

IMMINGHAM EASTERN RO-RO TERMINAL DCO APPLICATION

PINS REFERENCE TR030007

FINAL SUMMARY OF CASE BY DFDS

Introduction

1. This document summarises the case of DFDS Seaways plc at Deadline 9, the penultimate deadline before the end of the examination into the Immingham Eastern Ro-Ro Terminal DCO application. A list of documents submitted and appearances made by DFDS throughout the examination is appended to this document.

Summary

2. DFDS has had serious concerns about the Project's impacts on navigational safety and its operational impacts arising on DFDS from marine congestion and onshore transportation since before the submission of the application. It raised those concerns with the Applicant, and indeed the Harbour Master Humber, in response to pre-application consultation (see schedules of correspondence and key pieces of correspondence at [\[REP6-040\]](#) and [\[REP2-048\]](#)) and has continued to express its concerns consistently throughout the examination. Over the course of the examination DFDS' concerns have only exacerbated as a result of:
 - a. the Applicant's lack of genuine engagement with, indeed aggression towards, any interested party during the examination that has questioned its data, analysis, conclusions or decision-making processes, despite guidance in the Port Marine Safety Code's Guide to Good Practice that in preparing Navigational Risk Assessments, "*it is also very important to involve port users, practitioners, operators and those with an interest in the operation of the port, as necessary. They too have a significant contribution to make to the development and maintenance of the safety management system*" [\[REP1-016\]](#) and advice from the Maritime and Coastguard Agency that it expected "*every attempt to be undertaken by the Applicant to resolve the concerns raised by interested parties*" [\[REP1-021\]](#);
 - b. the inadequate Navigational Risk Assessment [\[APP-089\]](#) submitted by the Applicant, which is opaque and lacks the transparency required to enable its judgments and conclusions to be subject to proper scrutiny, and the deficiencies of which have not been remediated by the revised NRA submitted at Deadline 7 [\[REP7-011\]](#) in response to the ExA's request for a clear and coherent assessment of risk from the Applicant;
 - c. the multiple inadequacies of the navigational simulations carried out by the Applicant to date, including in the most recent simulations carried out in November and December 2023, which have included the use of tidal data that does not accord with the experience of DFDS pilots or indeed the Harbour Master Humber; the use of vessels that do not reflect the characteristics of the proposed design vessel; and the omission of the tug jetty in close proximity to the proposed development from some of the simulations;

- d. the Applicant's refusal to simulate a vessel with the characteristics for which the Project was designed (i.e. the characteristics defined in the Applicant's NRA [APP-089]), contrary to the suggestion in the Environmental Statement that it has adopted a "Rochdale Envelope" approach to the assessment of impacts [APP-039]; and its suggestion that the impacts of operating a larger vessel can instead be postponed to a later date, contrary to requirement in Infrastructure Planning (EIA) Regulations 2017 that environmental information should be taken into account before any decision to grant consent;
- e. the evidence that has emerged about the 'cost-benefit analysis' of potential mitigation measures carried out prior to submission of the application, which does not appear to have considered either the costs of delivering impact protection to the IOT trunkway or quantified the benefits of such protection (and which is not remedied by the Applicant's updated NRA which still fails to quantify the benefits of impact protection);
- f. the governance arrangements, in which ABP is the promoter of the Project; environmental consultant and regulator of marine safety for the Port of Immingham, the practical implications of which have been apparent during the examination, where commercial directors or those responsible for promoting the Project have intervened to answer questions relating to safety posed by the ExA to the Dock Master. While the Applicant has been at pains to emphasise the different statutory responsibilities of various office-holders, the fact remains that the Immingham Dock Master; Humber Harbour Master; Harbour Authority and Safety Board; Duty Holder; Designated Person; Head of Marine, Humber; Port Director, Group Head of Safety and Marine and the Applicant's navigational risk consultant, ABPmer, all ultimately work for or are owned by the Applicant company and many of the officeholders are line managers of others. All persons tasked with overseeing safety at Immingham are employees of and remunerated by the Applicant;
- g. the Applicant's insistence throughout the examination that it alone should be allowed to determine the tolerability of risk, notwithstanding the combined experience of, and potential implications for, other interested parties with undisputable expertise in navigating vessels in and out of the Port of Immingham; and indeed its suggestion that matters of navigational safety should not concern the ExA but rather be left to its own employees to determine, in spite of the clear policy requirements in relevant Marine Plans for decision-makers to ensure safe navigation and minimise any negative impacts on shipping activity;
- h. the Applicant's reliance, on the one hand, on the statutory responsibilities of the Dock Master and Statutory Conservancy and Navigation Authority to ensure navigational safety, while, on the other hand, promoting in requirement 18 of the DCO, an arrangement whereby the Applicant is not obliged to deliver impact protection that has been identified as necessary by the Statutory Conservancy and Navigation Authority or the Dock Master;
- i. the multiple errors in the Applicant's Transport Assessment (TA) [AS-008], including its failure to convert HGV movements to PCUs; the unjustified assumptions as to traffic distribution between the Port's east and west gates; the false impression given by the TA of an unconstrained road network, which was only remedied once DFDS identified the error with PCU conversion; the Applicant's continued claim that there will be no onshore transport congestion despite a number of junctions now being shown to be at or above practical capacity

and despite the proposed throughput of the Project exceeding the capacity of the IERRT terminal. DFDS remains concerned by the Applicant's failure to withdraw and update the Transport Assessment to correct these errors. The submission instead of a Transport Statement Addendum, comprising 1,726 pages at Deadline 7, just six weeks before the end of the examination has not allowed sufficient time for proper scrutiny;

- j. the Applicant's submission generally of large amounts of additional information with little explanation throughout and particularly shortly before the end of the examination; and its refusal to acknowledge errors followed by obfuscation when this became inevitable, further increasing concerns that it cannot be relied upon to police itself.
3. It is DFDS' case that the DCO application should be recommended for refusal by the Examining Authority and refused by the Secretary of State pursuant to section 104(7) of the Planning Act 2007 on the basis that its adverse effects would outweigh its benefits. If, contrary to DFDS' position, the Examining Authority recommends a version of the draft DCO for the Secretary of State to consider consenting, then the parameters of the project and the degree of freedom afforded to the Applicant by that draft should be strictly circumscribed, as set out below. In particular, to ensure navigational safety, any grant of DCO must secure the delivery of impact protection to the IOT trunkway prior to the commencement of operations at the proposed development.

Navigational safety

4. DFDS' serious concerns remain that the insertion of the IERRT into the already busy and navigationally challenging Port of Immingham, in close proximity to nationally critical and highly sensitive operations, will result in unacceptable safety risks and congestion and delay, with consequent unacceptable impacts on DFDS' operations at the Port of Immingham, neither of which have been adequately assessed by the Applicant. In particular the risk of IERRT vessels colliding with vessels at Immingham Oil Terminal or the Eastern Jetty, or alliding with those structures, has not been reduced to a tolerable level and is not As Low As Reasonably Practicable (ALARP).
5. Contrary to the suggestions by the Applicant, navigational safety is plainly relevant to any decision on the DCO. Section 104(2) of the Planning Act 2008 requires the Secretary of State to have regard to appropriate marine plan documents in deciding whether to grant development consent. The UK Marine Policy Statement (2011) obliges decision-makers to seek to minimise any negative impacts on shipping activity and economic effects and to protect the efficiency and resilience of continuing port operations (MPS, paragraph 3.4.7), such as those operated by DFDS at the Port of Immingham. The East Offshore and East Inshore Marine Plan (2014) requires decision-makers to minimise negative effects on shipping activity; avoid adverse economic impacts and afford protection to ensure safe and competitive shipping. The Project fails to ensure safe navigation at the Port of Immingham and fails to protect the efficiency and resilience of DFDS' existing operations for the reasons explained in its submissions to the examination and summarised below.
6. The navigational simulations that were undertaken prior to submission of the application were inadequate for the reasons explained in detail in DFDS' submissions to the examination, e.g. they involved only one simulation of Berth 3 (which is the undeniably the most challenging to manoeuvre to/from); the eastern jetty tug barge was inexplicably omitted from the simulations and if included, would have resulted in simulation runs that the Applicant categorised as 'successes' changing to 'failures' or

at the very least 'marginal' because IERRT vessels would have collided with moored tugs; used incorrect tidal data which did not align with the experience of DFDS pilots and PEC holders or, it turned out during the examination, with the Harbour Master Humber's own experience of navigating north of the IOT river berths; used wind data taken from the Humber side Airport runway anemometer, 15km inland of the Port which was not representative of conditions at the proposed location for the IERRT; involved excessive use of tugs and engine and thruster power; and did not simulate a vessel with comparable characteristics to the proposed design vessel. The Applicant's claim that those conducting the simulations knew about the tug barge (paragraph 2.12 of [REP3-008]) even though it was not included in the simulations is wholly unconvincing.

7. Further simulations have been undertaken during the course of the examination, but none has been with a vessel of the size that the IERRT has been designed to accommodate and the additional simulations have not overcome DFDS' consistent concerns about the tidal data used in the simulations. The latest simulation report provided by the Applicant [REP7-033] rightly acknowledges that *"manoeuvring to and from the new infrastructure is challenging, requiring precise positing of the vessel, tugs and their attitude to tidal flow and the wind"* and *"Operating to and from the new infrastructure will be challenging in the upper end of environmental conditions regularly experienced on the River Humber, not least the strong tidal flows"* yet the Applicant has refused to commit to necessary measures to ensure navigational safety.
8. Yet further simulations were held on 13/14 December – DFDS note with concern IOTT's comments on them at [REP8-057].
9. The NRA and the simulations are appendices to and form part of the Applicant's Environmental Statement (see, for example, ES Chapter 10 [APP-046], paragraph 10.1.2). As such, they are governed by the Infrastructure Planning (EIA) Regulations 2017. The Applicant's ES suggests that assessments have been based on parameters which are considered to result in the worst-case environmental effects, adopting the "Rochdale Envelope" approach [APP-039 para 3.2.1]). Section 10.11 of ES Chapter 10 [APP-046] sets out predicted risk profiles for various foreseeable accidents including allisions of vessels with port infrastructure, mooring issues etc. The risk presented by these types of hazards cannot properly be assessed, in terms of likelihood of occurrence or magnitude of consequence, without defining the envelope of the size/tonnage of vessels that are intended to use the proposed development and then assessing the risks associated with the relevant design vessel. In fact, the NRA does define the design vessel for the Proposed Development at paragraph 4.5.2 [APP-089] but neither the NRA, the simulations nor the ES appropriately assess the risks of operating such a vessel. The Applicant's refusal to simulate a vessel with the characteristics for which the Project was designed and its suggestion that the impacts of operating a larger vessel can instead be postponed to a later date are contrary to the requirement in the Infrastructure Planning (EIA) Regulations 2017 that environmental information should be taken into account before any decision to grant consent. The ExA must be satisfied at this stage that the Project is capable of operating safely in the manner in which it is intended. If the Applicant is unable or unwilling to assess the environmental (including safety) impacts of the design vessel, then it is incumbent on the Secretary of State to impose a new Requirement in Schedule 2 to the DCO which restricts the size of vessels using the Project to that which has been assessed.
10. DFDS has repeatedly stressed that the Proposed Development needs to be safe from the start of the operation onwards. Simulating with only the Stena T class is not sufficient as those vessels are

considerably smaller than the vessels for which the Applicant claims the new terminal has been designed (and the trend is clearly for vessel sizes to increase). Hence it is very disappointing for DFDS that their and other stakeholders' request to carry out simulations of a vessel comparable to the design vessel have not been heeded by the Applicant (which also runs counter to the ExA's Action Point 17 of ISH3 [EV6-012]). The Applicant's claims that it has already demonstrated through its earlier simulations with the Jinling vessel that the Proposed Development was safe for the design vessel, but DFDS disputes this for a number of reasons:

- a. first, the Jinling are highly manoeuvrable compared to other vessels that are closer in size to the design criteria, and as already mentioned are only about 70% of the displacement of the design vessel; and
- b. secondly, DFDS have shown in their representations numerous examples where the Applicant over-relies upon the power usage of the vessel and claims the manoeuvre is safe despite the bow thruster running full to starboard for 13 minutes. On this basis, DFDS' case is that only around a 1/3 of the runs were successful which cannot lead to a conclusion that the development will be safe. Even now there has still only been one run to Berth 3 with a larger model, as this table demonstrates:

Totals	DFDS Analysis	ABP Analysis
Success	14	36
Marginal	14	5
Failed	13	4
Aborted	3	4
Unable to assess	5	0

Berth Analysis: Berth 1: 2, Berth 2: 46, Berth 3: 1, IOT 6: 1, IOT 8: 20

Table 1: The Applicant's simulations with DFDS' results, the Applicant's results and the berths used

- c. Thirdly, the simulations carried out with the Jingling vessel were flawed in the numerous ways that DFDS has explained throughout the examination (including that they used flawed tidal data and unrepresentative wind data).
11. In addition to that fundamental flaw in the Applicant's assessment, its NRA is confused, opaque and non-committal (leading to the ExA requesting a redraft of the mitigation section, which was then moved as part of the redraft to appendices D and E; the risk controls have not been specified any more clearly). The consideration by ABP's Harbour authority and Safety Board (HASB) that led to the application going ahead was very superficial and cannot be relied upon to conclude that safety impacts have been adequately assessed or are adequately controlled through the DCO. The Applicant appears to have sought to overcome the deficiencies in the HASB process by convening a further HASB meeting on 28 November 2023 (see Applicant's response to third written question NS.3.03 [REP7-022]). The minutes of that meeting reveal that the consideration of the safety risks posed by the Project remained superficial and it is hardly credible to believe that the HASB, comprised as it is of ABP commercial directors, would reach a decision some four months into a six-month examination process that the project they were promoting resulted in unacceptable safety risks or required impact protection to the

IOT trunkway, especially after ABP, as Applicant, had reached the conclusion that impact protection for the IOT trunkway would be too costly.

12. Even the revised NRA is inadequate, lacks transparency by failing to set out proposed mitigation clearly and fails to establish that risks will be reduced to ALARP with the measures proposed by the Applicant. The core issue remains: the Applicant has taken an unstructured and piecemeal approach to risk assessment in which no outside party can have a clear understanding of the reasoning behind the NRA's findings, nor the choice of tolerability that these findings have been assessed against. DFDS has previously discussed this at length in its submissions and has found that the Applicant's NRA does not allow for clear and informed interpretations of the likelihood (e.g. poor definitions) or consequence (e.g. poor understanding of exposure of passengers) that the stakeholders were consulted on. Stakeholders have not been afforded any guidance on what benchmarking was used to derive tolerability thresholds. The Applicant has simply ignored stakeholders from the outset and has prevented them from understanding its approach to assessing tolerability, ostensibly as a result of its fear that interested parties would seek to "game the risk assessment" for their own commercial gain – a view that continues to skew the Applicant's perception of the seriousness of the navigational risk concerns shared by DFDS and the IOT. This attitude of mistrust and aggression has been characteristic of the Applicant's approach throughout and has led it to dismiss out of hand the concerns of experienced individuals with pertinent expertise in the matter (see e.g. the Applicant's dismissal of Captain Jonathan Bush's simulations report [\[REP8-023\]](#), paragraphs 3.12-3.18). DFDS remains firmly of the view that the Applicant's assessment of risk has been too low, driven by inadequate definition of likelihoods and lack of clarity on the significance of consequences to passengers, the IOT and the UK's fuel production as a whole. Lower risks require less severe risk controls to meet ALARP and this has resulted in the Applicant underestimating the level of mitigation required and has subsequently led to them ruling out or postponing identified essential risk controls, most critically being the IOT impact protection. This red flag necessitated DFDS (and independently also IOT) to commission its own shadow NRA to appropriately assess the risk which concluded that the consequences from an incident, practically at the IOT trunk way or finger pier, were so significant that they required the hard controls of impact protection. The need for these essential risk controls has continually been downplayed by the Applicant on the basis of the Cost Benefit Analysis which has its own substantial failings, not least that there has been no assessment of the actual benefit to compare against estimated costs, but also the repeated comparison of the cost of the risk control to the cost of the capital project – suggesting the risk control measures have instead been inappropriately based on, or biased by, commercial considerations. Remarkably, despite the examination process's 10 deadlines to date, the Applicant has still not provided any real justification for decisions made during the Cost Benefit Analysis.
13. The Applicant's response to the ExA's question NS.2.07 to provide examples of comparable relationships between Ro-Ro facilities and fuel import/export berths [\[REP4-008\]](#) resulted in the Applicant; identifying a number of examples that were not remotely comparable to the relationship between the Proposed Development and the IOT infrastructure or the Eastern Jetty, as set out by DFDS at paragraph 3.6 of [\[REP4-025\]](#). This is important as it is this unique close proximity to nationally critical and highly sensitive operations that sits at the heart of DFDS' objection to the Proposed Development. DFDS agrees with the submissions from IOT that the proximity of the Proposed Development to the IOT is unique; the consequences of an incident are nationally significant [\[REP6-045\]](#); and that there is no other example in the UK where there is a ferry terminal (existing or proposed), still less one proposed

for vessels of the scale and mass proposed here, in such close proximity to oil infrastructure [\[REP7-069\]](#).

14. The DCO no longer refers to the NRA to require the mitigation in it to be delivered. Both NRAs fail to assess the safety risk associated with the 100 passengers that could be on board the Ro-Pax vessels operating to/from IERRT. The Applicant's claim that this is mentioned in the NRA and at the HAZID workshops is simply not credible; relying on the mention of the 'people' category of risk in the NRA, which could plainly just be referring to mariners rather than the 100 passengers which could be aboard the vessels operating at the Proposed Development. It seems clear to DFDS that this extremely important point has simply been forgotten or ignored by the Applicant which is incomprehensible given the nature of the highly industrial Port of Immingham and the fact that it hasn't seen any passengers for some 20 years plus. DFDS request the Harbour Master to confirm or deny whether he is satisfied that the NRA has adequately assessed risks to passengers.
15. DFDS was extremely surprised and concerned to hear at ISH5 that the Applicant did not have any minutes of key meetings in which the risks, costs and benefits of various controls were discussed. It is difficult to comprehend a situation where costs and benefits are said to have been considered and yet there is no set of notes; no report and no minutes setting out what the costs and benefits actually are, so as to inform the decision. It is almost inconceivable to believe that parties were able to undertake an adequate assessment of costs and benefits, leading to the rejection of impact protection to the IOT trunkway, with nothing committed to paper and no minutes of relevant meetings at which decisions were taken. While the Applicant submitted an updated Navigational Risk Assessment at Deadline 7, which includes some references to a cost benefit analysis, there remains a lack of any contemporaneous evidence of the information on which that analysis is said to have been based and even now, the updated NRA does not quantify the benefits of providing impact protection to the IOT finger pier so as to understand how its costs compare to its benefits. The project originally had, and still has, all the hallmarks of being railroaded through without proper consideration of navigational safety.
16. In light of the shortcomings of the Applicant's NRA, both DFDS and IOT commissioned shadow NRAs, both of which conclude that impact protection for the IOT finger pier must be secured (or the finger pier moved further north or to the other side of the IOT trunkway) to reduce safety risks to ALARP, together with five other identified risk controls. In response to the ExA's suggestion of an initial set of controls the Applicant has added a new requirement (19) that requires the dock master to amend the port's Marine Operations Manual to incorporate 'Enhanced Operational Measures', without defining what those measures entail. As such, this requirement is meaningless and ineffective as such measures could be anything and there is no guarantee they will ensure appropriate protection to the safe navigation within and around the Port.
17. The Applicant's response to DFDS has been to repeatedly denigrate its concerns on the basis that they are motivated by commercial rivalry (which DFDS has consistently refuted – this project is to move Stena line from one part of the Humber to another), but the same allegation cannot be made of IOT which has no conceivable commercial interest in the Project. The fact that both DFDS and IOT share the concerns and are at one on the need for impact protection to be secured for the IOT finger pier from the outset should be attributed very significant weight by the ExA and Secretary of State. Their shared concerns are not frivolous or vexatious; they represent grave and genuine concerns about the safety implications of allowing the Project to proceed in its current form.

18. The safety aspects of the project have not changed since the application was made. At ISH3, the Applicant indicated that following discussions with IOT, it was prepared to commit to impact protection for the IOT finger pier, on a without prejudice basis, in the hope that this would address IOT's outstanding concerns and submitted plans of what was proposed [AS-020]. Unfortunately, dialogue between the Applicant and IOT subsequently appears to have broken down. While the Applicant did make a change request which included the potential delivery of impact protection, its design does not satisfy either IOT or DFDS that it will provide adequate protection, nor does the Applicant consider it necessary. For example, the proposed impact protection is intended to be 'sacrificial' (i.e. it would only survive one allision) and in the event of an allision there are no control measures secured in the DCO to prevent IERRT from operating until the impact protection is replaced. Furthermore, the delivery of impact protection measures remains within the exclusive discretion of the Applicant pursuant to its proposed drafting of requirement 18 to the DCO. As such, the impact protection is in no way 'secured' (as suggested by the Applicant at Deadline 8 ([REP8-023], paragraph 14.8). The Applicant's approach is paradoxical: on the one hand, it has relied heavily on the statutory responsibilities of the Dock Master and Statutory Conservancy and Navigation Authority to ensure navigational safety; but, on the other hand, it refuses to countenance a requirement that would oblige it to comply with a recommendation from either of those bodies that impact protection was necessary to ensure navigational safety.

Marine congestion

19. Aside from navigational safety, the addition of further vessels to an already busy port will increase congestion and is likely to delay other vessels, particularly in more challenging navigational conditions. The Applicant has gone through the motions of considering this issue but has not properly done so. As explained in [REP7-059], DFDS raised concerns at the commercial and operational implications of the Proposed Development prior to submission of the application. In October 2022, the Applicant's Humber Regional Director offered to convene a commercial and operational workshop to afford DFDS the opportunity to explain its concerns so that they could be taken into account and addressed by the Applicant. Unfortunately and to the continued disappointment of DFDS, the Applicant did not ever arrange such a meeting, in spite of prompting by DFDS.

20. Chapter 16 of the Applicant's ES [APP-046] is intended to address socio-economic impacts, is highly superficial and inadequate. The assessment simply says that the Applicant has a duty to carefully manage all marine movements to facilitate safe and efficient functioning and that any increase in vessel movements will be managed through existing procedures (para 16.8.36). There is no mention in the assessment of the difficulty of managing existing Ro-Ro services with those proposed to be accommodated at IERRT, which will often be arriving and departing in the same temporal windows; of the loss of the stemming area to the west of Immingham Lock or the delay that will be caused to other vessels while vessels complete the challenging manoeuvres to and from the IERRT terminals.

21. At ISH5 (Action Point 5) [EV10-016], the Applicant was asked to provide details of a 'challenging' day at Immingham so as to inform the understanding of the way in which vessels would be managed to avoid operating difficulties to existing operators. Instead, at ([REP7-031] and [REP7-032]) the Applicant chose to provide information a 'busy' day on the Humber as a whole (rather than specifically at the Port of Immingham), that does not have the most challenging features such as larger vessels being involved and does not include challenging tidal or wind conditions. The Applicant's information does not provide

details of arrival or departure times and does not include any restricted vessels arriving in the congested morning period. The two main drivers of congestion in the area are the arrival of 'Passage Plan Vessels' (vessels over 40,000t Deadweight or 20,000m3 gas carrying capacity), typically requiring 3-4 tugs and are slow moving and tidally restricted vessels. The biggest congestion issues are likely to arise on the morning tide given that arrivals to the IERRT take 2-3 times longer than departures. Despite this, in the Applicant's scenario there is only one passage plan vessel departure on the morning tide and no passage plan movements on the afternoon tide. Therefore, whilst the traffic may be toward the upper end of the 'mean range' in terms of vessel movements, this day is not representative of a 'challenging' day.

22. On 'stemming' (i.e. vessel waiting areas), DFDS has explained that when the lock is in use, there are waiting areas for other vessels known as 'stemming' areas, where a vessel sits with its 'head to the tide' so that it is stopped relative to the seabed. There are currently two stemming areas available: one to the east and one to the west of the lock. The eastern area is typically used on an ebb tide and the western area on a flood tide to allow the vessel to sit head to tide. The IERRT will occupy the eastern stemming area such that it will no longer be available to vessels waiting to enter the lock (as acknowledged by the Applicant at paragraph 15.2 in [\[REP8-023\]](#)). As set out in DFDS' written representation [\[REP2-040\]](#), paragraph 38, the loss of the eastern stemming area and use of the western area instead will have an impact not only on the use of the lock, given the strict criteria set out in Notice to Mariners S.H.22, limiting the number of vessels that can be in certain areas but will also cause potential significant issues for DFDS IOH traffic. Vessels stemming at the western jetty will significantly compromise IOH arrivals and departures and concentrate traffic in an already busy area. Additional waiting times will also have implications for DFDS' services and carbon reduction targets, as set out in paragraph 147 of the same document.
23. The Applicant's identified risk controls, including implementing specific limitations for each berth, will assist in the reduction of risk (albeit not to an acceptable level, without the delivery of impact protection) but will ultimately result in a narrowing of the operational window that the IERRT vessels can arrive or depart the terminal. This will inherently increase the operational demand of the bounded times in which vessels can move and is likely to result in congestion challenges and delays to time-sensitive cargoes (such as DFDS operations). The greater the limitations, the narrower the window and the greater effect on congestion; however, the berth limits have not been identified and their influence on the impacts of congestion have not been properly explored by the Applicant. For example, if tidal limits were introduced for large IERRT vessels, this would make movements at IERRT far safer, but would force such IERRT vessel movements into a time period that is already restricted for IOT finger pier and various other Immingham vessel movements.

Onshore transportation

24. It has taken five of the six months of examination for the Applicant to correct the errors discovered by DFDS in the Applicant's Transport Assessment and highway capacity assessments relating to conversion of HGV movements to Passenger Car Units (PCUs), which caused an underestimate of the effects of the project on the road network. Instead of substituting the original Transport Assessment, the Applicant has instead submitted a 1726-page 'addendum' at Deadline 7 (with only six weeks remaining of the examination) that does not acknowledge the errors in the original TA or supersede that document. It is DFDS' view that a new standalone Transport Assessment should have been

submitted to clearly supersede and replace the flawed assessments in the original TA [AS-008] for the purposes of continuity and accuracy of information in the public domain. Furthermore, the TA addendum does not provide a reasonable worst-case assessment as set out in [REP7-045]. The addendum has also been issued with insufficient time remaining to allow all interested parties and highway authorities to undertake a thorough review of the accuracy of the submitted information and properly understand its implications for the operation of the network, which is particularly important given the numerous errors that DFDS has identified in the Applicant's previous transport work. This is not appropriate for a Nationally Significant Infrastructure Project.

25. DFDS' case is that the IERRT terminal does not have enough capacity to cater for the proposed throughput – the Applicant has not assessed the terminal's operation during specific times of the day when vessels arrive and unload, leading to periods of high utilisation exceeding the terminal's capacity. In light of detailed modelling provided by DFDS, which the Applicant was engaged with for the provision of the operating parameters, the Applicant has advised that they can manage these needs with the provision of additional bays, however have yet to provide suitable evidence of management procedures, details of the location of these additional bays, or the influences this will have on other operations within the IERRT terminal. DFDS consider the Applicant's current assessment to be incomplete and are concerned that vehicles during high utilisation periods will therefore spill onto the highway network within the Port and cause congestion that will affect other Port users, particularly DFDS given the scale of its operations at Immingham.
26. In its latest submissions [REP8-023] the Applicant dismisses DFDS' reference to the general arrangement plans showing 1699 trailer bays (paragraph 23.9), saying the plans are 'for illustrative purpose only', despite the Applicant using these values consistently themselves, e.g. in an 8 December meeting between transport consultants (see [REP7-056], section 2.7). In fact, the development must be built in general accordance with the general arrangement plans (requirement 7), suggesting the Applicant has a worryingly loose understanding of its DCO or a worryingly wide interpretation of the leeway it affords.
27. The Applicant has overestimated the level of usage of the East Gate by those using the IERRT. The Applicant's assumption of a split of 85%/15% between the East and West Gates is fundamentally flawed for the reasons set out in DFDS' previous submissions. The evidence provided in [REP8-045] identifies that the base assignment between the West Gate and East Gate is actually 60%/40% respectively, which has been agreed in the Statement of Common Ground. The Operational Freight Management (OFM) plan submitted at Deadline 7 [REP7-036] and amended at Deadline 8 [REP8-018], has no substance and provides no means of achieving the Applicant's assumed assignment to the East Gate of 85% or controlling the daily throughput of units. National Highways' concerns regarding the lack of effectiveness of the OFM plan were raised at Deadline 8 [REP8-034] and have not been resolved. Given the lack of control, there will in fact be greater usage of the West Gate as per current conditions with no mitigation in place.
28. The Applicant promised a 'sensitivity test' of a 60%/40% West/East Gate split, which is set out at Appendix J of the Transport Assessment Addendum [REP7-013]. That assessment is replete with errors and omissions, as set out in paragraph 63(a) to (m) of DFDS' Comments on D7 Submission [REP8-045], and its value has been further diminished by the adoption of the Stena profile within the AM peak hour assessments which suppresses the potential impact and therefore fails to provide a

reasonable worst-case assessment of the Project on the road network for the reasons explained in [\[REP7-045\]](#), paragraphs 64 – 65. This approach was not agreed in the Statement of Common Ground and is no longer consistent with the approach to the assessment adopted within the Transport Assessment and the Transport Assessment Addendum which were based upon the Port of Immingham profile in the AM peak hour rather than a Stena peak hour.

29. The onshore environmental assessment uses Stena T Class vessels as its 'worst case assessment', once again confirming that the project has not been assessed with larger vessels and should not be allowed to use them. Even using the Stena T Class vessels and the Stena profile for the AM peak, the Applicant's assessments reveal that several road junctions would exceed their practical capacity (i.e. 85% of their absolute capacity) and require mitigation.
30. It is not agreed that the conclusions of the original TA remain unaltered, as suggested within the Applicants TA Addendum. The corrected highway capacity assessments included within the TA Addendum clearly demonstrate that the IERRT adds additional traffic to several junctions resulting in those junctions exceeding their practical capacity leading to demonstrable harm to DFDS operations and the operation of the public highway network in terms of congestion and highway safety, as set out in [\[REP7-057\]](#). 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. As such, 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*'.
31. The Applicant's Environmental Statement fails to recognise or assess sensitive environmental receptors on the public highway network in respect of junctions operating in excess of their practical capacity on key access routes to and from the Port of Immingham. The Environmental Statement instead incorrectly states that the overall network consists of negligible / low sensitivity receptors, on the basis that each of the roads considered within the assessment operate well within capacity threshold levels now and in the future, citing the incorrect capacity assessments undertaken in Section 6.5 of the TA. In fact, the corrected highway capacity modelling in the Transport Assessment Addendum [\[REP7-013\]](#) both within Annex G 'Update to Technical Note 2', and Annex J 'Local Highway Network Sensitivity Test' indicates that there are a number of sensitive junctions but those findings have not been reflected in any update to the Applicant's ES or the identification of any mitigation to address the impacts of the Proposed Development on those sensitive junctions. The cumulative residual impacts identified within these assessments are considered to be severe and require assessment within the Environmental Statement.
32. DFDS' case is that the mitigation measures set out in [\[REP7-057\]](#) should be implemented before the project becomes operational, to mitigate the impacts of the project on the road network. Notwithstanding the safety concerns raised at the A1173 / Kiln Lane roundabout, DFDS' view is that without mitigation the additional congestion at this junction will further deter IERRT traffic from using this route, in favour of the A160 corridor. The outcome of a reasonable worst-case sensitivity test needs to be understood to inform the extent of mitigation required on the A160 corridor.
33. 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.'

Applicant engagement and attitude

34. The Maritime and Coastguard Agency's advice on port marine safety is that the responsible organisation should '*strive to maintain consensus ... through ... stakeholder engagement and ... review of risk assessments with users*' (see ExQ2 Question NS.2.05 [PD-013]). The Port Marine Safety Code's Guide to Good Practice states that in preparing Navigational Risk Assessments, "*it is also very important to involve port users, practitioners, operators and those with an interest in the operation of the port, as necessary. They too have a significant contribution to make to the development and maintenance of the safety management system*" [REP1-016] and advice from the Maritime and Coastguard Agency that it expected "*every attempt to be undertaken by the Applicant to resolve the concerns raised by interested parties*" [REP1-021].
35. Far from seeking to conduct genuine engagement or striving to maintain consensus, the Applicant's approach throughout the examination has been to aggressively attack any interested party that deigns to question or disagree with its conclusions, as explained further below.
36. The Applicant has consistently characterised points made by DFDS as demonstrating a lack of understanding of navigational and other issues when this is patently untrue – DFDS has been operating from Immingham for many years and has undoubted expertise in the marine and onshore constraints at the Port. The Applicant's refusal to accept the contributions of, at the very least, equally experienced professionals with undisputable expertise in navigation vessels in and out of the Port of Immingham does it no credit and should be a cause of some alarm to the ExA.
37. The Applicant's attitude toward outside marine expert opinion is typified by their derisive treatment of Jonathan Bush's statement ([REP8-023], paragraphs 3.12-3.18). Despite being a highly experienced mariner and a former senior Humber Pilot of many years, who left ABP with glowing references, his expert opinion regarding the tide and suitability of this development are described as incoherent and not worthy of consideration with the unwarranted suggestion that his well-founded, experience-based testimony is merely a fabrication of a disgruntled ex-employee.
38. This attitude has been evident since the start of the examination. In the Applicant's response to Relevant Representations [REP1-013] it repeatedly and unjustifiably accused DFDS of misleading the ExA (3.5-3.6), (3.19-3.25) (3.84-3.90); showing a fundamental lack of understanding; and even questioned its credibility (3.91-3.98). This aggressive approach has continued throughout the examination, during which the Applicant has derided and dismissed DFDS' representations as deliberately misleading, disingenuous, obtuse, uninformed and even untrustworthy.
39. An example of the Applicant's attitude is its inability to conclude a statement of common ground with DFDS because it has not been able to resist adding text in rebuttal of DFDS' position, rather than just setting out its own position and allowing DFDS to do the same, as is the norm in such statements. It appears that its attitude may also have delayed the production of other statements of common ground, given that on 11 January 2024, the ExA had to make a procedural decision to create an additional deadline to allow for the submission of 7 additional statements which had yet to be agreed.

40. In other cases the Applicant continues to disagree with DFDS in the face of clear evidence contrary to its position. It vehemently denies that the Harbour Master agrees with DFDS about the tidal direction north of the IOT, even though the Harbour Master has said in terms that *'he shared DFDS' observations in that he would expect it to be further round and slightly stronger'* [REP8-050], page 1. DFDS acknowledges that the Harbour Master states that this does not, in his view, affect the validity of the simulations, but his agreement with DFDS as to the correct tidal direction stands. It is DFDS' understanding that Applicant will publish its 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.

41. Other examples of the Applicant's behaviour:

- a. DFDS supplied the Applicant with Protective Provisions shortly before Deadline 2 (5 September) and supplied them to the examination at Deadline 2 ([REP2-042]); the Applicant did not respond until 21 November (almost seven weeks later) despite the draft version provided by DFDS being only two pages long;
- b. the Applicant has been very slow to settle a Statement of Common Ground and at the time of writing had still not done so despite these being requested by the ExA for Deadline 5 (23 October);
- c. the ExA asked the Applicant to engage with DFDS and IOT on designing further simulations as an action point from ISH3 (action point 16), giving Deadline 5 as the deadline; it did not do so until Friday 20 October, the working day before the deadline, and even then did not accept DFDS' proposals for the simulations;
- d. the Applicant offered a 'senior safety workshop' on its own initiative but cancelled it shortly before it was due to take place (and after DFDS staff had booked flights from Denmark), and never rearranged it; a promised "commercial and operational workshop" also never took place;
- e. when DFDS complained that it was asked to give views on navigational issues in relation to the Applicant's change request on 10 November with a closing date of 19 November, the Applicant has repeatedly characterised this as a reminder to participate in the general consultation on the changes that ran from 20 October to 19 November, but the text of the letter is obviously in no sense a 'reminder' but an initial approach to give expert opinion on navigational impacts.

42. The Applicant's attitude runs to the heart of the shortcomings with the application. Had it properly engaged and genuinely taken account of concerns raised by DFDS and others, many of the issues that have been canvassed during the examination could potentially have been resolved or narrowed. To quote the Thanet Extension Recommendation Report, paragraph 5.2.99, that Applicant's conclusion that all risks are ALARP and therefore acceptable *'highlights that a key member of the Applicant's assessment team even at this stage was not prepared to accept the contributions of equivalently experienced professionals making the judgment that this level of reduction [to ALARP] had not been reached'*. Even at this late stage, the Applicant is not prepared to accept the contributions of DFDS (or

indeed IOTT) that risks have not been reduced to ALARP. As in the Thanet case, the consequence of the Applicant's flawed assessments and refusal properly to engage to ensure adequate protection to navigation safety must be the refusal of development consent, or, at the very least, the imposition of a requirement securing impact protection for the IOT finger pier from the outset together with the other restrictions outlined below.

Applicant governance

43. The Applicant has been at pains throughout the examination to highlight the legal separation of powers between ABP as applicant and ABP as regulator. DFDS has never questioned the separate statutory responsibilities imposed on Statutory Harbour Authority, Harbour Master Humber or Dock Master. However, while they may have different statutory functions, that does not guarantee their independence. It is clear that in practical terms there is a lack of separation given that each of the regulators is directly employed and remunerated by ABP, which is the Applicant and promoter of the Project. This blurring of the roles has been on display during the examination, for example at ISH3 when Commander Bristowe, the Head of Marine, Humber (and ABP employee) intervened to answer questions posed by the ExA to the Dock Master.
44. Indeed, the Immingham Dock Master; Harbour Master Humber; Harbour Authority and Safety Board; Duty Holder; Designated Person, Head of Marine, Humber; Port Director; Group Head of Safety and Marine and the Applicant's navigational risk consultant, ABPmer, all ultimately work for or are owned by the same company and many of the officeholders are line managers of others. For example, the Regional Director, Humber sponsors the IERRT project at ABP, and from him the line of management runs down through the Head of Marine, Humber (Paul Bristowe) to the Harbour Master Humber and the Immingham Dock Master. DFDS also consider that the independence of the 'Designated Person' has been further compromised by the temporary appointment of Captain Mike McCartain to the role. Captain McCartain is a director and a board member of ABP. By being appointed as Designated Person as well there is now no independent oversight within the Applicant's marine management structure. In those circumstances, it is particularly important for the ExA to subject their evidence to careful scrutiny and to ensure that navigational safety is properly assessed and appropriately and independently controlled through the DCO.
45. The Applicant claims at paragraph 2.1 of its Supplementary Navigation Information Report [[REP7-030](#)] that its Harbour Authority and Safety Board (HASB), which authorised the promotion of this project, is 'independent'. However, the ABP commercial board (which has a commercial interest in the success of the Project) comprises exactly the same members as ABP's HASB board, which is said to provide independent safety oversight. The fact that the same group of people meet on two separate occasions for different meetings cannot sensibly be interpreted as an arrangement providing 'independent' oversight. As noted in the IOT's paper on separation of powers and independence (section 9 of [REP-035](#) (page 42), there is case law which addresses the issue of independence [[REP4-037](#)].
46. Given the absence of any truly independent oversight, critical decisions as to the safety of the Project and the necessary protective measures must be taken by the Secretary of State and, in the event that development consent is granted, secured in the DCO.

DCO points

47. Were the Examining Authority to recommend a draft of the DCO to address the possibility that the Secretary of State is minded to grant development consent (which DFDS opposes), the following safeguards should be included (references are to the version of the draft DCO submitted at Deadline 8 [\[REP8-005\]](#)):
- a. The daily ro-ro unit limit of 1800 in article 21(1) should be maintained;
 - b. The ability for up to 100 passengers a day to depart from the facility in article 21(2) should be removed because this has not been assessed adequately or at all, and if this implies there is no limit on passenger arrivals, this should be explicitly forbidden by the DCO;
 - c. The mitigation proposed in Navigational Risk Assessment should be set out clearly therein and secured in the DCO by means of a new requirement – the NRA is still a certified document in the DCO but provisions relating to it have been removed by the Applicant;
 - d. A limit should be placed on the maximum size of vessel able to use the IERRT corresponding to the maximum size of vessel that has been assessed by the Applicant by the end of the examination (essentially a Stena T class vessel) by means of a new requirement; this should only be able to be varied by seeking an amendment to the DCO to ensure external scrutiny of such a step and to prevent an effective tailpiece that larger vessels can be used beyond those that have been assessed;
 - e. Improvements to five junctions identified in [\[REP7-057\]](#) should be required to be implemented via s278 agreements (since it is too late to incorporate them into this application directly) before the project can become operational, which should be added as a new 'Grampian'-style requirement;
 - f. The impact protection measures should be required to be in place before construction of the IERRT is able to commence, or failing that before the IERRT is permitted to be operational, and if an allision with the impact protection measures occurs that void their protection operation of the IERRT should be suspended until they are replaced, requiring amendments to Requirement 18;
 - g. In substitute for Requirement 19, an initial set of operating procedures should be provided and secured which can then be subsequently varied by the Harbour Master if he sees fit. The current draft DCO [\[REP8-005\]](#) refers to Enhanced Operational Measures but these are not defined in the draft DCO; the Applicant appended some controls (headed 'Enhanced Operation Controls') to the end of its responses to ExQ4 [\[REP8-020\]](#) but these do not appear to be secured.

Conclusion

48. In conclusion, this application is unprecedented in terms of safety risks to people, property and the national economy and is unique in terms of the close proximity of the Proposed Development to nationally critical and highly sensitive operations such as the IOT. The Applicant has not mitigated the

risks with anything like the level of consideration that such a level and nature of risk merits. In addition the Proposed Development will cause unacceptable congestion to vessels in the port and vehicles both inside and outside the port that has neither been properly assessed or mitigated. For the reasons summarised above and elaborated upon in the detailed representations submitted by DFDS during the examination, the application should be recommended for refusal pursuant to section 104(7) of the Planning Act 2008 on the basis that its adverse impacts outweigh its benefits. In the event of consent being granted, the CO must secure the delivery of impact protection to the IOT trunkway prior to the commencement of operations at the proposed IERRT.

APPENDIX – SUBMISSIONS AND APPEARANCES MADE BY DFDS

9 April 2023 – Relevant representation [\[RR-008\]](#)

6 July 2023 – **Pre-examination procedural deadline A**

[\[PDA-006\]](#) – submissions on examination procedure

[\[PDA-007\]](#) – principal areas of disagreement summary statement

[\[PDA-008\]](#) – requests to attend ISH1 and ISH2

21 July 2023 – [\[AS-013\]](#) letter in response to ISH1 and ISH2 agendas.

25 July 2023 – **Preliminary meeting** – appearance led by Angus Walker of BDB Pitmans LLP.

25 July 2023 – **ISH1** (DCO) – appearance led by Angus Walker of BDB Pitmans LLP.

27 July 2023 – **ISH2** (various topics, including onshore transportation and shipping and navigation) – appearance led by Isabella Tafur of Counsel.

15 August 2023 – **Deadline 1**

[\[REP1-026\]](#) – Cover letter

[\[REP1-027\]](#) – Summary of case at ISH1

[\[REP1-028\]](#) – Summary of case at ISH2

[\[REP1-029\]](#) – Response to ISH2 AP11

[\[REP1-030\]](#) – Response to ISH2 AP12

[\[REP1-031\]](#) – Response to ISH2 AP14

[\[REP1-032\]](#) – Response to ISH2 AP15

[\[REP1-033\]](#) – Response to ISH2 AP17

15 September 2023 – **Deadline 2**

[\[REP2-036\]](#) – Cover letter

[\[REP2-037\]](#) – Responses to ExQ1

[\[REP2-038\]](#) Annex

[\[REP2-039\]](#) – Comments on D1 submissions

[\[REP2-040\]](#) – Written representation

[\[REP2-041\]](#) Summary

[\[REP2-042\]](#) – Proposed protective provisions

[\[REP2-043\]](#) – Navigational Risk Assessment

[\[REP2-044\]](#) – Humber Pilot Handbook

[\[REP2-045\]](#) – Maritime statistics

[\[REP2-046\]](#) – Stallingborough Interchange data

[\[REP2-047\]](#) – NKPP transport statement

[\[REP2-048\]](#) – Response to statutory consultation

[\[REP2-049\]](#) – Schedule of correspondence

- [\[REP2-050\]](#) – Notice to mariners
- [\[REP2-051\]](#) – Traffic study: throughput
- [\[REP2-052\]](#) – Traffic study: gatehouse
- [\[REP2-053\]](#) – Altalto Transport Assessment

11 September 2023 – **Deadline 3**

- [\[REP3-021\]](#) – Cover letter
- [\[REP3-022\]](#) – Comments on D2 submissions

27-28 September 2023 – **ISH3** (navigation and onshore transportation) – appearance led by Isabella Tafur of Counsel.

28 September 2023 – **ISH4** (DCO) – appearance led by Angus Walker of BDB Pitmans LLP.

29 September 2023 – [\[AS-025\]](#) Admiralty chart extracts

9 October 2023 – **Deadline 4**

- [\[REP4-022\]](#) – Cover letter
- [\[REP4-023\]](#) – Responses to ExQ2
- [\[REP4-024\]](#) – Comments on D3 submissions
- [\[REP4-025\]](#) – Summary of case at ISH3
- [\[REP4-026\]](#) – Summary of case at ISH4

19 October 2023 – [\[AS-026a\]](#) Response to Applicant’s proposed changes consultation

23 October 2023 – **Deadline 5**

- [\[REP5-042\]](#) – Comments on D4 submissions
- [\[REP5-043\]](#) – IOH Manoeuvring explanatory note

13 November 2023 – **Deadline 6**

- [\[REP6-037\]](#) – Cover letter
- [\[REP6-038\]](#) – Comments on D5 submissions
- [\[REP6-039\]](#) – Response to R17 request on simulations
- [\[REP6-040\]](#) – Draft statement of common ground with the Applicant

21-22 November 2023 – **ISH5** (navigation and onshore transportation) – appearance led by Isabella Tafur of Counsel.

23 November 2023 – **ISH6** (DCO) – appearance led by Angus Walker of BDB Pitmans LLP.

29 November 2023 – [\[AS-042\]](#) Protective provisions comparative version

11 December 2023 – **Deadline 7**

- [\[REP7-042\]](#) – Cover letter

[\[REP7-043\]](#) – Response to R17 request on Hollandia movements

[\[REP7-044\]](#) – DFDS Schedules

[\[REP7-045\]](#) – Comments on D6 submissions

[\[REP7-046\]](#) – Comments on ExA dDCO amendments

[\[REP7-047\]](#) – Comments on 7-8 December vessel simulations

[\[REP7-048\]](#) – Keadby 3 decision letter

[\[REP7-049\]](#) – Keadby 3 recommendation report

[\[REP7-050\]](#) – News article on ABP investment

[\[REP7-051\]](#) – Senior safety forum correspondence

[\[REP7-052\]](#) – July 2022 simulations

[\[REP7-053\]](#) – Proposed protective provisions

[\[REP7-059\]](#) – Summary of case at ISH5

[\[REP7-054\]](#) – ISH5 AP1 response

[\[REP7-055\]](#) – ISH5 AP5 response

[\[REP7-056\]](#) – ISH5 AP22 response

[\[REP7-057\]](#) – ISH5 AP28 and AP29 response

[\[REP7-060\]](#) – Summary of case at ISH6

[\[REP7-058\]](#) – Draft statement of common ground

20 December 2023 – **Deadline 7A**

[\[REP7A-001\]](#) – Comments on Change Application

8 January 2024 – **Deadline 8**

[\[REP8-044\]](#) – Cover letter

[\[REP8-045\]](#) – Comments on Deadline 7 submissions

[\[REP8-047\]](#) – Appendices

[\[REP8-046\]](#) – Response to ExQ4

15 January 2024 – **Deadline 9**

Final Summary of Case by DFDS (this document)

Comments on Deadline 8 submissions