

PROPOSED IMMINGHAM EASTERN RO-RO TERMINAL

PINS REFERENCE TR030007

RESPONSE TO APPLICANT'S CHANGE REQUEST FROM DFDS SEAWAYS UK PLC

- 1.1 This is the response of DFDS Seaways UK PLC (DFDS) to the change request made by Associated British Ports (the Applicant) on 29 November 2023.
- 1.2 In summary, DFDS' concerns expressed in their comments on the change consultation [[AS-026a](#)] remain - the Applicant has not changed anything as a result of the consultation. Change 4 is not acceptable to the party whom it is intended to protect, IOTT; recent (13 December) navigational simulations of unpowered vessels of the size of the design vessel have not been sufficiently successful; it is at the Applicant's discretion whether to implement the impact protection with no clear criteria provided; the proposed change offers no guaranteed improvement in navigational safety at all. Furthermore the Applicant is supplying thousands of pages of documents at a late stage in the examination with little explanation, which is unreasonable.
- 1.3 DFDS would wish to see (via dDCO requirements):
 - 1.3.1 impact protection installed from the outset;
 - 1.3.2 impact protection replaced whenever damaged;
 - 1.3.3 RoPax (i.e. passenger vessels) to be simulated if to be permitted;
 - 1.3.4 IERRT to be restricted to vessel sizes that have been simulated successfully by the end of the examination;
 - 1.3.5 dedicated standby tugs to be required to be available; and
 - 1.3.6 adequate assessment of Berth 3 and the impact on the Eastern Jetty.

2 The implications of the lateness of the material

- 2.1 The Applicant's change request serves to highlight a consistent feature of the IERRT application. The IERRT application was misconceived from the outset. Insufficient thought, planning and genuine consultation and engagement were applied pre-application and the Applicant has been trying in an ad hoc manner to plug gaps and address challenges made to its proposals as the hearings have progressed. The change request submitted on 29 November consists of some twenty-nine new documents and almost one thousand five hundred pages, with just eight weeks of the examination period left to run. This is leaving aside the very significant quantity of new documents and information which have also been submitted by the Applicant throughout the examination period, including at Deadline 7. By way of example, the

latest transport assessment addendum document alone is over one thousand seven hundred pages long.

- 2.2 It is unfair and unreasonable of the Applicant to expect either the ExA or interested parties to consider and engage with the introduction of significant changes to the application and material volumes of new documentation at this very late stage of the examination process and it is prejudicial to the chances of a full and thorough examination prior to the close of the examination period.
- 2.3 The fact that navigational simulations are still being undertaken approaching the last month of the examination is also deeply concerning, especially given those simulations have failed to obtain buy in or acceptance from key interested parties and have not been fully successful. The Applicant argues that the number of simulations conducted is to be applauded as a demonstration of thoroughness. DFDS would suggest that instead it indicates the clear failings of many of the simulations undertaken during the process.
- 2.4 All of this demonstrates very clearly that the IERRT application was made prematurely and has not been properly considered by the Applicant. Had the Applicant not assumed that it “knows best”, had it been willing to engage in a meaningful manner with interested parties and actually listened to their concerns, then maybe some of the issues which it is now seeking to address at this very late stage of the process may have been avoided. As it is, even following detailed discussions with IOT Operators over impact protection measures, in change 4 the Applicant has submitted revised impact protection measures which do not satisfy any party to this process, including itself.

3 **The Changes**

- 3.1 DFDS previously commented on the proposed changes and the comments are provided at [\[AS-026a\]](#). As far as DFDS is aware, and on reading Appendix L to the Consultation Report Addendum [\[AS-060\]](#), the proposals have not changed as a result of the consultation exercise, although many more documents have been provided.
- 3.2 The changes consist of:
 - 3.2.1 Change 1: The Realignment of the Approach Jetty and Related Works;
 - 3.2.2 Change 2: A Realignment of the Internal Link Bridge and Consequential Works;
 - 3.2.3 Change 3: The Rearrangement of the UK Border Force Facilities; and
 - 3.2.4 Change 4: Enhanced Management Controls and Options for the Potential Provision of Additional Impact Protection Measures.
- 3.3 DFDS' main concerns continue to be around navigational safety and the insufficiency of Change 4.

4 **Proposed Changes – Additional Request for Stakeholder Engagement**

- 4.1 Further to the Changes Notification Report, on 10 November DFDS received a letter relating to the Proposed Changes asking for the view of key stakeholders within the Port of Immingham as to whether the Proposed Changes may have any implications for commercial and recreational navigation, which appears to be fulfilling the undertaking made in paragraph 10.2.3 of the consultation version of the Environmental Statement Addendum [[AS-023](#)], albeit late.
- 4.2 While DFDS appreciated the Applicant seeking the views of stakeholders, only five working days were given to provide these views. In the Applicant's consultation response addendum (Appendix K) [[AS-060](#)] (pages not numbered but e-page 10) the Applicant characterises this as a reminder letter, but it clearly is not and is seeking to address a gap in the original consultation material (it is exhibited at Annex A to Annex C to the Environmental Statement Addendum (e-page 226)). Indeed paragraph 3.2.2 of Annex C to the Environmental Statement Addendum [[AS-070](#)] refers to stakeholders being 'specifically consulted with respect to the implications of these changes for navigational risk', which must be referring to the 10 November letter.
- 4.3 The Navigational Simulations document [[AS-071](#)] that supports the proposed change reveals that the assessment was still incomplete – further flow modelling is being undertaken and the impact on arriving vessels is not known – see page 4. The 29 November letter from HR Wallingford appended to the simulations document also refers to the 'ongoing Navigational Risk Assessment review'. This change request is therefore not fully assessed and should not be decided until it is, and 'further information' (as defined in the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017) should be sought from the Applicant. The simulated runs used a smaller Stena T class vessel alongside IERRT berth 1 instead of the larger design vessel, yet the close proximity to that vessel is still deemed successful in Run 15, despite that distance being even less with the full width design vessel.
- 4.4 The simulations of Change 1 and Change 4 leading to this report were only attended by the Applicant and their consultants (partly due to lack of notice), leading to the same charges of lack of proper engagement that the Applicant has levelled at DFDS and IOTT in relation to their Navigation Risk Assessments. Whereas those latter assessments were merely to provide some independent scrutiny of the assessment of navigational risk, the simulations that the Applicant has carried out should have involved stakeholder engagement in line with Maritime and Coastguard Agency advice (see [[REP1-021](#)]).
- 4.5 Holding even later simulations (13 and 14 December) to see whether the proposed development is safe just over one month before the end of the examination is far too late for the assessment of this project, it should have been done well before the application was made. Even now, the Applicant has yet to prove satisfactorily that the IERRT will be safe for any size of vessel.
- 4.6 The amended dDCO has changed the description of the impact protection work (Work No. 3) from 'will' to 'may' be equipped with fendering units; this appears that the Applicant is even less committed to building what is required than before and means that any requirement to oblige the Applicant to build the impact protection should ensure that all of it is included.

- 4.7 DFDS would wish to be consulted on the detailed design of Work No. 3 in Requirement 18. Presumably Schedule 6 of the dDCO needs to be amended to refer to new versions and addenda corresponding to the 29 November 2023 submissions.
- 4.8 In the consultation version of the Environmental Statement Addendum it stated at paragraph 3.3.6 [AS-028] that there was to be a general increase in trailer spaces from 1,430 to 1,699. (3.3.6 of the ES Addendum) but no figure appears to be given in the 29 November version. The General Arrangement Plans [AS-029] and [AS-049] show the bays appear identical so presumably the total of 1,699 still stands.
- 4.9 Whilst these changes, including the new unaccompanied lane and additional bays, will improve capacity to some extent; DFDS' primary concern as regards landside impacts is that the yard has insufficient capacity for the Applicant's nominated maximum throughput of 1,800 units per day, or will exceed operating targets under nominal conditions. DFDS' assessment of the yard capacity, which already incorporates the amendments to the configuration as advised in the change proposal, is as reported in [REP6-038], paragraphs 99 to 115, and within DFDS response to Action Point 22 [REP7-056] and identifies that the yard has insufficient capacity to hold the import and export freight units.
- 4.10 The Environmental Statement replacement Chapter 3 [AS-065] states at paragraph 3.2.6 that the annual throughput has been capped at 660,000 Ro-Ro cargo units per year, but the Applicant has since accepted a daily cap of 1,800 units. It does not appear that this change has been reflected in the updated environmental assessment and this should be addressed.

5 **Proposed Change 4: Enhanced Management Controls and Options for the Potential Provision of Additional Impact Protection Measures**

5.1 Enhanced Management controls:

- 5.1.1 As part of the consultation on Proposed Change 4, the Applicant suggested an amendment to the DCO to add navigational management controls (see [AS-027] paragraph 3.35), but has not in the event proposed such a change in the actual Change Application. Instead, at the equivalent paragraph 3.35 of the submitted change proposal [AS-072] it is proposed '*that the Port of Immingham Dock Master could publish a General Direction designed to regulate the management of vessels arriving at the IERRT berths*'. By not amending the dDCO to require this and leave it as something that the Dock Master 'could' do, no reliance can be placed on any such controls being imposed.
- 5.1.2 Instead, DFDS supports the ExA's proposed requirement 18A, with amendments as suggested in its submission [REP7-046], whereby initial controls are required to be imposed. This is in addition to requiring the physical impact protection measures to be in place before construction or operation of the project – see below.
- 5.1.3 In particular DFDS would support, as set out in its NRA, the implementation of enhanced navigational controls requiring the presence of a 'dedicated standby tug' (in addition to ordinary towage requirements) to prevent a vessel bound for IERRT Berths 2 or 3 alliding with a vessel berthed at Eastern Jetty or tug barge, such that

this did not affect general tug availability nor costs for other river users. Given the need for tug attendance as part of the operational controls proposed by the Applicant and more generally at the IERRT, DFDS believes that ABP should procure a dedicated additional tug for the IERRT, the cost of which should be borne exclusively by the Applicant and users of the IERRT. DFDS does not believe that it or other existing users of the port should either experience shortage of existing tugs or be required to meet any of the cost of providing additional tugs for the IERRT, pursuant to the 'agent of change' principle.

5.2 Options for Potential Provision of Additional Impact Protection Measures:

5.2.1 DFDS remains concerned about the approach the Applicant is taking to Impact Protection Measures, and nothing in the Changes allays those concerns. DFDS does not think Change 4 satisfactory for the following reasons.

5.2.2 DFDS does not understand the rationale for promoting a change that no party appears to support. The Applicant does not think any additional Impact Protection Measures are required (2.29 of the Proposed Changes Report [\[AS-072\]](#)), the IOT Operators say (in their comments [\[REP5-035\]](#) paragraph 2) that:

“the IOT Operators wish to note their surprise and disappointment that the Applicant has made that proposed change request without (a) providing the IOT Operators with a copy of the proposed changes prior to the materials being submitted and consulted on, given that they differ significantly from those attached to the letter of 27 September 2023 [AS-020] (b) seeking the IOT Operators’ agreement to (or even comments on) those proposed changes or (c) providing any details of the “enhanced management control” measures that the Applicant now intends to rely on.”

5.2.3 The Applicant does not consider ‘the scheme required by the IOT Operators to be feasible for a number of reasons – including navigational, engineering practicability, environmental impact and scheme viability.’ (2.38 of the Proposed Changes Report). DFDS queries why the Applicant is promoting Change 4 which satisfies neither the Applicant nor the IOT Operators.

5.2.4 DFDS wonders whether the reason the Applicant does not consider the scheme required by IOT Operators to protect the IOT jetty and vessels berthing at it to be feasible is simply that the Applicant is unwilling to pay the cost of including adequate impact protection and/or because the inclusion of adequate impact protection measures as part of the construction timetable would add delay to delivery of a working IERRT facility rather than because there are any navigational, environmental or practical barriers to providing such impact protection. If this is the case, then neither is a good or indeed reasonable reason for refusing to implement such important risk mitigation measures to protect a vital UK infrastructure asset and reduce the navigational risks of construction and operation of the IERRT to the Port of Immingham’s existing operations as a whole.

- 5.2.5 The design of Impact Protection Measures 'is still being finalised' (2.3.19 of the ES Addendum [\[AS-063\]](#)) so the full design remains unknown and whether what has been assessed is the worst case must be called into question. Should the designs change either through further development by the Applicant or following agreement with the IOT Operators, another opportunity should be given for stakeholders to comment on any differing proposal.
- 5.2.6 It is also not clear if the measures are 'sacrificial', i.e., they would only survive one collision and would have to be replaced. Comments made at ISH5 suggest that the measures would not survive a vessel alliding with them at their maximum design speed. If that is the case, then they should be replaced and IERRT should not operate until that happens.
- 5.2.7 The dDCO does not require the impact protection measures to be implemented (Requirement 18) even if the Harbour Master or Dock Master advises that they should, and their description has been made looser in the dDCO accompanying the Change Request.
- 5.3 In general, there is not enough time to examine the Proposed Changes properly before the close of the examination, they are rushed and incomplete and as of Deadline 7A there is a little over a month left in the examination, covering the Christmas and New Year period.
- 5.4 The Proposed Changes, alongside the other significant additional documentation being submitted by the Applicant even at this very late point in the process, illustrate what DFDS and other interested parties have been saying throughout. The application was poorly conceived, not properly thought through, did not take into account concerns raised by consultees / interested parties and has been badly executed. This leaves the Applicant frantically trying to plug gaps and dismiss concerns which should have been dealt with before the application was submitted and it leaves the ExA and interested parties in an unfair and unreasonable position at this very late stage of the examination.
- 5.5 Further simulations were conducted on 13-14 December to assess the movements of a ship of design vessel dimensions that had lost power, and Stena T vessels using berth 8 of the IOT with the impact protection in place. However, from this it was evident that the potential still remains for drifting and impact with IOT, and since this cannot be absolutely eliminated then the impact protection measures must be implemented before the project can operate.
- 5.6 DFDS supports the position of IOT Operators that adequate impact protection measures should be required to be installed by the Applicant prior to the start of any construction activities or operation of IERRT, as recommended by DFDS' own NRA [\[REP2-043\]](#). It is DFDS view that such measures are needed to mitigate the risks which have been clearly identified to the IOT facility. These measures should be designed to protect the IOT trunkway, the IOT finger pier and any vessels berthed on the IOT finger pier.
- 5.7 Accordingly, the Impact Protection Measures as proposed in the Proposed Changes are insufficient as they remain conditional on a recommendation by the Statutory Conservancy and Navigation Authority or Dock Master, as detailed in Requirement 18 of the draft DCO. DFDS has already set out in its Relevant Representation ([\[RR-008\]](#), paragraphs 3.48 and 7.17) and

Written Representation ([REP2-040](#), paragraph 195) why conditional measures are insufficient and remain of this view – the measures should be required to be implemented before the main works are permitted to commence. DFDS, therefore considers the Proposed Changes to offer little reassurance in respect of navigational safety concerns and the potential impact on users of the Port of Immingham and the Humber Estuary.

- 5.8 In summary DFDS does not think Change 4 is satisfactory as there is uncertainty as to:
- 5.8.1 whether the Applicant considers Impact Protection Measures are needed or not, and in what circumstances their implementation would be triggered (which should not be left to the Humber Harbour Master or Dock Master to decide given the issues of practical (rather than legal) separation of powers) – and certainly should not be left to the Applicant to decide, which appears to be the effect of the latest changes to the dDCO proposed by the Applicant in its response to the ExA’s revised draft,
 - 5.8.2 their acceptability to the owner of the infrastructure they are designed to protect,
 - 5.8.3 what the final design for any Impact Protection Measures will be and when they will be produced,
 - 5.8.4 whether they would be able to withstand a vessel the size of the design vessel,
 - 5.8.5 whether they would be replaced in the event of a collision,
 - 5.8.6 what event or circumstance would trigger their implementation, and
 - 5.8.7 whether there will be sufficient time for these changes to be properly examined.
- 5.9 None of this reduces the safety concerns which DFDS, and the IOT Operators, have raised with the Applicant long before the application for this DCO was submitted and have continued to raise throughout the examination.