Highway Access Management</p> <p>135. The Undertaker must consult with CLdN, on matters related to its statutory functions, in relation to the development of the construction environmental management plan under paragraph 8(1) of Schedule 2 to this Order, as if CLdN was listed as a consultee under that paragraph.</p> <p>136. No part of the authorised development may commence operation until a freight management plan governing the operation of the authorised development has been submitted to and approved by the Council, following consultation with CLdN on matters related to its statutory functions. The authorized development must be carried out in</p>	<p>The outline Construction Environmental Management Plan (as amended), which is to be a certified document under the dDCO, provides for the preparation and implementation of a Construction Workers’ Travel Plan and Construction Traffic Management Plan. These plans will be approved by the local Highway Authority and will include provisions which ensure that the Port of Immingham West Gate and surrounding road network will not be adversely impacted by the construction of the proposed development.</p> <p>The Applicant considers that it is for the Highway Authority, and not a commercial competitor, to review and approve the relevant traffic management proposals.</p>

accordance with the approved freight management plan.

The Applicant, therefore, proposes the deletion of CLdN's wording.

137. Indemnity

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

- (a) any obstruction which prevents or materially hinders access into or out of the Port, which is caused by or attributable to the Undertaker or its agents or contractors in exercising the power of this Order, save for where such an obstruction is as a result of the lawful actions of the Statutory Conservancy and Navigation Authority;
- (b) **the undertaking by CLdN of works or measures to prevent or remedy a danger or impediment to navigation or access to or from the Port arising from the exercise by the undertaker of its powers under this order; and**
- (c) any additional costs of disposal of dredging arisings from the Port incurred by CLdN as a result of the Undertaker's use of the CLdN disposal site.

The Applicant believes that it has provided sufficient indemnities to protect CLdN's legitimate interests, limited to circumstances where claims can be properly justified.

The Applicant, therefore, proposes the following alternative wording:

132. Indemnity

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

- (a) any obstruction which prevents or materially hinders access into or out of the Port, which is caused by or attributable to the Undertaker or its agents or contractors in exercising the power of this Order, save for where such an obstruction is as a result of the lawful actions/direction of the Statutory Conservancy and Navigation Authority;**
- (b) the undertaking by CLdN of works or measures to prevent or remedy a danger or impediment to navigation or access to or from the Port arising from the exercise by the undertaker of its powers under this order; or**

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

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

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

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

(3) Without limiting the generality of sub-paragraph (1), the Undertaker must indemnify CLdN from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph until the commencement of the operation of the authorised development.

138-9. Statutory Powers

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

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

There is no evidence that the dDCO will contradict, limit, or amend the statutory rights and powers vested in CLdN. The Applicant believes that these provisions are not required, and notes that they have not been requested by the other statutory undertakers which are to receive protective provisions under the dDCO.

The Applicant, therefore, proposes the deletion of CLdN's wording.

140. Arbitration

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

The Applicant and CLdN agree on this wording.

ANNEX 1:

The protective provision wording provided below is the latest version Applicant's proposed wording of the CLdN protective provision.

PART 13**FOR THE PROTECTION OF CLDN PORTS KILLINGHOLME LIMITED****Application**

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

Interpretation

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

(2) In this Part of this Schedule—

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

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

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

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

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

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

Cooperation

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

Notice of and consultation on works and vessel movements

130. The Undertaker must inform CLdN in writing of the intended start date and the likely duration of the carrying out of any specified work at least 20 days prior to the commencement of the specified work.

131. Any operations for the construction of any specified work, once commenced, must be carried out by the Undertaker so that CLdN does not suffer more interference than is reasonably necessary.

Indemnity

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

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

Arbitration

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