

## CLdN PORTS KILLINGHOLME LIMITED

### RESPONSES TO THE APPLICANT'S DEADLINE 7 AND DEADLINE 7A SUBMISSIONS

#### 1. INTRODUCTION

- 1.1 This document comprises the response by CLdN Ports Killingholme Limited (**CLdN**) to documents submitted by Associated British Ports (**the Applicant**) at Deadline 7 and Deadline 7A of the Examination of the application for a Development Consent Order (**DCO**) (**the Application**) for the Immingham Eastern RoRo Terminal (**IERRT** or **the Proposed Development**).
- 1.2 The Applicant's submissions at Deadline 7 and Deadline 7A are noted, particularly the Applicant's Response to CLdN's Deadline 6 Submission [**REP7-023**] (**the Applicant's DL7 Response**). CLdN considers that the majority of the submissions made by the Applicant at Deadline 7 and Deadline 7A is a repetition of points that the Applicant has already submitted but the submissions nonetheless fail to engage with the substance of the points that CLdN has raised throughout the Examination, and in particular the contents of CLdN's Deadline 6 Submissions [**REP6-036**]. Therefore, CLdN does not consider at this late stage of the Examination that it will assist the Examining Authority to duplicate CLdN's previous submissions by responding to each point made by the Applicant in the Applicant's DL7 Response.
- 1.3 Instead, CLdN has produced this document to address certain points raised in the Applicant's DL7 Response, and other documents submitted by the Applicant at Deadlines 7 and 7A, that CLdN wishes to clarify and to provide particular commentary on.
- 1.4 Where CLdN has not specifically responded to a point in the Applicant's DL7 Response, or other documents, that does not mean that it is accepted by CLdN. Rather, it is CLdN's view, as stated above, that its previous submissions have already addressed and established CLdN's position, which remains unchanged, on each point.
- 1.5 There are a number of points or challenges made in the Applicant's Deadline 7 Response, in terms of demand and growth rates and capacity estimates, that CLdN fundamentally disagrees with. However, it is expected that these points or assumptions will be formalised by the Applicant in the updated Humber Shortsea Market Study, which has not been published yet and is expected to be submitted at Deadline 8. Therefore, rather than addressing in this submission and in isolation the Applicant's points in terms of demand and growth rates and capacity estimates that it has made at Deadline 7, which are expected to be incorporated into the updated study, CLdN considers it more appropriate to address these matters in its closing submissions at Deadline 9, following receipt and in the context of the updated Humber Shortsea Market Study. This will allow CLdN to provide the Examining Authority with a full summary of its latest position in light of the updated Humber Shortsea Market Study and will avoid repetition of points in consecutive submissions. CLdN appreciates that Deadline 8 is late in the Examination, but it is the inevitable result of the Applicant's delay in producing the updated Humber Shortsea Market Study.
- 1.6 Section 7 of this document relates to the current position on CLdN's protective provisions and contains the responses by CLdN to the Examining Authority's further written questions and requests for information (**ExQ4**) issued on 22 December 2023 [**PD-022**] so far as they relate to CLdN.

#### 2. UPDATED HUMBER SHORTSEA MARKET STUDY

- 2.1 In response to Action Point 32 from Issue Specific Hearing 5 (**ISH5**) [**EV10-016**], it was understood from the Applicant's DL7 Response at paragraph 2.2 that it was in the process of producing a targeted update to the Humber Shortsea Market Study [**APP-079**] (**the**

**Market Study**). Despite being advised by the Applicant in the Applicant's DL7 Submission, also at paragraph 2.2, that this updated Market Study was to be submitted "*at, or prior to, Deadline 7A*" on Wednesday 20 December 2023, it is disappointing that this has still not been provided by the Applicant, particularly considering the late stage the Examination is now at.

- 2.2 CLdN notes from the Applicant's Deadline 7A Cover Letter **[AS-073]** that the Applicant's reasoning for this delay is due to the alleged number of new points that have been raised by Interested Parties, with the Applicant now suggesting that it will submit the updated Market Study at Deadline 8. CLdN's position has remained the same throughout the Examination; it is therefore unclear what, if any, new points the Applicant is referring to from CLdN's Deadline 6 Submissions that could have caused a delay in the Applicant producing its updated Market Study. It is particularly regrettable that once the updated Market Study is published following Deadline 8 (assuming the Applicant meets its already postponed deadline on time), CLdN and other Interested Parties will have very limited time to review adequately and respond to the updated Market Study prior to Deadline 9 (the final deadline of the Examination). CLdN is disappointed by the delay and the lack of meaningful engagement highlighted above, which has significantly hampered CLdN being able to assist the Examining Authority with the proper examination of the Application.

### 3. THE NEED CASE

- 3.1 CLdN does not consider it would assist the Examining Authority to respond further in detail to the Applicant's repetitive submissions in relation to the need for the Proposed Development in the Applicant's DL7 Submission, as the majority of the text is simply reproducing sections of the National Policy Statement for Ports (**NPSfP**) without providing anything new in substance to engage properly with CLdN's points.
- 3.1 CLdN would, however, like to clarify the mischaracterisation of CLdN's case by the Applicant in paragraph 4.4(i) of the Applicant's DL7 Submission. CLdN has not suggested that the Applicant's urgent and imperative need case only relates to overall demand and capacity elements of the need considerations. The point which has been made quite clear by CLdN is that the Applicant's original case for the Proposed Development was based on the alleged urgent and imperative need due to a lack of capacity, which CLdN has consistently disagreed with. The Applicant's position has then changed during the Examination to re-focus on the alleged urgent and imperative need to improve competition and resilience, both of which CLdN has also disputed. The point is therefore not that the Applicant's case relates only to demand and capacity, but that the Applicant's case for the Proposed Development is based on erroneous assumptions and inconsistencies, which, despite being drawn to the Applicant's attention by CLdN, have not been addressed in the Examination. CLdN has provided substantial submissions on why there is not an urgent and imperative need for the Proposed Development on the grounds of demand, capacity, competition or resilience, yet the Applicant has failed to properly engage with these submissions.
- 3.2 The Applicant states in paragraph 6.8 of the Applicant's DL7 Submission that "*there are a number of destinations which are currently only served by one direct Ro-Ro service from the Humber meaning that competition for Ro-Ro trade to and from those destinations does not currently exist on the Humber*". It is unclear how the Proposed Development would improve competition in this respect because IERRT will simply be another destination that serves one provider (i.e. Stena Line). In this regard, as CLdN has already submitted, the Proposed Development is 'competition neutral'. In any event, it should be noted as a matter of fact that the Port of Killingholme's (**Killingholme**) existing facilities demonstrate how more than one operator has been and can be provided for from one destination on the Humber and so the Applicant's assertion that this service does not exist is incorrect.

#### 4. ALTERNATIVES

- 4.1 CLdN notes that the Applicant has provided no substantive detail in the Applicant's DL7 Response as to why it does not consider existing capacity at Killingholme as an alternative to the Proposed Development. Beyond the high-level criticism that the alleged existing capacity at Killingholme is "*vague, hypothetical and general in nature*" (see paragraph 6.34 of the Applicant's DL7 Submission), the Applicant has provided no justification for its position. CLdN does not agree with the Applicant's characterisation of this existing capacity and has submitted a substantial amount of detail to demonstrate the existing and realisable capacity at Killingholme (see the Killingholme Note **[REP4-021]**) and how this alternative is a relevant and lawful consideration for the Examining Authority to take into account (see, in particular, Agenda Item 2(a) of CLdN's Issue Specific Hearing 3 Summary **[REP4-017]** and paragraphs 3.15 – 3.17 of CLdN's Deadline 6 Submissions **[REP6-036]**).

#### 5. TRANSPORT

- 5.1 CLdN's transport consultant, RHDHV, has liaised with DFDS's transport consultant, GHD, in respect of the transport-related points in the Applicant's DL7 Submission. Where CLdN has not specifically responded to such points, that does not mean that they are accepted, rather CLdN supports and refers the Examining Authority to DFDS's Deadline 8 response as CLdN is aligned with DFDS's views in relation to transport matters and does not wish to duplicate submissions unnecessarily. CLdN's outstanding points in relation to transport matters are summarised as follows below.
- 5.2 In paragraph 6.38 of the Applicant's DL7 Submission, the Applicant proposes an amendment to the draft DCO (**dDCO**) to limit the daily throughput of IERTT to 1,800 units, in place of the originally drafted annual cap. Whilst CLdN welcomes the introduction of this daily cap, it is concerned that there are no adequate mechanisms in place to secure and monitor this obligation. The Operational Freight Management Plan (**OFMP**) **[REP7-036]** submitted by the Applicant at Deadline 7 fails to commit to a coherent HGVs strategy for controlling and enforcing throughput, and assignment to the highway network. Furthermore, the monitoring regime (i.e. annual reporting of daily throughput) is, in CLdN's view, wholly inadequate to monitor HGVs impacts effectively. In addition, there are no controls placed on peak hour demand to ensure that effects on the highway network are adequately mitigated.
- 5.3 In the absence of a relevant requirement in the dDCO, CLdN is unclear how the OFMP would progress into tangible measures with appropriate input from stakeholders and how the final OFMP would be secured and then discharged.

##### ***Operational Freight Management Plan [REP7-036]***

- 5.4 In response to the Examining Authority's question TT.3.03 **[REP7-022]**, the Applicant explained that it intends to implement the throughput daily cap by the use of the OFMP. However, the OFMP is not secured in the latest **dDCO** and the version submitted by the Applicant **[REP7-036]** is not effective. Specifically, it is CLdN's view that the submitted OFMP fails to contain fundamental requirements, such as:
- 5.4.1 governance, including prescribed consultation, sign-off and adequate ongoing monitoring and enforcement; and
  - 5.4.2 commitment to and delivery of the measures and action plan.
- 5.5 The OFMP is unclear in that there is no mechanism to develop and secure the measures the Applicant has suggested.

##### ***Transport Assessment Addendum [REP7-013]***

- 5.6 CLdN disagrees with paragraph 6.4.5 of the Applicant's Transport Assessment Addendum (TAA) [REP7-013] which states that "a sensitivity scenario has also been undertaken without prejudice to the Applicant's position as to the robustness of the existing assessments". Throughout the Examination, CLdN has pointed out the flaws in the assumptions that underpinned the original Transport Assessment (TA) and has subsequently worked collaboratively with the Applicant to update and agree critical transport metrics. It is therefore contested that the sensitivity test as presented is, in fact, a reference case that better represents (than the updated TA) a typical future operational baseline for IERRT.
- 5.7 However, it is questioned if the sensitivity test represents a reasonable worst case (likely significant effects) scenario as the key metric of hourly HGV arrival and departure profiles have not been revisited despite numerous changes relating to yard operations. Those changes have largely been in response to concerns relating to throughput capacity (which remains unresolved) and it is inconceivable that the original arrival departure profiles derived from Stena's current operations would remain valid.
- 5.8 Notwithstanding the above, CLdN has reviewed the TAA submitted by the Applicant and notes that the document contains a significant amount of new information and is of the view that the TAA is essentially a re-submitted TA. CLdN does not accept that there is no material change to the TA [AS-008]. In particular, there is new or updated information in relation to policy interpretation, baseline traffic data, impact assessment methodology and underpinning assumptions and impact outcomes.
- 5.9 The TAA relies on a mishmash of cross-references to the updated TA [AS-008], technical notes submitted into the Examination and a series of annexes containing supplementary technical information. CLdN questions why the Applicant did not consolidate the information, in its entirety, into a revised clean document that would be easier for all parties to consider at this late stage of the Examination.
- 5.10 Again, CLdN is disappointed with the Applicant's approach of introducing substantial changes and a large amount of new information at such a late stage in the Examination, without providing an opportunity to engage in and respond to consultation on this further environmental information. It is regrettable that there is now a limited amount of time left for statutory consultees and Interested Parties to review the information now presented and to provide any meaningful response to assist the Examining Authority. There is no time for the revised TA to be adequately scrutinised and subject to the Examination process.

*Annex A – policy approach to considering development impacts*

- 5.11 The Applicant notes the NPSfP is the principal policy directive and the source of the requirement for the transport mitigation test to use current DfT transport assessment guidance, principally the National Planning Practice Guidance (NPPG). The NPPG makes the following reference to mitigation: "the Transport Assessment or Transport Statement may propose mitigation measures where these are necessary to avoid unacceptable or "severe" impacts". The Applicant then uses the judgement of *Hawkhurst Parish Council v Tunbridge Wells DC* [2020] EWHC 3019 (**Hawkhurst**) to supplement its conclusion that "it is clearly the case that the traffic and transport impacts of the IERRT development are not 'substantial' and, furthermore, that the overall traffic and transport impact after considering mitigation proposed by the Applicant is not unacceptable or indeed severe".
- 5.12 CLdN notes that the above case related to a care home development generating three peak hour trips, which was agreed by all parties not to be a material impact (let alone a severe one). Contrary to the Applicant's submission, *Hawkhurst* does not establish a definition of severe. The question of whether the impacts are severe is a matter of judgement for the decision-maker.

- 5.13 The true test for mitigation is if the residual driver delay effects are significant in Environmental Impact Assessment terms. The Applicant's assessment methodology in Chapter 17 of the Environmental Statement **[APP-053]** sets out the criteria for the significance of effects (and, by definition, the requirement for mitigation) at Table 17.3.
- 5.14 However, as previously submitted (see Agenda item 3 of CLdN's Issue Specific Hearing 5 Summary **[REP7-040]**), based on the outcomes of the TA capacity assessment and the TAA sensitivity test, CLdN's position is that the Applicant has failed to demonstrate no residual significant effects and therefore satisfy its own interpretation of the test for mitigation.
- 5.15 It is notable that the Applicant acknowledges that "if the decision-maker was minded to reach a different conclusion on the requirement of mitigation, the following measures are prescribed by the NPSfP:
- 5.15.1 demand management (NPSfP paragraphs 5.4.11 to 5.4.13);
  - 5.15.2 modal share (NPSfP paragraphs 5.4.14 to 5.4.21);
  - 5.15.3 HGV controls (NPSfP paragraphs 5.4.22 to 5.4.23); and
  - 5.15.4 access (NPSfP paragraphs 5.4.24 to 5.4.25)."
- 5.16 The NPSfP further directs that "*the IPC should consider how the accumulation of, and interrelationship between, effects might affect the environment, economy or community as a whole, even though they may be acceptable when considered on an individual basis with mitigation measures in place*".
- 5.17 CLdN has been consistent in its position throughout the Examination that the outputs from the TA indicate a magnitude of impact whereby demand management measures must be secured to limit the harm to highway users and local economy and affected businesses. Nothing in the Applicant's DL7 Response has demonstrated that these concerns have been addressed, meaning CLdN's position remains that there are unacceptable onshore traffic impacts and that the Applicant has failed to commit to adequate mitigation of these. This is contrary to the NPSfP.

*Annex B – email confirming NH Position on DfT circular 01/2022*

- 5.18 CLdN reiterates the concern that the sheer volume of new material that the Applicant has submitted at a late stage of the Examination gives little time for meaningful stakeholder review and in turn, for that feedback to inform the Examination.
- 5.19 It is noted that the Applicant's Statement of Common Ground (**SoCG**) with National Highways has not been updated since Deadline 5 **[REP5-009]** and the Applicant's SoCG with North East Lincolnshire Council was submitted at Deadline 7 **[REP7-005]**, with the last engagement document being dated 02 November 2023.
- 5.20 CLdN requests that the Applicant provides evidence of its engagement with stakeholders (including the timing and feedback) with regard to the new information that has been submitted during the Examination.

*Annex J – local highway network sensitivity test*

- 5.21 CLdN does not accept the label of "*sensitivity test*" for the impact assessment contained in Annex J, as this implies non-typical conditions. CLdN has maintained throughout the Examination that the assessment contained in the TA represents unrealistic operating conditions and, in reality, the sensitivity test represents conditions closer to typical. It is in

this context that the outcomes from the sensitivity assessments should be reviewed, noting impacts could increase if there were changes to the agreed parameters.

- 5.22 CLdN has concerns with regard to the sensitivity test utilising current Stena HGV arrival and departure profiles. Given the changes to the dwell times, design vessel and yard capacity it is difficult to accept that current HGV profiles are an appropriate basis for a peak hour transport assessment. CLdN has consistently raised concerns relating to the disconnect between key maritime parameters and the assumptions that are being applied to terrestrial traffic and has not received any assurance of a joined-up approach. CLdN additionally questions whether allowance has been made by the Applicant for traffic to and from the Border Control Post (outside the East Gate) where Sanitary/Phytosanitary examinations will be undertaken on foodstuffs and plants. The pattern of unaccompanied traffic is likely to remain the same but the effect of accompanied (which has a different profile) will depend on the evolving split of traffic.
- 5.23 Notwithstanding these concerns, CLdN has reviewed the sensitivity outcomes and notes that three junctions are exceeding recognised capacity thresholds. The data to support this claim is provided at **Appendix 2** of this document.
- 5.24 DFDS provided a useful overview of the relevance of Ratio Flow to Capacity values in its Deadline 7 submission [**REP7-045**] (see paragraphs 54 to 59). To further interpret the impact significance of the traffic model results, reference is made to the Transport Research Laboratory (TRL) publication of 2011, 'What Maximum RFC (Ratio Flow to Capacity) is acceptable?'<sup>1</sup>. This note considers that:

*“Generally, values of values of 0.85 for unsignalled junctions have been used extensively and many modelling products pander to this by setting defaults that, of course, encourage it even more.*

*Although it is understandable why such values are popular, and genuinely have their place, there may be a tendency for these values to become the ONLY goal, at the expense of evaluating situations in a more thorough and useful way.*

*There are a number of reasons why you should not rely on just one single acceptable maximum value of RFC. For example:*

*RFC values vary throughout a peak, and can rise and fall sharply or slowly.*

*The consequences of a high RFC depend on the flow.*

*An RFC value of 1.2 might not matter with a very low flow whereas a value of 0.8 might be disastrous with a high flow.*

*The important criteria for judging the success of a design (from the point of view of congestion) are the total delay to all vehicles, and the mean delay per vehicle on each of the approaches”.*

- 5.25 CLdN's position is that there is a need to mitigate the residual significant impacts and the Applicant is encouraged to bring forward proposals for either demand management or capacity improvement, and the Examining Authority is requested to ensure that there is a mechanism to secure this in the dDCO.

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<sup>1</sup> What maximum RFC (Ratio of flow to capacity) is acceptable? – TRL Software

## 6. CLDN'S COMMENTS ON THE LATEST DRAFT DCO ISSUES

- 6.1 This section contains CLdN's comments on the revised dDCO produced by the Applicant [REP6-003], the Examining Authority's schedule of proposed changes to the dDCO [PD-019] (the ExA's Proposed Changes) and the Applicant's response to the ExA's Proposed Changes [REP7-029].

### **Article 2(1) – Definition of “maintain”**

- 6.2 The Examining Authority's proposed change to delete “reconstruct” from the definition of “maintain” in article 2(1) on the basis that the Environmental Statement does not assess reconstruction is acknowledged and supported by CLdN. CLdN's previous submissions on this point can be seen in Appendix 1 to CLdN's Responses to DL5 Submissions [REP6-036] and in Agenda Item 3(a) of CLdN's Issue Specific Hearing Summary [REP7-041]. The Applicant, however, has continued to resist this change and CLdN is disappointed by the lack of justification for doing so. CLdN considers that the Applicant ought to consider again, in light of the environmental impact assessment it has carried out and the Examining Authority's suggested change, an appropriate scope for the power to “maintain” with corresponding environmental controls.

### **Article 7(b)(i) – Limits for vertical deviation**

- 6.3 The Examining Authority noted in its Proposed Changes that the landside engineering sections and plans [REP4-004] need to be annotated to identify existing and proposed finished ground levels for landside engineering. In response, the Applicant stated that it has submitted updated drawings to show the existing ground levels and proposed finished ground levels [AS-050]. However, the updated drawings that the Applicant refers to do not show existing and proposed ground levels landside. It is CLdN's view that if the Applicant does not supply satisfactory drawings, that the Examining Authority ought to recommend the deletion of the relevant limit of deviation.

### **Requirement 4 – Construction hours**

- 6.4 The Examining Authority's Proposed Changes and the Applicant's concession to the Examining Authority's drafting for Requirement 4 are noted. However, CLdN refers to its submissions in Appendix 1 to CLdN's Responses to DL5 Submissions [REP6-036] in relation to Requirement 4, in which it is CLdN's maintained view that the drafting remains loose and unclear:

- 6.4.1 in sub-paragraph 2, it does not make sense to state that “*the following works are permitted... provided...*” but then no works are listed;
- 6.4.2 in sub-paragraph 2(b), there is reference to “*agreed monitoring locations*”, however, it is unclear who this is to be agreed with and by when; and
- 6.4.3 it remains the case that sub-paragraph 2(b) is subject to a tailpiece that would allow this unclear provision to be disregarded.

### **Requirement 5 – Travel plan**

- 6.5 CLdN notes that the definition of “commence” by reference to section 56(4)(b) of the Town and Country Planning Act 1990 (the 1990 Act) is restrictive and does not account for other works that might necessitate mitigation prior to digging foundations. CLdN is of the view that the term “commence” should be defined by reference to section 56(4) of the 1990 Act but also should include a material change of use of land.

- 6.6 Further, and in any event, CLdN considers that it would be clearer if this requirement was drafted to state that “*the authorised development must not be operated until...*”.

**Requirement 8 – construction environmental management plan (CEMP)**

- 6.7 CLdN notes the change to the requirement for two separate CEMPs: an onshore CEMP (to be approved by the relevant local planning authority) and an offshore CEMP (to be approved by the Marine Management Organisation). However, to aid precision and enforceability, it is CLdN’s view that the requirement ought to include an additional subparagraph that requires the CEMPs to include whatever ancillary documents are referred to in the Outline CEMP. This would ensure that any management plans or similar documents that are referenced and relied upon to achieve the necessary controls and outcome in the Outline CEMP are all required to be referenced expressly, ensuring clarity on the parameters and requirements of the CEMPs.

**Requirement 11 – Woodland management**

- 6.8 As referred to above for Requirement 5, Requirement 11 also places reliance on the defined term “*commence*” and it is CLdN’s view that there ought to be an operational trigger added to this definition for clarity.

**Requirement 12 – East Gate Improvements**

- 6.9 Again, it is CLdN’s view that the defined term “*commence*” referred to within this requirement ought to include an operational trigger.

**7. PROTECTIVE PROVISIONS FOR CLDN**

- 7.1 CLdN has made every effort to engage proactively and in a timely fashion with the Applicant directly to resolve the matter of protective provisions to be afforded to CLdN. CLdN was therefore surprised and disappointed by the Applicant’s change in approach by submitting directly into the Examination, as opposed to CLdN directly, its explanation of its latest position in respect of the proposed protective provisions at Deadline 7A (**the Applicant’s Position on CLdN’s Protective Provisions**) [AS-078]. Given the limited amount of time left in the Examination, CLdN is concerned by the Applicant’s failure to engage directly with CLdN in relation to protective provisions and urges the Applicant urgently to reconsider its approach in the effort to expedite discussions.
- 7.2 CLdN has sent to the Applicant a letter of response to the Applicant’s Position on CLdN’s Protective Provisions. A copy of this letter is appended to this submission, at **Appendix 1**, for the Examining Authority’s information.
- 7.3 In response to DCO.4.10 in ExQ4 [PD-022], CLdN agrees with the Examining Authority’s interpretation of what CLdN is seeking to achieve via the inclusion of the proposed protective provisions in the form sought by CLdN. The fundamental point and aim of protective provisions is to allow and provide for the protection of a statutory undertaking that may or will be adversely affected by the construction and / or operation of a proposed development. CLdN is seeking such protection in the case of the Proposed Development, not to bring about commercial or other betterment in any way but to ensure the continuity of its statutory undertaking and in accordance with the ‘agent of change’ principle. There is nothing in the draft protective provisions that CLdN has proposed that seeks or would bring about commercial or other betterment to CLdN.

**08 January 2024**

**APPENDIX 1**

**LETTER FROM CLDN TO THE APPLICANT DATED 08 JANUARY 2024**



Pinsent Masons

BY E-MAIL

**STRICTLY PRIVATE AND CONFIDENTIAL**

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E [REDACTED]

08 January 2024

Dear Brian,

**CLDN PORTS KILLINGHOLME LIMITED  
IMMINGHAM EASTERN RO-RO TERMINAL – PROTECTIVE PROVISIONS**

I refer to Associated British Ports' (**the Applicant**) Deadline 7A submissions on 20 December 2023 [**AS-078**] which included an explanation of the Applicant's position in respect of the protective provisions for the benefit of CLdN Ports Killingholme Limited (**CLdN**) (**the Protective Provisions**) in relation to the application for development consent for the Immingham Eastern Ro-Ro Terminal (**IERRT or the Proposed Development**).

First, I should say that CLdN was disappointed by the direct submission of the Applicant's current position in respect of the Protective Provisions directly into the Examination without any approach, dialogue or engagement with CLdN since my letter of 08 December 2023. The matter of Protective Provisions is something that should be discussed, and ideally agreed, between CLdN and the Applicant independently of the involvement of the Examining Authority. CLdN has made every effort to engage with the Applicant to reach an agreement on the Protective Provisions, as evidenced most recently by my letter of 08 December 2023 which provided a revised draft of the proposed Protective Provisions with detailed supporting explanations for these. It was therefore surprising that you did not respond to (or even acknowledge) my letter of 08 December 2023, but instead made a direct submission to the Examining Authority.

Further, it appears from the Applicant's explanation and current position submitted at Deadline 7A that you may have been working from an outdated draft set of the Protective Provisions in column 1 of that submission. For example, you suggest that CLdN has added "in relation to the construction, and operation..." in paragraph 127, whereas the latest CLdN draft read as "during the construction and operation...". Similarly, in paragraph 130, you suggest that CLdN has changed the notice period of specified work to 30 days, but in fact CLdN had already accepted your amendment to reduce this to 20 days. It is therefore a concern to CLdN, given the apparent use of an outdated draft of the Protective Provisions and a failure to respond to my letter of 08 December 2023, that you have not had sufficient and diligent regard to the contents of that letter. I therefore refer you back to my letter of 08 December 2023, which contained the latest draft of the Protective Provisions at that time.

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Nonetheless, we have reviewed the Applicant's latest position in respect of the Protective Provisions but unfortunately do not feel that the Applicant has fully understood, recognised and properly addressed CLdN's underlying concerns and precedented reasoning for the protection it seeks. Therefore, CLdN's position remains much the same as set out in my letters of 08 December and 09 October 2023, which provided detailed explanations and justifications for the Protective Provisions.

#### **Paragraph 127 – Application**

CLdN maintains that the wording “...during construction and operation of the authorised development” should be included to ensure that the Protective Provisions for its benefit apply during the operation of the authorised development (as well as during construction). As previously explained, it is imperative that CLdN's statutory undertaking is protected and continues to be uninterrupted throughout the lifetime of the authorised development, not just during construction. Therefore, CLdN does not agree with the Applicant's limited justification on this point, whereby it defers its responsibility to the Harbour Master Humber once operations commence. CLdN also notes that the Examining Authority, in its latest set of written questions and requests for information [PD-022] at DCO.4.10, has asked the Applicant what disadvantage it would suffer if the Protective Provisions were to apply to the operational phase.

#### **Paragraph 128 – Interpretation**

Again, CLdN does not agree with the addition of a limitation in the definition of 'specified work' which restricts this concept, in the context of notification of vessel movements, to only those works which have been assessed in the environmental statement (and supplementary environmental information). As explained in my letter of 08 December 2023, it is unacceptable to CLdN that any obligations relating to specified works could be avoided by the Applicant simply because the impacts were not assessed in the environmental statement. There is no such limiting of specified works to any assessment (and approval) of the environmental statement across the protective provisions included for other bodies in the latest draft DCO [REP6-003] – CLdN does not see, therefore, why the Protective Provisions should be framed any differently. It is CLdN's view that the Applicant's position on this point is unjustified on the grounds that it does not consider it appropriate simply because CLdN is seen as a 'commercial objector'.

In any event, even if specified works were linked to the environmental statement across the draft DCO, CLdN would not agree with this approach – the assessments in question are the Applicant's own, whereas the definition of specified works must instead solely relate to an objective judgement made at the time of construction as to what works or operations are likely to affect CLdN's undertaking.

#### **Paragraphs 132 and 133 – Notice of and consultation on works and vessel movements**

CLdN does not agree with the Applicant's decision to delete paragraphs 132 and 133 of the Protective Provisions and does not feel that the Applicant has provided a justified reason for doing so. CLdN does not accept the reasoning that the Applicant cannot provide protection with regard to non-interference with vessels passing by the Port of Immingham on their way to/from the Port of Killingholme just because, as the Applicant submits, this is the responsibility of the Harbour Master Humber and not the Applicant. As I have previously detailed, the Applicant is the organisation developing IERRT and is therefore in control of construction activities and any interference with CLdN vessels, and so it is capable of proactively managing the construction activities to avoid such interference. The fact that the Harbour Master Humber has a statutory conservancy role does not change the Applicant's level of control and the provision of the Protective Provisions would not contradict or interfere with the Harbour Master Humber's statutory jurisdiction. For these reasons, I refer you to my letter of 08 December 2023 in which CLdN's position remains the same.

It bears repeating, again, that CLdN does not consider that the protections it has sought in relation to the Proposed Development are unreasonable or out of the ordinary for the protection of a statutory port undertaker affected by a neighbouring (and nationally significant) new development. As explained in my letters of 08 December and 09 October 2023, there is precedent in the Able Marine Energy Park DCO 2014 where protective provisions of this nature were provided to CLdN in order to mitigate against potential impacts of that project. Therefore, CLdN fails to see why the Applicant does not accept these provisions, which (as explained before) CLdN considers are comparable even though the proximity of the two projects (i.e. IERRT and the Able Marine Energy Park) to the Port of Killingholme clearly differs.

#### **Paragraph 134 – Railways**

The Applicant has provided minimal explanation for the deletion of this paragraph beyond what was submitted during Issue Specific Hearing 6, which I have already addressed in my letter of 08 December 2023. CLdN has made it clear that it understands and accepts that the DCO is not proposed to facilitate the delivery of freight by rail. What the Applicant fails to understand and appreciate, however, is that it is entirely foreseeable that the Applicant may choose to revive its rail rights in the future, including by the potential use of permitted development rights to do so, which would potentially have an adverse effect on CLdN's rights. I refer you to the detailed reasoning for this part of the Protective Provisions set out on page 14 of my letter of 09 October 2023 and request the Applicant to reconsider its approach here again.

#### **Paragraphs 135 and 136 – Highway access**

CLdN does not accept the Applicant's reasoning that it should not be consulted by the Applicant on the development of the Construction Environment Management Plan on the grounds that it is a "commercial objector". It appears the Applicant fails to understand that CLdN is a statutory undertaker (unlike the other commercial objectors such as DFDS and IOT) and therefore has justification for this request, noting that Requirement 8(1), as currently drafted in the draft DCO, references consultation with various bodies "*on matters related to their respective [statutory] functions*". As previously explained, however, CLdN would be happy to remove this paragraph from the Protective Provisions provided it is added to the list of consultees in Schedule 2 to the draft DCO.

#### **Paragraph 137 – Indemnity**

I refer you to my letter of 08 December 2023 in which I explained the minor amendments to paragraph 137 to clarify that the obstruction exception found in sub-paragraph (1)(a) only applies to the lawful actions of the Statutory Conservancy and Navigation Authority (**SCNA**), rather than including in addition reference to any direction from the SCNA, as the latter is included within the former and it is inappropriate practice for a statutory instrument to include an oblique dash. CLdN does not feel the Applicant has provided any justified explanation for refusing to accept these amendments and requests that the Applicant reconsiders this.

#### **Paragraphs 138 and 139 – Statutory powers**

As previously explained, CLdN does not feel that these particular provisions requested are unreasonable or unusual in the circumstances of affording protection to a statutory port undertaker affected by a neighbouring new development. The Applicant's explanation that other statutory undertakers have not requested these provisions is not a sufficient justification to refuse them to CLdN. These provisions are aimed at providing protection to CLdN's statutory rights, powers and privileges, whether or not the draft DCO contradicts, limits or amends these as currently drafted. Therefore, CLdN requests the Applicant to reconsider the rejection of these provisions and, at the very least, provide a proper explanation as to the Applicant's position.

CLdN has therefore reinstated those provisions it thinks are necessary to protect it from the risk of disruption and the consequences it may suffer from the Proposed Development. In the interest of progressing matters, CLdN has however accepted some of your minor amendments to the Protective Provisions. Please find attached:

- i) at **Appendix 1**, a clean revised version of the Protective Provisions;
- ii) at **Appendix 2**, a redline comparison of this revised version against the Applicant's version submitted at Deadline 7A **[AS-078]** on 20<sup>th</sup> December 2023;
- iii) at **Appendix 3**, a redline comparison of this revised version against CLdN's previous version appended to my letter of 08 December 2023, highlighting the changes CLdN has accepted; and
- iv) at **Appendix 4**, a redline comparison of CLdN's version of the Protective Provisions appended to my letter of 08 December 2023 with the Applicant's version submitted at Deadline 7A **[AS-078]** on 20<sup>th</sup> December 2023.

CLdN asks the Applicant to consider my letters of 08 December and 09 October 2023 fully and reconsider its position with respect to the above-mentioned provisions. If the Applicant maintains its current stance, CLdN asks again that a full and proper justification is provided on each matter, beyond the limited explanation provided in the Applicant's Deadline 7A submission.

Given the limited amount of time left in the Examination, we would appreciate it if you would discuss these matters directly with ourselves to avoid any delays and any unnecessary troubling of the Examining Authority.

I look forward to hearing from you shortly.

Yours sincerely

Robbie Owen  
Partner  
for Pinsent Masons LLP

This letter is sent electronically and so is unsigned.

## APPENDIX 1: REVISED DRAFT PROTECTIVE PROVISIONS FOR THE BENEFIT OF CLDN

### 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 during the construction and 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;

“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; and

“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 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.

##### Co-operation

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.

132. (1) The Undertaker must not allow vessels associated with the construction of any specified 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.

### **Railways**

134. 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.

### **Highway access management**

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.
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 authorised development must be carried out in accordance with the approved freight management plan.

### **Indemnity**

137. (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; or
  - (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 financial losses, costs, charges, damages, expenses, claims and demands arising until the commencement of the operation of the authorised development.

**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.

**Arbitration**

- 140. 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).

**APPENDIX 2: REDLINE DRAFT PROTECTIVE PROVISIONS FOR THE BENEFIT OF CLDN (CLDN'S LATEST VERSION OF 08 JANUARY 2024 COMPARED WITH THE APPLICANT'S LATEST VERSION OF 20 DECEMBER 2023)**

**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~~ during the construction and 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; and

“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~~ may interfere with:

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

**Co-operation**

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.
132. (1) The Undertaker must not allow vessels associated with the construction of any specified 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.

## Railways

134. 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.

## Highway access management

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.
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 authorised development must be carried out in accordance with the approved freight management plan.

## Indemnity

137. ~~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:
- (d) 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;
  - (e) 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

(f) 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 financial losses, costs, charges, damages, expenses, 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.

### 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.

### **Arbitration**

140. ~~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).

**APPENDIX 3: REDLINE DRAFT PROTECTIVE PROVISIONS FOR THE BENEFIT OF CLDN (CLDN'S PREVIOUS VERSION OF 08 DECEMBER 2023 COMPARED WITH CLDN'S LATEST VERSION OF 08 JANUARY 2024)**

**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 during the construction and 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;

“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; and

“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 may interfere with:

- (g) the Port or access (including over water) to and from the Port; [or](#)
- (h) CLdN's ability to carry out disposal activities at the CLdN disposal site; or
- (i) the functions of CLdN as the statutory harbour authority for the Port.

**Co-operation**

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.
132. (1) The Undertaker must not allow vessels associated with the construction of any specified 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.

### **Railways**

134. 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.

### **Highway access management**

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.
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 authorised development must be carried out in accordance with the approved freight management plan.

### **Indemnity**

137. (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:
- (g) 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;
  - (h) 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~~ [or](#)
  - (i) 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 financial losses, costs, charges, damages, expenses, claims and demands arising until the commencement of the operation of the authorised development.

### **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.

### **Arbitration**

140. 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).

**APPENDIX 4: REDLINE DRAFT PROTECTIVE PROVISIONS FOR THE BENEFIT OF CLDN (CLDN'S  
PREVIOUS VERSION OF 08 DECEMBER 2023 COMPARED WITH THE APPLICANT'S LATEST  
VERSION OF 20 DECEMBER 2023)**

**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 ~~during the construction and~~ 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; and

“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 ~~may~~ has been assessed in any environmental document as being likely to interfere with:

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

**Co-operation**

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.
- ~~132. (1) The Undertaker must not allow vessels associated with the construction of any specified 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.~~

### **Railways**

- ~~134. 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.~~

### **Highway access management**

- ~~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.~~
- ~~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 authorised development must be carried out in accordance with the approved freight management plan.~~

## Indemnity

137. ~~137.~~(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:
- (j) 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~~ [/direction](#) of the Statutory Conservancy and Navigation Authority;
  - (k) 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~~ [or](#)

- (1) 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 ~~financial losses, costs, charges, damages, expenses,~~ 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.

#### **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.~~

#### **Arbitration**

140. ~~140.~~ 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).

**APPENDIX 2**

**DATA FOR JUNCTIONS EXCEEDING CAPACITY**

**Key:**

Within Capacity	
Exceeding Capacity Threshold	

A160/A180 Roundabout Junction							
Arm	Year	RFC in Base Scenario	RFC in Base + Committed	RFC in Base + Committed + Development (BCD) Scenario	Difference between Base and BCD Scenarios	Difference between Base + Committed and BCD scenarios	Notes
A180 East (Arm B)	2025, AM	0.65	0.81	0.86	0.21	0.05	Delay in 2025 Base is predicted to be 13.34s, increasing to 28.15s in Base + Committed and increasing further to 38.13s in the BCD.
A180 East (Arm B)	2032, PM	0.72	0.89	0.95	0.23	0.06	Delay in 2032 Base is predicted to be 17.15s, increasing to 47.02s in 2032 Base + Committed and increasing further to 70.57s in 2032 BCD.

A160/Habrough Road/Ulceby Road/East Halton Road Roundabout Junction							
Arm	Year	RFC in Base Scenario	RFC in Base + Committed	RFC in Base + Committed + Development (BCD) Scenario	Difference between Base and BCD Scenarios	Difference between Base + Committed and BCD scenarios	Notes
A160 West (Arm C)	2025, AM	0.75	0.88	0.90	0.15	0.02	Delay in 2025 Base is predicted to be 6.13s, increasing to 7.01s in Base + Committed and increasing further to 14.96s in the BCD.
A160 East (Arm A)	2025, PM	0.72	0.87	0.92	0.20	0.05	Delay in 2025 Base is predicted to be 6.25s, increasing to 7.08s in 2025 Base + Committed and increasing further to 15.20s in 2025 BCD.
A160 West (Arm C)	2032, AM	0.8	0.94	0.95	0.15	0.01	Delay in 2032 Base is predicted to be 9.04s, increasing to 25.96s in Base + Committed and increasing further to 31.43s in the BCD.
A160 East (Arm A)	2032, PM	0.78	0.93	0.97	0.19	0.04	Delay in 2032 Base is predicted to be 8.86s, increasing to 24.98s in 2032 Base + Committed and increasing further to 43.52s in 2032 BCD.

A160/Humber Road/Manby Road Roundabout Junction							
Arm	Year	RFC in Base Scenario	RFC in Base + Committed	RFC in Base + Committed + Development (BCD) Scenario	Difference between Base and BCD Scenarios	Difference between Base + Committed and BCD scenarios	Notes
Humber Road (Arm A)	2025, PM	0.71	0.81	0.87	0.16	0.06	Delay in 2025 Base is predicted to be 8.35s, increasing to 9.34s in 2025 Base + Committed and increasing further to 13.59s in 2025 BCD.
Humber Road (Arm A)	2032, PM	0.76	0.86	0.93	0.17	0.07	Delay in 2032 Base is predicted to be 11.44s, increasing to 18.70s in 2032 Base + Committed and increasing further to 31.58s in 2032 BCD.