

IMMINGHAM EASTERN RO-RO TERMINAL



Habitats Regulations Assessment Derogation Report

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IMMINGHAM EASTERN RO-RO TERMINAL

WITHOUT PREJUDICE REPORT TO INFORM HABITATS REGULATIONS ASSESSMENT (HRA) DEROGATION

1. EXECUTIVE SUMMARY

- 1.1 This report has been prepared on a without prejudice basis in response to the request from the Examining Authority to set out the information that would be required for a potential derogation under the Habitats Regulations if, contrary to the Applicant's position, the Competent Authority does not agree with the Applicant's conclusions that the Proposed Development would have no Adverse Effect on Integrity (AEoI) on the Humber Estuary Special Area for Conservation (SAC), Special Protection Area (SPA) and Ramsar site. For the avoidance of doubt, this report has been requested and is provided on the basis that it is without prejudice to the Applicant's conclusions that no AEoI will arise for reasons set out in detail elsewhere.

2. INTRODUCTION

- 2.1 ABP, as owner and operator of the Port of Immingham, is seeking development consent to construct and operate a new roll-on/roll-off (Ro-Ro) facility within the Port to be known as the Immingham Eastern Ro-Ro terminal (IERRT).
- 2.2 A Habitats Regulations Assessment (HRA) has been undertaken by the Applicant pursuant to the Conservation of Habitats and Species Regulations 2017 (the Habitat Regulations) which has concluded that the Project would not have an Adverse Effect on Integrity ("AEOI") of any European site either alone or in combination with other plans and projects (**APP-115**). This report has subsequently been updated to provide further clarification at the request of Natural England and the Examining Authority (**REP5-020** and **REP7-014**) noting that the conclusions of this assessment have not changed.
- 2.3 This Without Prejudice HRA Derogation Report has been prepared and submitted at the request of the Examining Authority without prejudice to those conclusions. It considers two specific pathways relating to the loss of intertidal and subtidal habitat. The potential effects derived from all other pathways are not considered to compromise any of the conservation objectives or can, and in any event will be, fully mitigated. The anticipated effects of the Proposed Development does not in the Applicant's view constitute an AEOI on the European Sites both alone or in-combination with other plans or projects. Natural England's view on the HRA has not yet been received save for Natural England confirming that an AEOI from the project alone can likely be ruled out.
- 2.4 Given the conclusion reached by the Applicant in the HRA of no AEOI on the European Sites, it is the Applicant's position that the need for any derogation does not arise. This HRA Derogation Report is, however, submitted at the request of the Examination Authority in accordance with paragraph 3.22 of Planning Inspectorate Advice Note Ten: Habitats Regulations Assessment

relevant to nationally significant infrastructure projects (Aug 2022) (Planning Inspectorate, 2022) on a 'without prejudice' basis to the finding of the HRA of no AEIOI and the Secretary of State for Transport's ("Secretary of State") final decision on whether derogation would be required.

The Project

- 2.5 A detailed description of the Project is set out in Chapter 2 of the ES (**APP-039**) as amended by Chapter 2 of the ES Addendum (**AS-063**).
- 2.6 In summary the Project consists of marine works within the Humber Estuary and landside works within the existing port estate. The following paragraphs summarise the principal elements of the project in the context of both the marine and landside infrastructure. Full details are provided in Chapters 2 and 3 in Volume 1 of the Environmental Statement (ES) (Application Document Reference number 8.2.2 and 8.2.3 respectively).
- 2.7 **Marine infrastructure works** – The marine works will comprise a number of distinct components. In brief, these include:
- An approach jetty from the shore;
 - A linkspan with bankseat to provide a solid foundation;
 - Two secured floating pontoons linked by another linkspan bridge;
 - Two finger piers to provide three berths (one on either side of the northern-most outer finger pier furthest from the shore, and one on the northern side of the southern-most inner finger pier) thereby enabling the vessels to berth alongside with their stern ramps resting on a floating pontoon which will match the rising and falling of the tide;
 - A capital dredge of the new berth pocket; and
 - Disposal of dredged material at sea on the basis that no beneficial alternative use for the material has been identified (see Waste Hierarchy Assessment in Appendix 2.1 in Volume 3 of this Environmental Statement (ES) (Application Document Reference number 8.4.2(a));
 - Potential future inclusion of vessel impact protection measures to provide protection for the Immingham Oil Terminal (IOT) jetty and finger pier. ABP does not consider such measures are required, but it has made provision for them in the DCO application so as to ensure that the ability to provide such infrastructure is consented as part of the IERRT DCO in the event that it is determined at some future date that they are required.
- 2.8 **Landside infrastructure works** – In summary, the landside works consist of the following:
- The demolition of existing commercial buildings. Two of the buildings to be demolished which are used by Malcolm West Forklifts, will be replaced

within the existing site boundary. Their relocation will facilitate the construction of the internal bridge (see below);

- The improvement of the surface of the development site so to enable it to accommodate the cargo which is either awaiting embarkation on to one of the Ro-Ro vessels or awaiting collection after disembarkation - together with a small vehicular passenger waiting area. These works will include resurfacing and the provision of new pavements and associated infrastructure across the site;
- The construction of a new terminal building and a small welfare building to provide facilities for terminal operational and administration staff, lorry drivers and passengers, together with a small workshop;
- The construction of a UK Border Force buildings and facilities with check in area;
- The provision of necessary infrastructure such as substations and frequency converters;
- An internal vehicle access bridge linking the North and Central Storage Areas which will cross over Robinson Road (an existing port road);
- Improvements to the internal road layout within the Port together with improvements to East Gate comprising the widening of the existing entrance; and
- Off-site environmental enhancement involving the improvement of an existing area of woodland but outside the boundary of the statutory port estate boundary.

The Habitats Regulations Assessment Process

2.9 The HRA process follows a three stage approach, as detailed in the PINS Advice Note 10 (Planning Inspectorate, 2022):

- Stage 1: Screening for Likely Significant Effect (LSE)
- Stage 2: Appropriate Assessment (AA)
- Stage 3: Test 1 - Assessment of Alternatives
- Stage 3: Test 2 - Consideration of Imperative Reasons of Overriding Public Interest (IROPI)
- Stage 3: Test 3 - Compensation.

2.10 This section of the Without Prejudice Derogation Report summarises the outcome of the Project's HRA Stages 1 and 2 and introduces the Stage 3 assessment.

HRA: Stage 1 Likely Significant Effect

- 2.11 The HRA Stage 1 (Screening) assessment considered whether the Project might affect five European sites in its vicinity. Stage 1 concluded that LSE could not be discounted with respect to four European sites:
- Humber Estuary SAC;
 - Humber Estuary SPA;
 - Humber Estuary Ramsar site; and
 - Wash and North Norfolk Coast SAC.
- 2.12 LSE were discounted for qualifying interests of the Greater Wash SPA.
- 2.13 The following impact pathways were screened into the HRA Stage 2:
- Physical loss of habitat and associated species;
 - Physical damage through disturbance and/or smothering of habitat;
 - Physical loss or damage of habitat through alterations in physical processes;
 - Direct changes to qualifying habitats beneath marine infrastructure due to shading;
 - Physical change to habitats resulting from the deposition of airborne pollutants;
 - Non-toxic contamination through elevated SSC;
 - Toxic contamination through release of toxic contaminants bound in sediments, and accidental oil, fuel or chemical releases;
 - Airborne noise and visual disturbance;
 - Disturbance through underwater noise and vibration; and
 - Biological disturbance due to potential introduction and spread of non-native species.

HRA: Stage 2 Appropriate Assessment

- 2.14 The HRA Stage 2 Appropriate Assessment concluded that for that for the majority of pathways there is no potential for an adverse effect on site integrity or any potential for the predicted effects to compromise any of the conservation objectives, with no mitigation required. The need for mitigation has, however, been identified in relation to the potential effects of airborne noise and visual disturbance during construction. The mitigation to be provided includes restrictions on working over winter in certain locations, acoustic barriers and visual screens, soft-start marine piling and cold weather restrictions. In operation as a precaution screening will be installed so that movements of workers or vehicles will not be as visible from the foreshore.
- 2.15 Based on the distribution of birds, any potential disturbance and the Applicant's commitment to mitigation, it is concluded that there will be no adverse effects

on the integrity of either the Humber Estuary SPA or Ramsar from the effects of airborne noise and visual disturbance.

- 2.16 Mitigation has also been identified in relation to the effects of underwater noise and vibration during marine piling. This will include soft-start marine piling, vibro marine piling where possible, seasonal marine piling restrictions, night-time marine piling restrictions and use of Marine Mammal Observers. Based on the assessment of effects on qualifying species (river and sea lamprey and grey seal), any potential disturbance and the Applicant's commitment to mitigation, it is considered that there will be no adverse effects on the integrity of the Humber Estuary SAC or Ramsar from the effects of underwater noise and vibration during marine piling. There is also considered to be no adverse effects on the integrity of The Wash and North Norfolk Coast SAC (as a result of underwater noise and vibration during marine piling on the common seal qualifying feature), based on the Applicant's commitment to mitigation.
- 2.17 No mitigation was identified as being required (**REP7-014**) for the loss of intertidal habitat. In this context, intertidal habitat loss is predicted to be highly localised and of a magnitude that will not change the structure or function of the intertidal habitats in the Humber Estuary.
- 2.18 Similarly, no mitigation was identified as being required (**REP7-014**) for the loss of subtidal habitat. The loss of subtidal habitats due to piling will be highly localised. The *de minimis* (i.e., negligible and ecologically inconsequential) changes in subtidal habitat extent will not change the overall structure or functioning of the subtidal habitats within the Port of Immingham area or more widely in the Humber Estuary.
- 2.19 The review in the HRA of other plans and projects that could contribute to effects has established that significant adverse in-combination effects on site integrity with other plans and projects can be ruled out from all pathways, adopting a precautionary approach (Table 37, 38 and 39) (**REP7-014**).
- 2.20 In summary the applicant concludes that the Project will not result in AEOI for any European sites, receptors or pathways in view of the sites conservation objectives either alone or in-combination with other plans or projects.

Provision of a 'without prejudice' derogation case

- 2.21 Although the Applicant considers that the evidence is clear that the Project will not have an AEOI it has, at the request of the Examining Authority's EXQ4 Question BNE4.04, prepared this without prejudice Shadow HRA Derogation Report under Regulation 64 of the Conservation of Habitats and Species Regulations (2017) on a without prejudice basis to the overall conclusions of the HRA stage 2 assessment and the final decision of the Secretary of State in the Appropriate Assessment of the effects of the Project.
- 2.22 The following UK and European Commission (EC) guidelines address Regulation 64, and this Derogation Report has been prepared in accordance with this guidance:

- Defra. (2021). Habitats regulations assessments: protecting a European site;
- The Planning Inspectorate. (2022). The Planning Inspectorate (PINS) Note 10: Habitats Regulations Assessment relevant to Nationally Significant Infrastructure Projects;
- European Commission. (2018). Managing Natura 2000 sites – the provisions of Article 6(3) of the ‘Habitats’ directive 92/42/EEC.
- European Commission. (2012). Guidance document on Article 6(4) of the Habitats Directive 92/43/EEC. Clarification of the concepts of Alternative solutions imperative reasons of overriding public interest, compensatory measures, overall coherence, opinion of the Commission.
- European Commission. (2001). Assessment of plans and projects significantly affecting Natura 2000 sites: Methodological guidance on the provisions of Article 6(3) and (4) of the Habitats Directive 92/43/EEC.

HRA: Stage 3 of the HRA

- 2.23 Regulation 64 of the Conservation of Habitats and Species Regulations (2017) makes provision for a project to proceed where a negative assessment of the implications for a European site are recorded (i.e. where AEOI of European site(s) cannot be ruled out, despite any proposed avoidance or reduction (mitigation) measures). To proceed, a Project must be assessed against three tests, each test must be passed sequentially before proceeding to the next.

HRA: Stage 3 Test 1 Assessment of Alternatives

- 2.24 The Stage 3 Assessment of Alternatives (Section 3 of this document) considers the feasibility of ‘alternative solutions’ to meeting the Project Objectives. If an alternative solution (one which meets the project objectives) is identified that results in a lesser effect on the integrity of the European site, then the Project in its current form cannot proceed.

HRA: Stage 3 Test 2 Imperative Reasons of Overriding Public Interest (IROPI)

- 2.25 Defra (2021) states “*If there are no feasible alternative solutions, you must next be able to show that there are imperative reasons of overriding public interest why the proposal must go ahead. These must justify the proposal, despite the damage it will or could cause to the European site.*” The assessment of IROPI is presented in Section 4 of this document.

HRA: Stage 3 Test 3 Compensatory measures

- 2.26 Where the IROPI test has been satisfied, the HRA process requires that appropriate compensatory measures are provided by the applicant and “*the appropriate authority must secure that any necessary compensatory measures are taken to ensure that the overall coherence of Natura 2000 is protected*” (Conservation of Habitats and Species Regulations 2017).
- 2.27 Section 5 of this document provides detailed information on the proposed compensation site that has been identified to ensure coherence of the affected

European sites are maintained. This compensation has been identified without prejudice to the HRA Stage 2 Appropriate Assessment conclusion that the Project will not have an AEIOI on the European sites either alone or in combination with other plans or projects.

3. HRA STAGE 3 (TEST 1): ASSESSMENT OF ALTERNATIVE SOLUTIONS

3.1 The analysis of potential alternative solutions has had due regard to guidance provided within a range of sources, including those sources listed in paragraph 2.21 above and reflects the assessment of alternatives and information already before the Examination.

3.2 The approach that was adopted takes account of the following steps to identify whether a feasible alternative exists (i.e. which meets the need and related objectives for the Project which have been identified):

- Step 1 – Understand and define the project need and objectives;
- Step 2 – identify the potential AEIOI from the Project on the European Sites which the derogation assessment is responding to (in this case the Shadow HRA does not identify an AEIOI but the decision maker's view is not yet known);
- Step 3 – identify potential alternative solutions and screen to determine which alternative solutions (if any) meet the project need and objectives;
- Step 4 – consider whether out of the alternative solutions identified through step 3 - are any of these alternatives legally, technically and financially feasible? and
- Step 5 – consider whether the feasible alternative solutions identified in step 4 (if any) would have lesser environmental effects on the integrity of the European Sites?

Step 1: Understanding the need for the Project and the related project objectives

3.3 The need for the Project and the related objectives are explained in detail within the IERRT Application (see ES Chapter 4 [APP-040], the Planning Statement [APP-019], the Market Study [APP-079]) and the Applicant's various submissions to the Examination (see for example Appendix 1 of [REP1-009] section 3 of [REP5-032], section 3 of [REP7-023] and the Market Study update). What follows, therefore, is only a summary of the position as set out in more detail in that material.

3.4 The starting point for the consideration of the need for the IERRT development is the position laid down by the National Policy Statement for Ports (NPSfP). Section 3 of the NPSfP sets out 'Government policy and the need for new infrastructure'. In explaining the essential role of ports in the UK economy it is made clear that, amongst other things, shipping will continue to

provide the only effective way to move the vast majority of freight in and out of the UK, and the provision of sufficient sea port capacity will remain an essential element in ensuring sustainable growth in the UK economy (NPSfP, paragraph 3.1.4).

3.5 Section 3.4 of the NPSfP sets out 'The Government's assessment of the need for new port infrastructure', which confirms that the total need for port infrastructure depends on:

- (i) the overall demand for port capacity;
- (ii) the need to retain flexibility that ensure that port capacity is located where it is required;
- (iii) the need to ensure effective competition in port operations, and
- (iv) the need to ensure effective resilience in port operations (NPSfP, paragraph 3.4.1).

3.6 Having regard to the analysis of the need, the NPSfP concludes (at paragraph 3.4.16) that there is "*a compelling need for substantial additional port capacity over the next 20-30 years, ..*". The outcome of excluding the possibility of providing additional capacity through new port development is identified in paragraph 3.4.16 of the NPSfP as being "*strongly against the public interest*".

3.7 Following on from this, Section 3.5 of the NPSfP then goes on to provide guidance to the decision maker on assessing the need for additional port capacity. It is made clear (at paragraph 3.5.1) that "*the decision-maker should accept the need for future capacity to*", amongst other things:

- (i) Cater for long-term forecast growth in volumes of imports and exports by sea for all commodities indicated by the demand forecasts sets out in the MDST forecasting report accepted by Government.
- (ii) Offer a sufficiently wider range of facilities at a variety of locations to match existing and expected trade, ship call and inland distribution patterns and to facilitate and encourage coastal shipping.
- (iii) Ensure effective competition among ports and provide resilience in the national infrastructure, and
- (iv) Take full account of both the potential contribution port developments might make to regional and local economies.

3.8 Paragraph 3.5.2 of the NPSfP then further makes clear that "*Given the level and urgency of need for infrastructure of the types covered as set out above*", the decision maker should start with a presumption in favour of granting consent to applications for ports development. This presumption applies unless "*any more specific and relevant policies set out in this or any other NPS clearly indicate that consent should be refused*". The presumption is also subject to the provisions of the Planning Act 2008.

- 3.9 Therefore, under the policy set out within the NPSfP there is no requirement for the Applicant to demonstrate or prove a need for the IERRT development because the existence of a compelling and urgent need for that type of infrastructure is already established in the NPSfP itself.
- 3.10 Without prejudice to this important point, the Applicant has additionally provided clear evidence of the specific need for the IERRT development beyond the need that is already identified and established by the NPSfP, albeit that there is no policy requirement to do so and the presumption in favour of the proposed development that is set out in the NPSfP applies regardless of such evidence.
- 3.11 This separate demonstration of need and related objectives is set out within Chapter 4 of the ES [APP-040]. The chapter begins by explaining that this separate demonstration of need arises out of a number of different national and local imperatives, objectives and matters, which are then explained. They include those matters relating to the aspects of the Government's identification of the need for new port infrastructure contained within the NPSfP. But in addition, Chapter 4 deals with issues surrounding the lack of suitable Ro-Ro facilities on the Humber Estuary to meet the current and future needs of an existing Ro-Ro operator – namely Stena Line.
- 3.12 In summary, as identified in more detail in ES Chapter 4 and the Applicant's evidence to the Examination (which is not repeated again here) there is an imperative need to provide additional appropriate Ro-Ro freight capacity within the Humber Estuary in order to meet the growing and changing nature of demand, and thereby strengthen the estuary's contribution to an effective, efficient, competitive and resilient UK Ro-Ro freight sector. The Applicant's identification of need is not limited to that already identified and established in the NPSfP (albeit that need is compelling and urgent in its own right), but also includes the separate analysis of need for the Proposed Development as set out within Chapter 4 of the ES.

Step 2: Identify the potential AEOL from the Project to which the HRA Derogation Report is responding

- 3.13 Intertidal habitat (Mudflats and sandflats not covered by seawater at low tide) and subtidal habitat (Estuaries) loss was identified in HRA Stage 2 Appropriate Assessment as being a pathway to effect the European sites within the Humber Estuary. Whilst an effect on the European Sites was identified from these pathways, the residual effect was assessed as ecologically inconsequential, with no AEOL of the European Sites in view of those sites' conservation objectives (both alone and in combination with other plans or projects).
- 3.14 The HRA assessed the loss in intertidal habitat as "*de minimis*" in extent and considered negligible in the context of the amount of similar habitat in the region (and as a proportion of the SAC/Ramsar site). On this basis any change to the 'extent and distribution of qualifying natural habitats' conservation objective is

considered ecologically inconsequential. A loss on this scale is also considered to be insignificant in terms of ‘the structure and function (including typical species) of qualifying natural habitats’ conservation objective.” (Table 7 [REP7-014]).

- 3.15 The loss in subtidal habitat as a result of the piles is considered to be negligible in the context of the amount of similar habitat in the region and as a proportion of the Humber Estuary SAC/Ramsar. As a consequence, this loss is inconsequential in terms of ‘the extent and distribution of qualifying natural habitats’ conservation objective. A loss on this scale is also considered to be insignificant in terms of the ‘the structure and function (including typical species) of qualifying natural habitats’ conservation objective (Table 8 [REP7-014]).
- 3.16 This Shadow HRA Derogation Report specifically considers the loss of intertidal and subtidal habitat. By contrast, the potential effects derived from all other pathways are not considered to compromise any of the conservation objectives or can, and will be, fully mitigated.
- 3.17 Whilst the loss of either intertidal or subtidal habitat does not in the Applicant’s view give rise to an AEoI on the European Sites, Natural England’s full view on the Shadow HRA has not yet been received. Natural England do however consider that AEoI from the Project alone can likely be ruled out. Assessed alone, the Project including changes made to the application (accepted by the ExA on 6 December 2023) will result in direct loss of 0.012 ha (due to marine piling and capital dredging) and potential indirect loss of 0.02 ha (due to potential erosion of the foreshore) of intertidal habitat (totalling 0.032 ha), and the direct loss of 0.032 ha (due to marine piling) of subtidal habitat.

Intertidal loss

- 3.18 The HRA Stage 2 Appropriate Assessment concluded that the construction and operation of IERRT would result in the intertidal loss of 0.032 ha of the ‘mudflats and sandflats not covered by seawater at low tide’ feature of the SAC.
- 3.19 The combined worst case intertidal habitat loss (of 0.032 ha) as a result of the capital dredge and piling (both direct and indirect) represents approximately 0.000087 % the Humber Estuary SAC and approximately 0.000341 % of the ‘mudflats and sandflats not covered by seawater at low tide’ feature of the Humber Estuary SAC. A reduction of this magnitude is not considered sufficient to result in a change in ecological function or the integrity of intertidal habitats within any of the designated sites.
- 3.20 The potential for an in-combination effect on intertidal habitat loss with the proposed Immingham Green Energy Terminal development was identified. When considered in combination with the IERRT Project, however, the combined habitat loss is 0.044 ha (based on combined direct losses and modelling both schemes together to calculate potential for indirect intertidal losses). This combined intertidal habitat loss represents approximately 0.000120 % of the Humber Estuary SAC and approximately 0.000469 % of the ‘mudflats and sandflats not covered by seawater at low tide’ feature of the

Humber Estuary SAC. The in-combination assessment identified that these habitat losses are considered ecologically inconsequential and will not result in a change in ecological function or the overall integrity of the intertidal habitat or species they support.

- 3.21 No other plans or projects were assessed as having a cumulative or in-combination effect on the European sites with the Project (Section 4.14: In-combination assessment of the HRA [REP7-014]).

Subtidal loss

- 3.22 The HRA Stage 2 Appropriate Assessment concluded that the construction and operation of IERRT would result in the loss of 0.032 ha of subtidal seabed habitat with subtidal habitats a component of the 'Estuaries' feature of the SAC.
- 3.23 This represents an ecologically inconsequential proportion (<0.00009) of the total habitat available within the SAC and Ramsar. A reduction of this magnitude was not considered sufficient to result in a change in ecological function or the integrity of intertidal habitats within any of the designated sites.
- 3.24 The potential for an in-combination effect on subtidal habitat loss with the adjacent Immingham Green Energy Terminal was identified. When considered in combination with the Project, however, the combined habitat loss is 0.083 ha. This combined habitat loss represents approximately 0.000226 % of the Humber Estuary SAC. The in-combination assessment identified that these habitat losses are considered ecologically inconsequential and will not result in a change in ecological function or the overall integrity of the subtidal habitat or species they support.
- 3.25 No other plans or projects were assessed as having a cumulative or in-combination effect on the European sites with the Project (Section 4.14: In-combination assessment of the HRA [REP7-014]).

Summary

- 3.26 As a consequence, the HRA concludes that whilst there is likely to be an adverse effect on the European Sites as a result of the small loss of intertidal and subtidal habitat, this is not sufficient to constitute an AEOI of the European Sites. Nevertheless, on the basis that Natural England's views on this finding of the HRA are not yet known, this anticipated effect is taken through this Shadow HRA Derogation Assessment on a without prejudice basis.

Step 3: Are there potential alternative solutions

- 3.27 For a potential alternative solution to be a true alternative it must meet the need and the related objectives which have been identified. Therefore, any alternative options must first be assessed against that need and the related objectives to ensure that they would meet the need and the objectives. Actions or proposals that do not deliver the overall need or objectives identified are not true alternatives.

- 3.28 The consideration of potential alternative solutions was set out within section 4.3 of ES Chapter 4 [APP-040], and in particular paragraphs 4.3.6 to 4.3.128.
- 3.29 In summary, the analysis provided in ES Chapter 4 is provided by reference to a series of stages of analysis, as follows:
- 3.30 **Stage 1:** identifies and considers potential broad options that might be available to meet the need identified (ES Chapter 4, paragraphs 4.3.10 to 4.3.24), and demonstrates that the only realistic broad option for meeting the need that has been identified is to provide further Ro-Ro freight capacity within the Humber Estuary.
- 3.31 Due to the nature of the existing Ro-Ro capacity on the Humber Estuary and the extent to which it is utilised (as summarised further below) existing Ro-Ro capacity is not able to meet the need and the objectives which have been identified. Further capacity is, therefore, needed in the form of sufficient additional suitable Ro-Ro berths and related sufficient suitable landside storage capacity in a suitable location.
- 3.32 During the IERRT examination CLdN, the owner and operator of a competitor Ro-Ro facility on the Humber has claimed that it could potentially provide sufficient additional capacity to meet the level of demand that has been predicted to 2050 by the Applicant.
- 3.33 The Applicant has provided an analysis of why that claim is not accepted (see for example REP5-032), and identified fundamental problems regarding the lack of clarity, detail or certainty about such proposals, along with identification that provision of additional capacity at the CLdN facility would itself require some form of consent or approval (potentially constituting a Nationally Significant Infrastructure Project in its own right – with consequential implications). However, this claimed additional capacity (even if it could be provided) does not meet the identified need and objectives; it is, therefore, not a true alternative as summarised below.
- 3.34 **Stage 2:** provides an analysis, as necessary, of any of the initial potential alternative solutions to addressing the need that fall within the parameters of the preferred broad option identified under Stage 1 (ES Chapter 4, paragraphs 4.3.25 to 4.3.94). This analysis demonstrates that the only potential solution to meeting the identified need and objectives is the provision of new Ro-Ro freight capacity within the eastern extent of the Port of Immingham.
- 3.35 In addition to the analysis contained within ES Chapter 4, the following has also been the subject of the Applicant's evidence and submissions during the examination which complements the analysis in ES Chapter 4.
- 3.36 *Appropriate control over relevant functions and operations* – The importance of this requirement for any alternative solution is identified within ES Chapter 4 and in the Applicant's submissions to the examination. In light of the identified need and related objectives (both within the NPSfP and specifically for the

Proposed Development) this is a further main requirement (see ES paragraph 4.3.26) that any solution potential solution needs to provide to meet the identified need and objectives. Thus, by way of illustrative example, one of the key elements of need both within the NPSfP and specifically for the intended operator of the Proposed Development in this case is to provide competition and resilience through delivery of this infrastructure. In this case, again by way of example, there is a need to deliver sufficient and suitable capacity for an existing Ro-Ro freight operator (Stena Line), with an established customer base where it will have the ability to exercise appropriate control of its operations through being the terminal operator.

- 3.37 *Port of Hull* – In addition to the information provided within ES Chapter 4 (at paragraphs 4.3.55 to 4.3.62), the evidence provided to the examination confirms that the main Ro-Ro activity which occurs at the Port of Hull (consisting of a daily service operated by P&O to / from Rotterdam) operates from a terminal with a single in river berth which is, in effect, already fully utilised by the P&O service.
- 3.38 *Port of Killingholme* – In addition to the information already contained within ES Chapter 4 (at paragraphs 4.3.69 to 4.3.78) the following summary referring to evidence already provided to the Examination briefly highlights why CLdN's claimed additional capacity at the Port of Killingholme does not represent a true alternative to what is proposed (without repeating the detail of the Applicant's evidence and submissions provided to the Examination).
- 3.39 The Killingholme Terminal, operated by CLdN Ports Killingholme (CLdN), is an existing established facility that handles Ro-Ro freight cargo (both accompanied and unaccompanied cargo) including containers, as well as trade vehicle imports. The Ro-Ro services that currently operate from the facility are services operated by CLdN's own shipping line companies and Stena Line.
- 3.40 The facility has six berths, albeit that only one of these berths can currently handle Ro-Ro vessels of the approximate size of the vessel parameters identified in the Applicant's analysis – understood to be berth 3, the outer most northern berth (albeit that confusingly CLdN have also referred to berth 1 being the one able to handle such vessels). The berth currently accommodates the largest Ro-Ro vessels currently operating out of the Humber Estuary – the Celine and Delphine.
- 3.41 CLdN have indicated that five of the six available berths at Killingholme are currently actively used, and that one berth (berth 6) is currently unused. CLdN have also indicated that there are restrictions on the size of vessel that can be manoeuvred onto berth 2 or 5 when either is already in use (see Appendix 2 of **[REP7-040]**).
- 3.42 The main Ro-Ro shipping line services handled at the facility are those of the terminal operator's shipping line CLdN (Cobelfret). In addition, Stena Line currently operates an effectively daily Ro-Ro liner service to and from the Hook of Holland.

- 3.43 From information provided by CLdN to the IERRT examination the facility at Killingholme covers in the region of 107 hectares. Of that area CLdN indicate **[REP4-021]** that:
- (i) 14.09 ha is currently normally in use for Ro-Ro trailer storage;
 - (ii) 11.38 ha is currently normally used for container storage; and
 - (iii) 30 ha is currently normally used for trade car / vehicle storage.
- 3.44 The areas utilised for Ro-Ro trailer and container storage are all located in relatively close proximity to the berths. In addition, it is understood that some flexibility exists in the terminal layout such that some parts of the terminal can be used for either Ro-Ro trailer storage, container storage or trade car storage. Of the 30ha currently used for trade car / vehicle storage, CLdN have indicated that 3.74 ha has the ability to be used for Ro-Ro trailer or container storage.
- 3.45 The Killingholme facility is bordered by the site of the proposed Able Logistics and Business Park development to the north and the west and the Able Marine Energy Park to the south. The facility is however unconstrained in terms of residential developments surrounding the port.
- 3.46 During the examination CLdN has claimed that the existing Ro-Ro capacity at the Port of Killingholme is greater than that originally identified by the Applicant. CLdN have also claimed that they would be able to provide additional Ro-Ro freight capacity at the Port of Killingholme. The Applicant has responded to these claims in its submissions to the examination – see for example section 5 of **[REP5-032]** – but in summary:
- (i) There is a lack of clarity in the information provided by CLdN in respect of the existing Ro-Ro freight capacity at the Port of Killingholme. The suggested level of capacity claimed by CLdN does not – when relevant throughput figures provided to the DfT are examined - appear to reflect the position that is actually occurring at the facility. Without prejudice to that, even if the claimed capacity by CLdN does exist it does not affect the clear need for additional capacity to be provided on the Humber.
 - (ii) As to the claim to be able to provide additional capacity, there remains a lack of clarity as to what CLdN additional capacity it is claimed could be created at the Port of Killingholme, what this would involve (including by way of displacement of other activities), what it would actually involve by way of development at the facility, how or when CLdN would go about seeking to achieve such capacity, and the implications of doing so – both in terms of on site and off site implications and other effects which would require assessment. There are no plans or proposals for the provision of such additional capacity. Moreover, there is no proposal to provide any such additional capacity so that it could be operated by a rival operator.
 - (iii) Further and in any event, as the Applicant has identified, even if CLdN were to put forward any plans or proposals for the delivery of any significant additional capacity, it is inevitable that it would require some

form of consents and accompanying assessments (where, for example, invocation of permitted development rights is misconceived where EIA is required and/or any plan or proposal would be subject to consideration of Habitats Regulations matters). Moreover, it remains unclear from the absence of information from CLdN as to what would be envisaged why any such proposal to significantly increase the Ro-Ro capacity at the Port of Killingholme would not itself constitute a Nationally Significant Infrastructure Project requiring approval via a Development Consent Order.

- (iv) Further and in any event, even if additional capacity could be provided by CLdN it would self-evidently not deliver the elements of need and related objectives in the NPSfP relating to delivery of additional infrastructure to provide competition and resilience or the need and related objectives of the intended terminal operator, here Stena Line, to operate from a facility where it is able to control its own operations.

3.47 As identified in evidence and the submissions to the examination, CLdN has failed to demonstrate that any such alternative is a true alternative in circumstances where (amongst other things):

(a) The onus is on CLdN – as the person alleging deliverable spare capacity at Killingholme as an alternative – to provide sufficient detail as to what that alleged alternative consists of, how it can be delivered, when it would be delivered, and how it would meet all the elements of need and related objectives that have been identified. No such material has been provided.

(b) It is incorrect to suggest or consider that there would be ‘no barrier’ to the provision of additional Ro-Ro capacity across the Humber via Killingholme, and similarly incorrect to suggest or consider that ‘no harm’ would arise if the additional capacity were to be proposed at Killingholme.

(c) Claims made by CLdN about the timescale for the delivery of any additional capacity at Killingholme are unsubstantiated and unrealistic in any event. CLdN has not begun to identify or establish how such additional capacity could or would in fact be delivered. As already noted, any suggestion that permitted development rights could be used – even if they were theoretically available - is unrealistic given the basic limitations on the exercise of those rights that would be engaged in relation to EIA and HRA matters.

(d) Even if additional capacity could and would be delivered within a realistic timescale, it would not meet the identified demand and would not meet the identified need (whether in terms of the NPSfP or in terms of the operator requirements that have been identified).

3.48 Accordingly, and as explained in detail elsewhere, any additional capacity, even if it could be delivered, at Killingholme is not considered to be able to meet the need for infrastructure to address competition and resilience or the need for infrastructure for Stena Line here which makes up a key part of the overall need and objectives which have been identified.

- 3.49 Indeed, the alternative of providing further capacity at Killingholme through CLdN, even if it could and would be delivered, would simply result in the vast majority of future Ro-Ro capacity on the Humber being located at the Port of Killingholme at a facility which is operated and controlled by a party that also controls Ro-Ro shipping lines that operate from that facility and which compete with services operated by other Ro-Ro shipping lines on the Humber and in circumstances where Stena has already had to move its operations from that facility for reasons explained in evidence. This would be the antithesis of delivering the type of competition and resilience identified in the NPSfP and would not deliver a facility that Stena Line could operate for itself.
- 3.50 Given the nature of the relationship between the terminal operator and its shipping lines, additional capacity at Killingholme would not provide the ability to deliver and increase competitive Ro-Ro freight services and routes to and from existing markets and provide opportunities for routes for new markets.
- 3.51 In addition, the provision of additional capacity at the Port of Killingholme would not meet the identified need and objectives in terms of delivering the benefits from port development at Immingham itself, including in relation to the benefits to the regional and local economies. In this respect it can be seen that the IERRT development is fully in accordance with the land use strategy for the local area within which it is located, a key element being the further growth of the ports and logistics sector within North-East Lincolnshire. As a facility located outside of North-East Lincolnshire, the provision of additional capacity at Killingholme would not have the same beneficial impact for North-East Lincolnshire.
- 3.52 For the reasons summarised above and subject to more detailed evidence elsewhere, the provision of additional Ro-Ro freight capacity at the Port of Killingholme, even if it were available and deliverable, does not meet the identified need and related objectives and so is not a true alternative in any event.
- 3.53 *The Port of Immingham* – As to Ro-Ro activities occurring at the Port of Immingham, in addition to the information within ES Chapter 4, DFDS has in evidence provided to the examination process, identified that they are operating at 90 to 95% of capacity at Immingham and are looking for further land on which to expand within the Port. Again, given characteristics of the DFDS operations at Immingham, it is clear that the existing DFDS facilities at Immingham are not able to meet the need and objectives which have been identified.
- 3.54 During the examination, other than in respect of matters relating to the Port of Killingholme raised by CLdN which have been responded to by the Applicant as noted above, no party has disagreed with the Stage 2 alternatives analysis of the Applicant contained within ES Chapter 4.
- 3.55 **Stage 3:** Having identified the potential solution to meeting the need and objectives during stage 2, that solution being additional development at the eastern extent of the Port of Immingham, this was worked up into a detailed

proposal at stage 3 to be taken forward for formal consents and approvals. This was in turn subject to further detailed design and analysis. This analysis is explained in paragraphs 4.3.95 to 4.3.128 of ES Chapter 4.

- 3.56 During the examination process there has been further refinement of the design resulting in four further, albeit non-material, changes to the scheme. These changes and the background to them are explained in **[AS-027]** and **[AS-028]**.

Conclusions from Step 3

- 3.57 From the analysis undertaken and detailed in the Applicant's application and examination submissions, it has been demonstrated that there are no potential alternative solutions to meeting the need and objectives other than the provision of additional Ro-Ro berths and accompanying landside storage areas and infrastructure within the eastern part of the Port of Immingham. Furthermore, the wider evidence from the Applicant demonstrates that the form of development now being taken forward in the examination process is the most appropriate form of development.

Step 4: Are any of the potential alternative solutions identified through step 3 legally, technically and financially feasible? and Step 5: Do any of the feasible alternative solutions identified have lesser environmental effects on the integrity of the European Sites?

- 3.58 For the reasons summarised in the preceding paragraphs of this report, there are considered to be no potential alternative solutions to meeting the need and objectives other than the provision of additional Ro-Ro berths and accompanying landside storage areas and infrastructure within the eastern part of the Port of Immingham.
- 3.59 As to alternative forms of development that could take place in that location, the iterative design process undertaken - which has taken account of consultation responses, the results of environmental assessment work and the views of statutory bodies – has resulted in a form of development which meets the need and objectives and for which it is considered there is no alternative form of development that would have lesser environmental effects on the integrity of the European Sites.
- 3.60 In this regard it is noted that the various changes to the detailed form of development now being taken forward through the change application do not change the conclusions on the assessment of effects on marine ecological receptors.

4. HRA STAGE 3 (TEST 2): IMPERATIVE REASONS OF OVERRIDING PUBLIC INTEREST (IROPI)

- 4.1 Where, as in the case of the IERRT development, it has been demonstrated that there are no alternative solutions to the Project, the second derogation test to be satisfied is whether the Project meets the Imperative Reasons of Overriding Public Interest (IROPI) test.

- 4.2 PINS Advice Note 10 (PINS, 2022) provides that where harm (or risk of harm) to the integrity of the European Sites has been identified and *“it can be demonstrated that there are no feasible alternative solutions to the Proposed Development that would have a lesser effect or avoid an adverse effect on the integrity of the European site(s), the Proposed Development may still be carried out if the Competent Authority is satisfied that it must be carried out for IROPI”* (paragraph 3.27).
- 4.3 When identifying IROPI such reasons should be:
- Imperative – essential for public interest reasons;
 - Be in the public interest – it has benefits for the public (on a national, regional or local level) as opposed to a solely private benefit and benefits should be long term; and
 - Overriding – the public interest outweighs the harm, or risk of harm, to the integrity of the European site that is predicted by the appropriate assessment.
- 4.4 Regulation 64(1) of the Conservation of Habitats and Species Regulations (2017) (as amended) makes clear that the IROPI may be of a social or economic nature unless the site hosts a priority natural habitat type, or priority species. Intertidal mud and sandbanks exposed at low water and Estuaries are not a priority natural habitat type under the Habitats Directive, and therefore Regulation 64(1) applies to this IROPI case. No priority habitats or species are affected by the Project.
- 4.5 Defra (2021) guidance states: *“In practice, plans and projects which enact or are consistent with national strategic plans or policies, may be more likely than others to show IROPI – e.g. those covered by or consistent with a National Policy Statement or identified within the National Infrastructure Plan, especially if the plan itself has been assessed using the Habitats Regulations.”* Therefore, a key component of outlining the IROPI case of the project is a review as appropriate of relevant key national policies contained within the NPSfP. For the IERRT development this analysis is contained within the Planning Statement [APP-019] which demonstrates that the project is in accordance with policy contained within the NPSfP.
- 4.6 This IROPI case is based upon providing a solution that meets the urgent need and objectives identified which will, in turn, deliver substantial long term national, regional and local public interest benefits which are imperative and override what is, in any event, a highly precautionary assessment of harm to the European Sites.

Imperative Public Interest Benefits

- 4.7 The NPSfP – published in 2012 - establishes that there is a *“compelling need for substantial additional port capacity”* over the next 20–30 years (i.e. to 2032 - 2042), to be met by a combination of consented and new development

(paragraph 3.4.16). The need for the specific infrastructure comprising the IERRT development derives from number of different elements which are now considered in turn under a series of summarised headings.

The national need to provide port capacity to meet demand, including on the Humber Estuary

- 4.8 Under this heading, the imperative nature of the following elements of the overall need are summarised:
- The need for future port capacity to cater for long-term forecast growth in volumes of Ro-Ro imports and exports by sea indicated by the demand forecast figures set out in the forecasts accepted by Government (NPSfP, paragraph 3.5.1, bullet point 1), and
 - The need to provide the Humber Estuary with the ability to provide for, at least a proportion of the future growth in demand for Ro-Ro freight capacity predicted within the Estuary (ES Chapter 4, paragraph 4.2.80, Objective 2).
- 4.9 The reasons why meeting these elements of the need are imperative and in the public interest are set out in paragraphs 4.2.2 to 4.2.17 of ES Chapter 4. That explanation is supplemented by the following summary drawn from the updates to the evidence during the examination.
- 4.10 The most recent Government forecasts are contained within 'UK Port Freight Traffic 2019 Forecasts', which make clear that they supersede any previous forecasts including those specifically referenced in the NPSfP. These 2019 forecasts indicate that the growth rate for unitised Ro-Ro freight (both in terms of tonnage and units) will increase by an average of 2.5% per year between 2016 and 2050. By 2050 there is forecast to be an approximate 130% increase in both Ro-Ro tonnage and units in comparison to the position in 2016, from 99.73 million tonnes in 2016 to 229.92 million tonnes in 2050 and from 7.94 million units in 2016 to 18.2 million units in 2050 (DfT, 2019(b)).
- 4.11 The NPSfP makes clear that over time and notwithstanding temporary economic downturns, increased trade in goods can be expected as a direct consequence of the Government's policies to support sustainable economic growth and to achieve rising prosperity (NPSfP paragraph 3.4.2). It is also highlighted that the capacity needed to provide for competition, innovation, flexibility and resilience can be delivered by the market and is likely to exceed what might be implied by a simple aggregation of demand nationally.
- 4.12 Against the background of the Government's analysis of the need for new port infrastructure provided in the NPSfP (including) the matters summarised above, it is made clear that the Government believes that there is a compelling need for substantial additional port capacity over the next 20 to 30 years. Excluding the possibility of providing additional capacity for the movement of goods and commodities is identified as an outcome strongly against the public interest.

- 4.13 In addition, the NPSfP goes on to make clear that the decision maker should accept the need for future capacity which, amongst other things, caters for the long-term forecast growth in volumes of imports and exports by sea for all commodities indicated by the demand forecast figures set out in the national forecasts. Given the level and urgency of the need for such port infrastructure, the decision maker is instructed to start with a presumption in favour of granting consent for port development applications.
- 4.14 Furthermore, the NPSfP makes clear that any proposed future capacity does not need to cater for a particular amount of the long-term growth that is forecast in order for the need for it to be accepted or the presumption in favour of granting consent to apply.
- 4.15 The need to provide port capacity to meet demand predicted at the national level is, on its own, an imperative need that is clearly in the public interest.
- 4.16 In addition to the Government's national forecasts, an analysis has been undertaken of the growth in Ro-Ro freight considered likely to occur on the Humber Estuary – a key location for the movement of Ro-Ro cargo into and out of the UK - over the same time period to 2050.
- 4.17 As explained in the Market Study Update submitted by the Applicant at Deadline 8 of the IERRT examination, on the Humber Estuary, unaccompanied Ro-Ro traffic is, for example, expected to see continued and strong growth. The number of units handled is predicted to see a CAGR of 3.6% in 2023-2028 and a CAGR of 2.5% in 2028-2032 (in comparison to 2.1% in 2012-2022). The CAGR between 2032 and 2050 is expected to be 1.6%. Growth in the short term in tonnage is lower having a CAGR of 3.6% in the period 2023-2028, 2.5% in 2028-2032 and 1.3% in 2032-2050. In the period between 2020 and 2032 the CAGR is expected to be 4.0% (in units), which is in line with the historic CAGR between 2018 and 2022 of 4.2%.
- 4.18 Accompanied Ro-Ro traffic in the region will remain the smallest of the shortsea traffic flows. Growth will be relatively modest (CAGR (in units) for this trade of 1.8% in the period 2023-2028, 1.6% in 2028-2032 and 1.2% for 2032-2050.
- 4.19 These growth forecasts are shown in various figures of the updated Market Study. In terms of unaccompanied Ro-Ro units the information in the updated Market Study indicates that in 2050 the demand across the Humber Estuary will be approximately 1.92 million units in comparison to the current 1.05 / 1.06 million units level of activity.
- 4.20 The analysis of existing Ro-Ro capacity on the Humber Estuary when taking at face value CLdN's claims about the existing capacity available at the Port of Killingholme (despite the likelihood that this is an overestimate of such capacity) – still clearly demonstrates that additional Ro-Ro capacity will be required on the Humber to meet forecast demand in the period to 2050. This is further explained in the Applicant's Market Study Update that has been submitted at Deadline 8.

- 4.21 Furthermore, the analysis only considers the position up to 2050. There are no suggestions that the movement of goods in the form of Ro-Ro cargo will stop or cease to grow by 2050.
- 4.22 Accordingly, the need to provide port capacity to meet demand predicted at the Humber Estuary level is, on its own, also an imperative need that is clearly in the public interest.

The national need to ensure that sufficient appropriate Ro-Ro facilities are available in the right location, including on the Humber Estuary

- 4.23 Under this heading, the imperative nature of the need for future port capacity to offer a sufficiently wide range of facilities at a variety of locations to match existing and expected trade, ship call and inland distribution patterns (NPSfP paragraph 3.5.1, bullet point 3) is summarised.
- 4.24 The reasons why this element of the need is imperative and in the public interest, and why this requires sufficient Ro-Ro capacity of the right type on the Humber Estuary, has already been set out in detail paragraphs 4.2.18 to 4.2.45 of ES Chapter 4.
- 4.25 From an analysis of the current position on the Humber Estuary it is clear that it is a location where the market, in the form of Ro-Ro operators, shipping lines, trailer operators and customers, wants capacity to be located. Furthermore, it is clear that the market increasingly needs that capacity to be less constrained in terms of marine accessibility for the large Ro-Ro vessels in operation, or coming into operation, and with the ability to handle an increasing amount and proportion of unaccompanied Ro-Ro cargo. What this means in general terms by way of physical requirements is provision of further in-river berths served by suitable storage areas located in close proximity to those berths within a facility with good inland connectivity to provide competition and resilience.
- 4.26 The Government's analysis of the need for new port infrastructure provided in the NPSfP at section 3.4 (which emphasises that port capacity should be located where it is required, (NPSfP, paragraph 3.4.1)) demonstrates that this is one of the elements that makes up the overall compelling need for port infrastructure. The NPSfP identifies (at paragraph 3.4.16) that the Government believes that there is a compelling need for substantial additional port capacity over the next 20 to 30 years. Again, excluding the possibility of providing additional capacity for the movement of goods and commodities is identified in the NPSfP as an outcome strongly against the public interest.
- 4.27 In addition, the NPSfP identifies that the decision maker should accept the need for future capacity which, amongst other things, offers a sufficiently wide range of facilities at a variety of locations to match existing and expected trade, ship call and inland distribution patterns. Given the level and urgency of the need for such port infrastructure the decision maker is instructed to start with a presumption in favour of granting consent for port development applications.

4.28 This element of the need, which in turn highlights the need to provide port capacity to provide sufficient appropriate Ro-Ro facilities on the Humber Estuary is, again in and of itself an imperative need that is clearly in the public interest.

The national need to ensure effective competition amongst ports and resilience in port infrastructure, including on the Humber Estuary

4.29 Under this heading, the imperative nature of the following elements of the overall need are summarised:

- The need for future port capacity to ensure effective competition among ports and provide resilience in the national infrastructure (NPSfP paragraph 3.5.1, bullet point 4).
- The need to provide the Humber Estuary with the ability to continue to contribute effectively to UK Ro-Ro freight port infrastructure flexibility and resilience (ES Chapter 4, paragraph 4.2.80, Objective 3).
- The need to provide the Humber Estuary with the ability to continue to provide competitive Ro-Ro freight services and routes to and from existing markets and provide opportunities for routes to new markets (ES Chapter 4, paragraph 4.2.80, Objective 4).
- The need to provide the Humber Estuary with the ability to make efficient and effective use of existing established land and water transport connections and infrastructure (ES Chapter 4, paragraph 4.2.80, Objective 5).

4.30 The reasons why these elements of the need are imperative and in the public interest are already summarised in paragraphs 4.2.46 to 4.2.58 and paragraphs 4.2.77 to 4.2.78 of ES Chapter 4. That explanation is clarified and supplemented by the following.

4.31 In addition, in respect of competition and resilience matters, it should be noted that, whilst there are a number of Ro-Ro facilities controlled and operated by different Ro-Ro companies on the Humber Estuary, there exists other Ro-Ro services which operate from temporary facilities or from facilities which are operated by a competitor Ro-Ro operator. These matters are further considered in respect of the needs of a specific Ro-Ro operator under the following heading. Furthermore, a number of the existing Ro-Ro services also operate from facilities at an in-dock location which restrict future growth prospects, flexibility and resilience.

4.32 The NPSfP identifies (at paragraphs 3.5.1 and 3.5.2) that the decision maker should accept the need for future capacity which, amongst other things, ensures effective competition amongst ports and provide resilience in the national infrastructure. Given the level and urgency of the need for such port infrastructure the decision maker is instructed to start with a presumption in favour of granting consent for port development applications.

4.33 The NPSfP does not set out any restriction or limitation on the extent of effective competition and resilience that is being sought. The policy does not suggest

that if a certain level of resilience or competition is reached that there is no longer a need to seek further improvements.

- 4.34 There is, therefore, a need to provide Ro-Ro port capacity to ensure effective competition and resilience on the Humber Estuary. This in turn benefits competition and resilience at a national level. This again, in and of itself, is an imperative need that is clearly in the public interest.

The national need to take full account of the regional and local economic contribution of port development

- 4.35 Under this heading, the imperative nature of the following element of the overall need is summarised:

- The need for future port capacity to take full account of both the potential contribution port developments might make to regional and local economies (NPSfP paragraph 3.5.1, bullet point 5).

- 4.36 The reasons why this element of the need is imperative and in the public interest can be seen from paragraphs 4.2.69 to 4.2.76 of ES Chapter 4. That explanation is clarified and supplemented by the following.

- 4.37 At paragraph 3.5.1 of the NPSfP it is made clear that the decision maker should accept the need for future port capacity to take full account of both the potential contribution port developments make to regional and local economies.

- 4.38 Again, given the level and urgency of the need for such port infrastructure the decision maker is instructed to start with a presumption in favour of granting consent for port development applications.

- 4.39 In terms of job creation and GVA economic benefits of the specific port development being promoted by the Applicant, these are assessed as significant during both the construction and operational stage – see ES Chapter 16 [APP-052]. No party to the examination has significantly disputed the level of the economic contribution which the project would make. The only contention that has been made relates solely to the way in which the magnitude of the beneficial impacts associated with the creation of jobs has been described, a contention with which the Applicant in any event disagrees.

- 4.40 However, the economic contribution which port development of the form being applied for by the Applicant will make is much broader than simply job creation and GVA matters.

- 4.41 The development proposed will contribute to the achievement of a number of economic related aims and objectives set out within the relevant local development plan – the North-East Lincolnshire Local Plan 2013 – 2032 (Adopted 2018) (the Local Plan). In this regard it should be noted that the Local Plan, amongst other things:

- (i) Identifies the Port of Immingham as a facility of international trading significance, which provides a regional and national economic gateway providing links to European and other trading markets (Local Plan paragraph 6.6).
 - (ii) Identifies the ports and logistics sector as one of five key sectors of the local economy that is of national importance, and that a key opportunity for the area is to build on the international significance of this sector of the economy (Local Plan Tables 7.1 and 7.2).
 - (iii) Envisages that there will be growth in the ports and logistics sector by 2032 (Local Plan Spatial Vision).
 - (iv) Identifies the land within the Port of Immingham on which the development is proposed as an area where proposals for port related uses will be supported and approved subject to certain limited criteria being met (Local Plan Policies 7 and 8).
- 4.42 The relevant host authority for the proposed development – North-East Lincolnshire Council – has indicated that it agrees with the Applicant’s analysis that the proposed development accords with the development plan as a whole, including those elements of the plan which seek to contribute to an improved economy.
- 4.43 Within its Relevant Representation, North-East Lincolnshire Council make it clear that growth in the area is under pinned by the Ports of Immingham and Grimsby and that the project will add to the wider economic growth of the Humber Region **[RR-018]**.
- 4.44 The proposed development being promoted by the Applicant provides for the economic elements which the NPSfP indicate form a part of what constitutes sustainable port development (see for example section 7 of **[REP5-032]**), namely:
- (i) the development will cater for long term forecast growth in volumes of imports and exports of Ro-Ro cargo by sea;
 - (ii) the development will contribute to local employment, regeneration and development;
 - (iii) the development will ensure competition and security of supply, and
 - (iv) the development will enhance access to the Port of Immingham and the jobs, services and social networks which the Port has created and which it sustains.
- 4.45 The potential contribution the Applicant’s proposed port development might make to the regional and local economy – a contribution which is significant and which has not been questioned – will help to meet an imperative need that is clearly in the public interest.

The national need to provide for the needs of an existing key Ro-Ro operator on the Humber Estuary

4.46 Under this heading, the imperative nature of the following element of the overall need is summarised:

- The need to provide the Humber Estuary with the ability to meet the urgent needs of an existing Ro-Ro freight operator, Stena Line, with an established customer base is considered. Those needs including, in summary, the provision of sufficient suitable capacity at a facility that is suitably located at which the operator has sufficient control of appropriate functions and operations (ES Chapter 4, paragraph 4.2.80, Objective 1).

4.47 The reasons why these elements of the need are imperative and in the public interest can be seen in paragraphs 4.2.59 to 4.2.68 of ES Chapter 4. That explanation is clarified and supplemented by the following.

4.48 CLdN has claimed that the needs of Stena Line could be accommodated at the Port of Killingholme. That claim is unsustainable in light of the evidence as to the discussions that have taken place between the parties – as reported to the examination. Even if there were physical capacity for Stena Line’s operations, that such capacity could actually be delivered, and even if it were to be offered on acceptable appropriate terms for a sufficiently long term period of time (conclusions which are not supported by the available evidence), this would still not provide capacity at a facility which was controlled by Stena Line to enable it to compete effectively with other operators – in particular CLdN and DFDS nor deliver the resilience for the Humber that additional capacity at Immingham would deliver.

4.49 In light of, amongst other things –

- (i) the clear policy position set out within the NPSfP – for example highlighting the significance of competition and resilience matters in the context of the overall need for port capacity;
- (ii) the significance of the benefits provided by Stena Line’s existing Ro-Ro operations on the Humber, and
- (iii) the desire of Stena Line (a key player in the Humber Ro-Ro market) to grow its Humber operations and provide enhanced competition.

meeting the needs of Stena Line on the Humber Estuary is, on its own, an imperative need that is clearly in the public interest.

Conclusions on imperative needs

4.50 All of the various elements of the need that have been identified in their own right individually constitute an imperative need in the public interest. In combination, the collective need summarised by the various paragraphs above

– which is what a solution needs to address – provide an even more imperative need in the public interest.

The long-term nature of the benefits

- 4.51 The IERRT development does not make any provision for the decommissioning of the infrastructure being provided. Once constructed, the infrastructure will become part of the fabric of the Port of Immingham and will continue to be maintained so that it can be used for port related activities over the long term.
- 4.52 Whilst ‘long term’ is not defined within the Habitats Regulations, the IERRT development represents a significant investment and, therefore, long term commitment to expanding port capacity at the international gateway into and out of the UK that is the Port of Immingham. The benefits of the project – which relate to meeting the various need related objectives outlined in the preceding paragraphs – will, therefore, in addition to being significant, be long-term in nature.
- 4.53 The available evidence, therefore, demonstrates that a project meeting all of the various objectives outline above would clearly deliver substantial, wide ranging and long term benefits that are in the public interest.

Overriding the harm to the designated site

- 4.54 The public interest benefits that would be delivered by meeting the various need related objectives identified clearly and decisively outweigh, and should thus override, any harm or risk of harm to the European sites that would arise from the project taking place.
- 4.55 The construction and operation of IERRT will result in the potential loss of 0.032 ha of intertidal habitat and 0.032 ha of subtidal habitat. A reduction of this magnitude is not considered sufficient to result in a change in ecological function or the integrity of habitats within any of the designated sites.
- 4.56 When considered in combination with the adjacent proposed Immingham Green Energy Terminal, the combined intertidal habitat loss would be only 0.044 ha (based on combined direct losses and modelling both schemes together to calculate potential for indirect intertidal losses). The subtidal habitat loss in combination with the proposed Immingham Green Energy Terminal would be only 0.083 ha. The in-combination assessment identified that these habitat losses are considered ecologically inconsequential and will not result in a change in ecological function or the overall integrity of the habitat or species they support.
- 4.57 By contrast the long term public interest benefits that would arise from proceeding with the IERRT project are very substantial. Those benefits being, in summary, the provision of additional port infrastructure which :

- (i) provides an important contribution to capacity to cater for forecast future national demand in Ro-Ro freight;
- (ii) provides an appropriate important contribution to capacity to cater for forecast future demand in Ro-Ro freight on the Humber Estuary;
- (iii) provides appropriate Ro-Ro port capacity in the right location – namely a location, the Humber Estuary, where the market wishes Ro-Ro freight capacity to be provided;
- (iv) provides appropriate Ro-Ro port capacity that will improve competition and resilience in respect of such capacity and operations on the Humber Estuary, with corresponding benefits for these matters from a national perspective;
- (v) provides appropriate Ro-Ro capacity that will generate significant positive contributions to the local and regional economy, and
- (vi) provides appropriate Ro-Ro capacity that meets the needs of an existing key Ro-Ro operator on the Humber – Stena Line.

4.58 The evidence clearly demonstrates that there are imperative public interest reasons for the IERRT project to proceed and that these reasons clearly outweigh and thus override any potential harm to be caused by the project on the European sites.

5. SHADOW HRA STAGE 3 (TEST 3): COMPENSATORY MEASURES

Guidance on Compensatory Measures

5.1 If there are no feasible alternatives and the imperative reasons of overriding public interest test has been passed, it is necessary to undertake compensatory measures. These measures will need to be secured to ensure that the overall coherence of the national site network is protected.

5.2 The HRA identified 0.044ha of direct and indirect intertidal habitat loss resulting from the Project, in-combination with the Immingham Green Energy Terminal project. Intertidal habitat loss is predicted to affect the qualifying interest of the following European sites:

- Humber Estuary SAC: Estuaries (H1130) and Mudflats and sandflats not covered by seawater at low tide (H1140)
- Humber Estuary Ramsar: Criterion 1 – natural wetland habitats that are of international importance: The site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks, estuarine waters, intertidal mud and sand flats, saltmarshes, and coastal brackish/saline lagoons.

5.3 Subtidal habitat loss from marine piling will result in a direct loss of 0.032 ha and 0.051 ha of seabed habitat for IERRT and Immingham Green Energy Terminal respectively. This combined habitat loss of 0.083 ha represents approximately 0.000226 % of the Humber Estuary SAC. Subtidal habitat loss is predicted to affect the qualifying interest of the following European sites:

- Humber Estuary SAC: Estuaries (H1130)
- Humber Estuary Ramsar: Criterion 1 – natural wetland habitats that are of international importance: The site is a representative example of a near-natural estuary with the following component habitats: dune systems and humid dune slacks, estuarine waters, intertidal mud and sand flats, saltmarshes, and coastal brackish/saline lagoons.

The characteristics of Compensatory Measures

5.4 Compensatory measures should be (Tyldesley and Chapman, 2013):

- sufficiently targeted to the harm, such that the measures proposed are appropriate to the type of impact predicted;
- effective and feasible, with a reasonable guarantee of success;
- technically feasible, using best scientific knowledge and take account of the specific requirements of the ecological features to be reinstated;
- adequate in extent and directly related to the quantitative and qualitative aspects inherent to the elements of integrity;
- located in areas where they will be most effective in maintaining the overall coherence of the national site network;
- acceptable in timing, with respect to the implementation of the plan or project and the implementation of the compensatory measure and take into account the time required for habitats to develop;
- must not have a negative effects on the national network of European sites as a whole, despite the negative effects of the proposal on an individual European site;
- adjustable, flexible and adaptable in response to monitoring and review; and
- implemented in the long-term with a financial and legal basis to ensure this happens.

Proposed Compensation

5.5 If, contrary to the assessment that has been undertaken, the Secretary of State were to disagree with the Applicant's conclusion of no AEOI on the European

Sites from the intertidal habitat loss, compensatory habitat has been identified at the Outstrays to Skeffling Managed Realignment Scheme (OtSMRS).

- 5.6 OtSMRS lies 13.5 km east of the Project, and immediately adjacent to the Humber Estuary SAC (UK0030170), Humber Estuary Ramsar (UK11031) and Humber Estuary SPA (UK9006111). OtSMRS is therefore suitably located to provide contiguous compensatory habitat for the loss of qualifying feature of the European sites.
- 5.7 The OtSMRS site is in joint ABP and Environment Agency (EA) ownership and, on completion, is predicted to create approximately 175 ha of intertidal habitat (mudflats and saltmarsh) and 75 ha wet grassland linked to the outer Humber Estuary (see Figure 5.1).
- 5.8 OtSMRS is a joint initiative developed by the EA and ABP using a managed realignment approach to create new compensatory habitats for wildlife on the north bank of the Humber Estuary, near Welwick and Skeffling. The EA's main objective for OtSMRS is to compensate for intertidal habitats likely to be lost in the Humber Estuary as a result of carrying out the Humber Flood Risk Management Strategy, due to coastal squeeze and construction works. ABP's objective is to create new intertidal habitat to compensate for future anticipated habitat losses at their port complexes due to coastal squeeze and construction works. ABP own approximately 80ha of the OtSMRS site. The intertidal habitats created are required to be similar to those lost.
- 5.9 OtSMRS is two adjacent managed realignment schemes, Outstrays managed realignment and the Welwick to Skeffling managed realignment, known collectively as OtSMRS. The scheme is divided into three distinct areas (Figure 5.1);
- the western side (from Hawkins Point to Winestead pumping station, known as West 1);
 - a middle area of wet grassland habitat (above high tide levels and included in the scheme to increase the range of habitats on the site and provide the right conditions for rare species, known as West 2);
 - and the eastern site, extending up to Skeffling pumping station (known as East 1, 2 and 3). (the "Eastern Site")
- 5.10 Compensatory habitat identified for the Project lies within the Welwick to Skeffling managed realignment, in the 'East 2' block (Figure 5.1) which is in ABP ownership.
- 5.11 At the Eastern Site, an earth embankment approximately 4.5 km long and 2.5-3.5m above existing ground level is being constructed along the back of East 1, 2 and 3. The new flood defences have now been largely constructed, and a 400m section of the existing embankment and fronting saltmarsh in East 2 will be removed later this year to allow water to inundate the site to create approximately 175 ha of intertidal habitat. The existing embankment on either side of the breach location will be lowered down to ground level. A section of

existing embankment will be retained at the western end for ecological purposes.

- 5.12 **The permanent loss of intertidal and subtidal habitats (0.044 ha and 0.083 ha respectively) associated with the Project will be compensated through habitat creation at a 3:1 ratio.** This would require 0.381 ha of functional compensatory habitat to be created offsite. A 3:1 ratio for compensatory habitats is a typical requirement of Projects resulting in habitat loss from marine protected sites.
- 5.13 Compensation for the intertidal loss would be provided by the provision of mudflat. The subtidal loss will be replaced by functioning estuarine habitat characteristic of the Humber Estuary SAC.
- 5.14 Given the difficulties associated with the management and monitoring of small habitat parcels it is proposed that a unit of 1 ha would be provided by the Project. If, contrary to the Applicant's assessment, the Secretary of State were to conclude following Appropriate Assessment of the Project that compensation is required because an adverse effect on integrity on the European Sites cannot be ruled out, the compensation will be delivered out of this allocated hectare of intertidal habitat. The additional 0.619 ha of intertidal habitat which would be created in addition to the compensation required is appropriately to be regarded as an enhancement delivered by the Project. The compensation and enhancement allocated to the Project would together amount to 1 ha of intertidal habitat in total.
- 5.15 For the avoidance of doubt, the physical delivery of the OtSMRS, including the 1 ha element referred to above, does not form part of the Project as this is occurring under a separate process which has already been consented. An Environmental Impact Assessment (EIA), together with other assessments such as a HRA, were undertaken to support the planning and marine licence applications for the OtSMRS.

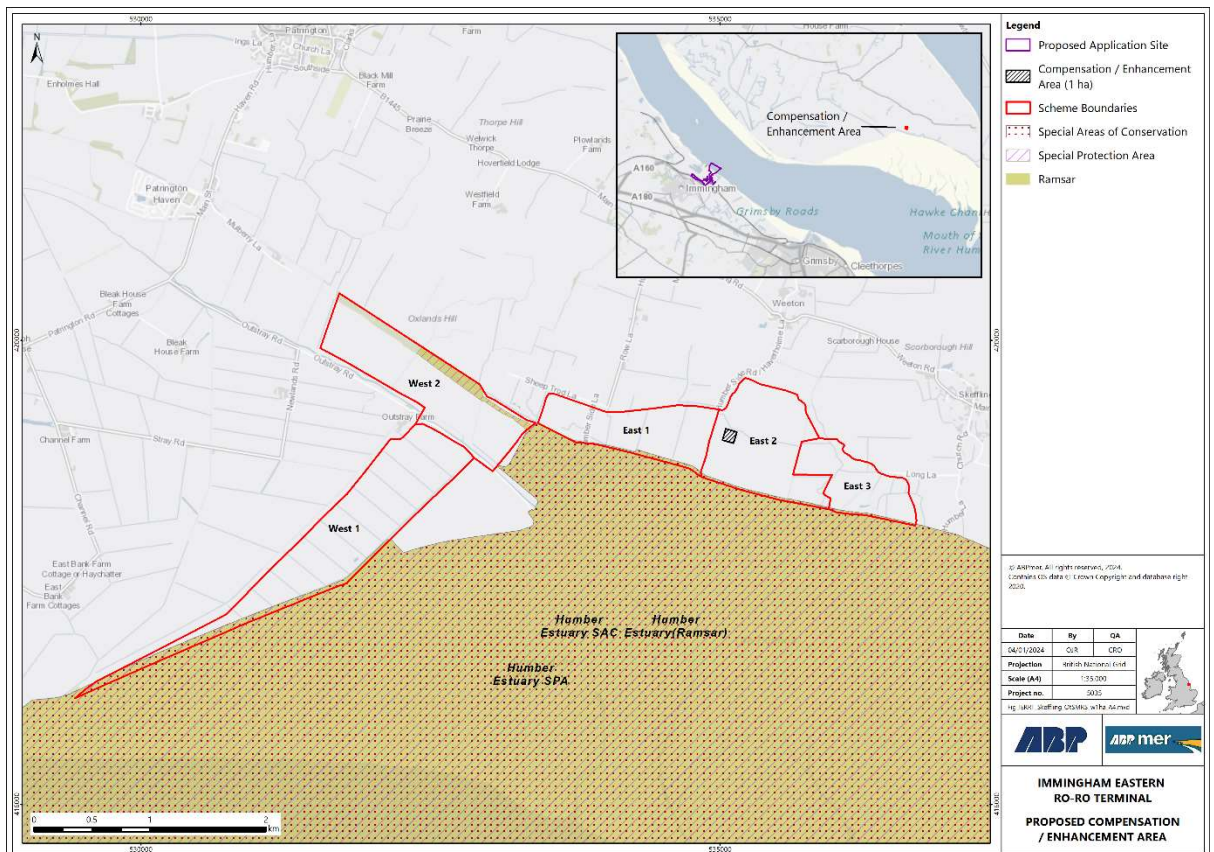


Figure 5.1: Location of compensation site at OtSMRS in relation to the Project

Design of Compensation Site

- 5.16 The habitat area within East 2 identified as compensatory habitat for the Project is predicted to be a mix of intertidal mud (forming part of the intertidal creek network) and low to mid elevation saltmarsh.
- 5.17 Habitat modelling undertaken as part of the consenting process for OtSMRS has been undertaken to understand the likelihood that managed realignment will create intertidal habitat that represents appropriate compensation for habitat loss within the Humber Estuary. The modelling was based on the elevation of current intertidal habitats adjacent to the Site and the high confidence that new intertidal habitats will form at similar elevations within the Site.
- 5.18 It is proposed that natural regeneration of intertidal habitats from tidal inundation will be appropriate and the establishment of a natural equilibrium can be achieved through the breach design that forms part of the compensation site consent.
- 5.19 Using evidence from ABP’s Welwick managed realignment site (undertaken in 2006), inundation frequencies from numerical modelling and the position of the site in the tidal frame, there is a high certainty of success in the creation of intertidal habitats at OtSMRS. Intertidal habitats are dynamic, and extents of mudflat and saltmarsh habitats are predicted to change post inundation. Initially 50-90 ha of mudflat will be created in the Welwick to Skeffling managed

realignment, which will reduce to 10-30 ha after 5 years, due to colonisation by pioneer and mid saltmarsh species.

- 5.20 This area of East 2 has been selected specifically to ensure that at least 0.132 ha of the compensation area will be retained as mudflat habitat as the site develops (to compensate for 0.044 ha of intertidal loss). The remaining 0.249 ha of compensation as well as the 0.619 ha provided by the Project as an enhancement will not be required to be retained as mudflat habitat. The additional habitat provided is predicted to develop into important intertidal habitats typical of the Humber European Sites, and support qualifying interests of the SAC, SPA and Ramsar designations.
- 5.21 The creation of compensatory habitat at OtSMRS will replace the habitat loss associated with the Project. The provision of three times the habitat loss will ensure a functional unit of intertidal habitat that will continue to support qualifying interest species from the adjacent European sites, and in immediate continuity with a broad range of other important habitats (intertidal saltmarsh, wetlands and grazing coastal marsh) across the managed realignment. As such, the proposed habitat creation is sufficiently targeted to compensate for the effects of the Project.
- 5.22 The compensation area within the OtSMRS will contribute to the Favourable Conservation Status of the Humber Estuary SAC and Ramsar site through increasing the overall 'extent and distribution of qualifying habitats' and creating the 'structure and function (including typical species) of qualifying habitats' that are Conservation Objectives for both impacted European sites. Whilst compensatory habitats lie outwith the boundary of the Humber Estuary European Sites, the proposed compensation site is located immediately adjacent and therefore will provide contiguous compensatory habitat for the loss of qualifying features. Increasing the area of qualifying habitats will protect the overall coherence of the national site network.

Schedule – programme of works

- 5.23 OtSMRS was granted planning consent in August 2019 (application ref. 19/00786/STPLFE and 19/00783/STPLFE).
- 5.24 Construction work for OtSMRS commenced in the summer of 2021, with ground investigations and archaeological surveys being undertaken to inform further detailed design. During 2022 construction of the realigned flood embankment and associated drainage began in the eastern areas of the site, which is now largely complete. Breaching of the site is proposed for 2024, allowing seawater to inundate the site.
- 5.25 It is therefore predicted, with high confidence, that the site will be transitioning towards a mosaic of intertidal habitats prior to the losses occurring. By the time habitat loss is incurred by the Project, the Welwick to Skeffling site should be fully functional and as such there will be no loss of habitat associated with the Project.

Securing the compensatory measures

- 5.26 The funding to deliver the compensatory measures has been provided by the Applicant.
- 5.27 The purchase of land for the compensatory measures has been completed and construction works are underway on site. No additional funding is required to secure the compensatory habitats provided for by the Project.
- 5.28 Future monitoring requirements for the site will be budgeted and agreed between the OtSMRS delivery partners (ABP and EA). The compensation/enhancement area identified will be committed by the Applicant by way of a separate legal agreement with the planning authority for the OtSMRS site, East Riding of Yorkshire Authority. The Applicant will covenant to allocate 1 hectare of intertidal habitat at the OtSMRS site to the Project, identifying its location and providing for its ongoing monitoring and management.

Responsibilities

- 5.29 The Applicant is committed to delivery and implementation of the compensatory measures as part of the continuing delivery of OtSMRS.

Monitoring and adaptive management

- 5.30 The compensation site will be monitored post construction to ensure that it is delivering on its environmental objectives. This will be in accordance with the Environmental Maintenance and Monitoring Plan for the OtSMRS project.
- 5.31 The Applicant will monitor the intertidal habitat development within East 2 of the eastern site (Welwick to Skeffling managed realignment) annually for a period of five years so as to ensure that the compensation area develops properly as intended into intertidal mudflat habitat. This will be undertaken via a drone survey using an unmanned aerial vehicle (UAV) to provide aerial imagery of the site. Outputs from the UAV survey will include an orthomosaic map; imagery stitched together and geometrically corrected ('orthorectified') to produce an accurate map. The high degree of resolution within the orthomosaic map will help to define areas of intertidal habitat coverage across the OtSMRS.
- 5.32 If required (to be established through consultation with Natural England), benthic core samples can be collected to provide benthic biotope classifications. It is considered that this level of detail is not necessary to understand the establishment of compensatory habitat, but could form part of additional monitoring requirements of the wider OtSMRS Environmental Management Plan.
- 5.33 The EIA undertaken for OtSMRS recognised the potential requirement for intervention to maintain mudflat habitats within the site. The compensation area has been chosen to minimise the need for future intervention to maintain the minimum compensation area available as intertidal mudflat. Should mudflat

habitats within this area evolve over time to become saltmarsh, and intervention is required, this will be undertaken as part of the wider management of the OtSMRS. Adaptive management may, if required, include the future reprofiling of the bathymetry to ensure mudflat habitats do not vegetate into low-mid saltmarsh.

- 5.34 If intervention works are required to maintain the intertidal habitat, the Applicant will consult with Natural England prior to undertaking those works.
- 5.35 In due course, however, the monitoring and management of the allocated 1 ha of intertidal habitat will be assimilated within the approved management plan for the full OtSMRS that is being prepared by the Environment Agency and ABP, whereupon future monitoring of the 1 ha of land will be undertaken in compliance with that Plan.

Enforcement

- 5.36 Should the compensatory measures be required by the Secretary of State as part of the Appropriate Assessment of the effects of the Project, the delivery of these compensatory measures will be included as a Requirement of the DCO which would need to be discharged prior to the commencement of those aspects of the Proposed IERRT Development which will directly impact upon the intertidal habitat loss.

6. CONCLUSIONS

- 6.1 If it is concluded that compensatory measures should be provided, 1 ha of intertidal habitat has been allocated to the Project at OtSMRS (0.381 ha of which would form compensation and the remainder would provide enhancement).
- 6.2 0.132 ha of mudflat habitat has been allocated to compensate for the loss of 0.044ha of direct and indirect intertidal habitat from the Project (in combination). An additional 0.249 ha of estuarine habitat has been allocated to compensate for the direct loss of 0.083 of subtidal habitat from the Project (in combination). The OtSMRS is currently undergoing construction and is expected to be functional upon commencement of the Project, resulting in no net loss of functional habitat to the European Sites.
- 6.3 OtSMRS has been designed specifically as compensatory habitat for port related infrastructure development within the Humber Estuary and as such is considered suitable for the purposes of the Project. The compensatory measures have been targeted to an area of OtSMRS that will form a mosaic of intertidal soft sediments that are characteristic of the European sites. As such the proposed compensation will result in no harm or risk of harm to the European sites.
- 6.4 Confidence as to the successful creation of intertidal habitats is provided through lessons learnt at the adjacent ABP Welwick managed realignment site, inundation frequency assessment from numerical modelling, position of the site

in the tidal frame and assessment of intertidal habitats at similar elevations within the Humber Estuary.

- 6.5 The Applicant is committed to the long term management and monitoring of the managed realignment site, and the requirements for evidencing the successfulness of the compensation area in East 2 will form part of those longer term commitments. If required, adaptive management will be undertaken to ensure the long term security of appropriate intertidal habitats as compensation for intertidal habitat loss associated with the Project.
- 6.6 If compensatory measures were to be required, a further 0.619 ha of intertidal habitat is being offered by the Project as enhancement, owing to the difficulty of monitoring and managing very small compensatory land parcels in the wider site context. The enhancement habitat may be a mix of intertidal mudflat and saltmarsh habitats.
- 6.7 The provision of compensatory habitats, should such be required, will ensure that the functioning and integrity of the adjacent European sites are maintained and that the overall coherence of the national site network is protected.

7. References

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