

IMMINGHAM EASTERN RO-RO TERMINAL



Protective Provisions Tracker

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1. Introduction

- 1.1 This tracker document is being provided pursuant to Question DCO1.23 from the Examining Authority (the 'ExA') for the Immingham Eastern Ro-Ro Terminal ('IERRT') Development Consent Order ('DCO') examination ('the Examination'). The ExA requires Associated British Ports as the applicant ('the Applicant') to prepare and submit an update as to the negotiation status of the Protective Provisions in the draft DCO at every deadline in the Examination timetable.

- 1.2 This document is intended to capture the progress in a single table which can then be used to track the completion of the Protective Provisions. This is intended as a live document which will be updated when updates or revisions to the Protective Provisions are made, and submitted at each Examination deadline as requested by the ExA.

2. Protective Provision Position

2.1 Table 1 below captures the Applicant’s position on each party’s Protective Provision, indicating whether a draft has been submitted to the Interested Party or is awaiting a response and providing an update as to whether any progress has been made in finalising the draft.

Table 1 – Status of Protective Provisions in draft DCO

Interested Party	Position at Deadline 1	Position at Deadline 2	Position at Deadline 3	Position at Deadline 4	Position at Deadline 5
Statutory Conservancy and Navigation Authority for the River Humber	Positive discussions with late stage draft to be shared with the Statutory Conservancy and Navigation Authority.	Positive discussions with late stage draft to be shared with the Statutory Conservancy and Navigation Authority.	Protective Provision agreed.		Further amendments have been made at the request of the Statutory Conservancy and Navigation Authority, to which the Applicant has agreed. These appear in the latest version of the dDCO submitted at Deadline 5.
Environment Agency	Positive discussions with late stage draft to be shared with the Environment Agency.	Positive discussions with late stage draft to be shared with the Environment Agency.	Positive discussions ongoing with late stage draft in circulation between the parties.	Positive discussions ongoing with late stage draft in circulation between the parties.	The Applicant has agreed what it believes is the EA’s last requested amendment and believes that the PP is now agreed. The dDCO submitted at

					Deadline 5 includes the latest wording.
Exolum	Draft Protective Provisions issued to Exolum. At the time of writing, the Applicant is awaiting a response.	Draft Protective Provisions issued to Exolum. At the time of writing, the Applicant is awaiting a response.	The Applicant is in receipt of an updated draft from Exolum, which the Applicant is reviewing.	Positive discussions ongoing with late stage draft in circulation between the parties.	Protective Provision agreed. The dDCO submitted at Deadline 5 includes the latest wording.
Humber Oil Terminal Trustees Limited	Applicant is in receipt of an updated draft from HOTT. Significant differences between the parties to be discussed when HOTT's full case has been submitted to the Examination.	Applicant is in receipt of an updated draft from HOTT. Significant differences between the parties to be discussed when HOTT's full case has been submitted to the Examination.	The Applicant is in receipt of an updated draft from HOTT. There are significant differences between the parties' positions. The Applicant is reviewing the draft protection provisions in light of HOTT's full case submitted at D2.	The Applicant is reviewing the draft protective provisions in light of the ongoing without prejudice negotiations with HOTT.	The Applicant is reviewing the draft protective provisions in light of the ongoing without prejudice negotiations with HOTT. The dDCO will be updated to reflect the agreed position following the conclusion of negotiations.
Northern Powergrid	Applicant is in receipt of an updated draft from Northern Powergrid, which the Applicant is reviewing.	Applicant is in receipt of an updated draft from Northern Powergrid, which the Applicant is reviewing.	The Applicant is in receipt of an updated late stage draft from Northern Powergrid, which the Applicant is reviewing.	Positive discussions ongoing with late stage draft in circulation between the parties.	Positive discussions are ongoing with a late stage draft in circulation between the parties. The dDCO submitted at Deadline 5 includes the latest wording.

Anglian Water	Positive discussions, with late stage draft circulated to Anglian Water.	Positive discussions, with late stage draft circulated to Anglian Water.	Positive discussions, with late stage draft circulated to Anglian Water.	Positive discussions ongoing with late stage draft (which reflects the outcomes of a call between the parties) now in circulation.	Positive discussions ongoing with the Applicant awaiting comments on a late stage draft (which reflects the outcomes of a call between the parties). The dDCO submitted at Deadline 5 includes the latest wording.
DB Cargo (UK) Limited	Awaiting completion of an alternative access agreement, following which the Applicant considers that these protective provisions will no longer be needed.	Awaiting completion of an alternative access agreement, following which the Applicant considers that these protective provisions will no longer be needed.	Awaiting completion of an alternative access agreement, following which the Applicant considers that these protective provisions will no longer be needed.	Alternative access agreement completed. Applicant awaiting confirmation that protective provisions are no longer required.	As a result of the alternative access agreement having been completed, the Applicant has removed this protective provision from the latest version of the dDCO submitted at Deadline 5. The Applicant has contacted DB Cargo twice for confirmation of their agreement to this and is awaiting a response.
Network Rail	Awaiting (i) completion of an	Awaiting (i) completion of an	Awaiting (i) completion of an	Network Rail solicitors seeking	Applicant is in receipt of an

	alternative access agreement with Network Rail and DB Cargo, and (ii) publication of scheme changes in order to progress draft further.	alternative access agreement with Network Rail and DB Cargo, and (ii) publication of scheme changes in order to progress draft further. Network Rail have provided an updated draft which the Applicant is reviewing.	alternative access agreement with Network Rail and DB Cargo, and (ii) publication of scheme changes in order to progress draft further. Network Rail have provided an updated draft which the Applicant is reviewing. Parties intend to meet in order to discuss matters prior to D4.	instructions following call.	updated draft from Network Rail, which the Applicant is reviewing. The draft received is reflected in the latest version of the dDCO submitted at Deadline 5.
North East Lincolnshire Council as Lead Local Flood Authority	Positive discussions with late stage draft to be shared with the Council.	Positive discussions with late-stage draft to be shared with the Council.	Positive discussions with late-stage draft issued to the Council.	Positive discussions with late-stage draft issued to the Council.	Positive discussions with late-stage draft issued to the Council.
Cadent Gas Limited	Cadent returned the draft to the Applicant with further comments immediately prior to Deadline 1.	Applicant is in receipt of an updated draft from Cadent Gas Limited, which the Applicant is reviewing. The parties intend to meet in order to discuss outstanding areas of difference.	The Applicant is in receipt of an updated draft from Cadent Gas Limited, which the Applicant is reviewing. The parties intend to meet in order to discuss outstanding areas of difference.	Call between parties 25.09.23. Differences remain and a further call is proposed.	A further call between the parties is being arranged in order to discuss the draft further. The dDCO will be updated to reflect the agreed position following the conclusion of negotiations.

Operators of Electronic Communications Code Networks	Positive discussions with late stage draft to be shared with the Operators.	Positive discussions with late stage draft to be shared with the Operators.	Positive discussions with late stage draft issued to the Operators.	Positive discussions with late stage draft issued to the Operators.	Positive discussions with late stage draft issued to the Operators.
CLdN	Applicant awaiting a first draft from CLdN.	Applicant is reviewing the list of topics which CLdN consider should be subject to protective provisions.	The Applicant has reviewed CLdN's comments on the scope of any protective provisions in CLdN's favour and the Applicant does not consider that such – or any – protective provisions are necessary. The Applicant has written to CLdN to this effect and awaits a response.	Applicant awaiting a response from CLdN.	The Applicant is considering CLdN's letter dated 9 October 2023 discussing protective provisions and will respond in due course.
DFDS	Applicant awaiting a first draft from DFDS.	Applicant awaiting a first draft from DFDS.	The Applicant received a first draft from DFDS at D2, which it is reviewing.	The Applicant received a first draft from DFDS, which it is reviewing.	The Applicant received a first draft from DFDS, which it is reviewing.

Interested Party	Position at Deadline 6	Position at Deadline 7	Position at Deadline 8	Position at Deadline 9
Statutory Conservancy and Navigation Authority for the River Humber	Further amendments have been made at the request of the Statutory Conservancy and Navigation Authority, to which the Applicant has agreed. These appear in the latest version of the dDCO submitted at Deadline 6.	The Applicant is engaging in positive discussions with the Harbour Master, Humber regarding amendments to the protective provisions, and will review the necessary amendments following the Harbour Master's Deadline 7 submissions.	The Applicant has amended the dDCO as submitted at Deadline 8 in order to reflect the draft Protective Provisions requested by the Harbour Master, Humber as part of his Deadline 7 submissions [REP7-061] .	The Applicant has adopted HMH's most recent amendments and believes the PP submitted at Deadline 8 [REP8-005] to be in its final form.
Environment Agency	Protective Provision Agreed.			
Exolum	Protective Provision Agreed.			
Humber Oil Terminal Trustees Limited	The Applicant is reviewing the draft protective provisions in light of the ongoing without prejudice negotiations with HOTT and the forthcoming changes application. The dDCO will be updated to reflect the agreed position following the conclusion of negotiations.	The Applicant provided a revised draft protective provisions on 29 November 2023, and is submitting a commentary of its suggested amendments with an updated version of the protective provisions at Deadline 7.	The Applicant has provided a revised wording of this Protective Provision, along with commentary on its amendments, at Deadline 7 [REP7-029] . This version of the PP has been included in the dDCO submitted at Deadline 8.	The Applicant has noted IOT Operators' comments on the Protective Provisions provided at Deadline 8 [REP8-058] and has responded at Deadline 9 (Application Document Reference 10.2.98).

<p>Northern Powergrid</p>	<p>Positive discussions ongoing with late stage draft in circulation between the parties. Northern Powergrid have made further comments, which the Applicant is reviewing.</p>	<p>Positive discussions ongoing with late-stage draft in circulation between the parties. The Applicant intends to revert to Northern Powergrid following Deadline 7.</p>	<p>On 19 December 2023 the Applicant provided its comments on Northern Powergrid’s most recent proposals as to whether the Protective Provisions should expire following the construction period. The Applicant believes that this principle is agreed, subject to additional wording which would mean that the Protective Provisions continue to have effect should the DCO (for example) be amended in future.</p> <p>Whilst the Applicant awaits Northern Powergrid’s substantive response, it believes the parties are very close to reaching agreement. As such, the latest wording (as suggested by the Applicant) has been provided in the Deadline 8 dDCO.</p>	<p>The protective provision has been agreed, as per the wording included in the version of the draft DCO submitted at Deadline 8 [REP8-005].</p>
<p>Anglian Water</p>	<p>The Applicant received comments from</p>	<p>Positive discussions ongoing with late-stage</p>	<p>On 14 December 2023 the Applicant provided</p>	<p>The Applicant has reviewed Anglian Water’s Deadline 8</p>

	<p>Anglian Water on 13 November 2023. The Applicant will provide a response to these in due course.</p>	<p>draft in circulation between the parties. The Applicant intends to revert to Anglian Water following Deadline 7.</p>	<p>an updated draft Protective Provision, with all matters agreed save for paragraph 55; which the Applicant has amended in order to provide that the PP will expire on the commencement of operations. This version of the Protective Provision has been submitted by the Applicant in the Deadline 8 dDCO.</p> <p>Whilst Anglian Water has kindly provided the Applicant with a copy of its Deadline 8 submission setting out the reasons for its disagreement with the Applicant's draft, the Applicant believes that, as Anglian Water have no live assets within the red line boundary (and only one decommissioned asset), it would not be appropriate to require</p>	<p>submissions [REP8-042] regarding the final matter which is outstanding between the parties. The Applicant's position is set out in the signed SoCG with Anglian Water submitted at Deadline 9 (Application Document 7.11) and in the Deadline 8 column of this table.</p>
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			<p>indemnities and protections in respect of Anglian Water's assets in perpetuity. The Applicant further notes that:</p> <ul style="list-style-type: none"> • Anglian Water have not offered any positive arguments to support the Protective Provision operating in perpetuity, relying simply on precedent. In contrast, due to the only Anglian Water asset within the red line boundary being a decommissioned pipe, the Applicant does not believe that Anglian Water's proposals are reasonably necessary in order to protect their interests; 	
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			<ul style="list-style-type: none"> • Whilst the Applicant notes that Anglian Water do not wish to set a precedent, this is also true of the Applicant; and • The Applicant also notes that other utility providers, such as Cadent Gas and Northern Powergrid have agreed that the protective provisions need not continue in perpetuity in order to provide adequate protections for their interests. <p>The IERRT development will have no impact on Anglian Water’s assets, and the Applicant ABP can see no justification for the Protective Provision surviving</p>	
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			beyond the end of the construction period.	
DB Cargo (UK) Limited	As a result of the alternative access agreement having been completed, the Applicant has removed this protective provision from the latest version of the dDCO submitted at Deadline 5. The Applicant has contacted DB Cargo twice for confirmation of their agreement to this and is awaiting a response.			
Network Rail	Applicant is in receipt of an updated draft from Network Rail, which the Applicant is reviewing. The draft received is reflected in the latest version of the dDCO submitted at Deadline 5.	The Applicant is attempting to align the updated draft protective provisions received from Network Rail with Network Rail’s asset protection agreement process, before reverting to Network Rail following Deadline 7.	The Applicant is continuing to engage with Network Rail regarding the wording of the Protective Provisions, and has included its latest draft in the Deadline 8 dDCO. The principal outstanding area of difference relates to the need for the Applicant to enter into a Network Rail Asset Protection Agreement in	The protective provision has been agreed. The Applicant intends to submit the final wording to the ExA at Deadline 10, at the same time as dealing with other dDCO matters arising from the ExA’s Rule 17 Letter dated 12/01/24.

			<p>addition to affording Network Rail the Protective Provisions. The Applicant considers that the comprehensive Protective Provisions encompass the vast majority of the terms included in the Asset Protection Agreement and, therefore, does not consider it appropriate to enter into the Asset Protection Agreement which is not in any case designed for the type of development contemplated by the IERRT proposals which do not impact upon Network Rail operations in addition to these protections. The Applicant is also attempting to remove superfluous drafting from the Protective Provisions regarding protections for Network Rail from powers of compulsory purchase, as the Applicant is not seeking</p>	
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			compulsory acquisition powers in relation to any Network Rail rights, interests, or assets.	
North East Lincolnshire Council as Lead Local Flood Authority	Positive discussions with late-stage draft issued to the Council. The Applicant is awaiting a response.	Positive discussions with late-stage draft issued to the Council. The Applicant is awaiting a response.	In September 2023 a revised version of the protective provision was provided to the Lead Local Flood Authority. Despite numerous reminder emails asking for comments, the Applicant has not received any amendments to this draft and, as such, has included this version of the Protective Provisions in the Deadline 8 dDCO.	The Applicant has still not received any comments from the Lead Local Flood Authority and, as such, considers the wording of the Protective Provisions submitted at Deadline 8 [REP8-005] to be final.
Cadent Gas Limited	Following an exchange of correspondence between the parties, differences have narrowed significantly. Cadent have circulated a revised draft, which the Applicant is reviewing.	Positive discussions ongoing with late-stage draft in circulation between the parties. The Applicant intends to revert to Cadent following Deadline 7.	The Applicant and Cadent Gas have made significant progress towards an agreed version of the Protective Provisions but have not yet reached a final agreement. The Deadline 8 dDCO reflects the latest draft as provided by the Applicant to Cadent at Deadline 8.	The Applicant and Cadent Gas are still to reach final agreement on the wording of the Protective Provisions, with the Applicant's latest position sent to Cadent on 15 January 2024. The Applicant understands that Cadent are to make submissions at Deadline 9, following which the Applicant

			<p>The Applicant is seeking to ensure that the scope of the Protective Provisions reflects the fact that Cadent operate a single intermediate pressure pipeline across what is proposed to become the Western Storage Area. As the works in this area (and in proximity to the pipeline) are to be limited to surfacing, drainage and lighting works, the Applicant is seeking to agree provisions which afford sufficient protections to Cadent whilst also being proportionate. The Applicant is also keen to respect the existing legal agreements in place between the parties, whilst affording Cadent greater protections with regards to the development works which are to be undertaken during the</p>	<p>will continue discussions with Cadent.</p>
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			<p>construction period for the IERRT.</p>	
<p>Operators of Electronic Communications Code Networks</p>	<p>Positive discussions with late-stage draft issued to the Operators. The Applicant is awaiting a response.</p>	<p>Positive discussions with late-stage draft issued to the Operators. The Applicant is awaiting a response.</p>	<p>In September 2023 a revised version of the protective provision was provided to both BT Openreach and Liberty Global (Virgin). Despite numerous chaser emails asking for comments, the Applicant has not received any amendments from either operator. As such, the Applicant has included the latest version of the Protective Provision as provided to BT Openreach and Liberty Global in the Deadline 8 dDCO.</p>	<p>The Applicant received correspondence from Openreach on 10 January asking for clarifications as to the extent of the works proposed, and clarification as to why it is proposed that the Protective Provision expires following the construction period.</p> <p>The Applicant responded offering a call to clarify the works proposed and stating:</p> <p><i>“On the reasoning for the Protective Provisions expiring following the end of the construction period, this is because (save for a small section of highway land outside of the Port’s East Gate) the land within the red line boundary for the project is entirely in ABP’s ownership. As a result, Openreach’s apparatus are in place pursuant to existing</i></p>

				<p><i>legal agreements between Openreach and ABP. Far from the protections for Openreach’s apparatus ending, therefore, the protections will instead revert back to the those provided at present; with operations at the port returning to ‘business as usual’ save for the use of the three new berths proposed. ABP considers that it is reasonable for additional protections for Openreach’s apparatus to be in place during the construction period, but does not agree that the indemnities provided to Openreach in the Protective Provisions should then last in perpetuity when there is an existing legal framework to fall back on.”</i></p> <p>The Applicant awaits a reply from Openreach, and has had no engagement from Liberty Global (Virgin).</p>
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CLdN	ABP does not believe that protective provisions for CLdN are required. Without prejudice to this position, ABP is considering CLdN's correspondence on this topic with a view to preparing draft protective provisions for CLdN. Such a draft will provide protections which are commensurate with CLdN's potential to be affected by the proposed development.	The Applicant received a revised draft set of protective provisions from CLdN at 6pm on Friday 8 December, immediately prior to Deadline 7. The Applicant will consider this revised draft, and provide an updated version of the protective provisions, along with commentary explaining its amendments, as soon as possible following Deadline 7.	The Applicant has provided a revised wording of this Protective Provision, along with commentary on its amendments, at Deadline 7 [REP7-029] . This version of the PP has been included in the dDCO submitted at Deadline 8.	The Applicant has noted CLdN's comments on the Protective Provisions provided at Deadline 8 [REP8-043] and has responded at Deadline 9 (Application Document Reference 10.2.97).
DFDS	The Applicant has reviewed draft protective provisions received from DFDS and hopes to revert with comments shortly after Deadline 6.	The Applicant provided a revised draft protective provisions on 22 November 2023, and is submitting a commentary of its suggested amendments with an updated version of the protective provisions at Deadline 7.	The Applicant has provided a revised wording of this Protective Provision, along with commentary on its amendments, at Deadline 7 [REP7-029] . This version of the PP has been included in the dDCO submitted at Deadline 8.	The Applicant has noted DFDS's comments on the Protective Provisions provided at Deadline 8 [REP8-045] and has responded at Deadline 9 (Application Document Reference 10.2.99).

<p>North East Lindsey Internal Drainage Board</p>		<p>The Applicant has received the proposed wording for a new protective provision from the Drainage Board, which it is considering.</p>	<p>On 22 December 2023, the Applicant provided comments on the draft wording received from the Drainage Board which, among other things, acted on comments received from the ExA in its Schedule of Proposed Changes to the dDCO [PD-019]. The Applicant has not received any further comments from the Internal Drainage Board and, as such, has provided its latest draft wording in the version of the dDCO submitted at Deadline 8.</p>	<p>The Applicant is still yet to receive any comments from the Drainage Board, and the version of the Protective Provision submitted at Deadline 8 [REP8-005] remains unchanged.</p>
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