

**THE PROPOSED ASSOCIATED BRITISH PORTS (EASTERN RO-RO TERMINAL)  
DEVELOPMENT CONSENT ORDER**

**DEADLINE 8**

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Response to Examining Authority further written questions and requests for information (ExQ4),  
on behalf of the Harbour Master, Humber

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Reference	Addressed to	Information required	HMH response
<b>BGC.4.01</b>  Submission of legislation etc	<b>HMH</b>	Submission of legislation etc Submit copies of:  a) The British Transport Docks Act 1972 (the 1972 Act); and  b) Immingham Dock Bye-laws 1929.	Submitted on 22.12.23 @ 15.50hrs.
<b>DCO.4.04</b>  ExA's suggested Requirement 18A or incorporation of the Revised Navigational Risk Assessment (NRA) and NRA Addendum into the dDCO	<b>Applicant and HMH</b>	The ExA is mindful of the HMH's 'in principle' objection stated in [REP7-061] to the suggested Grampian Requirement 18A and notes HMH's alternative wording for Requirement 18A should the Secretary of State conclude such a requirement should be included in any made DCO. The ExA also notes the Applicant's support for HMH's position, as expressed in [REP7-029].  Notwithstanding the submissions made by the HMH and the Applicant, the ExA remains of the view that in the interests of navigational safety any made DCO for the Proposed Development should secure initial operational limits for the proposed berths and that need not be incompatible with the exercising of the HMH's statutory duties. That said, the ExA recognises that a requirement based on the HMH's alternative wording may be more appropriate, albeit whichever form of wording might be used	<p>HMH has consistently stated that - taking account the wide range of controls available to him (and to the Immingham Dock Master) - navigational safety on the Humber will not be compromised by the delivery and operation of the proposed development at Immingham notwithstanding its proximity to other Immingham port infrastructure including the nationally important IOT facilities.</p> <p>Against this background, HMH has no "in principle" objection to securing initial operational limits for the proposed berths in the DCO provided that it can be achieved in a way that does not undermine the discretion of the SCNA and HMH to exercise their respective statutory functions.</p> <p>HMH is aware that the Applicant intends to submit a revised Requirement 18A at Deadline 8. He has been consulted on, and fully endorses the proposal.</p> <p>In the opinion of HMH, the requirement for the Enhanced Operating Measures to be set out in the Port of Immingham Operating Manual has a number of benefits: the information will</p>

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		<p>would engage the provisions of section 145 (Harbours) of the Planning Act 2008 (PA2008). The ExA considers that the only appropriate alternative to the inclusion of a requirement along the lines of R18A would be the incorporation of the updated NRA [REP7-011] and Supplementary Navigation Information Report [REP7-030], as a means of setting a baseline for the operation of the proposed berths, via a specific requirement within any made DCO. Such an incorporation of the NRA via a specific requirement would be something which the Applicant appeared to support when it originally submitted its application, and for which there is precedent, for example Requirement 11 of each of the made Tilbury 2 DCO [AS-039] and Lake Lothing DCO [AS-040].</p> <p>The Applicant and the HMH are therefore requested to:</p> <p>a) Comment on the following revised wording for recommended additional Requirement 18A:</p> <p><i>(1) The undertaker <del>may</del> <b>must</b> not commence marine commercial operations until the Statutory Conservancy and Navigation Authority has published <del>guidance setting out a</del> written statement of safe operating procedures for arrival at and departure from the authorised</i></p>	<p>be where river users will expect to find it, the approach respects the jurisdiction of the Dock Master, and it will not interfere with or fetter the ability of HMH or HES to manage the safe navigation of vessels.</p> <p>The ExA suggests that an alternative approach (i.e. an alternative to the earlier proposals for a Requirement 18A) would be to incorporate the updated NRA and Supplemental Navigation Information Report as a means of setting the baseline for the operation of the proposed berths. HMH is concerned that this would be unduly prescriptive and would not allow for variation of controls in response to changing conditions, It could also have the inadvertent effect of preventing effective controls from being used, simply because they were not included in those documents, e.g. new controls made available through technological advances.</p> <p>Turning to the specific questions at paragraphs (a) to (d):</p> <p><b>With regard to point (a)</b>, as explained above, HMH fully supports the Applicants revised proposals in preference to the previous drafts. He also considers the ABP proposed text sits well with existing paragraph 16 of the protective provisions for the SCNA.</p> <p>Paragraph 16 of the proposed protective provisions in the dDCO currently provides as follows:</p> <p><i>16. Before commencing marine commercial operations the Company must submit to the Statutory Conservancy and Navigation Authority for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development and must operate the authorised development only in accordance with such</i></p>

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		<p><i>development for particular vessels and/or classes of vessels.</i></p> <p><i>(2) The Statutory Conservancy and Harbour Authority must not publish the <del>guidance</del> <b>written statement</b> referred to in sub-paragraph (1) unless it has first consulted with the <del>dockmaster</del> <b>dock master</b> for the Port of Immingham and the IOT Operators, as defined in Part 4 of Schedule 4, and has had due regard to their representations.</i></p> <p><i>(3) The undertaker must operate the authorised development only in accordance with the <del>guidance</del>-written statement referred to in <b>sub-paragraph (1)</b> as <b>may be</b> amended and re-published from time to time.</i></p> <p>b) Clarify whether publication of “safe operating procedures” as referenced in the wording above would be by the Statutory Conservancy <u>and</u> Navigation Authority (SCNA) alone or by SCNA and the Statutory Harbour Authority (SHA) for the Port of Immingham.</p> <p>c) Advise whether the SHA Humber and/or SHA Port of Immingham would be prepared to give written consent to Requirement 18A being included in any made DCO for the Proposed Development.</p>	<p><i>procedure as approved, including any approved alteration made from time to time.</i></p> <p>HMH suggested in HMH29 [REP7-061] (with which the Applicant aligned itself) that paragraph 16 could be amended to include additional sub-paragraphs that:</p> <p><i>“(2) The undertaker must not submit the statement referred to in sub-paragraph (1) unless it has first consulted with the harbour master, the dockmaster for the Port of Immingham and the IOT Operators, as defined in Part 4 of this Schedule, and has had due regard to their representations.</i></p> <p><i>(3) Prior to granting or refusing approval of the statement referred to in sub-paragraph (1), the SCNA may carry out its own navigational risk assessment and may impose reasonable conditions on the approval for the purposes set out in paragraph 3(2)(a) to (c) of this Part of this Schedule.”</i></p> <p>In the event that the Examining Authority is minded to recommend the Applicant’s proposed Requirement 18A, it is suggested that sub-paragraph (1) of paragraph 16 to the protective provisions could be amended to make it clear that the SCNA’s approval of the safe operating procedures is subject to the requirement for EOM (additional text in red):</p> <p><i>16. Before commencing marine commercial operations the Company must submit to the Statutory Conservancy and Navigation Authority for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development and, <b>subject to Requirement 18A</b>, must operate the authorised development only in accordance with such procedure as approved, including any approved alteration made from time to time.</i></p>

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		<p>d) Comment, as an alternative to Requirement 18A being included in any made DCO for the Proposed Development, on the incorporation of the updated NRA and Supplementary Navigation Information Report into any made DCO, via the following recommended wording for an additional requirement (named by the ExA at this stage as 18B simply for identification purposes), as follows:</p> <p>Requirement 18B</p> <p><i>The authorised development must be constructed and operated in accordance with the “applied controls” described in the Updated Navigation Risk Assessment and the Supplementary Navigation Information Report listed in Schedule 6.</i></p>	<p><b>With regard to point (b)</b>, the approach suggested by the Applicant has the advantages that it is consistent with usual practice well-known to all users of the port. Paragraph 16 already provides for a written statement of safe operating procedures to be prepared by the Applicant SHA and approved by the SCNA. The new Requirement 18A would provide additional comfort regarding the proposed control measures.</p> <p><b>With regard to point (c)</b>, if the Applicant’s approach to Requirement 18A is adopted, there is no need for section 145 consent.</p> <p><b>With regard to point (d)</b>, HMH is concerned to ensure clarity and flexibility. The draft Requirement 18B suggests that all Applied Controls referred to in the updated documents would be required all of the time, regardless of experience once the IERRT is constructed and operational. The proposed wording is not time-limited or capable of change (without further formal application process). This is a significant concern to HMH, noting also that Requirement 18B would not allow for the application of potential further controls that may not be contemplated in the NRA, but which may become available over time, e.g. through the advent of new technology.</p> <p>Ultimately, HMH respectfully takes the view that Requirement 18B would provide little comfort to third parties whilst being overly prescriptive for HES and potentially requiring unnecessary controls and/or potentially placing restrictions on more appropriate controls that could be imposed.</p>
DCO.4.05	Applicant and HMH	<b>Requirement 18 Impact Protection Measures (IPM) and right of appeal under paragraphs 19 and 22</b>	HMH acknowledges the points made by the Examining Authority.

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		<p>In relation to the concerns about the ExA's recommended changes to Requirement 18 voiced by the HMH and the Applicant, the parties are reminded that one of the purposes of the Nationally Significant Infrastructure Projects' regime is to reduce the need to obtain several separate consents prior to an infrastructure project's delivery.</p> <p>a) <b>For the Applicant</b> - The ExA is mindful of the HMH's in-principle objection to the inclusion of a power of direction, as opposed to recommendation, within Requirement 18 [REP7-061], a position that the Applicant has expressed support for in [REP7-029], but in the event of the ExA being minded to recommend to the Secretary of State that a power of direction be included in Requirement 18, would the Applicant be content if no right of appeal to the Secretary of State were made available to the undertaker?</p> <p>b) <b>For the Applicant and HMH</b> – In the event of a power of direction being included in Requirement 18 without right of appeal, would the inclusion of a power of direction engage section 145 of the PA2008?</p> <p>c) <b>For the Applicant</b> – Justify the inclusion of the dock master in Requirement 18 in the version of the dDCO that accompanied the Applicant's Change Request [AS-053].</p>	<p><b>In response to question (b)</b>, with or without the right of appeal, a power conferred on the SCNA to direct the Applicant to construct the IPM engages section 145. The reason for this is that section 145 is concerned with changes to the powers or duties of harbour authorities. Such new power would go beyond the existing general power of direction afforded to the SCNA pursuant to section 6 of the British Transport Docks Act 1972, which applies only to the giving of directions to vessels in the Humber.</p> <p>Aside from the specific question regarding Requirement 18 put to HMH by the Examining Authority, HMH would like to make clear his full support for the Applicant's proposed Requirement 18, the most recent version of which has been shared with him prior to Deadline 8.</p> <p>In his view, the Applicant's proposed wording is consistent with the position taken by HMH throughout this examination, i.e. that there should be provision for the recommendation of impact protection measures by the SCNA (in its capacity as the body responsible for managing the safe navigation of the Humber) to the Applicant (as the statutory body with responsibility for safe operation of the Port of Immingham), but not a direction that would require them to be constructed, whether given by the SCNA or another person.</p> <p>HMH has explained his reasons for this in previous submissions. However, he has also given some thought to a proposal should the Examining Authority consider it essential for the DCO to include more than a recommendation. The wording suggested below is offered up to assist the Examining Authority on the basis that it is not a preferred option, but that consent would not</p>

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			<p>be withheld by the SCNA under section 145 of the Planning Act 2008 to the associated change to its functions:</p> <p><b>Requirement 18</b></p> <p>“impact protection measures” means–</p> <p>(a) part (a) of Work No. 3; or</p> <p>(b) part (b) of Work No. 3; or</p> <p>(c) both parts (a) and (b) of Work No. 3;</p> <p><b>Impact Protection Measures</b></p> <p>18.—(1) In the event that the Statutory Conservancy and Navigation Authority determines, at its discretion, that impact protection measures are required in the interests of navigational safety in the River Humber, and upon receiving notification of that decision from the Statutory Conservancy and Navigation Authority, the undertaker must construct the impact protection measures as determined by the Statutory Conservancy and Navigation Authority.</p> <p>(2) No works for the construction of the impact protection measures may commence until the undertaker has consulted with the Statutory Conservancy and Navigation Authority, the dock master, the operator of the Humber Oil Terminal and the MMO as to the detailed design of the impact protection measures and had regard to the representations made to the undertaker by any such person.</p> <p>(3) No works for the construction of the impact protection measures may commence until the undertaker has obtained the consent of the Statutory Conservancy and Navigation Authority (such consent not to be unreasonably withheld).</p>

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			<p>(4) Upon receiving notification of the Statutory Conservancy and Navigation Authority's determination referred to in paragraph (a), the undertaker must— within 10 business days, notify the operator of the Humber Oil Terminal and the MMO of that determination; and</p> <p>(b) within 30 business days, notify the operator of the Humber Oil Terminal and the MMO as to the steps it intends to take as a result of the Statutory Conservancy and Navigation Authority's notification.</p> <p>(5) The detailed design referred to in paragraph (2) must be:</p> <p>(a) within the limits of deviation shown on the relevant plans of the works plans;</p> <p>(b) in general accordance with the detail shown on the relevant engineering sections drawings and plans; and</p> <p>(c) in general accordance with the detail shown on the relevant general arrangement plans.</p> <p>.</p>
DCO.4.06	Applicant, HMH and IOT	<p><b>Requirement 18: potential amendment to construct Finger Pier IPM prior to commencement of construction of the proposed berths</b></p> <p>As a prerequisite to minimising impedance to IOT operations and/or safety risks related to construction activity, if a DCO were to be made, should Requirement 18 be amended to require IPM for the Immingham Oil Terminal Finger Pier be constructed prior to the capital dredge and commencement of construction of the proposed IERRT berths?</p>	HMH does not have a particular view on this.



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DCO.4.07	Applicant and HMH	<p><b>Need for Protective Protections (PPs) in favour of the Statutory Conservancy and Navigation Authority (SCNA)</b></p> <p>Paragraph 32 of the “Joint Note – Separation of functions” (the functions note) [REP7-066], states:</p> <p><i>“Historically, Harbour Orders do not treat an applicant’s harbour masters as separate bodies requiring protective provisions in legislation authorising further port infrastructure, and there is no reason for this DCO to do so. On the other hand, the protective provisions in the DCO provide a streamlined approvals process for works in the Humber that would – but for the disapplication of Section 9 of the 1899 Act - be subject to licensing by the SCNA.”</i></p> <p>Explain the rationale for the inclusion of PPs in favour of the SCNA in the dDCO [REP6-003]. In the light of what has been stated at paragraph 32 of the joint note [REP7-066] and the HMH’s view that a made DCO should not include powers routinely available to the HMH (in the capacity of the SCNA), is there an inconsistency of approach with Part 1 of Schedule 4 of the dDCO having been included as a means of disapplying/streamlining the licensing of works by the SCNA?</p>	<p>HMH is unclear what the Examining Authority means by: <i>“and the HMH’s view that a made DCO should not include powers routinely available to the HMH (in the capacity of the SCNA)”</i>. The point being made on his behalf at paragraph 32 of the Joint Note (within the section headed <i>“Immingham Dockmaster”</i>) was that harbour orders under the Harbours Act 1964 do not include protective provisions for the benefit of the applicant SHA’s own harbour master (or dock master as the case may be) even though such appointees may well have their own independent statutory functions conferred under local legislation.</p> <p>The difference here is that– unlike most other harbours – there is a separate harbour authority for the Humber (SCNA) with a separate statutory role to that of ABP as the Immingham port operator.</p> <p>Previous harbour orders applied for by ABP in respect of developments at Immingham have not disapplied section 9 of the Humber Conservancy Act 1899. Hence, the usual legislative regime has applied. Arguably, this could have been the approach adopted to this application too. However, this is not an order under the Harbours Act 1964. The application meets the thresholds for nationally significant infrastructure, and the Applicant’s approach follows the precedent set by the Able Marine Energy Park DCO which disapplied the usual section 9 licensing regime and substituted an alternative approvals mechanism, reflecting that the principle of the development had been approved by the Secretary of State with detailed approvals left to the appropriate body. As alluded by the Examining Authority in ExQ DCO.4.05, one of the purposes of the</p>

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			<p>Nationally Significant Infrastructure Projects' regime is to reduce the need to obtain several separate consents prior to an infrastructure project's delivery.</p> <p>In light of DCO precedent, it is not considered that there is any inconsistency of approach. The protective provisions also have the benefit of setting out on the face of the order the basis on which the SCNA may provide and condition its approval to detailed plans and specifications (against which both parties can be held to account).</p> <p>It is submitted, however, that it would be inconsistent with the usual approach to such matters for the Immingham Dock Master to be afforded any special protection.</p> <p>HMH hopes this clarifies the previous note.</p>
DCO.4.08	Applicant	<p><b>Protective Provisions (PPs) in favour of the Humber Oil Terminals Trustees Limited (HOTT)</b></p> <p>a) Would IOT vessels be prioritised over Proposed Development traffic, and if not, why not?</p> <p>b) Would a protective provision requiring impact protection measures for either or both of the IOT Finger Pier and the Trunkway be compatible with Requirement 18?</p>	<p>With regard to (a), it would not be for the Applicant to determine unilaterally whether IOT vessels are prioritised over vessels concerned in the construction of the proposed development. As stated on page 13 of the Response on behalf of HMH to D6 submissions from IOT and DFDS [REP7-064]:</p> <p><i>"No vessel has a free run – the process is managed, every time, for every vessel, every day."</i></p>

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DCO.4.10	Applicant and CLdN	<p><b>PPs in favour of CLdN</b></p> <p>The ExA notes that the Applicant considers that the PPs sought by CLdN, most particularly paragraph 127 “Application” should not apply to the operational phase of the Proposed Development, with the movement of vessels being under the control of the Humber Vessel Traffic Service (VTS) [AS-078]. It appears to the ExA that what CLdN is seeking to achieve via the inclusion of the Proposed Development’s operational phase within paragraph 127 would be the maintenance of the status quo for (non-interference with) the movement of shipping to and from the Port of Killingholme rather than seek to gain a competitive advantage over operations at the Port of Immingham.</p> <p>a) <b>For CLdN</b> – Is the ExA correctly characterising your representation that the operational phase for the Proposed Development should be included in the PPs? If not, explain why not.</p> <p>b) <b>For the Applicant</b> – if the proposition is correct that VTS would be able to manage the passage of vessels so that there would be no interference with the movement of shipping to and from the Port of Killingholme, what disadvantage to the undertaker would there be if the PPs sought by CLdN were to apply to the</p>	<p>Although this question is not addressed to HMH, he would like to bring to the attention of the Examining Authority that his primary concern is that HES should be able to manage traffic safely and efficiently on the river without being in danger of contravening the provisions of the DCO.</p> <p>HMH notes that the ExA considers that what CLdN is seeking to achieve by including the operational phase of the IERRT in its protective provisions is the maintenance of the status quo rather than any competitive advantage over operations at the Port of Immingham. HMH has no view on the question of commercial advantage. However, he considers that such provision, if included, it would amount to a departure from the status quo which does not afford CLdN such benefits.</p> <p>HMH also notes that the protective provisions proposed by CLdN are worded in such a way that they are directed very specifically to the construction period. HMH does not see how they would readily apply – as currently drafted – to the operational phase of the development, even if it was considered desirable to put CLdN in a different position to other vessel operators on the Humber (which HMH suggests would be undesirable as a matter of principle).</p>

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		operational phase (ie the use of any of the Proposed Development's berths)?	
<b>NS.4.09</b>	<b>HMH</b>	<p><b>Monitoring of the application of risk controls including adaptive procedures</b></p> <p>In what ways and with what frequency would the SCNA monitor the application of the 'applied controls' as listed in replacement Appendix 10.1 of the ES Chapter 10 [Table 32, Annexes A, B and C and Annex G, Table 2 in REP7-011 ], particularly those listed as 'project specific adaptive procedures' (having regard to HMH's representation at Deadline 7A that any imposition of enhanced controls, such as obligatory additional tug assistance, would be imposed by the Dock Master following consultation with the SCNA)?</p>	<p><b>Each voyage compliance monitored in real time</b></p> <p>Every voyage is being monitored for compliance with operating requirements in real time by interested parties including VTS Humber, Immingham Dock Master, the terminal operator, vessel operator, vessel master and pilot of PEC as well as tug operators, where involved. Failure to adhere to all the requirements could result in a vessel being delayed or cancelled. In real time, all relevant people are all following the rules because it is the common welfare for them to do so.</p> <p><b>Stakeholder liaison meetings and NRA review</b></p> <p>Away from the activity itself there are regular management and stakeholder liaison meetings reviewing the effectiveness of the measures in place and developing new procedures if required. This is in addition to the formal navigation risk assessment process which is a constant process of review and continuous improvement.</p>