

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

**DEADLINE 9**

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Response on behalf of the Harbour Master, Humber  
to Deadline 8 submissions

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## 1. Introduction

- 1.1. In this document Harbour Master, Humber (**HMH**) responds to the submissions made at Deadline 8 by DFDS Seaways Plc, Immingham Oil Terminals, CLdN Ports Killingholme Ltd and the Applicant.
- 1.2. The fact that HMH has not responded to any particular point does not mean that he agrees with it or accepts that it is correct. HMH has limited his responses to matters that are directly relevant to his areas of responsibility and where he thinks he can assist the Examining Authority.

2. Table of responses:

Document	Content	Response on behalf of Harbour Master, Humber
<p><b>DFDS – comments on D7 submissions</b>  [REP8-045]</p>	<p><b>c – Supp NIR</b> (see pages 5 to 8)</p> <p><i>“26. In paragraph 3.32 the Applicant states that a single tug was demonstrated to be a sufficient enhanced control rather than impact protection to mitigate a risk of allision. This does not however address the issue of a failure of the tug, her line or the crews ability to make such a tug fast. There are still multiple points of failure that only adequate impact protection can mitigate.”</i></p>	<p>HMH refers the Examining Authority to his response below to IOT’s deadline 8 submissions <b>[REP8-057]</b>.</p>
<p>Ditto</p>	<p><b>d. Navigation Simulation Study – Dec 2021</b></p> <p><i>“37. The overall summary should be noted in relation to the need for impact protection measures for the IOT prior to any construction taking place, and a decision on the need for impact protection measures should not be left to either HMH or the Applicant’s discretion – ‘it should be noted that manoeuvring to and from the new infrastructure is <u>challenging, requiring precise positing of the vessel, tugs and their attitude to tidal flow and the wind.</u> Mitigating the <u>inherent risk in the manoeuvring operations</u> will require a robust training solution to be in place’. Underlining has been added by DFDS for emphasis and shows that this is a challenging facility from a navigational perspective with inherent risk considered to be present according to HR</i></p>	<p><b>Paragraph 37</b> – HMH refers the Examining Authority to paragraph 3.1.4 of HMH 10 (Response on behalf of HMH to DFDS D2 Documents) <b>[REP3-024]</b> in which he confirms that:</p> <p><i>"The conditions in the Humber are indeed challenging but vessel movements have been, and will continue to be, managed safely by HES"</i></p> <p>DFDS states that this is not just another riverside port development which can be treated in the same way as if it was not close to such a nationally significant and sensitive facility. HMH agrees. This does not mean, however, that the principles of risk assessment for the purposes of navigational safety will differ. Obviously, the sensitivities of a particular location and the severity of potential impacts feed into that assessment to ensure that proper account is taken of them.</p>

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	<p><i>Wallingford. Also see page 28 – ‘It became clear early in the simulation session that manoeuvring from the main navigation fairway to the approaches to Immingham Harbour, such that the vessel is correctly aligned to make a controlled approach to the new infrastructure, is challenging’ and pages 38 and 39 in the section General Comments – ‘Operating to and from the new infrastructure will be challenging in the upper end of environmental conditions regularly experienced on the River Humber, not least the strong tidal flows.’ ‘The nature of the new infrastructure and the associated manoeuvres are such that failure to adequately address training and operating procedures might lead to serious incidents’. This clearly supports the concerns of DFDS and IOT over the navigational safety risks posed by the Proposed Development. The very sensitive location proposed for IERRT immediately adjacent to the IOT trunkway and behind existing IOT operational berths means that this is not just another riverside port development which can be treated in the same way as if it was not close to such a nationally significant and sensitive facility.</i></p> <p><i>38. HR Wallingford also identify in its summary on page 5 and conclusions on page 49, a need to develop ‘appropriate limits for an initial operating capability’. This supports the requirement for</i></p>	<p><b>Paragraph 38</b> – HMH reiterates that appropriate initial operating limits will be set as part of the soft start to ensure safety and to allow for appropriate training. In his view, this is best handled in the usual way rather than on the face of the DCO.</p> <p>Having said that, HMH is content for there to be a minimum towage support requirement as provided for in the proposal for the Enhanced Operational Measures, as defined by the Applicant at Deadline 8. HMH refers the Examining Authority to HMH24 (written summary of his oral submissions at ISH6) <b>[REP7-068]</b>.</p> <p>In supporting the proposal for Enhanced Operational Measures, HMH has accepted the need to provide mitigation by means of extra towage over long tidal windows against the risk posed by a highly unlikely set of co-incidental emergency events because of the severity of the potential consequences. This is a significant and unique measure on the estuary which underlines HMH’s recognition of the risk and the representations made by Interested Parties.</p> <p><b>Paragraph 40</b> – HMH believes the relevant point is that use of the IERRT will be restricted to those vessels it can physically accommodate (i.e. in structural terms) and which have also been assessed in terms of manoeuvrability and other attributes as being fit for purpose to safely use that berth. The latter would be properly tested and evaluated by HMH and his team at the appropriate time and does not need to be prescribed for or restricted in the DCO.</p>

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	<p><i>operational conditions and constraints to be clearly identified as a requirement of the DCO.”</i></p> <p><i>“40..... Why was this vessel, which was clearly available to HR Wallingford, not used in later simulations with the Applicant preferring instead to focus on the smaller Stena T class, rather than simulating both the Stena T class and a larger vessel. DFDS maintains its position that use of the IERRT should be restricted only to those vessels which have been fully and effectively simulated - the Stena T class.”</i></p>	
Ditto	<p><b>g - Applicant’s summary of ISH6 [REP7-021]</b></p> <p><i>“83.... at ABP on the Humber, the HMH is not only an employee of ABP but also reports into individuals whose interest is in promoting a successful IERRT application, namely the head of marine for the Humber and his direct line manager the Regional Director Humber.”</i></p> <p><i>84.... DFDS does not agree that judicial review is a sufficient recourse here as only legal errors can be challenged.”</i></p> <p><i>“85. Row 31 - it is noted that Ms Victoria Hutton for HMH stated that the HMH would look at the question of whether the SHA has the power to impose impact protection but did not believe there</i></p>	<p><b>Paragraph 83</b> – HMH’s employment status and line management is irrelevant. ABP in its capacity as the SCNA is a statutory body with specific statutory functions. HMH is a statutory appointee of the SCNA, with his own statutory powers of special direction. An action taken by the conservancy or its harbour master purely with the motive of benefiting ABP as the commercial operator of the Port of Immingham to the detriment of other river users would be ultra vires and unlawful. It is also to be remembered that ABP as SHA for Immingham is also a statutory body with the constraints and responsibilities that involves.</p> <p>It is easy for DFDS and IOT to make unsubstantiated assertions of lack of independence and partiality to support their cases in this examination, but neither has adduced any evidence of previous impropriety or partiality on the part of the statutory bodies at Immingham and their respective appointees. There is no reason before this examination to suggest that the SCNA or HMH (or,</p>

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	<p><i>was anything in the legislation where either the Dock Master or HMM has the power to recommend someone to build a certain piece of infrastructure. If it is indeed the case that the HMM does not believe he has the power to recommend, or indeed more importantly require, that impact protection measures should be constructed, then it is DFDS position, and DFDS understands supported by IOT, that the Applicant should be required to construct impact protection measures under the terms of the DCO. The decision on whether or not impact protection measures for IOT are needed cannot be left to the Applicant to decide.”</i></p> <p>“86. Row 32 - it cannot be left to the HASB to be final arbiter for any disagreement between the SCNA and the Port of Immingham SHA. The HASB is the ABP Board. The fact it holds separate Board meetings from the ABP commercial board so that the ABP directors can state that they are “wearing a different hat” in making decisions, does not alter the fact that it is not an independent decision making body entirely separate from the commercial drivers of the ABP board. The directors of the HASB and the ABP Board are identical. Accordingly, in the interests of fairness (both being achieved and being seen to be achieved) and ensuring navigational safety issues are considered on purely safety grounds, a genuinely independent body from wholly</p>	<p>indeed, the Applicant SHA and Immingham Dock Master) would act improperly so as to knowingly plan for the IERRT to be constructed and operated in an unsafe manner.</p> <p>It follows that there is no reason to take the process out the hands of the relevant statutory bodies appointed by Parliament on grounds – essentially - that they cannot be trusted.</p> <p><b>Paragraph 84</b> – as explained in <b>REP5-040</b> (Response to IOTT’s comments on independence of ABP, harbour master and dockmaster at page 42 of REP4-035), unlawful actions (including unreasonable behaviour) by public bodies are susceptible to judicial review. See paragraphs 8 to 13 of that document. Neither DFDS nor IOT refuted any of the observations set out in that note.</p> <p><b>Paragraph 85</b> – the point that HMM has been at pains to make throughout this examination is as follows: HES will deal with whatever development has been consented (subject to having approval of the detailed plans and specifications).</p> <p>HMM, with all the experience at his disposal, is comfortable with the proposals for the IERRT. It is his considered and expert opinion that the IERRT is capable of being operated safely using the tools that he has available to him in the usual way. It follows that if, at any stage, HMM considers that physical impact protection measures are (or are likely to be) required for reasons of navigational safety, he will tell the port operator. Through HES, or in the exercise of his discrete statutory powers, if necessary, HMM will continue to ensure that appropriate measures are put in place to ensure that vessel movements in the Humber continue to be managed safely. This could mean – in an extreme scenario – preventing vessels from</p>

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	<p>outside ABP should be made final arbiter for any disagreements arising pursuant to the DCO.”</p>	<p>accessing the berth at all if unsafe to do so, until appropriate physical protection measures are in place. Lesser, but nevertheless very stringent controls, could be applied in the absence of physical protection including reducing the operating windows to allow berthing movements only in limited weather and tidal conditions. As has been explained to the ExA, although he does not control towage in the dock, HMH could nevertheless exercise his powers to prevent vessels from accessing the dock, in the absence of what he would regard as necessary towage for purposes of safe navigation of the Humber. HMH can also impose pilotage requirements. In real life, HMH and the Dock Master collaborate closely in the interests of safe navigation, as do the pilots, masters and tug operators. It does not follow that a third-party power to direct construction of impact protection measures is required, or that the only reasonable alternative to that is a requirement to construct them from the outset.</p> <p><b>Paragraph 86</b> – the same legal points about statutory independence and vires apply as have been made on behalf of HMH throughout this examination - unchallenged by the Interested Parties. (HMH has made it clear in his submissions that he does not consider that the SCNA should be a “discharging authority” for purposes of appeal by ABP from the Requirements.)</p>
Ditto	<p><b>i. Response to IOTT’s D6 submissions [REP7-024]; reply to IOT letters [REP7-025] – pages 25 and 26</b></p> <p><i>“111 It is clear from the Applicant’s response that it envisages other vessel types could use the IERRT in future and DFDS believes that the only way this</i></p>	<p><b>Paragraph 111</b> – The rationale for DFDS’s submission is that HMH cannot be trusted to ensure that proper assessment will be carried out before another vessel type is permitted to use the IERRT. There is no evidence to support this. HMH refers the Examining Authority to his previous submissions, including in response to paragraph 40 above.</p>

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	<p><i>should be permitted is with an amendment to the DCO to ensure that the Applicant has to conduct thorough simulations with full engagement of interested third parties and fully independent scrutiny before any other vessels are permitted to use the facility. Given the very serious navigational safety concerns which have been highlighted throughout the examination and the severe consequences if comprehensive and proper future successful simulations are not undertaken, DFDS believes this is the only way that the ExA and Interested Parties can obtain comfort about future changes in vessels using the IERRT safely. It should not be left to the Applicant and HMH to conduct such simulations internally and without proper external scrutiny and a right of effective challenge.”</i></p>	<p>DFDS will be well aware from its own experience, that simulations to assess whether a specific vessel can use a berth safely do not take place in a vacuum. They always involve the relevant stakeholders. Such simulations are inevitably attended by highly experienced pilots, PECs and tug operators as well as experienced vessel masters. Nobody involved in simulations has any interest in (or reason to) sacrifice safety on the Humber.</p> <p>Further, and as referred to in previous submissions (see, for example, paragraph 3.5 of HMH 3 (Comments on behalf of the Harbour Master, Humber on submissions made at Deadline 1) [REP2-061], HES holds regular liaison meetings with Immingham jetty operators as part of a programme of stakeholder engagement encouraged by the Port Marine Safety Code, which include briefings regarding any new developments and works in progress on the river.</p> <p>DFDS refers to “comfort”. Were the SCNA (or the Applicant) to fail to fulfil its statutory responsibilities by not carrying out appropriate assessments and imposing appropriate controls where needed, it would be acting ultra vires and susceptible to legal challenge.</p>
Ditto	<p><b>k – Applicant’s response to ExA’s proposed changes to the DCO [REP7-029] – page 26</b></p> <p><i>“115 - The comments on requirements 18A and 18 underline the lack of practical independence between the Applicant and the Harbour Master – the Harbour Master only allows the Applicant to review its proposed responses in advance. We do not know whether the Applicant suggested any changes to the</i></p>	<p><b>Paragraph 115</b> - Requirements 18 and the proposals for a Requirement 18A (re-numbered 19) directly affect the legal responsibilities of the SCNA. The fact that HMH showed his response on legal points relating to the drafting of the DCO to the Applicant in advance of submitting them to the examination is not evidence of a lack of independence or collusion, any more than the preparation of a Joint Note at the request of the Examining Authority.</p>



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	<p><i>Harbour Master and whether they were incorporated in this case or in relation to many other responses.</i></p> <p><i>116. The Applicant overstates the reasons for its objection to the amended requirement 18. It would not create an 'adverse operational precedent' for all ports across the UK. It is common practice in DCOs for mitigation to be required to be in place before projects commence either construction or operation, depending on when the adverse impacts to be mitigated would occur, and this provision is not as strongly worded as that.</i></p> <p><i>117. Further, the Applicant is steadfast in saying that it is not appropriate for anyone to interfere with HMM's statutory responsibility for ensuring navigational safety (see Applicant comments on IOT Operators DCO protective provisions and IOT Operators proposal that it should be able to decide if impact protection measures are needed) but this is exactly what the Applicant is proposing to do by not accepting the decision of HMM over whether the impact protection works need to be undertaken and instead insisting this can only be a recommendation from the HMM but should ultimately be the Applicant's decision."</i></p>	<p>In any event, HMM refers the Examining Authority to HMM38 [REP8-052] which provides his up to date position and confirms both that he was consulted on, and endorsed, the Applicant's proposed amendments to Requirement 18A (now Requirement 19) which clearly fall within the remit of navigational safety. It would be odd if he had not been consulted.</p> <p>HMM is independently satisfied that the Applicant's proposals provide an appropriate level of additional comfort around initial operating procedures, whilst being consistent with the existing Requirement 18 in Schedule 2, and the requirement for HMM to approve in advance a written statement of safe operating procedures under paragraph 16 of the protective provisions for the SCNA.</p> <p><b>Paragraph 117</b> - HMM refers the Examining Authority to his response to paragraph 85 above, which rehearses previous submissions regarding why it should be for the Immingham SHA to determine whether Work No. 3 or any part of it should be constructed.</p>
Ditto	<b>m – response to joint note on separation of functions</b> [REP7-066] – page 30	<b>Paragraph 134</b> – HMM notes that these points are addressed in his previous submissions. Both the HMM and Dock Master have discrete statutory responsibilities. If not acting properly, they can be

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	<p><i>“134..... What DFDS does question is how the management, reporting and governance structure set up within the Applicant’s organisation could possibly ensure or allow for the independence of either the Dock Master Immingham or the HMH when their line management and reporting lines are directly into the senior leadership team of ABP Humber. Both the HMH and the Dock Master’s annual objectives, remuneration and employment are dependent on the Humber leadership team and the Regional Director Humber, whose principal goal is to maximise revenues from the ports on the Humber, including Port of Immingham. This is not a healthy governance structure and gives rise to clear conflicts of interest.”</i></p> <p><i>“135. At paragraph 36 of the Joint Note, the point is made by the Applicant and HMH that “the responsibilities for safety and mutual co-operation extend to all users of Immingham (including, e.g. IOT and DFDS) and not just the statutory bodies.” It is interesting that this point should be highlighted by the Applicant and HMH given their overall approach on this project which is that they “know best” and that interested parties should therefore simply accept their views based on their experience. Having consistently argued for the approach that they (the Applicant and HMH) should be left to determine what is safe, what operational measures should be introduced (if any) and what impact protection may be needed (if any), this Joint Note</i></p>	<p>challenged. If they make Wednesbury unreasonable decisions, they can be challenged. This is how their independence is intended to be secured by Parliament.</p> <p>HMH does not consider there is any conflict of interest. As stated in paragraphs 9 and 10 of his Written Representation <b>[REP2-054]</b>: HES (as the SHA for the Humber) maintains its own Marine Safety Management System (MSMS) to manage marine hazards, risks and emergency preparedness, as required by the Port Marine Safety Code (PMSC). The Humber MSMS is independently audited as required by the PMSC and treated as such with respect to Maritime and Coastguard Agency (MCA) PMSC health checks. As stated in paragraph 19 of HMH REP5-040:</p> <p><i>“HMH has not felt under pressure from ABP in either of its capacities to compromise the safety first ethos attaching to his role. The Examining Authority has had the opportunity to hear from and make their own assessment of Captain Firman. Were there to be any conflict between commercial expediency and safety, he would always put safety first. Not only does HMH have the requisite statutory powers to put safety first, but he also confirms that he has always been supported by ABP in each of its capacities to do so.”</i></p> <p>It is also perhaps worth making the point that in any organisation, directors are under a statutory duty to ensure that their statutory duties under the Health and Safety at Work legislation are carried out.</p> <p><b>Paragraph 135</b> – It is not a case of the Applicant and HMH being “left to determine” what is safe. As the relevant statutory bodies with</p>

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	<p><i>states clearly that actually all users of the Port of Immingham, including DFDS and IOT, have a responsibility for safety at the Port and accordingly the navigational safety concerns which have been consistently and repeatedly raised by DFDS and IOT should be taken seriously by the Applicant and HMH. DFDS do not believe that this has been the case and contend that this supports the view of both DFDS and IOT that the introduction of operational safety measures and of impact protection measures should not simply be left at the sole discretion of the Applicant."</i></p> <p>136. Part 3 of the Joint Note (paragraphs 41 to 44) represents a statutory responsibilities and obligations argument in a theoretical world. In the real world in which the Applicant, the SCNA, the HMH and the Dock Master Immingham operate, the management and governance structure embedded in, and operated by, the Applicant does not support the theoretical world in which the Applicant argues that the SCNA should not be able to require impact protection measures to be implemented, that the SCNA and HMH will be free to impose whatever directions they see fit to control vessel movements and that the HMH and Dock Master will be free and unfettered in choosing to exercise their statutory responsibilities however they see fit and regardless of the possible adverse cost or operational</p>	<p>responsibility for the safe management of the port and the Humber, that is precisely their responsibility.</p> <p>The point about other operators being responsible for safety too is merely that navigational safety is not a one way street. All river users need to act responsibly.</p> <p>HMH has heard the concerns of the Interested Parties relating to the proximity of the IERRT to the IOT infrastructure and the serious potential consequences of any accident in that area. He takes those concerns very seriously. They have not been dismissed. It is the job of HES and HMH to ensure this risk is managed. HMH is simply seeking to avoid prescribing how this risk management is achieved at this stage (noting his acceptance of the Enhanced Operating Measures - see response to paragraph 38 above). Control measures could be anything from impact protection to only berthing on flood tides. Not insisting on impact protection at this stage does not mean that the risk is being ignored.</p> <p>HMH notes that he listened to and agreed with DFDS's comments regarding tidal flow on the simulator and ensured that the tides were physically remeasured to ensure that HR Wallingford was not working from a single source of data. He has also spelt out how a soft start to operational use will allow experience to be gained and provide security in the event that real life experience is different to that expected.</p> <p>HMH has made it clear during the course of this examination that all risks will be managed and that approval to construct the terminal does not automatically grant 24/7/365 unfettered access to it by any</p>

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	<p>consequences to the Applicant's commercial interests at the Port of Immingham. 1</p> <p>137. In the real world which exists on the Humber today, the HMM and Dock Master are employees of the Applicant, however much the Applicant and HMM maintain that the SCNA and HMM are responsible to the Harbour Authority and Safety Board (which of course is identical in personnel to the ABP commercial board), and the pilots on the Humber are all also employees of the Applicant. Ultimately, therefore, the Regional Director Humber in practice holds the power to terminate the employment of the HMM, the Dock Master and any Humber pilots. In this governance and management structure there are very real tensions and conflicts of interest and it is clearly unrealistic to suggest, as the Applicant and HMM do in this Joint Note, that the HMM, Dock Master Immingham and Humber pilots are free to take whatever decisions they think best and/or to raise concerns over navigational safety issues and potentially shut down all operations to IERRT. The governance and management reporting structure are simply not designed to support such a contention.</p> <p>138. Given the above and the clear position set out in the Joint Note that ultimately only the Applicant can decide whether to introduce impact protection measures, DFDS believe this issue should not be left to the SCNA / HMM and the Applicant to debate</p>	<p>or all vessels within the design parameters. Any risk is always managed safely ahead of commercial expediency.</p> <p>HMM has also accepted that the introduction of extra vessels to the Port of Immingham may have an impact on operational flexibility in some circumstances, but this can, and will be, managed safely ahead of commercial issues. The river is open to all who wish to use it, provided that they can do so safely, and there are many examples of where new facilities have been successfully introduced to the estuary.</p> <p><b>Paragraphs 136 and 137</b> – HMM disagrees. What DFDS posits is superficially plausible but wrong. Part 3 of the Joint Note [REP7-066] explained why, in the view of the statutory harbour authorities, the SCNA is well placed to recommend whether Work No. 3 is required in the interests of navigational safety in the River Humber and why it is appropriate for there to be a recommendation by the SCNA rather than a requirement. HMM invites the Examining Authority to review Part 3. In no sense is it merely theoretical:</p> <ul style="list-style-type: none"> <li>• Paragraph 41 explains why Requirement 18 (as a recommendation) is consistent with usual practice on the river and describes the very real powers available to HMM and his team of experienced mariners.</li> <li>• Paragraph 42 points out that it is for a port operator to decide on port infrastructure but that the conservancy – through HES and HMM – is best placed to identify what controls are appropriate and to impose them.</li> </ul>

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	<p>and determine but instead the only safe position that can be adopted is either to reject the application for IERRT and require the Applicant to reconsider and resubmit its proposals or to make the installation of impact protection measures for the IOT a condition of the DCO.</p> <p>139. In the event that the ExA concludes that it is not necessary from a navigational safety perspective to impose impact protection measures at the outset as a condition of the DCO then it should at least ensure that the SCNA and HMH are given the power to require that such impact protection measures are put in place at a later date. In practice, for the reasons set out above, DFDS believes that leaving a decision on the installation of impact protection measures to a later date is fraught with uncertainties and conflict of interest concerns, but if the ExA is not willing to make this decision as part of the DCO then at the very least that decision should not simply be left to the sole discretion of the Applicant, as the Applicant would like.</p> <p>140. Further, contrary to the Applicant's suggestion in the Joint Note that interested parties with concerns over how the Applicant and/or SCNA and HMH behave in future have a remedy by way of judicial review, as the ExA will be aware this would be a blunt and onerous means of appeal for any interested party to have to follow. Instead, a more effective and efficient route of appeal to a genuinely</p>	<ul style="list-style-type: none"> <li>• Paragraph 44 points out that the competent harbour authority is concerned solely with pilotage.</li> </ul> <p>Over time, the Humber conservancy and Immingham port ended up under the umbrella of the British Transport Docks Board (BTDB) and then under the umbrella of another statutory body, namely ABP as successor to the BTDB. DFDS is effectively saying that the <b>only</b> realistic view that can be taken on the operation of the Humber is that <b>none</b> of the statutory bodies appointed by Parliament would operate properly and within their statutory functions because ABP would put improper pressure on them. In the present case, this would mean inappropriate pressure being placed on the Immingham SHA, Dock Master, SHA for the Humber, CHA for the Humber, Harbour Master for the Humber, his colleagues at HES and all the pilots working on the Humber - requiring them to put money and job security ahead of their duties under the PMSC and their respective statutory safety functions. HMH objects to DFDS's theory in the strongest possible terms.</p> <p>As has been pointed out before, HMH is a statutory appointee with discrete powers. In DFDS's theoretical world where he would be dismissed by the Regional Director for failing to improperly promote commercial considerations of ABP over safety of navigation in the Humber, his replacement would have exactly the same responsibilities. Further, a decision to interfere with his proper activities or to dismiss the HMH on this basis would itself be Wednesbury unreasonable on the part of ABP and susceptible to challenge!</p>

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	<p>independent third party arbiter should be included in the DCO.</p>	<p><b>Paragraph 138</b> - HMH does not accept DFDS's conclusions, which are based on a specious argument.</p> <p><b>Paragraph 139</b> is considered in the previous submissions of HMH.</p> <p><b>Paragraph 140</b> – it is observed on behalf of HMH that judicial review is a mechanism of appeal to an independent arbiter. The threat of judicial review is, of itself, a powerful incentive to compel a public authority to act reasonably whilst a successful claim has very real benefits for the claimant as well as causing grave reputational damage to the body concerned.</p>
<p><b>DFDS – Response to ExQ4</b></p> <p><b>[REP-046]</b></p> <p><b>DCO.4.09</b></p> <p>b) For DFDS – Explain why it is considered PPs relating to the operational phase for the Proposed Development would be necessary rather than relying on the provisions of any existing</p>	<p><b>DFDS response to (b):</b></p> <p>Currently the passage on the River is unimpeded other than the scheduled and regular river traffic. As has been explained during the hearings, DFDS operates a regular daily scheduled service into the Port of Immingham and the punctual arrival and departure of vessels operating on that service is critical to DFDS' business. If the Proposed Development is granted, once it becomes operational any berthing/sailing manoeuvres in the approaches to the IERRT may impact passage to the Immingham Outer Harbour and the Immingham inner dock, particularly if vessels approaching or departing the IEERT run into difficulties.</p> <p>Current berthing/sailing manoeuvres by DFDS vessels do not have to contend with a regular</p>	<p>It is potentially misleading to suggest that new traffic (to/from IERRT) would introduce an impedance to and interference with scheduled and regular river traffic - as if the scheduled and regular traffic is a "baseline". Traffic flows on the river are constantly changing, reflecting that anyone can use the river. The new service to and from the IERRT will be a new normal and managed in the usual way. There is no set amount of traffic that the river handles and there is no reason why vessels approaching IERRT would be any more likely to run into difficulties than vessels approaching or departing other destinations on the Humber.</p> <p>In relation to the comments regarding the risk of closure of the Port of Immingham, HMH refers to HMH 11 <b>[REP4-033]</b>, where he responded to the Examining Authority's question (NS.2.11) concerning this matter (see page 7).</p>

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<p>licence/lease arrangements.</p>	<p>service schedule attempting to navigate to an area of the Port which is acknowledged by HR Wallingford in its simulation report to be very challenging.</p> <p>More significantly, the risk of vessels approaching and departing the IERRT alliding with the IOT facility does not currently exist and was never envisaged by DFDS. DFDS has set out at length during this examination its concerns that the risk of allision by vessels using the IERRT, given its proximity to the IOT , and the Applicant 's view that no impact protection measures are needed means that there is a material risk to DFDS ' operations from closure of all, or a material part, of the Port of Immingham. Although this risk exists today, it is increased very significantly if IERRT is built. The existing agreements in place between the Applicant and DFDS are over 15 years old and did not envisage the construction of IERRT or contemplate the need for protection against such a development which could materially impact existing port operations. Accordingly, the existing agreements do not provide any protection certainly in the case of DFDS. DFDS schedules are finely tuned to reduce CO2 emissions and any delay has significant impact on this. Again the approach to CO2 reduction has evolved significantly since those agreements were made and the change in the way in which DFDS operates to minimise its CO2 emissions means it has less</p>	

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	<p>resilience to time delays existing or entering the port.</p> <p>If the Proposed Development becomes operational it has the potential to be significantly disruptive when conditions are less than perfect. DFDS and its customers need to be assured that the sensitive cargo flows that are supported by DFDS routes will not be adversely affected by additional marine traffic using the Proposed Development.</p>	
<p><b>IOT – Response to ExQ4</b></p> <p><b>[REP8-057]</b></p> <p><b>DCO.4.04</b></p> <p><b>Likely extent of “impedance” to IOT Operations</b></p> <p>Provide detail of any assessment that has been carried out for the “degree of impedance” to operations at the IOT Finger Pier [paragraph 1.10 in</p>	<p><b>IOT response:</b></p> <p>At the time of writing, the Applicant has not approached the IOT Operators to engage in any assessment of operational impacts on the IOT. Even at this late stage, no response has been received to the draft SoCG returned to the Applicant prior to Deadline 7 [see Appendix 2 REP7-070]</p> <p>The IOT Operators have not been able to undertake that assessment themselves.</p> <p>However, based on the outcome of the simulations which took place on 13 and 14 December (which are commented on below in these submissions) it is evident that, even if IOT Finger Pier vessel priority is facilitated over the movement of IERRT vessels (and means provided to secure this), then the physical constraints imposed by IERRT</p>	<p>Of: “<i>the Harbour Master Humber confirmed that IOT vessels would be offered priority</i>”.</p> <p>The river is for all users. Priority of particular vessels is dependent on a variety of factors and cannot – nor should it be- guaranteed. HMH believes his position on this is clear and refers the Examining Authority to:</p> <ul style="list-style-type: none"> <li>• paragraph 6 of HMH33 [REP8.048]</li> <li>• Page 2 of HMH35 [REP8-051]</li> <li>• Page 13 of HMH23 [REP7-067]</li> <li>• Paragraph 12 of HMH24 [REP7-068]</li> <li>• Paragraph 3.6 of HMH12 [REP4-032]</li> </ul> <p>On the IOT proposed protective provisions generally, HMH stands by HMH33 [REP8-048].</p>



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<p>REP7-070] that could be caused by the presence of the Proposed Development across a range of met-ocean conditions, signposting relevant parts of the application from which assumptions are drawn, and what implications any impedance might have for the shipping of oil products having regard to the Energy Act 2023 and any relevant policy or guidance. This matter should be incorporated into a final and signed Statement of Common Ground (SoCG) between the parties.</p>	<p>infrastructure mean there will be a significant impact on the shipping of oil products at IOT</p> <p>However, the ExA will have noted that row 6 of Appendix 1 to the IOT Operators' D7 submissions [REP7-070] recorded the position reached in Issue Specific Hearing 5, whereby the Harbour Master Humber confirmed that IOT vessels would be offered priority. It is therefore suggested that the IOT Operators preferred protective provision paragraph 6 should be implemented to avoid any such impact.</p> <p>For the avoidance of doubt, those operational controls should supplement the extent of physical impact protection and other accommodation works the IOT Operators have argued for since February 2022.</p>	

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<p><b>IOT – Deadline 8 submissions [REP8-057]</b></p> <p><b>Comments on navigational simulation runs for enhanced operational controls of 13 / 14 December – page 6 and Appendix 4 [REP8-058 – page 88 onwards]</b></p>	<p><i>Paragraphs 6 to 26.</i></p>	<p>HMH does not seek to make a case that IOT should not have its concerns – but in his view, there are steps that can be taken to manage those risks.</p> <p>As far as HMH is concerned, the testing of the single tug as a means of arresting the movement of a vessel which has suffered complete control failure identified a number of successes and failures. What the IOT submission ignores is the raft of other control measures that would remain available in what would be effectively an emergency situation, not least the use of anchors. Through the process the use of anchors alone was investigated and deemed ineffective in the worst conditions, so the addition of towage for this specific purpose was agreed (noting that this will be unique for any RoRo vessel operating in any part of the Humber).</p> <p>In reality, detailed assessment to identify where the measure was effective would be carried out for any vessel using Berth 1, and the vessel would only be allowed to berth in conditions where the measure would be effective where potentially required.</p> <p>This is not the same as suggesting that a single tug allows unrestricted access to Berth 1 in all conditions, and that should be clearly understood by all parties. Again, safety would be prioritised over commercial expediency.</p> <p>That a particular class of vessel may not be allowed to berth in a particular set of circumstances does not render the facility as inherently unsafe and that is entirely consistent in principle with procedures and limits prescribed for all berths on the estuary.</p>

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		<p>In regard to where the tug makes fast, HMH believes it was agreed by all parties present at the simulations (including the tug masters) as the sensible area to avoid risks to the tug in the earlier part of the manoeuvre. This is entirely consistent with the logic used for RoRo's trading to the Immingham area today, as prescribed in Humber Standing Notice to Mariners 34, which covers the requirements for tugs to be made fast on certain vessels passing IOT.</p>
<p><b>IOT – Deadline 8 submissions [REP8-057] - Flow modelling summary</b></p>	<p>Page 13</p> <p><i>42. The IOT submissions - Appendix 4 - Commentary on Simulations dated 7/11/23-08/11/23 [REP7-047] from a recently serving class 1 Humber Pilot questions whether the baseline flow modelling presented is accurate. The IOT Operators note that no details from serving Humber Pilots, to respond to these claims have been provided by the Applicant, which has had to rely on HES and Port of Immingham Harbour Masters, who do not navigate vessels in these areas, in the absence of any other pilot experienced in the area."</i></p>	<p><b>Paragraph 42</b> – it is the case that serving Humber pilots (and tug operators) have been present at all the simulations that have taken place in respect of the proposed IERRT. Other pilots have been kept updated through formal and informal meetings.</p>
<p><b>IOT – Deadline 8 submissions [REP8-057] - Cost-benefit analysis and tolerability meeting and other meetings</b></p>	<p>Page 21</p> <p>"79. In any event the meeting minutes do seem to indicate that based on a qualitative judgment, the cost benefit for impact protection was accepted as required and therefore met the ALRP definition as it recommended that the SHA should be able to require it. This recommendation is incongruous to</p>	<p>HMH attended the meeting to provide technical advice, and not as a decision-maker.</p> <p>The reason why HMH was not insistent on Impact Protection Measures being installed from the outset is that, in his opinion, they may not be needed if other effective control measures are put in</p>

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	<p>the IOT Operators as both the HES and Port of Immingham Harbour Masters were present at the meeting and so whilst accepting they may need the measures, were happy to postpone requiring it until a future point in time, presumably following the occurrence incidents or near misses.”</p>	<p>place that are designed to prevent there being an impact in the first place.</p> <p>HMH has consistently maintained throughout that, in the absence of such other controls, Impact Protection Measures may be required in certain conditions and would therefore be recommended. It does not follow that there would need to be an incident or near miss for this to occur.</p>
<p><b>CLdN [REP8-043]</b></p>	<p><b>Page 8 paragraph 7 – protective provisions for CLdN</b></p> <p><b>Page 11 (comments on paragraphs 132 and 133 – Notice of and consultation on works and vessel movements)</b></p>	<p>HMH stands by his response to CLdN’s proposed protective provisions set out on pages 3 and 4 of HMH34 <b>[REP8-056]</b>.</p>
<p><b>ABP revised dDCO (tracked)[REP8-004]</b></p>	<p><b>Schedule 2 – Part 2 – Procedure for discharge of requirements</b></p> <p>20. In this Part of this Schedule, “discharging authority” means—</p> <p>(a) any body responsible for giving any consent, agreement or approval required by a requirement included in Part 1 of this Schedule, or for giving any consent, agreement or approval further to any document referred to in any such requirement; or</p>	<p>HMH refers the ExA to:</p> <ul style="list-style-type: none"> <li>• his comments on the ExA's proposed changes to Requirement 18 and paragraph 22 and introduction of Requirement 18A at paragraph 5 of HMH29 <b>[REP7-061]</b>; and</li> <li>• HMH34 “Response on behalf of the Harbour Master, Humber to Deadline 7 and Additional submissions from the Applicant” <b>[REP8-056]</b>.</li> </ul> <p>Paragraph 5 of REP7-061 set out why it would not be appropriate to make the SCNA a discharging authority for the purposes of appeals against a direction made under paragraph 22 of Schedule 2 to the DCO.</p>

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	<p>(b) the Statutory Conservancy and Navigation Authority or the Work No. 3</p> <p>further to the issuing of a direction under requirement 18 of Part 1 of this Schedule.</p>	<p>In REP8-056, HMH noted that ABP had aligned itself with his submissions (HMH29) <b>[REP7-061]</b>.</p> <p>HMH also noted that he understood that ABP would be filing an alternative proposal to R18 and that the appeals point would fall away if this were accepted.</p> <p>HMH notes the Applicant's alternative proposal that R18 (Impact Protection Measures) becomes R18 and R19. Together these require certain actions to be undertaken by the undertaker in the event that a recommendation is made by either the SCNA or dock master that impact protection measures are required in the interests of navigational safety, together with a Grampian-style condition requiring Enhanced Operational Measures to be published and duly followed by the undertaker.</p> <p>Where there is no direction, there is no need for a right of appeal. However, even if the Examining Authority were to recommend that a power be conferred on the SCNA or dock master to require impact protection measures to be constructed, it is respectfully submitted that a right of appeal would not be appropriate for the reasons given in REP7-061, in which case the inclusion of the SCNA (and dock master) in the definition of discharging authority is not required.</p>
Ditto	<p>Schedule 4 – protective provisions for the SCNA</p> <p>Paragraph 16 Operating Procedures</p>	<p>HMH is pleased to note that his proposed amendments to paragraph 16 proposed in REP7-061 and the deletion of the provision for arbitration proposed in paragraph 4 of HMH28 - response to Action Points 6, 7, 12 and 13 from ISH6 <b>[REP7-063]</b> have been incorporated by ABP in its latest draft DCO.</p>

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		<p>As explained in HMH38 - Response to Examining Authority further written questions and requests for information (ExQ4) [REP8-052], HMH fully supports the Applicants revised proposals in preference to the previous drafts and considers that they work well with the amended paragraph 16.</p> <p>In the event that the Examining Authority is minded to recommend the Applicant's proposed Requirements 18 and 19, HMH suggested that sub-paragraph (1) of paragraph 16 to the protective provisions could be amended to make it clear that the SCNA's approval of the safe operating procedures is subject to the requirement for EOM by inserting the reference to that requirement in sub-paragraph (1), i.e:</p> <p><i>"16 —(1). Before commencing marine commercial operations the Company must submit to the Statutory Conservancy and Navigation Authority for approval a written statement of proposed safe operating procedures for access to and egress from the authorised development and, subject to Requirement 19, must operate the authorised development only in accordance with such procedure as approved, including any approved alteration made from time to time."</i></p>

**Winckworth Sherwood LLP**