IMMINGHAM EASTERN RO-RO TERMINAL DCO APPLICATION

PINS REFERENCE TR030007

COMMENTS ON DEADLINE 8 SUBMISSIONS BY DFDS

Introduction

1. This document consists of comments on various documents submitted at Deadline 8 (8 January 2024) for the above application. The documents commented upon are set out below.

a. **Revised draft DCO** [REP8-004]

b. **Applicant's Response to DFDS D7 submissions [REP8-023]**

c. **Navigational study of enhanced control measures** [REP8-029]

d. **Terminal Capacity Statement [REP8-027]**

e. **National Highways Response to ExQ4 [REP8-036]**

f. **National Highways Technical memorandum [REP8-037]**

g. **HMH Response to DFDS D7 submissions [REP8-050]**

h. **HMH Response to DFDS D7A submissions [REP8-049]**

Revised draft DCO [REP8-004]

2. The ExA provided their proposed changes on the dDCO on 1 December 2022 [PD-019] and DFDS commented on the ExA's proposed changes in its Deadline 7 response [REP7-046], predominantly supporting the ExA's proposed changes.

3. A revised draft Development Consent Order was submitted by the Applicant at Deadline 8 [REP8-004]. The majority of DFDS' previous comments on the Applicant's draft DCO remain. DFDS welcomes the inclusion of Protective Provisions for the benefit of DFDS in Schedule 4, it maintains the view that the drafting ExA provided their proposed changes on the dDCO on 1 December 2022 [PD-019] is more appropriate.

Applicant's Response to DFDS D7 submissions [REP8-023]

4. Paragraph 3.1 - November 2023 simulations. The Applicant notes it is correcting the record when in fact what it is doing is seeking to justify its failure to comply in a reasonable manner with an action set by the ExA. That action, which was only required because of the Applicant's failure to engage properly with Interested Parties at an early stage, was to liaise with interested parties to agree on the parameters for further navigational simulations. The Applicant has provided excuses for why it was difficult to book the simulator at HR Wallingford, but that is not a reason not to have engaged with Interested Parties until Friday 20 October when the deadline for completing the action was Monday 23 October. The Applicant could have engaged with interested parties immediately following the hearing on 4 October at which the action was issued, and had over two weeks in which it could have sought to agree parameters for the simulations which had been requested by the ExA. This could have been done at the same time as the Applicant sought simulator space, it clearly did not have to wait until it had secured space on the simulator. Instead, as it has done consistently throughout the IEERT project, the Applicant chose not to engage with interested parties as it had been requested to do by the ExA and simply presented its position on the simulations it intended to undertake one working day before the deadline knowing that Interested Parties would not then have the opportunity to properly influence the simulation parameters. To seek now to justify its behaviour as anything else lacks any credibility.

5. Paragraph 3.9 - Failure to include the Tug Barge in many of the simulations – DFDS do not accept the Applicant's statement that DFDS' criticism was 'unjustified and incorrect'. The tug barge was only included in the November 2023 simulations because DFDS flagged to the Applicant that it had omitted the Tug Barge in previous simulations. The Applicant justified this omission by saying that it was aware of the Tug Barge and so took it into consideration [paragraph 2.12 of **REP3-008**]. There is no indication/report that DFDS is aware of that verifies this was the case and it is not credible to suggest that this was not another failing of the Applicant's navigational simulations. Either the Applicant failed to properly construct its model to include the presence of the Tug barge (in addition to the incorrect design of the model in relation to the pontoons, which were only corrected at the December 2023 simulations), or it omitted the Tug Barge because it did not expect proper scrutiny from Interested Parties or because it made the simulation runs to and from the IERRT easier to achieve without the risk of a near miss or failure. To suggest it didn't include it as a deliberate choice because it was aware of it is not credible.

6. The Applicant notes that in the event of difficulties in challenging conditions, rather than plan ahead, accept proper scrutiny of its designs, protection measures and operational safety plans through the Examination, it will just manage the issue in the normal course of river operations. This seems to have become the Applicant's standard stock response for every challenge which has been made to it about navigational safety issues, effectively telling Interested Parties and the ExA that they should not worry, the Applicant will manage all of these challenges, including those it has not foreseen or risk assessed. Rather than continually telling Interested Parties that the Applicant "knows best" and using this to try to deflect difficult questions, perhaps the Applicant should have engaged properly with points Interested Parties made and then adapted its designs, amended its navigational simulations, agreed to appropriate impact protection measures and set out the operational measures it intends to take at the outset to enable Interested Parties and the ExA to satisfy themselves that the IERRT is a safe facility to build and operate in such a highly sensitive location.

7. Paragraph 3.12 - DFDS Observations of Jonathan Bush – DFDS is not surprised at the Applicant's dismissal of Jonathan Bush's evidence. This is entirely consistent with the Applicant's approach to any third party views that do not fit the Applicant's narrative or agree with its "we know best" approach. Mr Bush is an experienced pilot with over 12 years of experience of operating as a pilot on the Humber and to the Port of Immingham. Mr Bush left the Applicant's employment entirely of his own volition and with a good record as a Humber pilot. DFDS accept that it is therefore his own professional view, it is nonetheless a view informed by real practical experience and expertise.

8. The Applicant notes that Mr Bush's views cannot be construed as being in any way representative of pilotage or PEC views more generally, however, DFDS would ask how many pilots the Applicant has sought views of in regards to the IERRT and whether it has given its pilot community a proper confidential and anonymised opportunity to comment. It is the view of an experienced and well respected ex-Humber pilot who knows the Humber and Port of Immingham approaches intimately. The inference which the Applicant makes that Mr Bush is somehow an outlier and rogue pilot whose views should be discounted is disappointing and without any merit or indeed evidential basis provided by the Applicant. Mr Bush has asserted a view which the Applicant does not like or agree with and so it has chosen simply to dismiss it as being worthless, in line with its general approach on this Application to any third party view it does not agree with or which does not fit the Applicant's narrative.

9. Furthermore, DFDS have also provided evidence from other experienced mariners, including Capt. Jesper Nielsen, which raises concerns about the navigational safety of the IERRT and flags some of the challenges in navigating in this area which lend support to the fact that the Applicant does not have a monopoly of knowledge about navigating the Humber and Port of Immingham. There are other valid views from highly experienced and professional mariners which do not accord with the Applicant's narrative that everything is fine, the Applicant "knows best" and the Applicant will just "manage" issues if they arise – but unfortunately the Applicant has consistently chosen to ignore such views.

10. Section 4 - Tidal Flow – DFDS maintains its position that the correct tidal flow direction north of the IOT is not what was used by the Applicant in its navigational simulations. The tidal flow direction north of the IOT is well known to mariners who regularly navigate this area including the DFDS captains and PEC holders who navigate the area on a daily basis. As DFDS has shown in its evidence, the tidal flow north of the IOT is included in various publications and pilot handbooks published by the Applicant and the HMH acknowledged in a meeting in 2022 with DFDS and also at the ISH5 hearing that the tidal direction north of IOT is in accordance with those previous publications. The Applicant is due to publish a 2024 version of the Pilot Handbook on Thursday 18 January. DFDS has been provided with a number of advanced copies for distribution amongst its mariners. The 2024 Handbook is consistent with the latest 2017 Handbook and confirms DFDS' long-held understanding of the tidal direction north of the IOT. DFDS assumes the Applicant will provide the ExA with a copy of the relevant pages at Deadline 10.

11. The Applicant's position appears to be based on the readings taken by it in the immediate area of the proposed IERRT. DFDS notes that there is no evidence that new readings have been taken by the Applicant in the area to the north of IOT. DFDS remains sceptical that the tidal flow direction in the immediate area of the IERRT is as claimed by the Applicant but accepts that if this is the direction shown by readings taken at the Applicant's buoy then it does not have its own readings in

that same area to contradict the Applicant. However, DFDS has no doubt, based on published navigational documents from the Applicant itself and its own mariners experience over many years, that the tidal flow direction north of IOT is not as contended by the Applicant and not as used by the Applicant in many of its navigation simulations.

12. Paragraph 5 - Design Vessel – DFDS stands by its position that the Applicant has not demonstrated that a vessel corresponding to the design vessel for IERRT can safely berth and unberth at the facility. The only vessel which the Applicant has simulated in any reasonably thorough manner is the Stena T class, which is considerable smaller in all respects than the design vessel. No vessel approaching all of the parameters of the design vessel has been simulated. Despite having at least two years to build or modify an existing model with HR Wallingford in order to test a vessel approximating the design vessel parameters, the Applicant failed or chose not to do so.

13. Although the DFDS Jingling vessel was used by the Applicant in some simulations, DFDS has already given evidence that the Jingling is specifically designed to have increased manoeuvrability which is not representative of the Stena vessels available for use at the facility. The Jingling may be closer in physical size to the design vessel than the Stena T class but it does not have the parameters of the design vessel being still smaller and lighter. Furthermore, as DFDS has noted in its evidence, the Jingling simulations were limited, for example only one simulation run was done to berth 3, and some of the simulation results reported by the Applicant have been questioned i.e. the Applicant considered some manoeuvres to be successful when DFDS consider they should have been scored as either marginal or failures.

14. DFDS does not agree with the Applicant in paragraph 5.17 that is has used a "conservative ship manoeuvring model" in its assessment approach and contend that it is insufficient to base conclusions on the smaller Stena T vessel. DFDS has serious concerns of the Applicant getting DCO approval allowing the use a vessel the size of the deign vessel at a later date which presents a significantly higher risk profile without required level of mitigation (such as the sizing of adequate impact protection). DFDS already have concerns over the Applicant's risk assessment process and stakeholder engagement taken to date in this DCO application and would not wish to see the use of significantly larger vessels at the IERRT being allowed without full scrutiny and stakeholder engagement that the level of risk of this terminal demands.

15. DFDS cannot therefore accept the Applicant's statement in 5.30 that "*The Applicant's evidence and submissions demonstrate that a vessel up to the size of the design parameters specified has been appropriately considered within all relevant and necessary assessments – all of which conclude that the use of vessels up to this size would be appropriate and acceptable*." This statement is wholly inaccurate and the conclusions drawn are entirely premature. The simulations and assessment undertaken has not provided any reassurance that vessels up to the size of the design vessel can be safety navigated to and from the IERRT and, following the simulations of 12-13 December [**REP8-029**] and failed attempts to arrest an errant deign vessel from striking the IOT, DFDS has even greater concerns over the use of vessels up to this size.

16. Accordingly, in line with the view also expressed by other interested parties at ISH5, DFDS believes that the only safe approach for construction and use of the IERRT is for the dDCO to expressly limit its use to the Stena T class vessel. In view of the navigational safety concerns raised by interested parties and the immediate proximity to the IOT, the introduction of any future class of vessel at the

IERRT should then be dependent on independent scrutiny and approval via the dDCO and should not be left to the Applicant's internal process and discretion which would not provide for any scrutiny by interested parties or any form of independent evaluation.

17. Paragraph 6.2 - Comparisons between IERRT and IOH – The Applicant's explanation about why it is pertinent to consider the similarities between IERRT and IOH is misleading. The Applicant states that because the manoeuvres through the full force of the Humber tidal flows to IOH have been shown to be safe, this means the same will be true for IERRT. This is incorrect. As DFDS evidence on the differences between the location of IOH and IERRT explained, IOH is to the west of Immingham dock and its berths are in a location which is sheltered from the tidal flow. IERRT is to the east of Immingham dock and the berths are fully subject to the tidal flows. In addition, the Applicant maintains that the tidal flows in the immediate vicinity of the IERRT berths are different from those which apply to the north of IOT and are therefore different from the flows experienced by berthing and unberthing DFDS vessels – even though both IOH and IERRT vessels will pass through the same approach waters north of IOT. Furthermore, and perhaps most fundamentally, IERRT is proposed to be located immediately adjacent to the IOT trunkway and behind existing IOT tanker and barge berths, making it a highly sensitive and risky location. IOH is not.

18. It is not the tidal flows which make IERRT a highly sensitive risk, although these do undoubtedly present a challenging navigational exercise as HR Wallingford's December 2021 simulation report [REP7-032 and REP7-033] makes clear. What makes IERRT such a material risk, and a very different proposition to IOH, is its location immediately adjacent to IOT. Any miscalculation by vessels approaching or departing IERRT could result in an allision with either the IOT trunkway or finger pier or to a tanker or barge berthed at the finger pier. The margin for error is very small given its proximity and the Applicant's position that impact protection measures are not needed from the outset. Any allision with IOT or tankers/barges by vessels arriving at, or departing from, IERRT could be catastrophic with a risk both to human life – not only of workers at IOT and IERRT but also to those on Stena's vessels including the up to one hundred passengers Stena envisage they may carry – and to the environment. Such an allision could result in major disruption to all activities at the Port of Immingham and potentially to closure of the Port.

19. Rather than acknowledging and seeking to minimise this risk, the Applicant has sought throughout its application to downplay risks associated with this location, its design and its application process. It has chosen to ignore the views of interested parties such as DFDS and IOT despite their many years of operating vessels to the Port of Immingham. It has failed to meaningfully engage with such interested parties and when it has been forced to do so by the examination process, it has done so reluctantly and always too late. It has ignored the clear views of the IOT Operators and DFDS that impact protection measures could and should be put in place prior to any construction or operation of IERRT in order to greatly minimise possible consequences from a vessel allision and it refuses to allow any independent oversight of its decision relating to such impact protection measures or safe operating procedures.

20. The Applicant originally sought to compare IOH with IERRT in relation to the potential risk which vessels using IERRT pose to the Immingham Eastern Jetty. The Applicant noted that in its view the risk of vessels using IERRT to the Eastern Jetty was similar to the risk which vessels using IOH posed to the Western Jetty. This comparison is referred to in the Applicant's response but the Applicant now also seeks to argue that the risks which using IOH pose to the IOT are also similar

to the risks which using IERRT pose to the IOT. This is patently absurd. All vessels using the Port of Immingham have to pass the IOT but only vessels using IERRT will have to navigate around the back of the IOT and seek to berth within metres of both the IOT finger pier and the IOT trunkway. There is clearly no logic based in reality to the Applicant's latest suggestion that the risk of operations at IOH carry a similar level of risk to that identified and assessed for the proposed IERRT project and the suggestion by the Applicant that this is the case only serves to heighten the concerns raised that the Applicant's risk process for the IERRT project is flawed, that its NRA is flawed and that the Applicant has sought to downplay the risks of the IERRT from the outset both to enable it to promote the application in the form it has put forward and to avoid the cost of implementing proper risk management measures from the outset.

21. Paragraphs 9 and 10 – Navigational Risk Assessment (NRA) and Cost Benefit Analysis (CBA) – DFDS has explained the failings in the Applicant's NRA and CBA and why / how this could and has led to an inadequate assessment of navigational risk [**REP4-025**, **REP7-045**, **REP7-059** and **REP8-45**]. The Applicant's statements throughout these sections repeats many of the same points they previously made which DFDS continue to disagree with (and would refer the ExA to previous submissions instead of repeating these again here). The Applicant's responses simply reinforce the same fundamental issue that DFDS has had from the outset – the Applicant's NRA fails to provide the requisite level of transparency and structure to elicit valuable stakeholder feedback (and benchmark this against existing risk levels) and it's methodology does not allow external parties to clearly identify the path taken to arrive its conclusions. The Applicant continues to not understand or underestimate the importance of a fully informed, transparent and structured risk assessment process when undertaking a qualitative risk assessment. Very simple example is in the Applicant's statement in paragraph 9.2 that their NRA "…very clearly sets out the 'frequency descriptors' to define likelihood" which is entirely false – loosely defined wording is not clear and the frequency descriptors do not provide any information on frequency (how often an event might occur). The fact this was changed in the IGET NRA is a simple, yet obvious, difference between those two project NRAs which shows this was and continues to be lacking in the IERRT NRA and was and continues to be an example of the basic failings that have not been acknowledged and appear not to have been even recognised. Despite the Applicant's responses throughout this and previous documents, DFDS still disagrees with the findings of the Applicants NRA and the conclusions reached with regard to safety and adequate mitigation.

22. Paragraph 14 - Impact Protection Measures – DFDS disagrees that its position on impact protection measures is in any way inconsistent. DFDS has consistently supported the need for impact protection measures to protect the IOT trunkway and finger pier because of the very serious consequences which might arise from any allision with the IOT or any vessel berthed at the IOT. The fact that the long term operators of the IOT, with over fifty years of experience of operation and risk management for that facility and experience of operating other such facilities around the globe, consider impact protection measures to be necessary from the outset is compelling in DFDS opinion. The Applicant's determination of impact protection measures to be "disproportionate" is simply a reflection of the underestimation in the risk of critical hazards that DFDS continues to highlight to the ExA.

23. DFDS remains very concerned about the possibility of allision with the Eastern Jetty by vessels arriving and departing IERRT, however, DFDS consider the risk of allision with the Eastern Jetty to be a lower risk than that of allision with the IOT, not least because vessels currently operating into

and out of the inner dock already have to manage this risk at least when approaching Immingham dock – of course IERRT vessels will have to navigate to avoid the Eastern jetty both on approach and departure from IERRT so the risk is greater than the current status quo. In addition, it is hard to see what impact protection could practically be put in place to protect the Eastern Jetty which wouldn't either prevent the effective use of the Eastern Jetty and the Tug Barge or potentially hinder existing vessel navigation. The same is not true the impact protection measures for the IOT trunkway and finger pier outlined by either IOT or the Applicant in its change request – such measures would not materially impact navigation of vessels. DFDS therefore disagrees that the Applicant's Enhanced Management Controls are only applicable to IERRT Berth 1 (paragraph 23.8). The risk involved at the Eastern Jetty chemical tanker berth is significant and the manoeuvres in such close proximity give risk to similar concerns as the IOT in regard to exposure to passengers, the environment and knock on effects of port closures that have a direct impact to DFDS and other waterway users.

24. Paragraph 14.8 - It is simply not correct for the Applicant to suggest that its stated position would not result in impact protection measures being left to the Applicant to determine. That is exactly the position the Applicant has put forward and it continues to maintain that the SCNA or SHA should only be able to recommend and not to require the Applicant to put impact protection measures in place. The Applicant's argument seems to be that if the SCNA recommends that impact protection measures should be introduced then the Applicant would not be able to refuse this because if it did the SCNA could issue directions to prohibit vessels from operating to the IERRT.

25. Leaving aside the concern that DFDS, IOT and CLDN have all expressed that in practice the SCNA is not independent of the Applicant and therefore may be influenced in any decision it takes in future, if the Applicant's position is that a recommendation would have to be complied with, which is the only scenario in which the decision would not be left to the discretion of the Applicant, then there seems to be no reason why the SCNA should not be able to require the Applicant to put impact protection measures in place under the terms of the dDCO.

26. In any event, DFDS remain of the view that impact protection measures should not be left to either the SCNA, SHA or Applicant to determine at some future date, with all the uncertainty and additional potential risk which would accompany any such position, but rather that such measures should be required at the outset as a condition of the dDCO.

27. Paragraph 22.5- the Applicant disputes DFDS's statement that in the SoCG that the Applicant has failed to risk assess Ro-Pax vessels and thereby misses the 100 passengers who could, according to article 21(2)(a) of the draft DCO [**REP8-004**], arrive and depart from the IERRT daily. The Applicant claims the '*The navigational risk for Ro-Pax is covered in the NRA and was discussed at the HAZID workshop, whilst the risk to people has been incorporated into the Descriptor – 'People' as shown in Table 15 of the Applicant's NRA'.* DFDS has reviewed the Applicant's NRA [APP-089], revised NRA (tracked) [**REP7-012**] submitted at Deadline 7 and Supplementary Navigation Information Report [**REP7-030**] and has found no assessment of Ro-Pax vessels or passengers using the Proposed Development. Table 15 of the NRA 'Consequence Descriptors' includes 4 categories, one of those is 'People', but there is no specific risk assessment of the potential for 100 passengers using the Proposed Development daily.

28. DFDS attended a number of Hazid workshops held by the Applicant, in April 2022 and August 2022 and Applicant's claim that the potential for 100 passengers and Ro-Pax vessels was risk assessed through that process- this is not DFDS' recollections of the discussions at those workshops – the risks relating to 100 passengers using the Proposed Development daily would certainly have required detailed and specific discussion. Furthermore, the HazLogs provided to DFDS by the Applicant on 19 April 2022 and 9 September 2022 in relation to those respective workshops make no reference to the potential use of Ro-Pax or passenger services. As far as DFDS is aware, the Applicant has no simulated any Ro-Pax vessels, as of the August 2022 Hazid workshop, the only vessel simulated was the Jinling, which is RoRo vessel, no a Ro-Pax. Again reiterating there has been no assessment of the operation of Ro-Pax vessels or the prospect of 100 passengers, members of the public using the industrial Port of Immingham.

29. DFDS therefore suggests the Applicant should provide specific and detailed document references to illustrate where the Applicant has risk assessed Ro-Pax vessels with up to 100 passengers per day in the Application documents, to ensure the ExA can be provided with sufficient comfort that such have been properly assessed.

30. DFDS is surprised at the lack of risk assessment and consideration of the passengers driving through a heavily industrialised port that has not accommodated passengers for at least 20 years if not considerably longer than that. The introduction of daily ferry passengers represents a material change to the day to day operations of a port such as Immingham where the majority of traffic is HGV and port specific vehicles. Given the risks of opening up port access to private car journeys through the port estate and the possible waiting time such vehicles and passengers may have on the port estate, DFDS would have expected a material project to have accompanied the IERRT Application not only involving a comprehensive risk assessment but also a detailed wayfinding and signage exercise. There is no evidence of any of this in the Applicant's documentation. The reality is that the Applicant included ferry passengers in its application but has failed to carry out any assessment or analysis of this very material aspect of the Proposed Development.

Transport

31. The Applicant identifies in paragraph 18.1 that the inputs and outcomes of the Transport Assessment [**AS-008**] have been agreed with all three Highway Authorities in advance of the submission of the DCO. Whilst this is acknowledged, many of the inputs, assumptions and outcomes have been changed during the preparation of the Transport Assessment Addendum and the applicant has not evidenced that a similar level of transparent consultation with the highway authorities has taken place during the DCO or provided documentation demonstrating that alterations to the methodology have been fully disclosed, understood and agreed, or that the revised outcomes of the Transport Assessment Addendum [**REP7-013**] have been accepted. Details of post-submission consultation should be appended to the Transport Assessment Addendum.

32. At Paragraph 18.3 the Applicant identifies that the conclusions of the original TA remain unaltered. The corrected highway capacity assessments included within the TA Addendum clearly demonstrate that the IERRT adds additional traffic to several junctions resulting in these junctions exceeding their practical capacity leading to demonstratable harm to DFDS operations and the operation of the public highway network in terms of congestion and highway safety, as set out in **REP7-057**.

33. Paragraph 18.5 the Applicant claims that the updated local junction assessments now have less spare capacity than previously presented simply as a result of changes to the base input flows and committed development. In that statement, the Applicant fails to acknowledge that the assessments within the original TA were flawed due to the incorrect conversion of HGV's to PCU's resulting in the Applicant being unaware that the many junctions on the network will be operating in excess of their practical capacity in the future.

34. These errors in the original Transport Assessment resulted in the Environmental Statement Chapter 17 Traffic and Transport [**APP-053**] being flawed to the extent that it states at paragraph 17.8.67 that '*The IEA Guidelines note that driver delay is only likely to be significant when the traffic on the highway network is at or close to the capacity of the system. Each of the roads considered within the assessment operate well within capacity threshold levels now and for future years*' and at paragraph 17.8.68 that '*It can, therefore, be concluded that there will be negligible impact in respect of driver delay.* This is incorrect and consequently an assessment of significant operational and cumulative residual impacts upon driver delay has been omitted from Chapter 17 Traffic and Transport, and Chapter 20 Cumulative and In Combination Effects of the ES. This needs to be provided.

35. The reliance of the ES upon incorrect highway capacity assessments included within the TA [**AS-008**] is also a concern and demonstrates the need for this document to be superseded in its entirety, and documents which rely upon it updated accordingly.

36. At paragraph 18.6, the Applicant suggests the sensitivity test provided as Annex J of the Transport Assessment is robust. For the reasons set out in **REP8-045** the Applicants sensitivity test is not a reasonable worst-case assessment due to its use of the Stena Profile in the AM Peak hour. The 60% West Gate / 40% East Gate assignment is also considered to be representative of typical operating conditions given the lack of mitigation and controls being proposed by the Applicant.

37. At paragraph 18.10 and paragraph 18.22 the Applicant claims that all three highway authorities agree with the conclusions of the updated and additional (sensitivity) assessment. Evidence of what documents were issued and reviewed by the relevant highway authorities should be provided as it is not clear whether this statement extends to the Transport Assessment Addendum submitted at Deadline 7. For example, we note that the Transport Assessment Addendum included slightly different results to the previous issues of the Update to Technical Note 2, and the current submission of the Sensitivity Test includes new highway capacity analysis of the A160 / Eastfield Road signalised junction which requires a full review.

38. DFDS's has provided their findings on the initial review of the sensitivity test within **REP8-045** which identified that further information was required to allow these new assessments to be checked and verified. DFDS are concerned that the submission of such extensive additional information at such a late stage of the DCO process does not provide all parties with sufficient time to review, understand, or comment on the outcome of the assessments.

39. At paragraph 18.16 the applicant states that the TA Addendum makes it clear to readers as to what has changed or been added since the original document. The TA Addendum does not identify that the TA contains material errors and the capacity assessments included within it are therefore flawed

and can't be relied upon. Additionally, the highway capacity modelling within the original TA is also relied upon and referenced within the ES Chapter 17 at Paragraph 17.8.68. There is no way for a person reading the original TA to understand that the assessments within that document are wrong. It should therefore be withdrawn from the application and replaced by a standalone document.

40. At paragraph 18.21, DFDS' position that "non-material errors" in the modelling remain is still valid, as per the errors and omissions set out in paragraph 63(a) to (m) of DFDS' Comments on Deadline 7 Submission [**REP8-045**].

41. The Applicant references paragraph 60 of REP7-042 as highlighting a "clear misunderstanding by DFDS", however this document reference appears to be incorrect as it directs to the DFDS Cover Letter.

42. DFDS comments on the Sensitivity Test are set out in **REP8-045** and remain valid. It is not a reasonable worst-case assessment and should be updated to include the use of the Port of Immingham for the AM peak hour assessments.

43. The Applicants modelling clearly demonstrates there are several junctions on the network which exceed their practical capacity illustrated by an RFC of greater than 0.85, both within the Update to Technical Note 2 and the Sensitivity Test. Furthermore, the Transport Assessment Addendum provides results of the A160 / Eastfield Road signalised junction exceeding practical capacity with relation to a Degree of Saturation exceeding 90%, the results of which have not been discussed in the report nor have the impacts identified been mitigated.

44. The range of flows adopted in the Sensitivity Test do not demonstrate resilience in the road network as mentioned in paragraph 18.31. As explained in **REP7-057**, the network is sensitive to additional traffic demand and the implications for driver delay are significant. Given the lack of controls on vehicle routing proposed within the Operational Freight Management Plan a reasonable worst-case assessment of the impacts on the A160 corridor is required to fully understand the potential impacts of the IERRT development in consultation with National Highways.

45. The IERRT development does give rise to significant impacts by virtue of the fact it is generating additional traffic onto a network within which some junctions will operate at or in excess of practical capacity, creating unacceptable impacts upon DFDS operations, and the operation of the highway network in terms of capacity and safety. These issues are particularly acute at the junction of the A1173/ Kiln Lane for the reasons set out within **REP7-057**. The implementation of a mitigation scheme at this location is important to ensure that the A1173 corridor provides a safe access route to/ from the IERRT without significant delays caused by additional peak hour congestion. This will go some way towards helping ensure that the A1173 can become an attractive route for HGVs and potentially reduce demand for, and congestion on, the A160 corridor in the future.

46. Contrary to the requirements of NPSfP at paragraph 5.4.9, the applicant is proposing no tangible mitigation measures to mitigate the impact of the unacceptable impacts of the IERRT on the surrounding transport infrastructure. In-so-doing the Applicant is failing to meet the essential principle outlined at paragraph 5.4.26 of the NPSfP requiring the developer to '*fund provision of infrastructure required solely to accommodate users of the development without detriment to pre-existing users*'.

47. By failing to properly assess or provide mitigation to address the highway safety and residual cumulative impacts identified at sensitive locations on the highway network, the Applicant is failing to meet the requirements of the NPPF at paragraph 115 which states '*Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe*.'

Navigational study of enhanced control measures [REP8-029]

48. DFDS has previously discussed the limitations of relying on tugs to prevent the occurrence of allision with the IOT and have stated that there are still multiple points of failure that only adequate impact protection can mitigate. The Applicant's navigational study of enhanced control measures does not simply remove the need for impact protection. The potential for an allision with the IOT is clearly shown as a valid possibility – particularly for a design vessel sized ship – and whilst that possibility remains DFDS are adamant that it also remains necessary to ensure the consequences of an impact with the IOT are further mitigated by hard controls of the impact protection measures.

49. DFDS would consider that the simulations undertaken and shown within this report provide a strong basis for the clearly identifiable and very real potential for allision with the IOT to occur and the seriousness of the consequences that could result. The navigational safety and ongoing implications of an incident have been a core reason that DFDS have been consistently seeking further detailed assessments to be made. DFDS and IOT have identified the risk to the IOT infrastructure and, following these simulations, DFDS also now increasingly concerned about the undefined operational limitations for a vessel the size of the design vessel and the challenge this presented. Runs 8b, 8c and 9b would have resulted in contact with the back of the IOT river berths and/or the unprotected portion of the IOT trunkway – identifying the high-rick location of the proposed IERRT development and it's close proximity to nationally significant infrastructure. It is clear that the undefined mitigation measures, impact of the IERRT terminal for tug availability and the impact of limiting conditions for manoeuvres on the operational window for other vessel movements still require considerable assessment which had not been done prior to the DCO application and had only been commenced on direction by the ExA.

50. Only the IERRT berth 1 was assessed and it is only the IERRT berth 1 that has proposed a tug in the enhanced control measures. DFDS note however that movements to berths 2 and 3 will not have these enhanced control measures and from previous simulations undertaken to these berths, will be at an angle to the tide. The result being no arrest tug and greater exposure to tidal currents acting towards the IOT or the Eastern Jetty (depending on the direction of tide).

51. As identified in the simulation report, the effects following contact with the IERRT cannot be accurately simulated and the whist these runs were re-assessed without the IERRT in place, the actual outcome of this scenarios cannot be predicted. In several simulations (for example, runs 6a, 6c, 6d, 7a, 9a, the contact of the IERRT design vessel on the IERTT terminal would have resulted in the damage to the IERRT infrastructure and possible holing and sinking of the IERRT vessel, which then presents its own extended set of related impacts to the ongoing operations within the port of Immingham and particularly to the operations to and from the IOT finger pier.

Terminal capacity statement [REP8-027]

52. The 1,901 slots for imports referenced in Table 2 of **REP8-027** is a new development, one that has only come following several questions being raised by the Interested Parties regarding further evidence of the terminal's capacity. The information provided by the Applicant is a late development in the application process leaving little time to adequately review the influence of these additional bays, or even how these bays would be effectively utilised. The terminal capacity assessment provided by the Applicant provides no evidence to support how the Applicant would manage a peak operation situation.

53. The Applicant suggests in paragraph 2.6 that only impacts on local roads and highways needs to be considered. DFDS' concern is the influence of queues causing congestion for their traffic as per prior DFDS submissions [**REP6-038**]. This can occur within the Port for which the Applicant has provided no evidence indicating no impact, nor any processes for management.

54. The ratio for unaccompanied versus accompanied units was agreed for the purpose and use within the Traffic Assessment and Gate House impacts. Specially, the agreement, as documented within the Transport Statement of Common Ground was that changes in the ratio had non-material impacts on the assessment of demand versus capacity of the road network. The Applicant is trying to insinuate in paragraph 3.16 that this also extends to the terminal capacity, which is not correct nor has been discussed, and indeed not as recorded in the SoCG.

55. As presented in REP7-056, the original port capacity assessment undertaken by DFDS was based on inputs advised by the Applicant in previous application documents and in application hearings. During ISH5, the Applicant refined these figures. Therefore, the original calculation by DFDS was not incorrect as the Applicant states in paragraph 4.1, rather it shows the lack of suitable detail and transparency of the information provided within the Applicant's original application. Further, the Applicant suggests in paragraph 4.2 the current inputs are "considered to be reasonable" by the Applicant, rather than robust or appropriate for design purposes. This is perplexing given these inputs are those provided by the Applicant, and would suggest that the Applicant is still questioning their own position.

56. In paragraph 4.8, the Applicant has suggests that there are 1,901 slots that could be made available during peak times for imports. Given that peak demand for unaccompanied vehicles is likely to coincide with other modes (accompanied and containers, as well as exports), it is still not clear how the yard will be managed to provide the necessary level of capacity. As stated in DFDS' terminal capacity assessment [**REP7-056**], "Under peak operations, the yard will exceed capacity for UK Imports alone. And under normal operations, the import operations will still exceed operating targets, albeit within the capacity of the site, however without consideration for UK Exports. For normal conditions, the yard would need to be meticulously managed, with full control over vessel arrivals, haulier arrivals, tug units within the yard, unloading processes, and movement of accompanied units within the terminal."

57. As presented in DFDS' written response **REP8-045**, DFDS has identified that the freight management lacks any real sustenance and further information is required, such as where these additional bays are located, how will competing demands of different modes (unaccompanied, accompanied, containerised, or trade units) as well as imports versus exports will be managed, how vehicles will be queued, and what happens during a disruption event such as late arrivals of

vessels, needs to be produced. Without this information, the Applicant cannot claim, given the capacity issues of the terminal, that there will not be any adverse impacts on DFDS, other port users, and industry outside the port that relies on HGV Infrastructure.

National Highways response to ExQ4 [REP8-036]

58. DFDS supports the position that JSJV does not agree that the Operational Freight Management Plan (OFMP) [REP8-036] submitted by the Applicant is comprehensive enough to achieve the benefit of avoiding congestion both within the Port estate and on local roads.

59. Regarding the response to Question TT4.03, DFDS is concerned that National Highways (and JSJV) have not been presented with a reasonable worst-case assessment of junction capacity given that the sensitivity test did not use the Port of Immingham profile for the AM peak hour assessment – contrary to the methodology adopted in the original TA, and subsequent updates to Technical Note 2.

60. As outlined in DFDS' written responses REP8-045, the latest sensitivity test suppresses the impacts along the A160 corridor and overestimates junction capacity by using a lower traffic profile in the AM peak hour. DFDS requests that the Applicant submits an updated Sensitivity Test to National Highways using the most appropriate gate assignment (60%/40%) and traffic profile (Port of Immingham) in the AM peak hour for the purposes of a reasonable worst-case assessment.

National Highways Technical memorandum [REP8-037]

61. The Transport Assessment Addendum [REP7-013] was submitted on 11 December 2023 and DFDS is concerned that it is unlikely to have been fully reviewed in JSJV's technical memorandum [REP8-037] dated 13 December 2023, as it notes a review of the separate documents 'Update to Technical Note 2' and the 'Further Sensitivity Test' assessments submitted by the Applicant in November 2023.
62. DFDS notes that the Further Sensitivity Test does not use the Port of Immingham profile during the AM peak hour and cannot therefore be considered a reasonable worst-case assessment. DFDS has requested that the Applicant updates the sensitivity test to ensure that the potential impacts of the IERRT on the A160 corridor are fully understood.

63. DFDS request clarification as to whether JSJV (and National Highways) have reviewed the revised Transport Assessment Addendum [REP7-013] in full including the updated traffic modelling results and the assessment of the signalised junction of A160/Eastfield Road – which is operating above practical capacity (with reference to a Degree of Saturation >90%). Clarification of National Highways approach to mitigation and/ or contributions at this junction is also requested.

HMH Response to DFDS D7 submissions [REP8-050]

64. The Applicant has built its navigational simulation models on the assumption that the tidal flow direction both in the immediate vicinity of the IERRT and in the approaches to IERRT to the north of IOT is as shown from the buoy readings taken by the Applicant in the immediate vicinity of IERRT. DFDS has consistently challenged this assumption. For many months before the application was submitted and throughout the examination, DFDS has informed the Applicant and HMH that the tidal flow direction north of the IOT and used in the Applicant's simulation modelling is incorrect and DFDS has provided evidence from its own highly experienced mariners who have been operating in the area to the north of IOT for many years and also from the Applicant and HMH's own pilots manual and published guidance in support of its position. For obvious reasons, DFDS does not have its own buoy readings in the actual IERRT location to empirically challenge the Applicant's readings but it remains sceptical about those readings given flow directions north of IOT.

65. Although the Applicant has consistently stated that DFDS is wrong about its view of tidal flow direction north of the IOT and continues to dispute that HMH has ever agreed with DFDS about this, DFDS has witnesses from the meeting in 2022 when HMH acknowledged that he understood the tidal flow direction to the north of IOT to be as DFDS contend it is – and as all previous Applicant and HMH guidance for the river says it is. Furthermore, DFDS dispute the Applicant's view that HMH did not accept this to be the case at the ISH5 hearing.

66. There is a risk that this potentially important issue is simply being reduced to one of semantics. The Applicant is steadfastly unwilling to accept that its model north of IOT may have been wrong, despite all the evidence to the contrary. If the Applicant is correct in its assertion, then DFDS would have expected HMH, complying with the statutory duties which both he and the Applicant have highlighted, to have issued revised guidance and notices to mariners operating in the area to the north of IOT to correct the historic position on tidal flow. This has not happened, presumably because HMH does not believe there has been a change in tidal flow in this area. Furthermore, HMH has stated in his submission [HMH 360] at Deadline 8 that "*DFDS has adduced no evidence to suggest that the results of the simulations insofar as concerns the operability of the proposed IERRT development would be materially different (and less successful) had the tidal direction to the north of the area in the simulations been as HMH and DFDS would have expected it in real life*." HMH is not therefore disputing the position held by DFDS regarding tidal flow direction to the north of IOT, indeed he makes clear, as he did at the ISH5 hearing, that he expects the tidal flow direction to be the same as DFDS has indicated. Instead what both the Applicant and HMH are now saying is that it doesn't really matter from a navigation simulations perspective because it does not affect the validity of the simulations. This is therefore answering a wholly different question, which is does it matter if DFDS is right about tidal flow direction to the north of IOT, rather than is DFDS right and has HMH accepted that tidal flow direction to the north of IOT remains as he and DFDS have always understood it to be.

67. DFDS is unable to say if it is correct to reach the conclusion the Applicant and HMH have, that it does not matter from a simulation perspective, because none of the simulation models have been fully set up to reflect DFDS' position on tidal flow direction, although DFDS accepts that HR Wallingford sought to produce on a number of the additional runs in November 2023, the best compromise it could given the severe time constraints – which were all of the Applicant's own making.

HMH Response to DFDS D7A submissions [REP8-049]

68. DFDS note that the control measures to date proposed by HMH and the Applicant to try to avoid the risk of allision between vessels berthing at IERRT and IOT generally involve the use of a tug. DFDS remain firmly of the view that installation of proper permanent impact protection measures for IOT before any construction of IERRT takes place is the only really effective risk control open to the Applicant and therefore believes this should be made a condition of any consent for the IERRT application. The 13 and 14 December 2023 simulations have only served to reinforce this view. As IOT Operators have noted in their Deadline 8 Submissions, these latest simulations clearly show that reliance simply on operational control measures which the Applicant and/or HMH may determine to impose from time to time are simply not sufficient to provide adequate risk control or protection to the IOT facility. Accordingly, in the event that the IERRT application is not refused – and it remains DFDS view that this is the appropriate outcome from the examination to date – DFDS believe that comprehensive impact protection measures for the IOT must be made a condition of the dDCO.

69. DFDS does not understand why HMH would not be supportive of this risk control measure if HMH was simply considering the minimisation of navigational risk and the most effective measures to ensure navigational safety. However, since HMH is not willing to assert that the Applicant should incur the cost of proper impact protection measures and continues to assert that other control measures can be used, which to date have generally required the use of a tug, DFDS believe that if operational risk controls are deemed to be an appropriate risk management measure on their own – which again DFDS would not agree with – then the Applicant should procure a dedicated additional tug for use in any control measures implemented at IERRT.

70. As noted above, having seen the results of some of the attempted control measures from the simulations conducted by the Applicant on 13 and 14 December 2023, which clearly indicate that there is a material risk of vessels which get into difficulties whilst trying to berth at the IERRT alliding with the IOT, DFDS remains of the view that, aside from refusing the application for IERRT, the only really effective risk control measure which is available mitigation is a condition in the dDCO that adequate permanent impact protection measures should be put in place before any construction of the IERRT.