

**Infrastructure Planning
Planning Act 2008
The Infrastructure Planning (Examination Procedure) Rules 2010**

Immingham Eastern RoRo Terminal DCO Application

**Closing Submissions
of
CLdN Ports Killingholme Limited**

15 January 2024

CONTENTS

1.	INTRODUCTION	3
2.	LEGAL AND POLICY FRAMEWORK	5
3.	THE PROPOSED DEVELOPMENT AND THE EXAMINATION	8
4.	HARMS ARISING FROM THE PROPOSED DEVELOPMENT	19
5.	THE DRAFT DCO	26
6.	POLICY COMPLIANCE AND PLANNING BALANCE	31
	APPENDIX 1 – 2011 TRANSPORT RESEARCH LABORATORY NOTE	34

1. INTRODUCTION

- 1.1 This document comprises the closing submissions by CLdN Ports Killingholme Limited (**CLdN**) to the Examination of the application by Associated British Ports (**the Applicant**) for a Development Consent Order (**DCO**) (**the Application**) for the Immingham Eastern RoRo Terminal (**IERRT** or **the Proposed Development**).
- 1.2 The purpose of this document is to assist the Examining Authority by summarising the key evidence and arguments that CLdN has submitted and made throughout the Examination and to highlight the outstanding issues that are of particular concern to CLdN.
- 1.3 In summary, it is CLdN's maintained view that the Proposed Development does not meet the relevant policy tests to justify granting the DCO. In summary:
 - 1.3.1 The Proposed Development does not comply with the National Policy Statement for Ports, read as a whole (**NPSfP**). The Applicant has failed to demonstrate that it is a sustainable port development in that it does not cater for evidenced long term forecast growth, is not functionally well designed and does not provide a positive contribution to competition and resilience and therefore cannot benefit from the presumption in favour of grant. Further, the Applicant has failed to demonstrate that the Proposed Development meets all other relevant policy and legal requirements.
 - 1.3.2 Alternatively, even if the presumption in favour of grant applies, limited weight should be given to the presumption because the need identified by the Applicant simply does not exist and, even if it did, the IERTT does not serve that need. The case pursued by the Applicant in the Application was based on inaccurate assumptions relating to dwell times and capacity at Killingholme, as CLdN has clearly established through its own evidence submitted to the Examination. That original need case has very recently been abandoned and re-cast in the Updated Market Study **[REP8-028]**, where the Applicant now adopts a different methodology, which is inconsistent with the agreed position in the Statement of Common Ground on dwell times **[REP6-020]** (**Dwell Time SoCG**) and industry practice. As explained in CLdN's Deadline 9 response to the Applicant's Deadline 8 submissions (**CLdN's Deadline 9 Response**), the Updated Market Study cannot be relied upon to justify such a fundamental (and late) change in the Applicant's case. It is based on flawed analysis, is partial and selective, and is not supported by objective evidence. CLdN submits that it should be given no weight and is not a credible answer to the evidence and analysis provided by CLdN's independent consultants on the true picture of need and capacity for unaccompanied RoRo freight in the Humber. That evidence clearly shows that there is no urgent and imperative need for the Proposed Development and that any residual need which does exist can be met by making best use of existing facilities and realisable capacity at the Port of Killingholme (**Killingholme**). The fact of existing and realisable capacity at Killingholme is an important and relevant consideration and materially weighs against the Applicant's unsupported and changed need case.
 - 1.3.3 Further, and in any event, the Applicant's case as a whole is selective, inconsistent and contradictory. This means it has not presented any clear or reliable factual analysis which explains how the Proposed Development would meet the need that it asserts is present. In particular, the assessment of landside storage capacity and the split of accompanied vs. unaccompanied RoRo vessels does not match Stena's stated intentions for the IERRT.
 - 1.3.4 Taking all of the above into consideration, it is clear that the benefits of the Proposed Development are very limited and clearly outweighed by the harms identified by CLdN and others. Those harms have not been properly assessed meaning that there remains the potential for significant adverse impacts for transport, biodiversity and navigational safety which the DCO does not adequately protect against.
- 1.4 As explained in the Examination, CLdN has sought to participate in the Examination so as to assist the Examining Authority in reaching a recommendation, based on the facts, and in light of a clear

understanding of the nature of the Proposed Development. CLdN decided that it needed to participate in the Examination due to the obvious factual inaccuracies relating to its own operations advanced by the Applicant, in particular regarding available and realisable capacity at Killingholme. Through its evidence to the Examination, which has been verified and supported by independent expert analysis, CLdN has demonstrated that the Applicant's assumptions about Killingholme are fundamentally incorrect. As explained in CLdN's previous submissions throughout the Examination, and summarised here, those incorrect assumptions underpinned the Applicant's case for the Proposed Development. Instead of meeting CLdN's case head on, the Applicant has continued to pursue a case that is based on selective information, assumptions and assertions, with limited substantiation.

- 1.5 In addition, the piecemeal (and often late) changing submissions and adjustments to the Proposed Development, have been both unhelpful to the efficient conduct of the Examination and have served to muddy the waters further rather than provide a clear picture of what it is that the Applicant is actually applying for and why it is justified. This has culminated in the late submission of a new case on need, which adopts a new methodology, which CLdN has only had a very short time to consider. This all matters because Examination is an evidence-based process, and the Proposed Development must be justified against the relevant legislative and policy tests and on a proper understanding of the scope and impacts of the development and balance of benefits and harms. That has not been done and is a further reason why the Examining Authority is invited to recommend against granting development consent.
- 1.6 For the reasons set out in more detail in these closing submissions, CLdN submits that the Examining Authority should recommend refusal of the Application. However if, notwithstanding these submissions, the Examining Authority is minded to make a different recommendation or the Secretary of State on determination considers approval, CLdN submits that this should be done on the basis of the facts set out in CLdN's submissions and after having put in place sufficient protection for CLdN's interests (as a statutory undertaker and an existing user on the Humber, in accordance with the well established policy of 'agent of change' per paragraph 193 of the National Planning Policy Framework, December 2023) as set out in CLdN's submissions on the draft DCO in section 5 below.
- 1.7 These closing submissions are structured as follows:
 - 1.7.1 **Section 2:** Legal and Policy Framework;
 - 1.7.2 **Section 3:** The Proposed Development and the Examination;
 - 1.7.3 **Section 4:** Harms Arising from the Proposed Development;
 - 1.7.4 **Section 5:** The draft DCO; and
 - 1.7.5 **Section 6:** Policy Compliance and Planning Balance.
- 1.8 A substantial amount of new material was provided by the Applicant at Deadline 8, including the Applicant's Response to CLdN's Deadline 7 Submission **[REP8-021] (the Applicant's Deadline 8 Response)**, the Humber Shortsea Market Study Update **[REP8-028] (the Updated Market Study)** and the Terminal Capacity Statement **[REP8-027] (the Terminal Capacity Statement)**. CLdN has responded to these documents separately in CLdN's Deadline 9 Response. Where necessary, these closing submissions refer to and summarise the main points made in CLdN's Deadline 9 Response but do not seek to duplicate the detail of those submissions.

2. LEGAL AND POLICY FRAMEWORK

2.1 CLdN's previous submissions on the relevant policy background can be found at:

- 2.1.1 Relevant Representation (19 April 2023) [\[RR-007\]](#);
- 2.1.2 Issue Specific Hearing 2 Summary (17 August 2023) [\[REP1-025\]](#);
- 2.1.3 Written Representation (6 September 2023) [\[REP2-031\]](#);
- 2.1.4 Response to Deadline 2 Submissions (12 September 2023) [\[REP3-020\]](#);
- 2.1.5 Issue Specific Hearing 3 Summary (10 October 2023) [\[REP4-017\]](#);
- 2.1.6 Response to Comments by Applicant (10 October 2023) [\[REP4-019\]](#);
- 2.1.7 Response to ExQ2 (10 October 2023) [\[REP4-020\]](#);
- 2.1.8 Response to Deadline 4 Submissions (24 October 2023) [\[REP5-041\]](#); and
- 2.1.9 Responses to Deadline 5 Submissions (14 November 2023) [\[REP6-036\]](#).

2.2 The relevant policy framework is set out in the NPSfP and the UK Marine Policy Statement (2011) and the East Inshore and East Offshore Marine Plans 2014 (see s.104(2)(aa) of the Planning Act 2008).

2.3 This Application must be decided in accordance with the NPSfP (see s.104(3) of the Planning Act 2008) unless any relevant exception applies (s.104(4)-(8) of the Planning Act 2008) including where the decision-maker is satisfied that the adverse impact of the proposed development would outweigh its benefits (see s.104(7) of the Planning Act 2008).

2.4 It should not be controversial that:

- 2.4.1 the NPSfP needs to be read and applied as a whole and not selectively (*R (on the application of ClientEarth v Secretary of State for Business, Energy and Industrial Strategy* [2020] EWHC 1303 at §129);
- 2.4.2 where a proposal meets the requirements of the NPSfP, the presumption in favour of grant is the starting point and it will not necessarily carry decisive or even significant weight when the planning balance is struck (see *R (on the application of Scarisbrick) vs Secretary of State for Communities and Local Government* [2017] EWCA Civ 787 at para 31) (see [\[REP4-017\]](#) page 5); and
- 2.4.3 the weight to be given to the presumption in favour of grant is a question of judgement for the decision-maker.

The NPSfP

2.5 The “fundamental policy” of government under the NPS is:

- 2.5.1 to “encourage sustainable port development to cater for long-term forecast growth in volumes of imports and exports by sea with a competitive and efficient port industry capable of meeting the needs of importers and exporters cost effectively and in a timely manner, thus contributing to long-term economic growth and prosperity” (3.3.1, first bullet);

- 2.5.2 to allow judgements as to when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment (3.3.1, second bullet); and
- 2.5.3 that all proposed developments must satisfy the relevant legal, environmental and social constraints and objectives (3.3.1, third bullet).
- 2.6 Those three requirements must be read together and as a whole. Only sustainable port development catering for long term forecast growth in volumes is encouraged by the NPSfP. Paragraph 3.3.3 of the NPSfP provides that new port infrastructure should also meet the criteria set out therein, including that it ensures competition and security of supply and is well designed, functionally and environmentally.
- 2.7 Further, the NPSfP provides that capacity must be in the right place if it is to effectively and efficiently serve the needs of import and export markets (paragraph 3.4.11 NPSfP).
- 2.8 It is the need identified in the NPSfP, i.e. the need for sustainable port development which responds to the policies set out in the NPSfP, that gives rise to the presumption in favour of development set out in paragraph 3.5.2.
- 2.9 Once that need is established, the Secretary of State must still “*weigh the suggested benefits, including the contribution that the scheme would make to the national, regional or more local need for the infrastructure, against anticipated adverse impacts, including cumulative impacts*” (paragraph 4.2.2 of the NPSfP).
- 2.10 In summary, as CLdN has previously submitted **[REP2-031]**, the framework set out in the NPSfP is that:
- 2.10.1 there is a general need for additional port capacity that responds to the factors set out in paragraph 3.5.1 of the NPSfP and the decision-maker should accept that need;
- 2.10.2 the NPSfP does not set out a general presumption in favour of granting all port development. The proposed development must meet the description set out in paragraph 3.5.1 of the NPSfP interpreted in light of the NPSfP as a whole. It is incumbent on the Applicant to properly demonstrate that those conditions have been satisfied;
- 2.10.3 the starting point is that there is a presumption in favour of granting applications for sustainable port development, subject to other policies in the NPS which indicate when consent should be refused;
- 2.10.4 there is no guidance as to the weight to be given to a particular development’s contribution to the identified need; and
- 2.10.5 the contribution of a particular development to national, regional or local need is relevant to the assessment of the benefits side of the planning balance (see NPSfP at paragraph 4.4.2 and *R (on the application of ClientEarth) v Secretary of State for Business, Energy and Industrial Strategy* [2021] EWCA Civ 43 at 72, as referred to in **[REP2-031]** at paragraphs 6.15-6.20).

Other relevant policy and legal requirements

- 2.11 In addition to the NPSfP, the East Inshore and Offshore Marine Plans refer to the broad aims of ensuring an efficient and economic marine industry (see paragraph 50). In that regard they are consistent with the NPSfP and underscore the need for the Examination to consider and reach a conclusion on whether the Proposed Development amounts to an efficient and economic proposal.

2.12 In a similar vein, Regulation 6(3) Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 requires the Applicant to set out why making the order is desirable in the interests of (a) securing the improvement, maintenance or management of the harbour in an efficient and economical manner; or (b) facilitating the efficient and economic transport of goods or passengers by sea or in the interests of the recreational use of sea going ships. As set out in CLdN's Written Representation [REP2-031] at paragraphs 6.23-6.25 and at Issue Specific Hearing 3 (ISH3) (see CLdN's ISH3 Summary [REP4-017]), the extent to which the Proposed Development is "desirable" in these respects is both an important and relevant matter for the Secretary of State's consideration pursuant to s.104(2)(d) of the Planning Act 2008, as well as a matter prescribed in relation to development of the description to which the application relates (see s.104(2)(c)). The Examining Authority and Secretary of State are therefore entitled to take these matters into account in carrying out the planning balance.

Alternatives

2.13 As explained in CLdN's Written Representation [REP2-031] at paragraph 6.24 onwards and [REP4-017] on page 4, the existence of existing capacity at Killingholme which could meet realistic forecast growth is an important and relevant consideration in the particular circumstances of this Application:

2.13.1 The NPSfP policy on alternatives is at paragraph 4.9.1. It provides that:

"In any planning case, the relevance or otherwise to the decision-making process of the existence (or alleged existence) of alternatives to the proposed development is in the first instance a matter of law, detailed guidance on which falls outside the scope of this NPS. From a policy perspective this NPS does not contain any general requirement to consider alternatives or to establish whether the proposed project represents the best option."

2.13.2 As a matter of law, alternatives are not usually relevant in planning cases, but it may be relevant or necessary to consider alternatives where there are clear planning objections to development on a particular site and the major argument advanced in support is that the need for the development outweighs the planning disadvantages, or where an absence of alternatives is relied upon to justify the scheme. In those types of cases, decision-makers are entitled (if they consider appropriate in their planning judgement) to take into account evidence that the need for the proposed scheme can be met elsewhere through the operation of normal market forces even where no specific alternative site has been identified – there is no "one size fits all" rule (see *Trusthouse Forte Hotels Ltd v Secretary of State for the Environment* (1986) 53 P&CR 293 and *R(Langley Park School for Girls) v Bromley LBC* [2010] 1 P&CR 10).

2.13.3 Consideration of alternatives may also be required by law. The Applicant has recently submitted to the Examination a without prejudice IROPI assessment to justify a derogation from the requirements of regulation 63 of the Habitats and Species Regulations 2017 (**the Habitats Regulations**). Pursuant to regulation 64 of the Habitats Regulations, where it cannot be ruled out that development will not have an adverse effect on the integrity of a European Site, consent can only be granted where the competent authority is satisfied that, there being no alternative solutions, the plan or project must be carried out for imperative reasons of overriding public interest. If an adverse effect on integrity has not been ruled out, consideration of alternatives is therefore mandatory. Natural England has not yet confirmed that its concerns about the Applicant's evidence and assessments relating to European Sites have been resolved. Should the need to consider a derogation from regulation 63 of the Habitats Regulations arise, the existence of existing capacity at Killingholme would be a relevant consideration that the Secretary of State would be required by law to take into account.

2.14 It is against the above legal and policy framework that the Proposed Development must be assessed.

3. THE PROPOSED DEVELOPMENT AND THE EXAMINATION

3.1 The Applicant's case in support of the Proposed Development has changed significantly over the course of the Examination. This has made it difficult for interested parties, including CLdN, to understand precisely what is being proposed by the Applicant and on what basis. As set out in more detail below, the evidence submitted to the Examination shows that: (1) the justification for the Proposed Development is weak and incoherent; (2) the Applicant has failed to address legitimate criticisms of its methodology and assessments; and (3) notwithstanding the various changes and refinements of the Applicant's case for the Proposed Development, its case remains contradictory and unsubstantiated.

3.2 This is illustrated by the Applicant's approach to (1) assessing capacity and demand on the Humber and (2) its assumptions relating to operations and throughput at IERRT.

3.3 The Applicant's justification for the Proposed Development, and a key alleged benefit of the Proposed Development, is an alleged 'urgent and imperative need' to provide additional capacity, and an absence of alternatives to meet that claimed need:

3.3.1 Statement of Reasons **[APP-017]**:

Paragraph 5.7.7: *"there is an imperative need to provide additional appropriate RoRo freight capacity within the Humber Estuary"* and paragraph 6.2.4 states that *"the IERRT development will provide port capacity in a location where the industry, operating within a free market environment, urgently needs additional capacity to be provided"*.

3.3.2 Planning Statement **[APP-019]**:

Paragraph 4.22: *"there is a clear and urgent need for the provision of a new RoRo facility of the appropriate kind on the Humber Estuary to meet both the current and future needs of Stena Line"*.

Paragraph 4.27: *"these objectives are to provide the Humber Estuary with the ability to meet the urgent needs of an existing RoRo freight operator, Stena Line, with an established customer base"*.

Paragraph 5.10: *"there is a very clear and urgent need for the type of infrastructure that the IERRT Project will provide"*.

3.3.3 Funding Statement **[APP-018]**:

Paragraph 2.5: *"ABP recognises that it may not be possible to secure all of the required interests and rights within the timescale that meets the urgent need to deliver the IERRT development"*.

3.3.4 ES Volume 1 Chapter 4 **[APP-040]**:

Paragraph 4.2.67: *"There is an imperative need to provide additional appropriate RoRo 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 RoRo freight sector."*

Paragraph 4.2.67: *"there is a clear and urgent need for a new facility of the appropriate kind somewhere on the Humber Estuary – namely an appropriately located facility with the ability to accommodate large RoRo vessels in a suitably unconstrained way, with sufficient storage / cargo handling areas in close proximity to the berths and where the necessary control in terms of operations can be achieved – to meet the current and future needs of Stena Line"*.

- 3.4 From the beginning of the Examination, and throughout, CLdN has made clear its position that the Examining Authority and Secretary of State should interrogate these claims and that, based on the evidence submitted to the Examination, the need case is significantly overstated and unsubstantiated. In this section, CLdN sets out why, based on the evidence submitted to the Examination, the Applicant has failed to demonstrate that the Proposed Development satisfies the two key components of its own case. In short, the Applicant has not shown that the Proposed Development: (1) is able "to meet the growing and changing nature of demand"; or (2) that it will "provide additional appropriate RoRo freight capacity".

Demand and capacity

- 3.5 Over the course of the Examination, CLdN has raised a number of fundamental concerns with respect to the Applicant's need case for the Proposed Development. Specifically, CLdN considers that the need case is significantly overstated and that the Proposed Development is not sustainable port development for the purposes of the NPSfP. In particular, the Applicant has not substantiated its own case that there is an urgent need to provide further RoRo port infrastructure to meet the growing and changing nature of demand on the Humber.
- 3.6 Despite CLdN (and other interested parties) providing real data and factually correct information during the course of the Examination, the Applicant has failed to adequately address the fundamental inaccuracies and inconsistencies in its original case. This section summarises the evolution of the Applicant's need case during the Examination, and identifies the key areas where information is still lacking and where the Applicant's case has not been supported by objective or reliable evidence.

The DCO application

- 3.7 As set out above, the Applicant's own case for the Proposed Development is based on an alleged urgent and imperative need for the Proposed Development.
- 3.8 The Applicant's need case is underpinned by the assessment of demand versus capacity originally provided in the Applicant's Market Forecast Study Report **[APP-079] (the Market Study)** (Appendix to ES Volume 1 Chapter 4 **[APP-040]**). The Market Study concludes in paragraph 41 that "*capacity in the Humber for unaccompanied RoRo will be exceeded in the next few years under all realistic scenarios that have been considered. Storage capacity and space for additional services will be limiting further growth*".
- 3.9 Figure 8-15 of the Market Study summarises the Applicant's initial assessment of demand against capacity, which states that in the Applicant's central scenario, capacity for unaccompanied RoRo on the Humber would be exceeded initially in 2025, with excess demand growing to approximately 600,000 units by 2050. Presumably, this is why the Application initially proposed a maximum throughput of 660,000 units per year at the Proposed Development, of which 475,000 (72%) would be unaccompanied RoRo.
- 3.10 The supply side of that assessment was based in large part on the assumption that Killingholme was operating at or even beyond its maximum capacity. As CLdN has repeatedly stated during the Examination, that assumption was based on unsubstantiated evidence and flawed assumptions: in particular Google maps images which were said to show landside storage capacity (**[APP-079]** at paragraph 204) at Killingholme and an assumed (but not evidenced) "standard industry" dwell time of 2.25 days (**[APP-079]** at paragraph 206).

The Volterra Report [REP2-031]

- 3.11 In response to the Applicant's need assessment, CLdN commissioned Volterra Partners LLP (**Volterra**) to provide an independent study of the market demand and capacity for port freight in the Humber region, alongside a critique of the Applicant's Market Study (**the Volterra Report**). The Volterra Report sets out the findings of this independent review, identifying fundamental issues with the Applicant's need case. Paragraph 1.3 of the Volterra Report identifies a number of fundamental

flaws in the Market Study: (1) the current static storage capacity at Killingholme was incorrect and significantly underestimated; (2) the Market Study did not allow for any expansion in storage capacity at Killingholme in the future; and (3) there was a clear inconsistency in the Market Study concerning the potential capacity of the Proposed Development.

- 3.12 After accounting for the highlighted inconsistencies and errors in the Applicant's need case, Volterra demonstrated that (even when applying the Applicant's demand forecasts for unaccompanied RoRo without any adjustments) the corrected factual estimates of existing Humber capacity, in the worst-case scenario, showed that capacity would only be breached between 2031 to 2044 (see paragraph 1.11 of the Volterra Report). This is much later than the stated 2025 in the Market Study (see page 94 of the Market Study). In the most likely scenario, however, Volterra estimates that capacity on the Humber would in fact not be breached until 2050 (see paragraph 6.4 of the Volterra Report).
- 3.13 Volterra concluded that, using accurate assumptions about capacity at Killingholme, existing facilities on the Humber can in fact comfortably cater for the growing and changing nature of demand on the Humber. Whilst estimates of both demand and capacity of the Humber have evolved as new information has arisen throughout subsequent deadlines within the Examination, this conclusion has remained intact. The subsequent sections presented below provide a step-by-step recap of how the need case has evolved over the remainder of the Examination, concluding with where it is now.

Correcting factually inaccurate estimates of capacity at Killingholme

- 3.14 Throughout the Examination, the Applicant has consistently failed to correct the clear factual inaccuracies presented in its initial assessment of existing capacity at Killingholme, even when invited by the Examining Authority to do so at Issue Specific Hearing 6 (**ISH6**). The Applicant has yet to explicitly acknowledge that CLdN is clearly best placed to advise on capacity at its own port, especially given it possesses actual operational data and information on the amount of landside storage capacity, as opposed to basing its assessment of capacity on satellite images and estimations.
- 3.15 The Applicant's estimates of existing capacity at Killingholme have evolved substantially over the course of the Examination, as explained below.
- 3.16 The Market Study **[APP-079]** estimated that capacity at Killingholme amounts to 290,000 unaccompanied RoRo units per annum (see Table 8-2), with no potential to expand in the future. When incorporating this estimate of Killingholme's capacity into the wider existing capacity of the Humber as a whole, the Applicant concluded that *"there is currently very little, if any, available spare capacity of the right type available on the Humber"* (see paragraph 4.2.45 **[APP-040]**). This lack of existing capacity is then used by the Applicant to justify additional port infrastructure being provided on the Humber to meet future demand.
- 3.17 The Volterra Report concluded that, once the Applicant's factually inaccurate assumptions have been corrected, existing capacity at Killingholme amounts to between 521,551 and 625,861 unaccompanied RoRo units in 2023, growing to between 623,556 and 748,268 unaccompanied RoRo units by 2025 after the ongoing development at Killingholme is complete. The range in capacity accounted for variations in dwell times over time, with a range of 1.25 days to 1.50 days conservatively tested at the time while real time data on dwell times was collated by CLdN. As it turned out, both of these assumptions were conservative and too high compared to the current (2023) dwell time operated at Killingholme: CLdN's 2023 recorded dwell time to date is actually 1.16 days once factoring in container dwells has been taken into account, which are slightly longer on average than unaccompanied trailers (0.92 days) (see the detailed review of CLdN's data by Volterra in CLdN's Deadline 6 Submission at paragraph 16 of Appendix 2 **[REP6-036]**).
- 3.18 Instead of engaging with the substance of the Volterra Report, the Applicant has repeatedly avoided the substantive facts and focused on peripheral points, or points that are not in dispute:

- 3.18.1 in its Deadline 3 Submission [REP3-007], the Applicant ignored Volterra’s analysis and wrongly asserted that “CLdN do not appear to dispute the Applicant’s analysis of the current extent of RoRo storage at the Port of Killingholme” (paragraph 3.18);
- 3.18.2 by Deadline 5, the Applicant had been provided with accurate data by CLdN and could have corrected its estimates. Instead, in the Applicant’s Deadline 5 Submission [REP5-032] the Applicant believed it was still best placed to comment and conclude on capacity at Killingholme, despite the fact that CLdN operates and possesses all of the operational data for this port. For example, in paragraph 5.9 of the Applicant’s Deadline 5 Submission, the Applicant incorrectly asserts that the existing capacity at Killingholme amounts to 532,608 unaccompanied RoRo units; and
- 3.18.3 at Deadline 6, the Dwell Time SoCG was agreed between the Applicant, CLdN, DFDS and Stena [REP6-020]. Combining agreed dwell times (now based on real data) with the correct information on landside storage space at Killingholme – as provided in the Killingholme Note [REP4-021] and in Table 4.1 of the Volterra Report [REP2-031] – allows for the most accurate estimate of existing capacity at Killingholme to be presented. Paragraph 17 of Appendix 2 in CLdN’s Deadline 6 Submission [REP6-036] shows that the most accurate and up to date estimate of annual existing capacity for unaccompanied RoRo units at Killingholme is 675,764 units in 2023, rising to 807,931 by 2025. However, it was not until the Applicant submitted its Updated Market Study in January 2024 [REP8-028] that the Applicant finally utilised CLdN’s estimate of 2023 realisable capacity¹ at Killingholme, despite stating that it “anticipates that this capacity is likely to be lower” and ignoring that capacity will increase to 807,931 in 2025 after confirmed expansion works have been completed.
- 3.19 CLdN’s Deadline 6 Submission outlines the implications of these significant flaws in the Applicant’s existing capacity estimates in the Humber. As shown in paragraph 2.20 of CLdN’s Deadline 6 Submission, the evolving capacity discussions over the course of the Examination demonstrate that existing capacity for unaccompanied RoRo on the Humber was originally underestimated by 834,000 units. The revised capacity estimate for the Humber – 1,796,000 unaccompanied units per year by 2025 – represents an upward revision of 187% compared to the Applicant’s initial estimate (962,000 units). This is clearly a very material error by the Applicant, which completely undermines its justification of need for the Proposed Development. The evidence shows that existing realisable capacity can readily cater for changing and growing demand on the Humber.
- 3.20 The timeline presented above only represents part of the picture on capacity discussions. Aside from the incorrect assumptions used to establish existing capacity, the Applicant has repeatedly failed to acknowledge the potential for future expansion in landside storage capacity that is available at Killingholme, should the market demand more space in the future. Volterra first raised the prospect of future additional capacity at Killingholme as an alternative option to the Application in the Volterra Report [REP2-031], with paragraph 4.28 of this report presenting an assumed incremental expansion of capacity at Killingholme in the future. The Applicant challenged this on the basis that Volterra had relied on information provided by CLdN (see paragraphs 3.17-3.20 of [REP3-007]). In response, further factual information on Killingholme’s ability to expand was provided through both a site inspection for the Examining Authority, and a subsequent Killingholme note [REP4-021]. CLdN maintains that, through CLdN’s Deadline 4 Submissions, there has been complete clarity about: capacity at Killingholme both now and in the future; how capacity is managed at the port; and how additional capacity can be delivered in the future. The Applicant has still not accepted the potential for Killingholme to expand in the future and has not updated their market assessment to reflect this, instead capping Killingholme at its 2023 realisable capacity in paragraph 5.25 of the Updated Market Study [REP8-028]. CLdN, however, is satisfied that the Examining Authority has been provided with enough evidence to show that Killingholme is a flexibly operated port with a proven track record of

¹ For clarity, the term ‘2023 realisable capacity’ refers to the capacity that could currently be realised on the Humber based on: (1) the most recent dwell times of RoRo operators on the Humber; and (2) the current number of landside storage spaces (trailer bays and container slots) at ports on the Humber. The reason that CLdN has presented estimates throughout this document for both 2023 and 2025 is because work is ongoing at Killingholme to expand the number of landside container slots over this year and the next.

expanding capacity when the market requires and with the existing land and infrastructure to deliver this.

The Applicant's flawed and misleading assumptions on dwell times

- 3.21 The Applicant's Market Study utilised an average dwell time of 2.25 days for unaccompanied RoRo to inform capacity estimates of the Humber (see paragraph 115 of the Market Study). As CLdN has demonstrated, this dwell time is not aligned to the real, comparable data on the Humber and therefore had misleading implications for the assessment of existing capacity in the area (see CLdN's Written Representation [\[REP2-031\]](#)). In particular, the Applicant's sensitivity testing of dwell time was misleading (upwardly biased) (see paragraph 4.5 of the Volterra Report) and the average 2.25 day dwell time assumed for the market assessment was significantly different from the reality operated and recorded at Killingholme (a port which achieves dwell times of around 1 day on average) (see paragraph 4.8 of the Volterra Report).
- 3.22 Notwithstanding this clear evidence provided by the operator of Killingholme, the Applicant maintained its position and reiterated that *"the average figure of 2.25 days was determined having regard to the experience and knowledge of the authors of the Market Study in respect of this matter, sense checked against what was occurring in respect of Stena Line operations The use of 2.25 days is, therefore, considered a reasonable assumption to be made for the purposes of giving an overall estimate of capacity"* (see the Applicant's Deadline 3 Submission [\[REP3-007\]](#) at paragraphs 3.24 to 3.25).
- 3.23 CLdN raised the issue of dwell times during ISH3 which was held on 27 and 28 September 2023. In Item 2b of ISH3, Ellie Evans of Volterra stated that this *"is, despite Volterra raising this [the dwell time issue] as the largest challenge in their report, still not explained or substantiated with any real primary data, instead relying on the general view of their consultants which is not corroborated by any empirical evidence"*. CLdN refers the Examining Authority to CLdN's ISH3 Summary for further details of Ms Evans' oral evidence on this issue [\[REP4-017\]](#).
- 3.24 The Examining Authority then asked all relevant parties – CLdN, the Applicant, Stena and DFDS – to agree a Dwell Time SoCG for them to consider [\[REP6-020\]](#). Whilst this Dwell Time SoCG was being discussed between parties, more evidence was submitted to the Examination which undermined the Applicant's asserted dwell time of 2.25 days:
- 3.24.1 first, in response to CLdN and Volterra demonstrating that IERRT was not operationally deliverable if utilising a 2.25 day average dwell time (more detail on this below), Stena produced a table in Appendix 4 of the Applicant's Deadline 5 submission [\[REP5-032\]](#) stating that they expect to operate an average dwell time for unaccompanied RoRo of 1.4 days (imports and exports) at IERRT; and
- 3.24.2 secondly, in an attempt to support the analysis in its Market Study, the Applicant submitted a paper by PIANC titled "The Design of Terminals for RoRo and RoPax Vessels" [\[AS-079\]](#) (see the Applicant's Deadline 5 Submission [\[REP5-032\]](#)). In fact, this paper does not support the 2.25 day assumption (see CLdN's Deadline 6 Submissions [\[REP6-036\]](#) at paragraph 2.10).
- 3.25 The Dwell Time SoCG was submitted to the Examination at Deadline 6 [\[REP6-020\]](#) and provides the Examining Authority with an agreed position on existing average dwell times at Killingholme and Immingham for all shipping line operators. It was at this point that the Applicant had to acknowledge (at least implicitly through the signing of the Dwell Time SoCG) that its original dwell time assumption was far too high compared to the reality on the Humber. The table presented on page 5 of CLdN's Deadline 6 Submission [\[REP6-036\]](#) clearly demonstrates how misleading and inaccurate the Applicant's original assumption on dwell time was. In light of the Dwell Time SoCG, CLdN's Deadline 6 Submission recalculated capacity to correct for the Applicant's initial error on dwell times and re-estimated capacity on the Humber using the agreed dwell times. CLdN showed in paragraphs 2.20.1-2.20.2 [\[REP6-036\]](#) that even under the Applicant's revised demand forecasts, existing capacity on the Humber would not be breached until 2045, whilst under more conservative scenarios of demand

the revised capacity is not breached at all over the period to 2050 (Figure B in [\[REP6-036\]](#) shows this graphically).

- 3.26 Fundamentally, the agreed dwell times show that there is no ‘urgent and imperative’ need for the Proposed Development. The facts show that the Applicant’s Market Study was a very poor estimate of reality and, consequently, the Applicant’s assessments were fundamentally misleading and incorrect.
- 3.27 In response, at Deadline 8, the Applicant submitted an Updated Market Study [\[REP8-028\]](#) which departs from its original methodology and seeks to argue that dwell times are not a reliable measure of capacity. It is clear that the Applicant has decided to wholly change its case because the agreed dwell times on the Humber do not support its original Market Study and clearly undermine the Applicant’s case that further port infrastructure is urgently needed to service future demand on the Humber.
- 3.28 As explained in paragraphs 3.1 and 3.2 of CLdN’s Deadline 9 Response, using dwell times to estimate capacity is the most sound, reasoned and evidenced methodology. It was the basis upon which the Application was prepared, submitted and accepted and the parties, including the Applicant and Stena, estimated capacity throughout the Examination (see paragraph 3.1 of Appendix 1 to CLdN’s Deadline 9 Response) and is in any event established industry practice across the entire RoRo shipping industry (see paragraphs 3.1-3.2 of Appendix 1 to CLdN’s Deadline 9 Response).
- 3.29 Further, the new methodology adopted by the Applicant is flawed and selective (see paragraphs 2.1-2.2 and 3.5-3.7 of Appendix 1 to CLdN’s Deadline 9 Response): it is not based on the most up to date economic forecasts and instead adopts bullish short term forecasts which give rise to an unrealistically high base level for its assessment of future growth; it relies on existing capacity for CLdN, DFDS and Stena but ignores that operators can flex to meet demand; and it also ignores CLdN’s evidence that its current capacity will increase by 2025 due to ongoing expansion works. The Updated Market Study is simply not robust enough to justify such a fundamental change in methodology at this late stage in the Examination.
- 3.30 Further, this late change in the approach to calculating capacity (and the Applicant’s failure to acknowledge candidly that the original assessments were inaccurate) casts serious doubt on the robustness or reliability of any estimates presented by the Applicant in the Updated Market Study. It remains CLdN’s view that there is significant additional realisable capacity on the Humber available, with the potential to expand this in the future at Killingholme should demand require it. This has been mathematically demonstrated to the Examining Authority utilising the established dwell time approach to estimating realisable capacity, which is accepted by all RoRo operators on the Humber.
- 3.31 A range of less significant challenges and issues has been raised by CLdN on the Applicant’s need case throughout the Examination, on topics such as competition, Humber demand forecasts, the scale of socio-economic benefits and economic efficiency, all of which are still important and relevant, especially when taken together, for the Examining Authority to consider. CLdN’s responses on these matters and their relation to relevant policy tests are summarised in the next section.

An evidenced, realistic assessment of need on the Humber

- 3.32 CLdN refers the Examining Authority to the annotated graph (Figure B) in CLdN’s Deadline 6 Submission [\[REP6-036\]](#) which provides the corrected assessment of demand versus capacity for unaccompanied RoRo on the Humber in the future. This graph highlights the scale of the factual inaccuracies inherent within the Applicant’s need assessment. It also serves to demonstrate that once a more accurate position on both existing and future capacity on the Humber is taken, the case for an urgent and imperative need to provide further freight infrastructure on the Humber does not exist.
- 3.33 Whilst discussion over realisable capacity estimates has been the focus of this submission, given this is the largest point of disagreement, CLdN also disputes the Applicant’s revised forecasts of future demand presented in the Updated Market Study in paragraph 6.13 [\[REP8-028\]](#). As set out in

paragraph 7.4 of Appendix 1 to CLdN's Deadline 9 Response, CLdN believes its demand forecasts presented in Figure B of CLdN's Deadline 6 Response ([REP6-036], Figure B in Appendix 2) represent the most likely scenario of future demand, given this forecast does not overestimate growth in demand on the Humber in the short term.

- 3.34 CLdN's submissions throughout the Examination have provided accurate factual information to the Examining Authority to substantiate its assessments of demand and capacity. These assessments clearly show that, contrary to the Applicant's belief, there is no urgent and imperative need for additional port infrastructure on the Humber and that realistic long term growth can be met through existing facilities, should that growth materialise.

Operational matters

- 3.35 In addition to a weak and unsubstantiated need case, there are serious doubts that the Proposed Development is operationally capable of handling the stated level of unaccompanied RoRo throughput that the Applicant argues will address the alleged need for additional RoRo infrastructure. It is clear the Applicant is aware of the issues with operational delivery of the Proposed Development, given that it has repeatedly changed its position throughout the Examination with respect to expected levels of throughput and landside storage capacity at the Proposed Development.

- 3.36 The deliverability of the Proposed Development matters for two reasons:

3.36.1 to address any identified need to accommodate growing and changing demand, the Proposed Development needs to be an appropriately designed facility, able to accommodate types of freight in which the market is growing (refer to paragraph 3.2). The Applicant has been clear from the start that it views the unaccompanied RoRo sector as the key growth area in the market in future years. For example, see paragraph 4.3.38 of ES Volume 1 Chapter 4 [APP-040] where the Applicant acknowledges "*the increasing dominance of unaccompanied RoRo freight and the fact that this form of RoRo cargo requires more storage space than accompanied RoRo cargo*". The Proposed Development clearly needs to be able to provide for vessels and landside storage that can accommodate this type of cargo; and

3.36.2 secondly, in order to meet the relevant policy tests and benefit from the presumption in favour of grant, it must be functionally well designed. National ports policy also requires that the facility be economically efficient.

- 3.37 The Applicant's original stated levels of throughput and landside storage capacity at the Proposed Development were:

3.37.1 a capped maximum throughput of 660,000 units per annum, of which 495,000 units (72%) were expected to be unaccompanied units, as stated in paragraph 3.2.6 of the Environmental Statement Chapter 3 [APP-039]; and

3.37.2 stated landside storage capacity of 1,430 trailer bays and 40 container ground slots, as outlined in Environmental Statement Chapter 2 [APP-038].

- 3.38 The Volterra Report showed in Table 4.4 that in order for the Proposed Development to achieve the maximum throughput identified above within the stated storage capacity, a dwell time of 0.92 days would need to be achieved. This is less than half the average dwell time that the Applicant was assuming at that time (2.25 days). This pointed out a fundamental inconsistency in the case for the Proposed Development.

- 3.39 The Applicant, in its Deadline 2 Submissions [REP2-010], stated that "*in practical terms, however, the efficient throughput of the terminal on a day-to-day basis is considered likely to be around 80% of that total capacity, which would result in an average of 1,440 units being handled per day (around 525,000 units per year)*". Appendix 1 of CLdN's Deadline 3 Submission [REP3-020] contained

Volterra's second report (**Second Volterra Report**). The Second Volterra Report showed that for 525,000 units per annum to be serviced at the Proposed Development, an average dwell time of between 0.97 and 1.16 days would need to be achieved for this level of throughput, again substantially below the assumed 2.25 days the Applicant's proposed. Clearly, even reducing the realistic level of throughput from 660,000 units to 525,000 units per annum did not demonstrate that the Proposed Development was operationally deliverable in practice.

- 3.40 Instead, both the assumed dwell time and the amount of landside storage capacity needed to be revised. The Applicant responded to questions raised about the functional design of the Proposed Development through:
- 3.40.1 presenting an amended landside storage capacity plan in paragraph 6.6 of its Deadline 5 Response **[REP5-032]**, with the capacity increasing to a total of 1,674 trailer bays, 65 container ground slots and 25 trade bay slots;
 - 3.40.2 a submission from Stena at Appendix 4 of the Applicant's Deadline 5 Response **[REP5-032]** which was the first time the Applicant's team provided a clear indication of how they envisaged the Proposed Development to operate in reality. Conveniently, an expected dwell time of 1.4 days (2.45 days for imports and 0.35 for exports) was now presented by Stena (replacing the previous 2.25 day assumption), which meant that IERRT was able to almost exactly achieve its stated annual throughput of 380,160 unaccompanied RoRo units per annum from landside storage capacity (72% of 528,000 total units²); and
 - 3.40.3 the available landside storage capacity at the Proposed Development was then amended again in the Applicant's Terminal Capacity Statement **[REP8-027]** submitted at Deadline 8, with the latest landside storage assumptions presented in Table 2. It should be noted that CLdN still considers it to be wholly inconsistent for the Applicant to apply the principle of flexibility at the Proposed Development to justify increasing landside storage slots, yet on the other hand to criticise and challenge the flexibility in Killingholme's existing operations that allows it to expand capacity and ground slots quickly to meet any increased demand.
- 3.41 While revised dwell times and landside storage assumptions might have theoretically resolved the issues with the Proposed Development's functional design, further issues and inconsistencies in the Applicant's proposals have become clear:
- 3.41.1 first, to achieve its stated throughput with the amount of storage capacity and dwell time indicated, the Proposed Development would need to achieve a 72% unaccompanied RoRo, 28% accompanied RoRo split. As discussed in paragraph 24.1 of Appendix 2 of CLdN's Deadline 6 Submission **[REP6-036]**, this split of unaccompanied and accompanied is clearly not realistic at this higher level of throughput. There would need to be a near doubling of accompanied RoRo demand to accommodate this proportion, despite the Applicant's case clearly showing that the accompanied RoRo market is in decline. This is reiterated in paragraph 3.1.1 of Appendix 2 to CLdN's Deadline 9 Response; and
 - 3.41.2 secondly, as set out in paragraph 3.1.3 of Appendix 2 to CLdN's Deadline 9 Response, the Applicant has relied upon MAFI-trailer throughput (on which containers sit) to justify a higher level of demand and future throughput on the Humber, as set out in the Updated Market Study. Yet when assessing the Proposed Development's landside storage, it is clear that only a very small amount of container traffic can be handled at IERRT (65 container ground slots), demonstrating that the development is not designed to meet an important part the Applicant's estimated need.
- 3.42 CLdN has also raised an issue with respect to the Proposed Development's identified use of vessels, and how this links to both the proportional split assumptions and landside storage capacity. In Issue

² Note there has been a slight inconsistency on realistic annual throughput by the Application throughout the examination process. In some cases, 525,000 units has been presented (1,440 units per day multiplied by 365 days), whilst in others 528,000 units has been presented (80% of 660,000).

Specific Hearing 5 (ISH5), CLdN raised a concern during Agenda Item 3(a) that it did not think the stated level of throughput at the Proposed Development can be achieved with the vessels the Applicant has tested within the Application. CLdN refers the Examining Authority to its ISH5 Summary [REP7-040] which provides a detailed explanation of why vessel types restrict feasible deliverable throughput at IERRT. In summary:

- 3.42.1 CLdN considers it very unlikely that the Applicant will be able to achieve its stated target throughput with the vessels they have tested in the Navigational Risk Assessment (NRA), that being Jinling and Transporter / Transit;
 - 3.42.2 to achieve 528,000 units per year at the Proposed Development there would need to be a number of unrealistic factors occurring, such as maximising accompanied cargo on RoPax vessels and achieving vessel utilisation rates substantially above Stena's existing service operations and what they are currently achieving on average; and
 - 3.42.3 not achieving the stated 28% proportion of accompanied cargo has implications for landside storage capacity. As is set out in CLdN's ISH5 Summary [REP7-040], CLdN believes that in reality a dwell time of around 1.16 days would need to be achieved at the Proposed Development to service the realistic proportion of unaccompanied units.
- 3.43 The Applicant and, in particular, Stena (see [REP8-059]) again provided new information in its Deadline 8 submissions with respect to vessels intended to be used at the Proposed Development. The story, however, remains the same. As set out in paragraph 5.1 of Appendix 1 to CLdN's Deadline 9 Response, tables provided in Stena's submission [REP8-059] make it clear that to meet its stated throughput and accompanied versus unaccompanied proportions (28% and 72%), it intends to utilise 2 RoPax vessels and one RoRo 'Design' vessel. In paragraph 5.2 of Appendix 1 to CLdN's Deadline 9 Response, CLdN explained that this represents a clear inconsistency between the overall need case being put forward – with growth focusing on unaccompanied RoRo and containers (including on MAFI-trailers) – and what the Proposed Development is able to deliver in practice, namely a doubling of RoPax vessel services, for which demand has declined in recent years.
- 3.44 Even at this point in the Examination, the Applicant is still unable to demonstrate that the Proposed Development is well designed functionally, nor caters for the changing and growing demand on the Humber, with clear inconsistencies between the type of vessels being used (a focus on RoPax vessels that carry significant amounts of accompanied RoRo) and the type of freight for which there is an alleged need and hence requirement to store landside (unaccompanied RoRo).
- 3.45 This comparison of both stated vessel and landside storage capacity shows, once again, that the Applicant's calculations and evidence presented, and hence its broad case for the Proposed Development, are inconsistent, incoherent and unachievable. As set out in paragraph 5.3.3 of Appendix 1 to CLdN's Deadline 9 Response, when taking the Applicant and Stena's estimated figures, the remaining unaccompanied RoRo throughput at the Proposed Development – 353,080 units – would not even serve to meet the alleged gap in capacity (1.35m units) and demand (1.92m units) of approximately 600,000 unaccompanied RoRo units.
- 3.46 When scrutinised, it is clear that the Applicant's assumptions, mathematical calculations and figures presented simply do not add up. At this late stage of the Examination, there remains a wholly inadequate explanation of how the Applicant intends to actually deliver the stated throughput at the Proposed Development in practice, particularly with the type of cargo that is expected to form a greater share of future demand. It is CLdN's view that this inability to show how the Proposed Development would meet future growth in demand serves to demonstrate that its actual function is simply to provide a facility to which Stena can relocate its existing operations.

Competition and resilience

- 3.47 Over the course of the Examination, the Applicant's case has subtly shifted away from meeting an identified overall 'need' to a position of contributing to matters of competition and resilience (see, for

example, paragraph 3.13 of the Applicant's Deadline 7 Responses to CLdN's Deadline 6 Submissions [\[REP7-023\]](#)).

3.48 However, CLdN's position and continued view is that the Proposed Development is at best competition-neutral (see paragraph 2.4 of [\[REP5-041\]](#)). This position is explained at:

3.48.1 page 17 of CLdN's ISH3 Summary [\[REP4-017\]](#) which refers to Volterra's explanation that there are different forms of competition on the Humber, relating to both shipping lines and port (i.e. terminal) operations. The Applicant owns two out of the three RoRo terminals on the Humber, which would rise to three out of four with the Proposed Development. The Applicant does not acknowledge this two thirds monopoly it currently holds on RoRo operations in the Humber. The Proposed Development would give the Applicant more power in the port operations market, with greater potential to exert monopolistic power and influence or control charging rates for shipping lines;

3.48.2 paragraphs 2.1 to 2.15 of [\[REP4-019\]](#) where CLdN questions the Applicant's competition arguments. It is unclear what contribution that the Applicant, as a private operator, believes it is making, via the Proposed Development, in order to achieve a "level playing field between the shipping lines". The idea of a level playing field relates to access to the same facilities across the 'short sea' sector of the market (see paragraph 2.2). In fact, CLdN has offered competitive, long-term shipping line contracts across Killingholme to multiple shipping line operators (see paragraph 2.3). CLdN does not prioritise the needs of its affiliated shipping lines over the needs of its other customers (see paragraph 2.4); and

3.48.3 paragraph 3.8.1 to 3.8.2 of [\[REP6-036\]](#), where it is made clear that competition between shipping lines on similar/equivalent routes is largely cost-driven (i.e. pricings) – building additional capacity, therefore, does not provide competition in that sense, and this remains the case even if one operation is moved to another location.

3.49 With respect to resilience:

3.49.1 as set out in paragraph 3.8.4 of [\[REP6-036\]](#), no clear analysis has been provided by the Applicant as to why the Proposed Development will provide this. The only historic example raised by the Applicant is related to Brexit issues, which have now been overcome and are reasonably considered to be a unique event;

3.49.2 as set out in paragraph 3.46, it is CLdN's view that the Proposed Development serves solely to relocate Stena's existing operations, rather than provide more resilience to the Humber market;

3.49.3 in any case, there would be no reason to build more and more capacity on the Humber to add resilience, when there is clearly insufficient demand to do so currently (paragraph 3.11 of [\[REP6-036\]](#));

3.49.4 CLdN shares the view that resilience is important to have in the Humber market, in order to avoid any inefficiencies. Resilience is inherently factored into calculations by the fact that a 'peak multiplier' of 1.25 is incorporated into all estimates of realisable capacity put forward by CLdN throughout the examination process (see Table 4.1 of the Volterra Report [\[REP2-031\]](#)) utilising an industry-standard methodology of estimating capacity based on dwell times. Through this, realisable capacity estimates have resilience built into them to deal with market fluctuations that could give rise to any short term capacity-related inefficiencies;

3.49.5 if future demand were to require it, resilience can be provided through the expansion of Killingholme – see page 15 of the Killingholme Note [\[REP4-021\]](#). If it were required currently, CLdN (as a commercial business) would have already expanded operations at Killingholme further to meet any unmet demand;

- 3.49.6 a demonstration of how resilience could be added to the Humber market to meet any rises in future demand is provided in Figure B of [\[REP6-036\]](#), which shows that Killingholme can expand landside storage and berth capacity to retain a resilience buffer ahead of demand in the future, just like the buffer that exists currently;
- 3.49.7 for context, the Applicant estimates that current realisable capacity stands at 1.35m units (Table 5.1 of the Updated Market Study [\[REP8-028\]](#)), whilst CLdN maintains that current realisable capacity is higher at 1.7m units (see paragraph 3.6 of [\[REP6-036\]](#)). This is significantly above current levels of demand, identified as 1.05m units in Table 5.1 of the Updated Market Study. A resilience buffer between realisable capacity and market demand therefore already exists, and will continue to exist as: (i) commercial operators at existing Humber ports respond to increased future demand through commercial decisions to reduce dwell time; and (ii) CLdN's ability to expand Killingholme in the future to be responsive to any growth in demand; and
- 3.49.8 there is a limit to providing over-capacity (i.e. 'resilience') in the freight market. Inherently, the market will always be responsive to demand. If too much capacity is provided, then shipping line operators will likely run into commercial issues and the market will need to re-set.

Overall summary

- 3.50 For the reasons set out above, at the end of the Examination, there remain completely fundamental issues with the Applicant's need case:
- 3.50.1 the Applicant continues to rely on factually incorrect assumptions about capacity at Killingholme (and hence on the Humber). At no point have these basic errors been adequately addressed by the Applicant. CLdN maintains that its own estimate of realisable capacity on the Humber – presented in paragraph 18 of Appendix 2 in CLdN's Deadline 6 Submission [\[REP6-036\]](#) – is the most reliable and robust estimate, rather than the alternative estimate put forward in the Updated Market Study at paragraph 5.31 [\[REP8-028\]](#);
- 3.50.2 while dwell times have now been abandoned by the Applicant, the Applicant has never accepted that it used misleading assumptions on dwell times (even though it is now party to the dwell times SoCG), which when corrected demonstrate that there is not an urgent and imperative need for further RoRo port infrastructure on the Humber to meet excess demand. The new analysis is just as flawed as the original Market Study and is not a reliable basis upon which to reach conclusions about demand and capacity;
- 3.50.3 as explained above, the weaknesses and inconsistencies in the Applicant's evidence and assessments also call into question the ability of the Proposed Development to meet the demand assumed by the Applicant, or any realistic assessments of demand in the future. The Proposed Development is operationally challenging to deliver, with issues still remaining around dwell times and landside storage capacity required to deliver the Proposed Development; and
- 3.50.4 the alleged "need" to increase competition and resilience in the Humber through building additional port infrastructure is not made out. In reality, this is a development to service one operator, which is proposing to move from an existing location on the Humber. It is, at best, competition and resilience neutral.

4. HARMS ARISING FROM THE PROPOSED DEVELOPMENT

- 4.1 Over the course of the Examination, CLdN and other interested parties have raised a number of potential harms arising from the Proposed Development. It is CLdN's view that these potential harms have not been properly assessed by the Applicant and the Applicant has not provided adequate provision in the draft DCO to secure that those harms cannot arise. This section of CLdN's closing submissions deals primarily with the potential harms it has raised in relation to transport. Where CLdN has not specifically referred to a potential harm arising from the Proposed Development in this document, it does not mean that CLdN accepts the potential harm does not exist.
- 4.2 CLdN adopts the views expressed by other interested parties on potential navigational safety harms and notes that ecology issues have not been resolved.

Transport

- 4.3 Throughout the Examination, CLdN has consistently raised concerns relating to the validity of the Transport Assessment (TA) conclusions. In particular, the Applicant has: (1) failed to develop a realistic worst-case scenario; and (2) relied on unsubstantiated assumptions underpinning the assessment of terrestrial traffic impacts. Due to these concerns, CLdN has consistently called for adequate controls for key terrestrial traffic parameters (e.g. HGV demand and assignment) to be secured through the DCO. The same concerns have been raised in respect to the related Environmental Statement (ES) impact assessments.
- 4.4 CLdN notified the Examining Authority at Deadline 2 **[REP2-031]** that it would work with DFDS on terrestrial transport matters as this approach would assist with the efficient management of the Examination by ensuring that multiple objections on the same issues, by parties with similar interests, are presented to the Examining Authority in a comprehensive and consistent manner.
- 4.5 To make best use of resources, DFDS's transport consultant, GHD Transport Limited (GHD), led on technical detail relating to transport model inputs and outcome and CLdN's transport consultant, Royal HaskoningDHV (RHDHV), provided verification of the findings. Both parties continued to engage with the Applicant throughout the Examination and shared information on all terrestrial traffic and transport matters.
- 4.6 In addition to the points summarised in these submissions, CLdN supports and refers the Examining Authority to DFDS's submissions at **[REP7-045]** (paragraphs 13, 14 and 48-53) **[REP8-045]** (paragraphs 43 to 65) and DFDS' further submission to be made at Deadline 9.
- 4.7 Intensive engagement between interested parties and the Applicant has resulted in numerous changes to the original Transport Assessment **[APP-108] (the Original TA)**. The following sections summarise the evolution of the TA and CLdN's response to the changes.

Transport Assessment Evolution

Pre-Examination

- 4.8 CLdN's concerns were initially documented in its Relevant Representation **[RR-007]** following a review of the Original TA and the ES Chapter 17 on Traffic and Transport **[APP-053]**. CLdN noted in its Relevant Representation that it is unclear whether a 'realistic worst-case scenario' has been assessed that allows for market and/or operator assumptions to change. Further, if the Applicant is simply assessing the traffic impact associated with Stena's commercial preferences, the draft DCO must constrain the Applicant (and its users) operations accordingly.

Issue Specific Hearing 2 and Deadline 1

- 4.9 An updated TA (some 500 plus pages longer in length) was accepted by the Examining Authority on 06 April 2023 **[AS-008] (the Updated TA)**. The Updated TA comprised of the main body report

previously submitted [APP-053] and was augmented by a number of technical appendices not previously submitted to the Examining Authority. CLdN undertook a full review of the new information, and this informed its oral case at Issue Specific Hearing 2 (ISH2) held on 27 July 2023 [REP1-025].

4.10 Four key concerns were identified by CLdN at this stage of the Examination:

4.10.1 **No assessment of worst-case daily flows:** Paragraph 5.2.5 of the Updated TA [AS-008], confirms average daily HGV demand has been used for the purposes of the assessment within the Updated TA and ES Chapter 17 on Traffic and Transport [APP-053]. The daily average HGV demand is derived by using the DCO throughput ceiling of 660,000 units and dividing it by 364 working days, per paragraph 5.2.5 of the Updated TA. This creates an unrealistic weekly profile that assumes the same daily demand from Monday to Sunday with no peaks. Utilising average numbers has the effect of smoothing out demand 'spikes' and underestimating the likely traffic impacts.

4.10.2 **Unsubstantiated trailer ratios:** Paragraphs 5.2.3 (d) and (e) of the Updated TA outline that the ratio of accompanied to unaccompanied trailers is fundamental to the traffic forecast within the Updated TA, and wider ES Chapter 17 on Traffic and Transport [APP-053]. The assessed values are 28% accompanied and 72% unaccompanied. The Updated TA refers to the intended operator, but no details are provided to substantiate the ratios. This is a critical assumption because accompanied units result in less HGV demand (as there is no additional tractor unit demand). The ratio also influences peak hour demand as accompanied trailers are influenced by sailing times, whereas un-accompanied trailers have a smoother profile throughout the day.

4.10.3 **HGV utilisation:** Paragraph 5.2.3 (f) of the Updated TA, details the number of HGV movements per freight unit. The proportion of trailer units arriving or departing without a trailer is not evidenced. If the proportion were to increase over the assumed 10% then traffic volumes would increase. This would be compounded by any changes to the ratio of accompanied to unaccompanied trailers.

4.10.4 **Port gate assignments:** Paragraph 5.5.7 of the Updated TA outlines that the Proposed Development is located in close proximity to the East Gate of the Port and on this basis provides the quickest route from the facility to the M180 west via the East Gate. An assumption is applied that 85% of traffic would use this gate. However, paragraph 5.5.8 of the Updated TA identifies that the use of the West Gate may reduce journey distance to the wider transport network. On this basis the 15% use of West Gate may be an underestimation and could result in an underestimation of all potential impacts upon the highway network to the west of the facility.

4.11 As set out in CLdN's Issue Specific Hearing 1 (ISH1) Summary [REP1-024] (Item 3) "*these issues are basic building blocks in the Transport Assessment. They put a question mark on the impact assessment outcomes prior to a higher level of sensitivity test being undertaken and in the absence of any control on HGV movements in the DCO. together this means that no reasonable "worst case" scenario on a weekly basis has been assessed. It is best case, not worst – which is a fundamental issue with respect to compliance with the Infrastructure Planning (EIA) Regulations 2017.*"

Further Development of the Transport Assumptions (Deadlines 2, 3, 4, 5 and 6).

4.12 In response to ISH2 Action List [EV2-004] (Action Point 10 to 17) and a general request by the Examining Authority for interested parties to endeavour to agree key transport parameters with the Applicant, a Terrestrial Transport Group (TTG) was facilitated by the Applicant which included representatives of the Applicant, the Applicant's consultants David Tucker Associates (DTA), DFDS and their consultants GHD and CLdN's consultants RHDHV.

- 4.13 The objective of the TTG was to agree baseline data so that constructive discussion could be had on the assessment outputs. It was subsequently agreed that all agreements would be captured in a tripartite Terrestrial Transport Statement of Common Ground (**the Transport SoCG**).
- 4.14 Following the first meeting on 30 August 2023, CLdN continued to participate in discussions with the Applicant and DFDS with respect to agreeing the parameters and methodology of the Applicant's traffic assessment. Details of this engagement (a total of five formal meetings and numerous informal exchanges) are captured in the Transport SoCG submitted at Deadline 5 [\[REP5-017\]](#) and at Deadline 6 [\[REP6-011\]](#).
- 4.15 The TTG proved to be a protracted process characterised by an Applicant pre-occupied with defending its flawed impact conclusion in the Updated TA despite material changes to assumptions that informed that outcome. This approach led to piecemeal submissions of technical documents and constant rebuttal of valid operational data shared by DFDS and CLdN. CLdN has maintained its position throughout the Examination that if adequate HGV controls are secured in the DCO and a realistic worst-case scenario is evidenced, this would negate the requirement to delve into exhaustive detail on transport metrics. Progress was eventually made on critical transport matters as summarised below:

Unaccompanied/Accompanied trailer ratios (and associated HGV arrival/departure profiles):

- 4.16 The Applicant provided further evidence at Deadline 2 [\[REP2-010\]](#) from current Stena operations to substantiate the adopted assessment ratio of 28% accompanied and 72% unaccompanied and concluded that the main impact would occur during 09:00 to 10:00 hours and therefore would not have a material impact on network peak hours.
- 4.17 CLdN's concern with this conclusion was that the peak development hours are forecast adjacent to the highway network peaks of 07:00 – 08:00 and 16:00 to 17:00 and any change to the terminal/vessel parameters that inform the adopted ratio and the peak arrival/departure times could cumulatively act to redistribute demand and raise the significance of the assessment impacts. Therefore, agreement to the Applicant's adopted ratio was qualified as accepted 'in isolation' (without consideration of other factors that could influence the end users traffic demand). CLdN refers the Examining Authority to Item 1 of [\[REP6-011\]](#).
- 4.18 CLdN's response to ExQ2, TT.2.04 [\[REP4-020\]](#) explains the importance of the qualification as follows:

"CLdN notes that it has already shared its data in relation to this and, in summary, there is no "appropriate split" – it is only what is factually and mathematically achievable, using a calculation of: maximum accompanied capacity on vessels x number of sailings x number of days = maximum accompanied throughput."

Solo Tractor Movements

- 4.19 A basis for further assessment was agreed at a TTG meeting on the 20 October 2023 as 36% single tractor units following submission of further data by CLdN [\[REP5-041\]](#).

East/West Gate Assignments

- 4.20 A basis for further assessment of 60% West Gate and 40% East Gate assignment was eventually adopted by the Applicant at Deadline 7 [\[REP7-013\]](#) following the submission by DFDS of a detailed review of local HGV services and yards at Deadline 6 [\[REP6-038\]](#).

Development Traffic Flow

- 4.21 It was established relatively early by the TTG (following DFDS' clarification of operations at the Port of Immingham [\[REP2-040\]](#)) that contrary to the assumptions in the TA, daily movements from the

terminal will vary, and that peak day demand is likely to be c1.25 average daily demand [REP5-017]. This confirms CLdN's concern that the Applicant's daily throughput assumption of 1800 units could underestimate HGV impacts and potentially, the daily peak could be some 25% higher. Eventually development peak daily throughput was secured as 1800 RoRo units in the draft DCO [REP7-029]).

- 4.22 However, a daily 1800 unit cap does not achieve appropriate controls/mitigations of the impact of IERRT on the highway network because a daily cap does not control key parameters such as HGV assignment and highway network peak demand. These concerns were raised by CLdN in ISH5 (see item 3(a) and 3(b) of CLdN's ISH5 Summary [REP7-040]) and resulted in the Examining Authority's suggestion that the Applicant gave consideration to securing a 'Freight Management Plan' in the DCO.

Proposed Development Changes

- 4.23 The Applicant indicated [REP2-009] an intent to revise Chapter 2 to include refinement of the Terminal Capacity. The request for change was entered into the Examination on 19 October 2023. This change coincided with the last TTG meeting (20 October 2023) during which the second and what proved to be final Transport SoCG was agreed [REP6-011]. This means that changes to critical terminal and vessel parameters (and their influence on terrestrial traffic) were not discussed or agreed by the TTG and have not influenced the subsequent assessment. Interested parties, including CLdN, remain concerned that changes to yard/vessel capacity, terminal configuration and dwell rates will materially change the transport parameters established by the TTG. These concerns remain because there are no controls within the draft DCO to secure the parameters that the Applicant has assessed.
- 4.24 The Applicant consistently fails to acknowledge that changes to vessels and terminal operations will influence the worst case scenario. CLdN considers that the Applicant's failure to account for credible changes in parameters undermines the subsequent assessments submitted at Deadline 7 [REP7-013] and the original assessments which the Applicant is maintaining remains the base case [AS-008].
- 4.25 It is therefore evident that the Applicant has failed to establish and evidence a worst case terrestrial transport scenario to give confidence that the transport assessments have identified and mitigated all potential significant effects resulting from the terrestrial transport impacts of IERRT.

Transport Assessment Addendum and Operational Freight Management Plan (Deadline 7 and 8)

- 4.26 The Applicant's Deadline 7 submission included a Transport Assessment Addendum [REP7-013] and an Operational Freight Management Plan (OFMP) [REP7-036].

Transport Assessment Addendum (TAA)

- 4.27 The TAA [REP7-013] contained a revised assessment of traffic impacts using the baseline developed by the TTG (Annex J) and an update to the original assessment (Annex G) which corrected errors identified by DFDS (as summarised in [REP7-045]). The Applicant's premiss for the assessments was "a sensitivity scenario has also been undertaken without prejudice to the Applicant's position as to the robustness of the existing assessments".
- 4.28 As set out in CLdN's Deadline 8 Submission [REP8-043] at paragraphs 5.6, 5.7 and 5.21, it does not accept the description of "sensitivity test" for the impact assessment contained in Annex J, as this implies non-typical conditions of a worst case scenario. In fact, the assessment contained in the Updated TA [AS-008] and updated in the TAA [REP7-013] at Annex G (as a 'base' case) represents unrealistic operating conditions for key transport parameters, which have been superseded by corrected parameters agreed in the Transport SoCG [REP6-011] at items 13 (gate assignment) and 14 (solo tractor units). These, in turn, are based on CLdN and DFDS' shared operational evidence pursuant to the TTG-stated objective captured in Post-Hearing Note 4 of CLdN's ISH1 Summary

[REP1-024] – “all parties stated an objective of agreeing baseline data so that constructive discussion could be had on the assessment outputs”.

- 4.29 Therefore, CLdN submits that Annex J (sensitivity test) should be considered by the Examining Authority as the base case (as it is based on evidenced parameters), although as explained further below, Annex J remains flawed.
- 4.30 CLdN has reviewed the sensitivity outcomes as summarised in Appendix 2 of CLdN’s Deadline 8 Submission **[REP8-043]**. It is noted that three junctions are exceeding recognised capacity thresholds and predicting substantial delays. Namely:
- 4.30.1 A160/A180 Roundabout Junction;
 - 4.30.2 A160/Habrough Road/Ulceby Road/East Halton Road Roundabout Junction; and
 - 4.30.3 A160/Humber Road/Manby Road Roundabout Junction.
- 4.31 Based on the Applicant’s interpretation of the Annex J results, no commitment is made by the Applicant to mitigate the documented delays. The Applicant submits that mitigation is not required by policy but, as set out below, CLdN does not accept the Applicant’s policy test for mitigation as set out in TAA Annex A **[REP7-013]** and elaborated in **[REP8-021]** (paragraph 4.13).
- 4.32 The Applicant has justified its position by relying on an alleged absence of “severe” impacts, based on its interpretation of the NPPF and DfT Circular 01/22. The Applicant’s interpretation of the policy tests is selective and does not take into account all relevant legal and policy requirements. In particular, the severe impact test is limited to the operation of the highway network and does not account for harm to road users and other impacted receptors. It is in this context that the Deadline 8 responses from National Highways and North East Lincolnshire Council confirm acceptance of no severe impacts (**[REP8-038]** and **[REP8-039]**) respectively. However, that is only one of the impacts that must be considered. The true regulatory test for mitigation is if the cumulative residual driver delay effects are significant in Environmental Impact Assessment terms.
- 4.33 On the question of significance and harm, CLdN refers the Examining Authority to the Transport Research Laboratory (TRL)³ publication of 2011, ‘What Maximum RFC (Ratio Flow to Capacity) is acceptable?’⁴ (**the 2011 TRL Note**). On the topic of impact thresholds, TRL advises that “*the important criteria for judging the success of a design (from the point of view of congestion) are the total delay to all vehicles, and the mean delay per vehicle on each of the approaches*”.
- 4.34 The findings of the 2011 TRL Note, and the general direction to not over rely on RFC thresholds, are embedded in the TRL ‘Junctions 10’ user guide (which is the software utilised by the Applicant to model junction capacity), as set out in DFDS’ submission **[REP7-045]** at paragraphs 55, 56 and Appendix 1.
- 4.35 Based on the Applicant’s transport modelling outputs and applying all relevant policy and regulatory tests, CLdN submits that there is a need to mitigate the identified significant cumulative impacts identified in the Applicant’s TAA Annex J assessment.
- 4.36 Paragraph 5.4.9 of the NPSfP sets out the following guidance for the decision-maker:
- “A new nationally significant infrastructure project may give rise to substantial impacts on the surrounding transport infrastructure, and the IPC should therefore ensure that the applicant has sought to mitigate these impacts, including during the construction phase of the development. Where the proposed mitigation measures are insufficient to reduce the impact on the transport infrastructure*

³ TRL produces ‘Junctions 10’ software, which is the UK industry standard for modelling junction capacity.

⁴ See **Appendix 1** for this note.

to acceptable levels, the IPC should consider conditions to mitigate adverse impacts on transport networks arising from the development”.

- 4.37 In accordance with this paragraph of the NPSfP, CLdN submits that the Applicant should bring forward proposals for either demand management or capacity improvement, and the Examining Authority is requested to ensure that there is an appropriate mechanism for securing this in the draft DCO.
- 4.38 Furthermore, CLdN submits that the TAA Annex J assessment does not represent a realistic worst-case scenario and is therefore not in compliance with the Infrastructure Planning (EIA) Regulations 2017. As outlined in CLdN’s Deadline 8 Submission [REP8-043] at paragraphs 5.6, 5.7 and 5.21, the changes to terminal/vessel operations would influence the precise peak HGV arrival departure profile adopted by the Applicant (which avoids highway network peaks and limits impacts). Further, the TAA Annex J assessment makes no allowance for the realisable capacity at Killingholme, which is already planned (see paragraph 3.19 above). This concern that the Applicant is suppressing peak hour impacts is also shared by DFDS and covered in more detail in [REP7-045] (at paragraphs 64-65) and [REP8-045] (at paragraphs 56-58).
- 4.39 The Applicant presented further information at Deadline 8 in support of the TAA Annex J assessment in the form of a Terminal Capacity Statement [REP8-027]. CLdN has reviewed the Terminal Capacity Statement, as set out in Appendix 2 of CLdN’s Deadline 9 Response. In summary, the Terminal Capacity Statement raises further questions in regard to terminal throughput and associated operational parameters and therefore cannot be relied on to substantiate the assumptions that have informed the Updated TA [AS-008] and the TAA [REP7-013].

Operational Freight Management Plan (OFMP)

- 4.40 CLdN welcomes the addition of the OFMP at Deadline 7 [REP7-036] as a mechanism for controlling HGV movements, however the OFMP fails to contain fundamental requirements, such as:
- 4.40.1 governance, including prescribed consultation, sign-off and adequate ongoing monitoring, adaptive mitigation and enforcement; and
- 4.40.2 commitment to and delivery of the measures and action plan.
- 4.41 The Applicant’s Deadline 8 submissions included an updated OFMP [REP8-018] (**the Updated OFMP**) and made a commitment that the Updated OFMP will be added to Schedule 6 to the draft DCO ([REP8-020], ExQ2 TT.4.02). CLdN has reviewed the Updated OFMP and refers the Examining Authority to Appendix 3 of CLdN’s Deadline 9 Response. In summary, CLdN considers that the measures do not address the concerns previously raised in [REP8-043] (paragraph 5.4) relating to the inadequacy of governance (including prescribed consultation, sign-off and adequate ongoing monitoring, adaptive mitigation and enforcement); and commitment to and delivery of the measures and action plan. CLdN is particularly concerned by the total lack of monitoring (and enforcement) of HGV movements during network peak hours and intervention ‘triggers’. CLdN’s position is shared by National Highways as set out in [REP8-036].

Summary

- 4.42 It is CLdN’s view that the Applicant has failed to evidence that a realistic worst-case scenario has been assessed in compliance with the Infrastructure Planning (EIA) Regulations 2017.
- 4.43 The Applicant’s assessment of typical operational conditions contained in the TAA Appendix J sensitivity test [REP7-013] identifies significant cumulative impacts for which the Applicant does not offer any mitigation.
- 4.44 In the absence of a realistic worst-case assessment, measures should be committed to secure no significant residual impacts, including cumulative impacts. The Applicant’s updated draft DCO

[REP8-005] and Updated OFMP **[REP8-018]** fail to provide adequate HGV mitigation, monitoring and controls to mitigate significant impacts.

- 4.45 Accordingly, the Applicant's transport submissions (and therefore the related Environmental Statement) give rise to likely significant impacts. Applying the NPSfP, at paragraph 5.4.9, mitigation should be considered and secured in the draft DCO.

Other harms

- 4.46 CLdN notes that Natural England has not yet confirmed it is satisfied that the impacts of the Proposed Development on protected sites have been adequately assessed or that an adverse effect on integrity can be ruled out. In those circumstances: (1) the continued potential for harm weighs significantly against the Proposed Development; and (2) as set out in section 2 above and section 6 below, if an adverse effect on integrity cannot be ruled out, the case for derogation from the requirements of regulation 63 of the Conservation of Habitats and Species Regulations will need to be made out.
- 4.47 Further, CLdN notes that there remain concerns expressed by others on the topics of transport (in addition to the points made above) and navigational safety. CLdN does not repeat those points here, but adopts them and submits that these matters also weigh against the grant of development consent.

5. THE DRAFT DCO

- 5.1 The terms of the Applicant's draft DCO have remained a consistent cause of concern for CLdN throughout the Examination. The Applicant's draft DCO has contained poorly defined terms, has included inconsistent and contradictory provisions and has been littered with "tailpieces" that would inappropriately permit the proper statutory processes to be avoided.
- 5.2 This section of CLdN's closing submissions seeks to provide the Examining Authority with a consolidated summary of the drafting issues of concern raised by CLdN throughout the Examination, to note where matters remain outstanding and to provide the Examining Authority with suggestions for resolution. Unless the context suggests otherwise, references in this section to the Applicant's initial DCO are references to the draft DCO submitted with the Application [APP-013] (the Initial Draft DCO) and references to the Deadline 8 DCO are references to the latest version of the draft DCO submitted by the Applicant at Deadline 8 ([REP8-004] and [REP8-005]) (the DL8 Draft DCO).

No provision securing compliance with the Navigational Risk Assessment

- 5.3 The NRA and the controls it contains are of fundamental importance to the proper functioning of CLdN's statutory undertaking. The Initial Draft DCO the Applicant submitted contained provisions (requirement 15 as it then was) securing compliance with the NRA. These provisions were deleted in the Deadline 5 draft DCO [REP5-005] without justification.
- 5.4 During ISH6 [REP7-041], CLdN explained why this was a concern and why the Applicant's approach of now not requiring compliance with the NRA was not aligned with best practice.
- 5.5 It is CLdN's view that it is no answer to say that the NRA is part of the Environmental Statement (ES) and is therefore a certified document. Certification is a drafting device that ensures certainty as to the contents of extraneous documents referred to in the ES. Absent an operative provision giving effect to the certified document, mere certification does not have any legal effect. The draft DCO does not require compliance with the ES, nor the measures referred to in it. To secure compliance it is necessary to include a positive obligation on the undertaker to comply, as was the case in the Applicant's Initial Draft DCO.
- 5.6 In this regard it is important to note that the regulatory regime applying to navigation on the Humber is not straightforward and that the Applicant possess functions as (1) owner and operator of Immingham and the statutory harbour authority; (2) the statutory conservation and navigation authority for the Humber; and (3) the competent harbour authority. The Applicant has itself noted in its explanation of its understanding of that regulatory regime ([REP1-014] at paragraph 8.1) that "it would be somewhat disingenuous to suggest that each component, whilst falling under the corporate umbrella of ABP, undertakes its obligations and carries out its functions separately and distinct from the other". Paragraph 10.2.3 of the same document confirms that the ABP Harbour Authority Safety Board, whilst being a separate board from the main ABP board, comprised the same membership. Therefore, not only were these boards within the same corporate body, but the same individual people carried out the functions of both boards. This structure and approach is wholly at odds with the guidance given by the courts on functional separation in relation to Environmental Impact Assessment (EIA) matters in *London Historic Parks and Gardens Trust v Secretary of State for Housing, Communities and Local Government* [2020] EWHC 2580; a case where the Secretary of State's own handling arrangements were found to be inadequate. As such, there are serious questions as to whether approval of an NRA developed after the grant of development consent should properly be left to those other functions of the Applicant.
- 5.7 CLdN submitted at ISH6 that in relation to a matter of such great importance as navigational safety, in circumstances where all of the RoRo and passenger ferries on the Humber arrive within a short time window and the Proposed Development condenses them in a small area at Immingham, it ought to be a matter for the Secretary of State to approve the developed NRA before construction, let alone any operations, could commence.

- 5.8 It is not uncommon for DCOs to include requirements for the approval of the Secretary of State and the Secretary of State is well placed to make such a determination; it is merely an extension of the function he already possesses by determining whether or not to grant development consent. Clearly the NRA is an important and relevant matter that the Secretary of State would take into account when deciding whether or not to grant development consent.
- 5.9 CLdN therefore urges the Examining Authority to consider including in its recommendations to the Secretary of State that the DCO, if made, be subject to a pre-commencement requirement requiring the Secretary of State's approval of an NRA that is in substantial accordance with the NRA that has been submitted by the Applicant. This is of critical importance to secure appropriate scrutiny of an issue of fundamental importance to users of the Humber.

Article 6 (maintenance of the authorised development)

- 5.10 The Applicant's definition for "*maintain*", contained in article 2(1), is a consistent and unresolved issue that has been raised throughout the Examination. In summary, the Applicant's definition is expressed as including "*inspect, repair, adjust, alter, remove or reconstruct*". The Applicant has consistently cited the drafting contained in other DCOs, even going so far as to make reference to the ESs supporting those other DCOs to justify its unbending adherence to this wide definition. The Applicant has insisted, contrary to the very clear wording in its own draft DCO, that the maintenance powers "*are not intended to give rise to the reconstruction of the works as a whole but refer to 'maintenance' within its ordinary meaning.*" (see paragraph 8.5 of [\[REP5-032\]](#)). This is despite the fact that the Applicant's drafting is clear that "*maintain*" includes "*reconstruct*".
- 5.11 As such, CLdN welcomed the Examining Authority's proposed change in its Schedule of Proposed Changes to the DCO [\[PD-019\]](#) that would see the deletion of "*reconstruct*" from the definition of maintain in article 2(1). CLdN notes that the Applicant's response to the Examining Authority's proposed change here was to merely cite general precedent without addressing the core issue, whilst the Applicant implicitly admitted in its response that it has not specifically assessed maintenance [\[REP7-029\]](#). As such it appears, from the Applicant's DL8 Draft DCO, that it is continuing to stand by its definition of "*maintain*". As CLdN has said before, it is no answer to rely on the proviso in article 6(2) that works of maintenance must not give rise to any materially new or materially different environmental effects from those assessed in the ES, because the ES is not clear on what, if any, works of maintenance have been assessed.
- 5.12 The simple fact remains that the Applicant's ES does not in any meaningful way assess the power to "*maintain*" in the sense of the word as defined by the Applicant in its draft DCO and therefore the definition of "*maintain*" ought to be amended to reflect the assessment that has been carried out by the Applicant.

Article 7 (limits of deviation)

- 5.13 CLdN raised in its Written Representation [\[REP2-031\]](#) its concern that the "*engineering sections, drawings and plans*" (as defined in article 2(1)) do not display sufficient information in relation to vertical levels to serve as a reference point from which the vertical limits of deviation contained in article 7(b) can be measured. For example, it was not clear whether the heights of structures ought to be scaled from existing or proposed ground levels.
- 5.14 The Examining Authority has acknowledged the issue in its Schedule of Proposed Changes to the DCO [\[PD-019\]](#) in which it noted that for the provision to be capable of being enforced the "*engineering sections, drawings and plans*" required annotation to identify the existing and proposed ground levels landside. CLdN acknowledges that [\[AS-050\]](#) defines proposed ground levels by reference to ordnance datum although it is regrettable that it took the majority of the Examination for the Applicant to provide basic information as to what it proposes to build.

Article 21 (operation and use of development)

- 5.15 In CLdN's Written Representation, CLdN raised its concerns with the 100 passenger per day limit being subject to an inappropriate tailpiece. Concerns have also been raised by CLdN, principally in the context of traffic and transport issues, as summarised in section 4 above, with the throughput being expressed as an annual limit as this would permit peaks of activity that exceed the parameters assessed in the Applicant's ES.
- 5.16 The Applicant's DL8 Draft DCO addresses these concerns by deleting the tailpiece in question and expressing the throughput limit as 1,800 RoRo units per day. CLdN welcomes the Applicant's amendments on this point.

Article 22 (power to appropriate) and article 4 (Incorporation of the 1847 Act)

- 5.17 As submitted, the Initial Draft DCO and related Explanatory Memorandum were unclear as to the extent to which the Applicant intended the "open port duty" contained in section 33 of the 1847 Act to be binding upon it. Similarly, the reasons for the incorporation or exclusion of the provisions of the 1847 Act applied by article 4 (incorporation of the 1847 Act) were unclear.
- 5.18 The Applicant has since re-visited the provisions of the 1847 Act and has provided in its latest Explanatory Memorandum [REP5-006] some justification for the provisions to be incorporated. CLdN is aware that the Examining Authority has requested the Applicant to provide a further updated Explanatory Memorandum by Deadline 10 but notes this means that CLdN will not have an opportunity to review and comment on it before the end of the Examination. The Applicant has also said that although the Proposed Development is intended to address a need identified by Stena, the Applicant considers that the Proposed Development is not intended to be for Stena's exclusive use. The Applicant's position in relation to this issue must be seen in the context of the deficiencies in its need case, which are discussed in greater detail elsewhere in these closing submissions. In addition, in the event that the Proposed Development is not exclusively for Stena's use, then it appears to CLdN that the Applicant has not fully assessed the range of transport parameters, as there have been no assessments of the impact on the highway network of another shipping line using the Proposed Development in addition to Stena.

Schedule 2 Requirements – Requirement 1 (Interpretation) definition of "commence"

- 5.19 As noted in paragraph 6.5 of CLdN's Deadline 8 submission [REP8-043], the Applicant defines "commence" by reference to section 56(4)(b) of the Town and Country Planning Act 1990. Section 56(4)(b) defines a "material operation" as including (among the matters listed in sub-paragraphs (a) and (aa)) "the digging of a trench which is to contain the foundations, or part of the foundations of a building."
- 5.20 This is a very narrow definition of "commence" that would allow any works of any description other than those related to the "digging of a trench which is to contain the foundations, or part of the foundations of a building" to be carried out without first complying with the pre-commencement requirements. This is clearly of particular concern to CLdN in relation to the marine works where no such trenches may be required but clearly has implications onshore where significant civil engineering works generating significant environmental impacts could be carried out that do not comprise the "digging of a trench which is to contain the foundations, or part of the foundations of a building". This significantly undermines the effectiveness of all of the pre-commencement requirements. The Applicant has not explained why this unusual approach is justified in the circumstances of the Application.
- 5.21 While there is a range of approaches taken in other DCOs in this respect, the usual approach is to start by defining "commence" by reference to section 155 of the Planning Act 2008 which contains a

wider definition of “material operation”, namely “any operation except an operation of a prescribed description”⁵.

Requirement 4 (construction hours – associated development) / (construction hours – onshore works)

- 5.22 This requirement has been subject to considerable discussion and subsequent amendment during the course of the Examination but still retains some key deficiencies as outlined at paragraph 6.4 of CLdN’s submission at Deadline 8 [REP8-043], namely:
- 5.22.1 in sub-paragraph (2) it does not make sense to state that “the following works are permitted ...provided” for there then to be no works listed or described;
 - 5.22.2 in sub-paragraph (2)(b), there remains a reference to noise levels not exceeding “maximum permitted levels of noise at each agreed monitoring locations”, however, it is unclear what the maximum permitted levels of noise are, who this is to be agreed, by when and through what process;
 - 5.22.3 it remains that sub-paragraph (2)(b) includes a tailpiece that would allow this already unclear provision to be disregarded by “agreement”, in a manner that would sit outside of the wider Planning Act 2008 process, or indeed, any apparent process set out in the DCO itself; and
 - 5.22.4 it remains the case that the Applicant can disregard the working hours, without the Council’s prior approval, merely because the works in questions “cannot be interrupted”.
- 5.23 These drafting points matter because, taken together, they significantly undermine the reliance placed in the assessment on the construction working hours. Paragraph (2)(b) might appear to give some comfort by suggesting the existence of specific limitations on overall noise levels and implying that some form of monitoring would be required to measure whether there is compliance. However, the drafting contains no obligation for those noise limits, measuring locations and duration of monitoring to be approved by the Council prior to the start of construction, or indeed, prior to work taking place outside of the normal working hours.

Requirement 8 (construction and environmental management plan)

- 5.24 CLdN raised in its Written Representation its serious concerns that, as initially drafted, requirement 8 required merely compliance with an outline document with no requirement for the subsequent approval of the relevant planning authority.
- 5.25 The Applicant, after questioning from the Examining Authority, has conceded that its Construction and Environmental Management Plan is outline in nature and that the subsequent approval of a detailed Construction and Environmental Management Plan by the relevant planning authority is appropriate. The drafting of requirement 8 in the DL8 Draft DCO now reflects that position and CLdN welcomes the Applicant’s additional drafting in the DL8 Draft DCO to make reference to the outline plans and skeleton management plans contained in the re-submitted Outline Construction and Environmental Management Plan. CLdN also welcomes the removal of the “tailpiece”.

New requirement 13 (operational freight management plan)

- 5.26 As a statutory undertaker whose undertaking is significantly reliant on the proper functioning of the highway network, CLdN has both a legitimate interest in understanding the detail of the proposed operational freight management plan and, through its knowledge of the operation of its undertaking, is in possession of information that may assist the relevant planning authority in its deliberations on such a plan when it is submitted for approval. As such, CLdN considers it is appropriate that the DCO

⁵ The prescribed exclusion is contained in regulation 7 of the Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015 where works of marking out a proposed road excluded from the definition of a “material operation”.

includes an obligation on the Applicant to consult CLdN on its proposed operational freight management plan and refers the Examining Authority to paragraph 4.1 of Appendix 3 to CLdN's Deadline 9 Response on this matter.

- 5.27 Such an obligation could readily be included either in requirement 13 or alternatively within the protective provisions for the benefit of CLdN.

Protective provisions

- 5.28 Throughout the Examination, CLdN has sought to engage with the Applicant to reach an agreement in respect of the protective provisions for the benefit of CLdN. CLdN notes that it has not received from the Applicant any acknowledgement of or response to its letter dated 08 January 2024. CLdN therefore refers the Examining Authority to paragraphs 7.1-7.3 of its Deadline 8 Submission and the appended letter dated 08 January 2024 [REP8-043], which sets out CLdN's latest position and submissions in support of the protective provisions it seeks.

6. POLICY COMPLIANCE AND PLANNING BALANCE

Sustainable port development

- 6.1 CLdN's case is that the evidence it has submitted to the Examination, taken together with the lack of credible evidence and explanation from the Applicant, clearly leads to the conclusion that the Proposed Development is not sustainable port development as envisaged by the NPSfP for the following reasons:
- 6.1.1 As set out in section 3 above, a realistic, evidenced assessment of demand and capacity on the Humber demonstrates that there is no "urgent" or "imperative" need for additional port infrastructure on the Humber in the short term and the most realistic assessment of future growth shows that existing RoRo port infrastructure, in particular at Killingholme, can meet forecast demand up to 2050. Accordingly, the Proposed Development does not: *cater to long-term forecast growth in volumes of imports and exports*" (NPSfP 3.5.1) nor does it contribute to "*national, regional or more local need for the infrastructure*" (NPSfP 4.2.2).
- 6.1.2 As set out above, it also remains unclear how the Proposed Development *would* cater for any credible demand. CLdN has raised concerns that the Proposed Development is not functionally well designed, which have not been answered (see section 3 above). Throughout the Examination, CLdN has maintained that the Proposed Development's design has not been adequately thought through, meaning that it is not designed to serve the function it is being proposed for, which is to accommodate Stena Line and allow them to grow operations and meet growing and changing (towards unaccompanied RoRo) demand (see **paragraph 3.36**). However, to meet its stated throughput, the Proposed Development will need to deliver a near doubling of accompanied RoRo throughput at a time when the market is declining (see **paragraph 3.41.1**). Clearly, this does not align with 'changing demand', i.e. a shift towards unaccompanied RoRo at the expense of accompanied cargo. It is also unable to meet a key element of the demand it forecasts (container storage). The vessels that will most likely be used at the Proposed Development – two RoPax vessels and one RoRo vessel – are limited in the amount of unaccompanied RoRo units they can carry (see **paragraph 3.43**). For these reasons, the Proposed Development is still unable to demonstrate that it "*caters to long term forecast growth*" or that it is "*well designed functionally*" (NPSfP 3.3.3).
- 6.1.3 It is clear from the type of cargo that will be accommodated, that the design of the Proposed Development does not allow for it to effectively and efficiently serve the needs of the Humber market (see **paragraph 2.7**) or meet the aims of ensuring an efficient and economic marine industry (see **paragraph 2.11**).
- 6.1.4 The Proposed Development does not provide a positive contribution to competition and resilience for the reasons set out in section 3 above. It is, at best, neutral on these matters and is in reality moving an existing operation from one location on the Humber to another.
- 6.1.5 There is an outstanding matter over whether the Proposed Development could adversely affect the integrity of a European protected site. If an adverse effect cannot be ruled out, in addition to needing to satisfy the requirement of the Habitats Regulations before it could proceed, the Proposed Development would not be "*well designed...environmentally*".
- 6.2 For any or all of those reasons, the Proposed Development does not benefit from the presumption in favour of grant in paragraph 3.5.2 of the NPSfP.
- 6.3 Even if the Proposed Development is considered to be sustainable port development, on any view, the Applicant's original case that there was an additional urgent and imperative need to be addressed was unsubstantiated and could not be relied upon and so the Applicant has now departed from it. The new analysis provided does not establish the urgent need over and above the policy need for which the Applicant contends. Very limited weight can be given to this alleged need when balanced against the harms of the Proposed Development (see NPSfP 4.2.2).

Other policy requirements

- 6.4 Further, given that (1) there is no identified need for additional capacity to meet demand; and (2) there are real doubts that the Proposed Development can service the demand the Applicant asserts exists, the Proposed Development is not economic and efficient harbour development (see Regulation 6(3) of the APFP Regulations). In particular, the Proposed Development cannot meet demand for the type of freight that is forecast to grow because Stena is limited by both landside storage capacity and also the types of vessels they can use (see paragraph 3.1.4 of Appendix 2 of CLdN's Deadline 9 Response).
- 6.5 Even if there were an identified need, CLdN has shown that the Proposed Development would not be able to meet the capacity 'gap' anyway. It is therefore clear that the Proposed Development would be an inefficient way of seeking to meet demand, particularly in circumstances where the market is already able to meet that demand through existing and realisable capacity. It would be far more economically efficient to utilise existing RoRo port infrastructure on the Humber – for example through expansion at Killingholme, which is readily available (see page 15 of the Killingholme Note [\[REP4-021\]](#) and paragraph 4.28 of the Volterra Report [\[REP2-031\]](#)) and this would be a much more efficient use of land to meet future demand.
- 6.6 In response to CLdN's submissions on policy compliance, the Applicant submits that the NPSfP allows it essentially to build an (in theory) infinite amount of capacity to ensure competition and resilience. See, for example, paragraphs 3.16, 3.25 and 6.18 of [\[REP7-023\]](#).
- 6.7 This argument is inherently flawed, as it implies that there is an infinite benefit to continually building more and more capacity, even if there is insufficient market demand for this or no need from a competition and resilience point of view. It is also contrary to the clear words of the NPSfP itself, which requires the decision-maker, where the presumption applies, to balance any contribution to need against the harms of the development, and case law, which makes it clear that the policy presumption in favour of need is not a 'blank cheque'. In any event, there is no acknowledgment by the Applicant of the facts that: (1) this would be an uneconomic and inefficient use of land; (2) the market would likely eventually need to re-set, causing significant disruption; and (3) there would be diminishing benefits to building more and more capacity, when there is insufficient demand to justify doing so, which would also be increasingly outweighed by the harms of doing so.

Planning balance

- 6.8 For the reasons set out in these closing submissions and in the evidence submitted to the Examination, CLdN submits that the planning balance is clearly in favour of refusing development consent for the following reasons:
- 6.8.1 There is limited policy support for the Proposed Development. It does not benefit from the presumption in favour of grant in the NPSfP and the need case is in any event weak and unsubstantiated. Very limited weight can be given to the alleged benefit of meeting an alleged urgent need for capacity on the Humber or the alleged need to promote competition and resilience. Even if the policy presumption did apply, it should be given limited weight.
- 6.8.2 The Proposed Development does not perform well against other national policy tests, in particular the need for port development to be economic and efficient.
- 6.8.3 CLdN and others have identified harms that have been dismissed by the Applicant, have not been properly assessed and there are insufficient controls within the draft DCO to ensure that significant adverse effects will not arise. This is particularly important when it comes to transport and navigational safety because the effects of the Proposed Development affect existing users on the Humber contrary to the agent of change principle.
- 6.8.4 There remain concerns over the impact of the Proposed Development on protected sites. If an adverse effect on integrity cannot be ruled out, the Proposed Development can only

proceed if, in the absence of alternatives, there are imperative reasons of overriding public interest. The Applicant's without prejudice IROPI case submitted at Deadline 8 relies on its need case, which has been shown to be significantly overstated and lacking in substance and credibility. IROPI cannot therefore be made out, in CLdN's submission.

6.8.5 There is a credible alternative to the Proposed Development and the harms it occasions. The existing market is able to meet any realistic demand forecasts without the need for the Proposed Development. That alternative reduces the weight to be given to the need case, which is premised on the absence of alternatives, and further demonstrates that the Applicant's case of an urgent and imperative need, let alone there being imperative reasons of overriding public interest, has not been made out. Contrary to the Applicant's submissions in its IROPI case, on an evidence-based understanding of the actual need for additional development on the Humber, existing and realisable capacity at Killingholme would meet the objective of meeting that need and is a proper alternative to the Proposed Development.

6.9 Further, and in any event, CLdN maintains that its concerns with the draft DCO have not been addressed and that the DCO as currently drafted does not address important issues with the Proposed Development, as set out in section 5 above.

6.10 For all of the reasons set out above and throughout the Examination, the evidence shows that the Proposed Development has not been justified and does not comply with relevant national policy. CLdN therefore invites the Examining Authority to recommend that the Secretary of State refuses to give development consent for the Proposed Development.

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What maximum RFC (Ratio of flow to capacity) is acceptable?

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

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

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

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

The consequences of a high RFC depend on the flow. An RFC value of 1.2 might not matter with a very low flow whereas a value of 0.8 might be disastrous with a high flow.

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