

IMMINGHAM EASTERN RO-RO TERMINAL



Applicant's Response to Interested Parties' Deadline 9 Submissions
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1 **Executive Summary**

1.1 Set out below are the Applicant's short responses to the submissions provided by four of the Interested Parties at Deadline 9. Deadline 10 presents as a last opportunity for the Applicant to comment on new material not previously before the examination. The Applicant is not repeating submissions that have already been made..

1.2 The representations to which the Applicant is responding are:

- (a) CLdN Response to Applicant's Deadline 8 Submissions **[REP9-023]**.
- (b) DFDS Response to Applicant's Deadline 8 Submissions **[REP9-025]**;
- (c) IOT Operators Response to Applicant's Deadline 8 Submissions **[REP9-028]**; and
- (d) Natural England Response to EXQ4, summary of designated sites potentially affected by this Application and comments on impacts to intertidal habitat in response to BNE4.05 **[REP9-018]**.

2 Introduction

- 2.1 This short document provides the Applicant's response to the information submitted by the Interested Parties at Deadline 9. Due to the late stage in the examination process the response provided is, of necessity, short and is not as detailed as it would otherwise have been if more time and opportunity were available to the Applicant.
- 2.2 The Applicant has deliberately confined its responses to material that has not previously been seen and comments to outstanding points.
- 2.3 Set out below is the Applicant's short response to the submissions provided by four of the Interested Parties in the following representations:
- (a) CLdN Response to Applicant's Deadline 8 Submissions **[REP9-023]**;
 - (b) DFDS Response to Applicant's Deadline 8 Submissions **[REP9-025]**;
 - (c) IOT Operators Response to Applicant's Deadline 8 Submissions **[REP9-028]**; and
 - (d) Natural England Response to EXQ4, summary of designated sites potentially affected by this Application and comments on impacts to intertidal habitat in response to BNE4.05 **[REP9-018]**.
- 2.4 This document addresses matters raised by the various Interested Parties by theme.

3 Transport

- 3.1 The submissions from DFDS **[REP9-025]** and CLdN **[REP9-023]** are repetitions of points made throughout recent submissions and at Deadline 8 in particular. The Applicant's responses to their issues are already covered in **[REP9-012]** and **[REP9-010]** respectively. However, the closing statements from both parties raise different perspectives and interpretation of these issues in respect of the consideration of the application and for completeness a response to these is provided below.
- 3.2 It is noteworthy that DFDS and CLdN make the same (repetitive) comments on Terrestrial Transport issues as confirmed in **[REP9-022]** (at paragraph 4.5). CLdN rely on the work undertaken by GHD (on behalf of DFDS). Therefore, responses below to commentary specifically on the DFDS submission should also be taken as a response to those shared concerns of CLdN.

Position of and Liaison with Statutory Highway Authorities

- 3.3 Throughout their closing submissions on terrestrial transport matters, DFDS and CLdN continue with their un-evidenced and mis-representative position in terms of the assessment and subsequent consideration of impacts of the proposed development. Their overall conclusions in terms of harm and need for mitigation are flawed both in terms of the technical assessments and the appropriate interpretation of the national policy requirements.

- 3.4 The conclusions reached by DFDS and CLdN, and the assessment they say support that conclusion, in respect of terrestrial transport are not consistent with the views of all three Statutory Highway Authorities (being North East Lincolnshire Council (NELC), North Lincolnshire Council (NLC) and National Highways (NH)). These are confirmed in the respective Statements of Common Ground. (**Document Reference 7.19 as submitted at Deadline 10, [REP8-008], and [REP9-005]** respectively).
- 3.5 As set out in **[REP9-015]**, the transport implications of the proposed IERRT development have been subject to an extensive and comprehensive transport assessment. This has included wide comprehensive consultation with the three relevant Statutory Highway Authorities – NH, NELC and NLC.
- 3.6 All three Highway Authorities were consulted on the drafting of the Transport Assessment prior to submission and have reviewed the relevant submitted information provided as part of the formal Examination including the Transport Assessment Addendum **[REP7-013]**.
- 3.7 None of the Statutory Highway Authorities have required any further assessment, information or amendments to either the documentation or the DCO.
- 3.8 As the ExA will be aware, the conclusions of the Highway Authorities have been reached by each authority separately, based on their own review of the original application documents and the additional relevant data and information that has been collated and submitted in a clear and transparent way as part of the Examination process.
- 3.9 All three Highway Authorities have confirmed that they have no objection to the scheme and that they do not consider physical mitigation is required (to deal with either capacity or safety implications of the scheme). Requirements to secure the provision of final versions of the Construction Traffic Management Plan, the Operational Freight Management Plan and the Travel Plan are contained with the dDCO in a form approved by those authorities.

Criticism of Timing of the Addendum Transport Assessment and Transport Assessment Evolution

- 3.10 As the ExA will be well aware, the Applicant has actively engaged with consultants acting on behalf of DFDS (GHD) and those for CLdN (RhDHV) throughout the Examination. The details of that engagement are confirmed in the Traffic and Transport Statement of Common Ground **[REP6-011]**.
- 3.11 The Applicant entered these discussions in good faith and sought to deal with queries and comments from both CLdN and DFDS in a timely manner (contrary to the suggestion by CLdN at **[REP9-022]**, paragraphs 4.13 – 4.14). These discussions were necessarily iterative and involved frequent additional comments being provided by DFDS and CLdN on the transport work, as is clearly identified from the meeting notes provided at **[REP6-011]**.

- 3.12 Much of the time was taken up dealing with unnecessary and obstructive criticisms from both DFDS and CLdN of base inputs to the Transport Assessment despite those having been agreed with the Statutory Highway Authorities (an example being the suggestion that the traffic flow inputs to the TA should be based on data from other sites more than 5 years old – dealt with at **[REP4-009]**).
- 3.13 A full set of updated assessments (and the Applicant’s position on the need for sensitivity testing) was submitted for review by all participants to the Examination (including the Highway Authorities) at Deadline 5 (see **[REP5-027]**, **[REP5-028]** and **[REP5-029]**).
- 3.14 In that regard, comments on the modelling work and interactions with the sensitivity tests were being received by the Applicant from DFDS as late as 21 November 2023 (see **[REP9-012]** paragraph 5.7). The Addendum provided (at the request of the ExA) a clear and concise summary of the final position of the applicant to which all parties have full transparency (see **[REP9-102]**, paragraphs 5.11- 5.13).
- 3.15 The criticisms, therefore, (see DFDS **[REP9-026]** paragraphs 2i and 24) are wholly unreasonable and do not reflect the proper and open way in which the transport issues relating the application have been considered both prior to and as part of the Examination.

Terminal Capacity and Management

- 3.16 DFDS confirm at paragraph 25 of **[REP9-026]** that their case is that “*the IERRT Terminal does not have the capacity to cater for the proposed throughput*”. This statement in itself confirms the continued attempt by DFDS to obfuscate the application submissions.
- 3.17 The Applicant’s position in terms of terminal capacity is clearly set out in **[REP8-027]**. Section 2 of that document sets out what has been assumed in terms of terminal design requirements and why. The conclusions of that assessment are clear and, indeed, consistent with DFDS’s own assessment work presented at **[REP7-056]**), as confirmed by the Applicant at **[REP9-012]**, paragraphs 5.32 – 5.36.
- 3.18 There is no competing evidence before the Examination which reaches a different conclusion to that of the Applicant.
- 3.19 It is common ground that appropriate management is required for any Ro-Ro terminal. Stena’s significant experience in that regard and, indeed, approach to the terminal management is clearly set out in **[REP7-072]**). The information provided by Stena Line, however, demonstrates a variety of tried and tested management tools and processes that it has available (both in respect of on-site and off-site matters) to ensure that the terminal can effectively and efficiently operate at the levels which have been indicated.

- 3.20 It is further clear that issues raised by DFDS (**[REP9-026]**, paragraph 26) and CLdN (**[REP9-022]**, paragraphs 4.23 – 4.24) as competitors to Stena Line about the expected operations in respect of dwell times, the number of marked bays on a plan and the size of the Terminal are not points that have any relevance in the context of the adequacy or robustness of the Transport Assessment. The Applicant's clear response to this point is covered in Section 3 of the Terminal Capacity Statement **[REP8-027]**.
- 3.21 Moreover, to suggest that Stena, as the future operator of the proposed IERRT development would actively support a proposal that it could not successfully manage and operate is nonsensical and the Applicant submits that no material weight can be given to such points that have been raised by DFDS in this respect.
- 3.22 There is, finally, no contrary evidence provided by any Interested Parties that this issue would lead to a material harm or impact.

Traffic Generation, Distribution and Impact and Sensitivity Testing

- 3.23 DFDS state at paragraph 24 of **[REP9-026]** that it took the Applicant five of the six months of Examination to correct errors discovered by them. This is completely incorrect. The issue with the PCU conversion was first brought to the attention of the Applicant via email on 18 September 2023 and this was discussed as part of the Examination (as summarised in DFDS's ISH3 summary **[REP4-025]**). The first draft of the update to Technical Note 2, with the correct HGV to PCU conversion, was provided to GHD (acting for DFDS) via email on 26 September 2023, just a week after the issue was identified. The first formal submission of this document following yet further comments from DFDS via email was made in **[REP5-028]**, approximately one month following the initial comments.
- 3.24 The timeframe between the issue first being identified and the inputs being agreed took approximately two months with the Applicant addressing comments as soon as reasonably possible each time comments were made by DFDS. DFDS and CLdN were fully engaged in the discussions on this point as is confirmed in the meeting notes provided in **[REP6-011]**. Ultimately, in any event, the issue is resolved as has been agreed with all parties, including the Statutory Highway Authorities and the Interested Parties.
- 3.25 In closing, both CLdN and DFDS make specific reference to items of concern relating to the detailed parameters in the TA. All of these points are either wrong, misleading or irrelevant to the outcome. These have all been covered in detail in **[REP9-010]** (for CLdN) and **[REP9-012]** (for DFDS), but the key ones are summarised below for ease of reference:
- 3.26 CLdN at paragraph 4.10 of **[REP9-022]** set out their four key concerns relating to the TA. These includes:

- 3.27 4.10.1 – Assessment of worst-case daily flows – This issue has been resolved and as confirmed at **[REP9-005]** the dDCO includes a limit on the daily level of units that can leave and enter the site.
- 3.28 4.10.2 – Unaccompanied/Accompanied Split and impact on Transport Assessment – This is further discussed at paragraphs 4.16 – 4.18. The curious (and unreasonable) position taken by CLdN here is that despite having agreed that the split would have no impact on the findings of the TA (this agreement is recorded at paragraph 40 of **[REP3-022]** for DFDS and at page 6 of **[REP3-020]** for CLdN), they now claim that more detail is required of the end user to determine the impact of scheme. That is clearly not the case.
- 3.29 As confirmed as early as Deadline 3 (and re-confirmed at **[REP4-009]**, Appendix 2) a change in the split of unaccompanied / accompanied movements would have no material impact on the TA. Indeed, if the level of unaccompanied freight increased as suggested by CLdN, the change would be beneficial in that it would flatten the profile of traffic across the day. Stena have nonetheless provided more detail on this matter at **[REP8-059]**.
- 3.30 Plainly, the Applicant’s assessment has been based on a robust assessment and there is no weight to be given to this point.
- 3.31 4.10.3 – Empty Tactor Ratios – The Applicant’s position is that the ratio adopted in the TA is robust, but this has nevertheless been resolved through the provision of a sensitivity test (see **[REP9-010]**).
- 3.32 At **[REP9-022]**, paragraph 4.10.4 and paragraph 4.20 and **[REP9-026]**, paragraph 27, CLdN and DFDS respectively repeat their position that the 85%/15% East Gate / West Gate split is flawed. That is demonstrably not the case and the Applicant’s position in that respect is clearly set out in Appendix B of **[REP5-027]**. This considered a range of factors which might affect usage, including location of local off-site employment areas and the existing usage of the gates for port users already in the vicinity of East Gate. These confirm the adoption of the 85/15 split to be wholly appropriate and evidence based.
- 3.33 For the reasons set out in Section 6 of **[REP5-027]** the overall assumptions adopted in the TA are considered to appropriately and adequately assess the impact of the proposals on the wider network. This has been agreed with all three Statutory Highway Authorities.
- 3.34 In contrast DFDS’s proposed 60/40 split **[REP9-027]**, paragraph 27 – echoed by CLdN at **[REP9-022]**, paragraph 4.22 is not supported by the evidence as already confirmed (and unchallenged by them) at paragraph 1.6 of Annex J of **[REP7-013]**.
- 3.35 As confirmed at paragraph 18.27 of **[REP8-023]**, without prejudice to the Applicant’s view that the TA is robust, the Applicant has provided a sensitivity test which enables the consideration of a range of different outcomes with an

increase in flows on the A160 corridor of over 200 PCUs higher than the Applicant's case – see Table 2 of Annex J of **[REP7-013]**. All three Highway Authorities confirm they have seen and considered those tests in addition to the base TAA case (for NH position see page 25 of **[REP9-005]** and page 13 (penultimate bullet) of **[REP8-037]**; and for NLC position see page 1 of **[REP8-040]**). NELC had no comments on the sensitivity testing because it resulted in less traffic on their network (the A1173).

- 3.36 Contrary to the suggestion at paragraph 28 of **[REP9-026]**, there are no “*errors or omissions*” in the sensitivity testing. A full response from the Applicant to those comments is provided at **[REP9-012]**, Appendix 1. The form of the sensitivity testing is wholly appropriate as confirmed at paragraph 5.23 of **[REP9-012]**. The basis of the sensitivity test was agreed with DFDS and CLdN (as recorded in the Traffic and Transport SOCG **[REP6-011]**).
- 3.37 The closing conclusions from both parties that now suggest this is not adequate (CLdN at paragraphs 4.38 and 4.42 of **[REP9-022]** and DFDS at paragraph 28 of **[REP9-026]**) have no evidential basis. They propose no evidenced alternative outcome nor do any of their preceding criticisms (as discussed above) hold any material weight or influence to the outcome.
- 3.38 In conclusion, it is clear that the transport implications of the proposed IERRT development have been subject to an extensive and comprehensive transport assessment. This has included wide and comprehensive consultation with NELC, NLC and NH – the three relevant Highway Authorities.
- 3.39 For the avoidance of doubt, all reasonable inputs from both CLdN and DFDS have been taken into account in the assessment.

Operational Freight Management Plan

- 3.40 At paragraph 4.22 of **[REP9-022]**, CLdN suggests that the Operational Freight Management Plan is needed because the 1,800 unit daily cap does not control key parameters such as assignment and highway network peak demand.
- 3.41 Control on those parameters is clearly and demonstrably not necessary. As stated by the Applicant at Section 1 of Annex J of the Addendum TA **[REP7-013]** the Applicant remains firmly of the view that the conclusions of the Transport Assessment are robust. This robust approach includes the assumptions made in respect of traffic generation (including solo tractor ratio) and assignment of HGVs.
- 3.42 As confirmed at paragraph 18.27 of **[REP8-023]**, without prejudice to that position, whilst the sensitivity testing enables the testing of a range of different outcomes, the ExA should note that it does assess what the Applicant considers to be a wholly unrealistic and as a consequence unreasonable assumption as to the level of traffic that would in fact use the A160 corridor.

- 3.43 That said, it is clear that a wide range of outcomes have been assessed, and found to be acceptable by the Statutory Highway Authorities. In that regard, the suggestion at paragraph 27 of **[REP9-026]** and paragraph 4.41 of **[REP9-022]** that National Highways require more detail at this stage is wrong. The position of NH is clearly set out above and is recorded in the SoCG between the Applicant and NH **[REP9-005]**. NH are content with the level of detail provided at this stage and that a final refinement of the OFMP can (and should) be dealt with once more detail of final terminal operation is fixed.

Interaction with EIA

- 3.44 At paragraph 31 of **[REP9-026]**, DFDS suggest that the EIA fails to assess appropriate receptors. This is nonsensical. The EIA at Chapter 17 **[APP-055]** clearly considers individual junctions, their sensitivity and the impact on them. It concludes the residual impact in terms of Driver Delay and Safety are insignificant / minor (see Table 17.18 of **[APP-055]**). The results of the final modelling do not alter those conclusions.

Mitigation

- 3.45 DFDS at paragraphs 32 and 33 of **[REP9-026]** and CLdN at paragraphs 4.30 – 4.36 of **[REP9-022]** continue to make unjustified and entirely inappropriate comments in claiming that there is a need for mitigation and that some mitigation should be sought as a result of the development.
- 3.46 The Applicant's position on this is set out at Annex A of **[REP7-013]** and in their response to DFDS at **[REP9-012]**, paragraphs 5.16 to 5.20.
- 3.47 This position of both DFDS and CLdN is completely contrary to the correct interpretation of the data, assessment, and Policy requirements. It is also completely contrary to the conclusions reached by all three Statutory Highway Authorities as confirmed in their respective responses to ExQ4 (NELC at **[REP8-039]**), NLC at **[REP8-040]** and NH at **[REP8-036]** and **[REP8-037]**). In this regard, as already noted, it is concerning that DFDS continue to pursue such points despite the evidence and are now seeking to criticise the expertise and clear position of each statutory highway authority without any basis for doing so.
- 3.48 The approach advocated by DFDS and CLdN in this regard has no policy or other technical basis and lacks any credibility. No weight can be given to those views.

4 Navigation

- 4.1 Both submissions from DFDS **[REP9-025]** and IOT Operators **[REP9-028]** repeat the various debates that have taken place on the subject of navigation and shipping throughout the course of the examination. No new substantive points are made by either party in their Deadline 8 submissions.
- 4.2 The points made by DFDS and the IOT Operators can be summarised as follows:

- Engagement on Navigational Topics;
- Navigational Risk Assessment;
- Design Vessel / EIA assessment;
- Impact protection measures;
- Tidal flow;
- Navigational Study of Enhanced Control Measures;
- Navigational study including the Eastern Jetty; and
- Proposed mitigations – requirements and protective provisions.

4.3 The submissions made by the IPs with regard to navigational matters at Deadline 9 are largely repetitions of points that have been made throughout the Examination, to which the Applicant has responded at each deadline. A brief summary of the Applicant’s response is provided below, cross referring to, but not repeating, the previous responses submitted by the Applicant.

Engagement on Navigational Topics

4.4 DFDS and the IOT Operators make various comments regarding engagement by the Applicant throughout the process on the subjects of navigational simulations and the NRA. The Applicant has undertaken three rounds of Navigational risk workshops alongside several rounds of simulations – including in November 2021, July 2022, November 2022, November 2023 (two events) and December 2023 [see for example **[AS-022]**, **[AS-023]**, **[REP7-033]**, and **[REP7-034]**. It has sought to work with Interested Parties wherever possible as demonstrated by further tidal current data collection prior to the submission of the DCO application and further simulations regarding enhanced controls during the DCO examination. This is despite the improbable extreme conditions that the asked to be considered in those simulations. Despite the DFDS aspersions of the Applicant’s approach i.e. (“*we know best*”), the Applicant has sought to take onboard and address feedback wherever possible. It has, however, become difficult to engage positively when the Interested Party clearly does not want the scheme to proceed.

4.5 The Applicant has expended significant effort to ensure that the simulations were carried out in a manner that is as transparent and collaborative as possible. This includes the circulation of detailed run plans and agendas in advance, as acknowledged by the IOT Operators (see Item 2 and Appendix 2 of **[REP8-057]** and **[REP8-058]**, and scheduling briefing meetings to allow IPs the opportunity to ask questions and provide feedback prior to the simulations taking place. This has been evidenced at numerous points throughout the examination including **[REP8-023]**, paragraphs 3.1 to 3.11 and Appendix 1 and in response to ISH5 Action Point 16 **[REP7-020]**.

Navigational Risk Assessment and Cost Benefit Analysis

- 4.6 DFDS and IOT Operators continue to suggest the Navigational Risk Assessment (NRA) for the project is defective and incorrect in reaching its conclusions on risk acceptability.
- 4.7 The Applicant's position on this is covered in the Applicant's Response to Relevant Representations **[REP1-013]** and Written Representations **[REP3-008]** and **[REP3-011]**, the Applicant's Reviews of the alternative NRAs provided by DFDS and IOT Operators **[REP6-030]** and **[REP6-031]**, the Supplementary Navigation Information Report **[REP7-030]**, and various responses at each deadline to comments made by DFDS and IOT Operators (e.g., **[REP5-033]**, **[REP5-034]**, **[REP6-028]**, **[REP6-029]**, **[REP7-024]**, **[REP7-026]**, **[REP8-022]**, **[REP8-023]**, **[REP9-011]** and **[REP9-012]**.
- 4.8 By way of summary, the conclusions reached in the Applicant's NRA **[REP7-011]** are based on a robust and detailed stakeholder engagement process, and account for the views of key port stakeholders, including the Humber Harbour Master and the Immingham Dock Master, IOT Operators and DFDS. The outcomes of the assessment are also affirmed by scenarios tested in the navigation simulation work that has been undertaken to support the IERRT project.
- 4.9 Comparison of the risk assessment undertaken by the Applicant **[REP7-011]** and those produced by DFDS **[REP2-043]** and IOT Operators **[REP2-064]** shows that the risk assessment outcomes are broadly similar. Notwithstanding the flaws in DFDS's **[REP2-043]** and IOT Operators' **[REP2-064]** assessments highlighted by the Applicant, including the use of COMAH methodologies **[REP6-030]** and **[REP6-031]**, the main difference between the alternative NRAs produced by the IOT Operators and DFDS compared to the Applicant's NRA are the judgments made with regard to the "tolerability" of the assessed risks – in that the alternative NRAs do not apply the same tolerability thresholds used by the Applicant who operates safe and efficient port marine operations across the Group's 21 ports and harbours.
- 4.10 Of crucial importance, the Harbour and Safety Board (HASB), as Duty Holder, consider that the risks associated with the IERRT development, taking account of the proposed Applied Controls, are tolerable and ALARP. The Applicant cannot overstate enough that it would not, in any way, be in the interest of ABP to construct a terminal that it did not consider to be safe.
- 4.11 A more recent point cited by DFDS and IOT Operators, is the accusation that the potential for up to 100 passengers using the IERRT has not been accounted for in the NRA. The potential for up to 100 passengers using the terminal has been made clear in all the submitted documents. The Applicant reiterates that the navigational risk for Ro-Pax is implicit in its NRA covering a three berth Ro-Ro facility and therefore covered in the NRA **[REP7-011]**.
- 4.12 As part of the assessment methodology, hazard scenarios were assessed against four receptors, one of which is 'people' (human life/personal injury) as captured in Table 15 of the Applicant's NRA in the five-by-five assessment matrix. In this regard, the potential for passengers to use the IERRT facility and vessels has been comprehensively assessed and is reflected in the hazard scenarios. The maximum outcome for 'People' is 'multiple fatalities'

which is recorded against numerous risks in the NRA. On this basis, and to be absolutely clear, the passenger number does not influence the risk outcome already recorded in the NRA.

- 4.13 IOT and DFDS make various comments relating to the cost benefit analysis. The Applicant's position regarding the Cost Benefit Analysis (CBA) has been consistent throughout the examination and the Applicant has provided the Examining Authority with further information within the Supplementary Navigation Information Report [REP7-030]. In summary the CBA supports the implementation of Enhanced Operational Controls from the start of operations (as advised in the IERRT NRA), whilst maintaining the ability to implement physical impact protection structures in the future if deemed necessary following a relaxation of the defined Applied Controls (enhanced tug usage) or the recommendation by the Dock Master or the SCNA. This is considered to be entirely proportionate and reasonable in the context of ongoing marine operations at the Port. On this basis, risks associated with IERRT are considered tolerable and ALARP – as was determined by the Duty Holder at the meeting of the HASB on 12th December 2022 and reaffirmed by the Duty Holder at the meeting of the HASB on Friday 8th December 2023.

COMAH and Societal Risk

- 4.14 IOT Operators reference COMAH in Paragraph 3.5 of [REP9-028]. The Applicant has explained how it assessed the navigational risk of building and operating IERRT. This assessment necessarily follows a set process which is specific to navigational risk assessments and is directly transferable to the Applicant's wider Marine Safety Management System as statutory harbour authority. Criticisms have been levelled at the NRA as it has not included a much more granular assessment of societal risk, unlike the information which has to be presented by a COMAH site operator in its COMAH safety report.
- 4.15 As addressed by the Applicant in [REP5-031] (NS.2.19 and BGC.2.04), [REP6-031], [REP7-030] (Para 4.5 – 4.10). The Applicant's NRA is not designed nor is it intended to assess Societal Risk, nor is the Formal Risk Assessment (FRA) for Marine Operations which forms the backbone of the Marine Safety Management System (MSMS). This is the sole function – and indeed is a crucial legal obligation - of a COMAH Operator's COMAH Safety Plan.
- 4.16 It is therefore the legal responsibility of the IOT Operators to undertake a societal risk assessment using HSE methodology to ensure that the risks and consequences listed within the NRA - amongst others - are controlled to levels acceptable to maintain public safety.
- 4.17 The IOT operators are incorrectly suggesting that unless the Applicant's NRA is 'COMAH-centric' in its approach, using HSE and COMAH methodology and descriptors, whilst also factoring in societal risk, it cannot be accepted as valid. This is simply not the case and would actually detract from the legitimacy of a COMAH safety report. Applying HSE Societal Risk Methodology to the whole of the NRA would lead to greatly inflated risk scores for non-COMAH related operations. Furthermore, including societal risk considerations within an NRA places the SHA in a position where it may be taking on a level of

responsibility for a COMAH site which should remain within the sole purview of the COMAH site operator.

- 4.18 The responsibility for setting tolerability levels sits squarely with the organisation responsible for marine/navigational risk, in this case ABP's SHAs for Immingham and Humber, and not, as incorrectly stated by IOT/NASH and DFDS, the stakeholders, Government or interested parties. Indeed, if DFDS or IOT Operators felt strongly that the Applicant, as SHA, has not correctly considered tolerability levels when devising its MSMS they are at liberty to consider developing their own MSMS and separately recording their compliance with the Code with the UK Government. The fact that they have not – and in fact rely on the Applicant's existing MSMS – is of concern when they instead wrongly ascribe societal risk factors to a risk assessment process for which these elements are patently unsuited.
- 4.19 The NRA considered the impact to wider receptors – essentially operations/functions of the port - from a marine navigation perspective by assessing the impact to:
- Port (wider port operations and associated functions),
 - Property (infrastructure etc.),
 - People (public, workers etc.),
 - Planet (Environmental receptors).
- 4.20 Taking these assessments into account, it is clear that the NRA did indeed consider the wider impact on the port operations, including impact on COMAH sites located within the port but necessarily stopped short of a societal risk assessment which remains the sole legislative responsibility of the COMAH site operator.
- 4.21 In conclusion, a risk assessment is only relevant for the specialist and individual area it is assessing. To assess using methods used for another type or area of risk assessment is inherently disingenuous as this would apply incorrect assessment criteria and could lead to the incorrect conclusions being drawn. This, in turn, could result in the risk being assessed in a more onerous way – with superfluous restrictions or mitigations being placed upon the activity – or conclusions being drawn which underplay the level of risk, unnecessarily placing people at risk.

Design Vessel

- 4.22 The issue of the design vessel has further been raised by DFDS, which is a repetition of points that the Applicant has responded to since ISH5 **[REP7-020]**. The Applicant reaffirms the position set out in previous submissions **[REP7-026]**, **[REP8-023]** – Section 5, **[REP9-012]** – paragraphs 5.47-5.51 that the design vessel provides a design envelope to ensure the IERRT infrastructure is adequately sized for future vessels across its 50-year design life. This position has been misconstrued by the Interested Parties who fail to acknowledge the duties of the Harbour Master Humber and Dock Master Immingham in ensuring that future vessels are adequately assessed to

ensure safe operation before being allowed to operate at the Port of Immingham **[REP7-020]** – point 30.

- 4.23 In summary, the design vessel is not an actual vessel in existence, it is a design envelope to ensure the facility is appropriate for the intended design life and usage. If, and when, new classes of vessels are requested to operate at the IERRT, the HMM and the Dock Master will, as part of their statutory duties, appropriately risk assess the vessel and determine any further controls as deemed necessary. The Applicant's position on this has been made clear at all stages in the Examination as noted above and its position is supported by the Harbour Master Humber's own submissions, for example at ISH5 **[REP7-067]**.

Impact Protection Measures

- 4.24 At **[REP9-028]**, the IOT Operators' comment that the Applicant's change request provides inadequate impact protection. The Applicant's principal position with regard to the provision of impact protection is clear and has been consistent throughout the examination. The Applicant does not agree that its change request is inadequate. The Applicant has provided extensive evidence, including in the Changes Request Report **[AS-072]** as well as the responses provided to the IOT Operators at **[REP7-025, REP8-022 and REP9-011]**.
- 4.25 In addition, the Applicant has spent considerable time and effort seeking to engage with the IOT Operators on this matter, including exploring the feasibility of the IOT Operators' suggested 'Beckett Rankine' design on a without prejudice basis and holding a series of design meetings. The Applicant's proposals for Impact Protection (if required) were underpinned by two detailed design reports provided at **[REP7-025]** and **[REP8-032]**.
- 4.26 The IOT Operators' submission **[REP9-028]** raises a number of comments in response to the Vessel Impact Protection Structure (VIPS) Concept Design report **[REP8-032]**. The Applicant produced this specifically in response to questions raised by the IOT Operators following its review of the Design Basis Report, which the Applicant supplied to the IOT Operators on 15 November **[REP7-025]**.
- 4.27 Due to the available time, the Applicant has provided initial responses to the matters raised. Paragraphs a) to d) below correspond directly to the IOT Operator's comments.
- a) The 5m offset between the impact structures and the IOT structures is deemed to be a reasonable allowance for the deformation of the VIPS plus allowance for construction purposes. As determined in **[REP8-032]**. The expected movement of the Finger Pier protection dolphin whilst absorbing this energy is less than 1 m at deck level and the preliminary assessment predicts that, although there will be large deformation within the ground, the strata below the upper layer of silt will not yield and it is predicted that from a geotechnical point of view the piles will not fail. On the other hand, the

anticipated movement of the Linear Protection Barrier whilst absorbing this energy is less than 1m at the level of the beam and the preliminary assessment predicts neither the strata below the upper layer of silt will yield nor will the piles geotechnically fail.

- b) The calculated impact speed of 1.8 knots for the 'future vessel' (i.e. maximum displacement vessel) results from a reverse calculation based on the maximum energy generated by the existing IERRT vessels. It is crucial to bear in mind, as noted above, that the "design vessel" is neither currently operational nor under construction. Instead, it serves as a set of parameters, used to future-proof the design of the IERRT infrastructure and define an envelope to allow for a robust and comprehensive EIA. This set of parameters takes into account factors such as draft, length overall, and beam. The implementation of Applied Controls, including potential towage and operating parameters set by the SHA, will be adjusted to align with the specific parameters of the actual future vessel when they become available. This approach is entirely consistent with standard practices for marine infrastructure, ensuring suitability over a 50-year design life.
- c) The available information on the as-built information for the IOT Finger Pier width indicated that the IOT finger Pier is 15m wide, the proposed Pier Protection Dolphin is proposed to be 14m wide to allow for future fender solution. The structures proposed are of a form that will allow for the inclusion of fendering to aid and protect vessels accessing the IOT Finger Pier.
- d) The ground conditions have been derived from the geotechnical investigation undertaken for the IERRT scheme and the nearest relevant boreholes complimented by the historic boreholes for the IOT infrastructure. The Geotechnical information will be further confirmed by the appointed contractor before the design is finalised for construction. However, as outlined in sections 7.1.4 and 7.2.4 of the Concept Design document [**REP8-032**], the evaluation results indicate that the proposed structures, when subjected to high collision loads, will generate significant moments and horizontal deflections in conjunction with the piled foundations. The preliminary assessment anticipates substantial deformation in the ground, particularly within the upper layer of silt. However, it is predicted that the strata beneath this layer will not yield, leading to the geotechnical that the piles will remain structurally sound. Nonetheless, a 5m offset between the impact structures and the IOT structures is considered a reasonable allowance, accounting for the deformation of the VIP and accommodating construction and maintenance requirements.

Tidal Flow

- 4.28 At paragraph 6.5 of [**REP9-028**], the IOT Operators comment that deficiencies have been identified in the Applicant's flow modelling. The Applicant does not agree with this statement and has evidenced the validity of the tidal flow model on multiple occasions, firstly in the Applicant's

representations at ISH2 (see item 29) and response to ISH2 Action Point 27 [REP1-009] and in the detailed modelling validation report at [REP6-033].

- 4.29 The IOT Operators' submission [REP9-028] contains a review of the 3D flow modelling report [REP8-019]. In response to which the following comments are provided.
- 4.30 The comments provided by the IOT Operators are largely either opinion or technical nuance. HR Wallingford considers that the flow modelling is entirely appropriate for the navigation simulations undertaken.
- 4.31 In respect of the comments at paragraphs 1.4 to 1.7 of [REP9-028], the ExA should be aware that the effect of the berthing piles was, in fact, included in the model.
- 4.32 The piles securing the pontoons were not included as their effect is negligible compared to the adjacent pontoon. The piles for the proposed Impact Protection were considered, and given they are in line with the current IOT infrastructure, can expected to be negligible in the way it affects either vessels operating at either IOT or IERRT.
- 4.33 With respect to Paragraphs 1.11 and 1.14, the Applicant should clarify the following points:
- Para 1.11: The 30m limit of effect was across the flow and is for times when the tide is flowing. The same paragraph in the report goes on to explain the larger areas of predicted effect up and down stream of the development. The larger changes between the IERRT and IOT around LW slack water, as referenced, are addressed starting two paragraphs further down with an extensive investigation – time series and overlaid vector plots used to further show effects on current speed and direction at these times.
 - The Applicant acknowledges the typographic error in this statement. HR Wallingford used 0.1 m/s as a threshold not 0.01 m/s. It is considered appropriate to use a lower threshold of change of 0.05 m/s when comparing two development schemes to fully demonstrate any changes in contrast with showing the effect of the development compared to baseline (existing) case, noting the natural variability in currents at the site from non-tidal effects and the magnitude of change in currents that might have an influence on navigation
- 4.34 Finally in addressing points raised in Paragraph 1.19, the Applicant disagrees with the assertion that the mean spring condition is representative of 50% of occurrences. The mean spring condition is roughly representative of the 67 percentile range. As such, 66% of the flows can be expected to be less than the mean spring flow and in the case of the Humber 50% of the flows are significantly less than those appreciated at mean spring.

Navigational Study of Enhanced Control Measures (Dec 2023 Sims Report) [REP8-029]

- 4.35 The Applicant notes the comments made by IOT Operators in **[REP9-028]** regarding the navigational simulations undertaken in December 2023 **[REP8-029]**. It should be noted that these simulations were undertaken and overseen by HR Wallingford, an independent consultant with 35 years of navigation simulation experience providing navigational consultancy not only to the Applicant but to the wider maritime industry (including the Interested Parties). The results and conclusions presented in HR Wallingford's reports are a collegiate effort, including the views of those present during the simulation which are then subject to expert review in the production process.
- 4.36 The Applicant is disappointed, therefore, with the tone of the IOT Operators' submissions on the December 2023 Navigational Simulations Study Report **[REP8-029]**. As the IOT Operators are aware, regardless of the client, HR Wallingford approach simulations in a flexible and collaborative manner, taking account of all views in order to ensure that the work undertaken is concluded jointly and without misunderstanding. As a result, there is never a single author of any navigational simulation report, with multiple experts (with multiple perspectives and views) involved. As such, the IOT Operators are wrong to view **[REP8-029]** as the product of a single author, as this document combines the views of all who attended the simulation sessions and has been reviewed and approved by other suitable experts. It is simply not the case that the author was neither qualified nor experienced for this work. The author is in fact highly qualified and experienced in this field, as were the rest of the HR Wallingford team that worked on this project.
- 4.37 The December 2023 study was intended to establish the effective level of towage to protect IOT infrastructure, assuming total controls failure and no other operational controls in place. For T class this was established as 1x 50t BP ASD tug. For the 50,000t vessel it was shown that 2x 70t BP ASD would be appropriate in most scenarios. The fact that there were failed simulation runs in a study that was establishing a limit should not be surprising or criticised – it should be commended as if all runs were successful, the Applicant would equally be criticised by Interested Parties for lacking proper scientific rigour by running simulations in sterile environmental conditions.
- 4.38 There is a significant difference between a total control failure and an electronic or human error. The total control failure was simulated because there is no effective mitigation in the event of that occurrence save for arresting the vessel using tugs or anchors. An electronic failure will not result in the long-term complete loss of control of the ship, as local reversionary modes are available; in a scenario such as that, a combination of the ship's power and tug support will mitigate the outcome. There is no effective way to simulate a non-specific human failure. However, there are plenty of ways to mitigate it, including training and oversight. Again, human error would not result in the long-term loss of full control of the ship, which is what was being simulated in the study covered by **[REP 08-29]**.
- 4.39 Generally, the Applicant also wishes to correct the record in relation to n comments made by IOT Operators in **[REP9-028]**, noting the discrepancies between the IOT Operators' account and the formal report study.

- In Para 8.2, The image is incorrectly labelled Run 11, however it is Run8 08c, which was assessed as a failed run. The run was undertaken again (in Run 08d) with increased towage (of 2 x 70tBP ASD tugs) and was assessed as a success. It is not clear why IOT are concerned with a scientific process that seeks to demonstrate the requirements for safe operations. It is inappropriate to highlight individual results out of context and present them as being conclusive, especially at this late stage.
- IOT Operators' record of the runs differs from the record taken by HR Wallingford and others during the simulation session.

4.40 Specifically, the Applicant wishes to make the following responses to points made by IOT Operators in relation to the simulation runs:

- The failure in Run 8c occurred 150m southwest from the IOT , with the vessel preparing to orientate for an approach to the berth. This is akin to every-day operations at the Port of Immingham as vessels prepare to enter Immingham Dock, which, presumably, IOT Operators do not consider to be a risk requiring impact protection today.
- The runs which passed close to the vessel berthed on IERRT1 were due to the initial setup of the simulation run and so were repeated, as described in the report.
- IOT have not provided a limit for lateral speed that they apply on their jetties, so during the study it was agreed that 0.5 knots was to be considered an objective limit for a successful landing. Only one run exceeded that speed.
- In any event, the 2 runs to which IOT refer were conducted in wind conditions which are higher than those normally considered by IOT to be safe for approaches to their berth, and which would only be allowed in exceptional circumstances. It is the exceptional circumstances that make the approach marginal, not the presence of the IERRT.

Navigational studies including the Eastern Jetty

4.41 DFDS in particular make reference to the simulations involving a tug berthed on the Eastern Jetty in their closing remarks **[REP9-026]** paras 9 and 10. The Applicant has addressed similar comments in **[REP9-012]** para 5.73 - 5.74 and Section 3 of **[REP8-023]**.

4.42 To summarise, the purposes of undertaking navigational simulations whilst developing infrastructure is to establish feasibility, both from a technical and operational aspects. Undertaking simulations at an early stage does not preclude further simulations being undertaken if and when new vessels are proposed for operation at the given marine infrastructure. These additional simulations would be undertaken at the behest of the Harbour Master, through his established processes for introducing new vessels. Furthermore, as useful as it might appear to asses operational limits by superimposing infrastructure

on track plots created without contemplation of that infrastructure, this is not actually and effective exercise (regardless of whether the result is positive or negative), as the result will not have taken into account how the pilot's decision making was influenced by the absence of that infrastructure - nor provide the pilots with the opportunity to take a different approach with the infrastructure now in mind.

5 **Need**

General Overview

5.1 The following paragraphs respond to the Deadline 9 submissions of CLdN on matters relating to need, alternatives and policy. These are contained in:

- (i) Response to the Applicant's Deadline 8 Submissions **[REP9-023]**, and
- (ii) CLdN Closing Submission **[REP9-022]**.

5.2 The responses provided by the Applicant are brief in nature due to the time available to review and consider the information provided. If time and process allowed a more substantive response would have been provided. Furthermore, just because a specific point raised by CLdN is not specifically responded to does not mean that the Applicant agrees with it or accepts it.

Response to CLdN's response to the Applicant's Deadline 8 Submissions [REP9-023]

5.3 CLdN's submission which purports to respond to the Applicants submissions on need matters is lengthy but does not actually raise any new issues which the Applicant has not already responded to in its various submissions.

5.4 The Applicant once again rejects the various repetitive criticisms suggesting it has changed its case during the examination and that it has failed to engage with the substance of CLdN's case. There has been no change of case or failure to engage at all.

5.5 The latest submissions of CLdN highlight again that it is limiting its approach to need as an issue focused on whether there is sufficient capacity to meet forecast demand. As the Applicant has made clear on numerous occasions through the examination, need matters are considerably broader than this (see for example, **[APP-040]**, **[REP1-009]** (in particular Appendix 1), **[REP2-010]** (in particular section 2), **[REP3-007]**, **[REP4-009]**, **[REP4-013]**, **[REP5-032]**, **[REP6-027]**, **[REP7-023]** and **[REP8-033]**).

5.6 CLdN's points in **[REP9-023]** can, as the Applicant understands them, be summarised down into:

- (i) a claim that the Applicant has used optimistic short-term growth rates which have led to an over-estimate of future demand;

- (ii) a criticism of the approach provided in the Market Study Update **[REP8-028]** regarding capacity estimates;
- (i) (iii) an alleged failure to fully take into account the position at the Port of Killingholme that CLdN say it has presented to the examination;
- (iii) a claim that there are inconsistencies in the assumptions justifying the case and deliverability of the IERRT scheme, and
- (iv) general criticisms about the lack of updated information within the Market Study Update **[REP8-028]**.

5.7 These points are responded to below. They are addressed without prejudice to the more fundamental points the Applicant has already made that CLdN's approach to need is contrary to policy in the NPSfP. It is for the Applicant to assess what it considers to be the need and the Applicant is then encouraged to bring forward development to reflect that, making its own decision as to what to bring forward and when in a free market environment, rather than the Examining Authority or the Secretary of State making those decisions, let alone CLdN – a competitor – restricting the Applicant's ability to do so and so restricting that competition.

Optimistic short term growth rate criticism

5.8 This is not a valid criticism:

- (a) As made clear within the Applicant's submissions (see for example section 8 of the original Market Study **[APP-079]** and section 4 of **[REP5-032]**) the forecasts produced on behalf of the Applicant take account of more than simply GDP forecasts. There are a series of drivers which support the level of growth which has been projected. The Applicant notes that no party to the examination has questioned these various drivers.
- (b) CLdN in its analysis are comparing different matters which are not equivalent. They refer (in Appendix 1 paragraph 2.2) to a 5% figure given by the Applicant in one of its earlier submissions and seek to compare this with the latest OBR short term forecasts for GDP development. The 5% figure quoted is from a Deadline 7 submission **[REP7-023]** of the Applicant (a point returned to below) which is the growth rate forecast for total shortsea trades on the Humber (i.e. both Lo-Lo and Ro-Ro trade) during the period 2022 to 2025. This takes account of all the various drivers set out within the Market Study, and not just GDP growth matters.
- (c) The 5% figure in **[REP7-023]** has been updated by the more recent information submitted at Deadline 8. CLdN's latest submission does not, therefore, acknowledge or refer to the further information on this matter contained within the Market Study Update **[REP8-028]**. For example, Table 6.1 of the Market Study Update shows the various growth rates presented to the examination and demonstrates that the growth rates used by the Applicant's advisors for the period 2023 to 2030 are not bullish at all. It is

not clear why CLdN now seek to focus on the 5% short term rate given at Deadline 7 when the Market Study Update demonstrates that there is general agreement on the average growth rate reported to 2030 overall.

- (d) The position to 2030 is more appropriate to consider (as the Applicant has done in the Market Study Update) for analysing such matters in respect of a new facility given the time it takes to develop such a facility. The presented CAGR until 2030 better smooths out any short-term macro economic fluctuations that will inevitably occur around the forecasted trend.
- (e) Short term macro-economic forecasts will inevitably fluctuate. In the past, macro economic projections have been revised both upwards and downwards, and it is very likely that this will again happen in the future. Such inevitable fluctuations further underline the need to plan in resilience and spare capacity in terms of port capacity.

5.9 For the reasons summarised above and explained in the Market Study Update, the Applicant does not consider that its short-term growth rates are over optimistic or too bullish. It has not over estimated demand.

5.10 In any event, the Applicant highlights that if one has regard to any of the forecasts or growth rates that have been presented to the examination, there is clearly common ground that there will significant growth in both overall shortsea units and unaccompanied Ro-Ro units on the Humber in the period to 2050. This is demonstrated by the analysis contained within Figures 6.2 and 6.3 and supporting text of the Market Study Update **[REP8-028]**. Furthermore, it is clear that growth will continue beyond this point in time – a position with which no party to the examination has indicated any disagreement.

5.11 The Applicant's position remains that there is insufficient existing capacity on the Humber to meet the forecast demand.

Market Study Update methodology approach criticism regarding capacity estimates

5.12 This criticism is also not valid:

(a) From the outset, the Applicant has always stated that the capacity of a Ro-Ro terminal is more than just the storage yard capacity – see, for example, paragraph 112 of the original market study **[APP-079]**. In addition, it was made clear in the original Market Study that the estimates were exactly that, just high-level estimates – see for example, paragraph 113 of the original market study. In addition, the original Market Study expressly provided a range of capacity estimates (see Appendix 7 of the original Market Study) in full recognition (as explained with various reasons) that it is difficult to provide a precise capacity estimate (see paragraph 116 of the original Market Study).

(b) What the Applicant has done through the Market Study Update **[REP8-028]** is to give the ExA the latest position on likely available capacity on the Humber. That takes account of the information that has been submitted to the examination and reflecting the reality of the point it had made previously that overall capacity is more than just storage yard capacity – this is a point which does not appear to have actually been disputed by CLdN. The approach in the Market Study Update is a far more appropriate approach in comparison to that adopted by CLdN which seeks to consider only storage yard capacity alongside current operational dwell times.

(c) Within the CLdN submission (see for example, paragraph 3.4 of Appendix 1) the Applicant is criticised for saying that the use of a dwell time must be employed with caution and that this is some sort of change of position. There is no basis for this characterisation of the Applicant's position. Paragraph 116 of the original Market Study **[APP-079]** highlighted this issue. Moreover, it is this issue which was also part of the reason why the original Market Study provided a range of capacity estimates using different dwell times.

(d) CLdN misunderstand or misrepresent what has been presented in the Market Study Update. Whilst the Applicant has used existing throughput levels at Immingham (DFDS), Immingham (Stena) and Hull as a starting point for the capacity considerations, the Market Study Update explains in the supporting text in section 5 how this has then been translated into the capacity indication provided.

(e) The only non Killingholme related criticism of the capacity figures presented is in respect of the identification of DFDS capacity. In Table 1 of its response CLdN suggest that the figure presented is not 'realisable capacity'. However, the figure the Applicant has provided is its assessment of realisable capacity in respect of DFDS's operations at Immingham based on all the evidence of relevance which has been provided. Moreover, DFDS has explained to the Examination that it has asked the Applicant for additional space at Immingham (i.e. by enquiring whether they could take over the existing Stena Line in dock facility when it is vacated) which is irreconcilable with CLdN's assertion that DFDS has significant additional capacity which they could realise within their current facilities. This specific point has been made by the Applicant since Deadline 7 (see, for example, paragraph 5.19 and 5.20 of **[REP7-023]** and not contradicted by DFDS.

5.13 On the basis of its evidence, including the points summarised above, the Applicant considers that the evidence it has presented on existing capacity is appropriate and robust. As has already been explained (see for example section 5 of **[REP7-023]**) the position presented by CLdN in respect of existing Ro-Ro capacity on the Humber is not considered to be credible.

A criticism over a failure to take fully into account the alleged position at the Port of Killingholme that has been presented to the examination by CLdN.

5.14 The Applicant has explained in detail why it has not simply adopted the position on future capacity alleged by CLdN at Killingholme. In summary:

- (a) the details of the alleged capacity in terms of what it is and how it would actually be achieved, or indeed when, has not been provided by CLdN, and
- (b) in any event, no relevant information has been provided on how that capacity could actually be delivered – for example, in terms of the necessary consents etc – such that there is no evidence that such capacity can be delivered.

5.15 This is only a summary of the submissions made by the Applicant in this regard – see for example section 5 of **[REP5-032]**. As far as the Applicant is aware, none of the significant and substantive points it has raised in respect of the alleged future capacity at Killingholme have been addressed in any substantive way by CLdN.

A criticism that there are inconsistencies in the assumptions justifying the case and deliverability of the IERRT scheme.

5.16 In this part of its submission (part 5 of Appendix 1 of **[REP9-023]**) inappropriately take just one of Stena Line’s example vessel scenarios from **[REP8-059]** to assert that the terminal will not be able to achieve the level of activity which has been indicated. These points have already been responded to and in particular paragraphs 5.8 to 5.10 of **[REP8-027]** explain why this approach is unreasonable, irrelevant and inappropriate. CLdN’s submissions rely upon the terminal being restricted to a specific type of vessel and vessel scenario over its lifetime which is clearly not an appropriate assumption,

5.17 As Stena Line made clear in **[REP8-059]** it is impossible to predict at the outset of a development every particular vessel variation which might occur over the lifetime of the terminal. The terminal has been designed to provide flexibility and resilience for at least a 50 year design life. Through that time markets will change and the operator will utilise vessels that meet those market demand, including providing an appropriate proportion of cabins for accompanied freight.

5.18 In this section of its submission CLdN are again being selective with the parts of the Market Study and Stena Line’s submissions they are quoting.

Market Study update criticisms

5.19 At Table 1 of **[REP9-023]** CLdN provide a table setting out their view of new information that has arisen since the Original Market Study and whether it has been considered in the Market Study Update **[REP8-028]**. Although CLdN criticise the Market Study Update the Applicant notes from this table that the information claimed by CLdN not to be incorporated into the update is actually very limited, namely:

- (i) latest OBR forecasts;
- (ii) dwell times and implications for realisable capacity, and
- (iii) Killingholme's alleged realisable capacity and expansion potential

5.20 These matters have all been responded to in the paragraphs above.

Response to CLdN's Closing Submission [REP9-022]

Criticisms of the Applicant

5.21 Throughout the CLdN closing submission repetitive criticisms are made about the Applicant's case which simply do not reflect reality. Thus, for example, the Applicant's case is described as selective, inconsistent, contradictory, piecemeal and subject to adjustment (for example, see paragraphs 1.3.3 and 1.5 of [REP9-022]).

5.22 The Applicant strongly refutes these allegations. It is the Applicant which has had difficulties with the way CLdN has shifted its position. By way of example, the ExA were initially informed by CLdN that Killingholme was not being put forward as an alternative (see page 2 of [REP2-034]) before then being informed that it was (see page 6 of the Applicants submission [REP4-009]).

5.23 Examination of the relevant application documentation and early submissions of the Applicant (see for example Appendix 1 of REP1-009) alongside the Applicants latest submissions (see for example see [REP8-033]), demonstrate that the Applicants position on need and lack of alternatives has remained consistent throughout the examination. The Applicant's extensive submissions to the examination on need, alternatives and policy matters clearly demonstrate that it has not only engaged with the substance of the points raised against its case by CLdN, but has responded to each point of substance that has been raised.

CLdN's involvement in the examination

5.24 Within the introductory section of its closing submission (at paragraph 1.4) CLdN claim why it decided that it needed to participate in the Examination of the IERRT facility. In fact, CLdN are a competitor Ro-Ro operator and shipping line and that in presenting the case it has at the examination have themselves highlighted that its motivation is driven by one of the very things about the proposed development that Government strongly seeks to encourage, namely competition in the sector. CLdN's representations and submissions to the examination on need are obviously commercial in nature. In so objecting in this way on need, they reinforce the case for the development itself in terms of Government policy in meeting all the aspects of need identified in the NPSfP.

- 5.25 At paragraph 1.4, CLdN seek to rely on alleged factual inaccuracies about its facility at Killingholme as justification for its involvement. Quite apart from the fact that CLdN has not, throughout the examination, produced evidence to support its claims (such as the claimed ability to develop additional capacity without consent) it is important to note that the Applicant did contact CLdN in advance of the submission of its application in an attempt to agree factual information about Killingholme. No response was forthcoming from CLdN – see paragraph 4.8 and Appendix 1 of **[REP7-023]**. CLdN, therefore, had a clear opportunity from the Applicant to provide factual information in respect of Killingholme in advance of the application being submitted but chose not to do so and to remain silent.

CLdN's analysis of the legal and policy framework

- 5.26 CLdN's analysis of the legal and policy framework set out within section 2 of its closing submissions is selective and in a number of respects wrong.
- 5.27 For example, paragraphs 2.7 and 2.8 of CLdN's closing submission represent a very selective summary of sections 3.4 and 3.5 of the NPSfP. As a result, CLdN's summary of the need identified in the NPSfP that is provided in paragraph 2.8 is incorrect.
- 5.28 The Applicant notes that CLdN's summary position provided in paragraph 2.10 of its closing submission is a repeat of points in its Deadline 2 Written Representation submission **[REP2-031]**. That Written Representation – including the matters now summarised by CLdN - was addressed in detail by the Applicant in, for example, **[REP3-007]**. The correct position in respect of the legal and policy framework to be applied in respect of need and alternatives matters has been presented in a consistent way in various of the Applicant's submissions throughout the examination. In addition to **[REP3-007]** see also **[REP1-009]** (in particular Appendix 1), **[REP2-010]** (in particular section 2), **[REP4-009]**, **[REP4-013]**, **[REP6-027]**, **[REP5-032]**, **[REP7-023]** and **[REP8-033]**.

CLdN's submissions on the Proposed Development and the Examination

- 5.29 Throughout the examination process, CLdN has either misunderstood or are misrepresenting the position on need which has been presented by the Applicant. Section 3 of CLdN's closing submission is a further demonstration of this approach.
- 5.30 For example, the introductory paragraphs of this section of the closing submission selectively quote from various aspects of the IERRT application documentation that refer to the urgent and imperative need for the project. As already made clear – see section 4 of **[REP7-023]** - the Applicant's case is not, and never has been, that an urgent and imperative need only relates to overall demand and capacity which is the mischaracterisation that CLdN are again putting forward in its closing submission (see for example the clear concluding position given in paragraph 3.34 of the CLdN closing submission).

- 5.31 The various quotations from the Applicant's submissions relating to this matter presented by CLdN ignore the full case. Thus: (a) when referring to the broad overall need for the project (i.e. the need identified within the NPSfP and the separate demonstration of need identified by the Applicant) the quotations are highlighting that the broad overall need for the project is urgent and imperative, and (b) when referring to a specific element of the overall need for the project, those quotations are highlighting that the specific element of need being referred to is itself urgent and imperative.
- 5.32 A significant amount of the closing submission of CLdN is given over to the issue of demand and capacity. Leaving aside the fact that, as indicated above, the Applicant's case is not, and never has been, that an urgent and imperative need only relates to overall demand and capacity elements of need considerations, the Applicant strongly disagrees with the position taken by CLdN on this matter. These matters are further touched on in the first part of this section of this document in respect of the response provided to CLdN's submission **[REP9-023]**.
- 5.33 The Applicant's evidence demonstrates that the need which it has put forward is much more than simply the established need in the NPSfP, or a need in terms of just demand and capacity, even though in respect of those specific issues, future demand is significant and existing capacity is not sufficient to meet that demand. The need is much broader than that and it includes, of course, Stena Line's needs which CLdN ignore.
- 5.34 In terms of future capacity, the claims made by CLdN about the alleged potential future capacity at Killingholme have not been evidenced. But even if they were, such additional future capacity would not meet the need which has been identified and which is urgent and imperative.
- 5.35 Within section 3 of its closing submission, CLdN again make claims relating to the operation of the IERRT facility and its ability to handle the level of throughput which has been indicated. These arguments have been responded to by the Applicant, most recently in paragraphs above. Within its closing submissions CLdN attempt to link these points back to the aspect of the NPSfP (at paragraph 3.3.3) which indicates that, amongst other things, new port infrastructure should be functionally well designed. However, CLdN's points on this issue do not relate back to the physical design of the terminal.
- 5.36 At the end of section 3, CLdN repeats a claim that the proposed development is 'at best competition-neutral' and raise questions about resilience matters before concluding (in paragraph 6.1.4) that the proposed development does not provide a positive contribution to these matters. The Applicant has demonstrated that the evidence just does not support CLdN's position. CLdN's conclusions are irreconcilable with the facts. The proposed development would provide an existing and established Ro-Ro operator – Stena Line – with a facility that they require to grow and expand their

operations and activities on the Humber Estuary. It would provide them with the ability to operate Ro-Ro vessels in an appropriate way from in-river berths, with sufficient storage and cargo handling areas and where, as the terminal operator, they will have control over their own operations and future activities – which as they have explained is not the case at the Port of Killingholme even if they had been offered space on commercially acceptable terms which they have not.

- 5.37 In CLdN's closing submission there is an absence of any consideration of that element of the need which relates to the specific needs of Stena Line. The position of Stena Line is clearly set out in their deadline 9 submission [**REP9-029**] reflecting the evidence that they have given to the examination, and that position of Stena Line is not addressed by CLdN.

Alleged harms arising from the proposed development and the planning balance

- 5.38 CLdN seek to give the impression that significant harms would be generated by the development, but these are not identified. Its closing submission refers to alleged transport related harms – these claims are addressed as appropriate by the Applicant in this response document – but again such assertions of significant harm are impossible to reconcile with the assessments by all of the relevant highway authorities which have concluded that there is no objection to what is proposed.
- 5.39 CLdN suggest in paragraph 6.8.1 in respect of the Planning Balance that there is limited policy support for the Proposed Development. This is simply not the case. The detailed and comprehensive policy analysis which the Applicant provided as part of its application – found within the Planning Statement and its appendices [**APP-019**] – including the policies contained within the NPSfP show the strong support the Proposed Development enjoys. CLdN has not provided any substantive evidence to indicate that the policy analysis provided by the Applicant is incorrect or that – as now claimed in paragraph 6.8.2 – the Proposed Development does not perform well against national policy tests.
- 5.40 In respect of the other Planning Balance matters raised by CLdN in paragraph 6.8 and following, for the reasons set out within the Applicant's extensive application documentation and submissions to the examination:
- (i) The proposed development does benefit from the presumption in favour set out in the NPSfP and would meet a need which is both urgent and imperative;
 - (ii) The proposed development is both economic and efficient – something which in any event the NPSfP makes clear is a matter to be left to the market to consider;
 - (iii) There are no material harms arising from the Proposed Development, only significant benefits which would outweigh any harms even if they existed;

- (iv) The proposed development – based upon very clear and robust evidence – does not generate an adverse effect on the integrity of protected sites but, in any event, the need it meets has been demonstrated to constitute Imperative Reasons of Overriding Public Interest, and
- (v) Alleged existing and future capacity at Killingholme – even if it could be satisfactorily demonstrated that such further capacity exists and could be delivered, which CLdN has failed to do – is irrelevant under the policy framework of the NPSfP. Even if it were relevant in principle, it does not meet the elements of the need identified, nor Stena Line’s needs anyway, and it is simply incapable of being an alternative. Neither would such capacity – even if it could be delivered - reduce the weight of the need case to the extent that it would not constitute Imperative Reasons of Overriding Public Interest.

6 Protective Provisions and Statements of Common Ground

- 6.1 As stated above, no new substantive points regarding protective provisions have been made by IOT Operators, CLdN or DFDS. As such, the Applicant does not consider that its position as stated in **[AS-078]**, **[REP7-029]**, **[REP9-011]** and **[REP9-012]** has changed.
- 6.2 The Applicant is confused by DFDS’s submissions on the preparation of a Statement of Common Ground. The Parties have continually sought to engage in the preparation of that document (**[REP9-009]** sets out the timeline of that engagement), but it appears that DFDS are surprised that the Applicant might want to state its position with regards to the new points raised by DFDS during the drafting process; in order that the Applicant might clarify its position and assist the ExA. No other party has made analogous submissions as to the Applicant’s approach to SoCGs.
- 6.3 Regardless, a completed SoCG with DFDS has been submitted at Deadline 10 (Application Document 7.7).

7 Biodiversity, Ecology and Natural Environment

- 7.1 The Marine Management Organisation (MMO), Environment Agency, and Natural England have all provided their views relating to biodiversity, ecology and the natural environment throughout the course of the examination.
- 7.2 The Applicant is pleased to have reached agreement on all matters raised by the MMO and the Environment Agency, as recorded in the MMO’s Statement of Common Ground (Application Document 7.8) and the Environment Agency’s letter to the ExA dated 10 November 2023 **[REP6-041]**.
- 7.3 The Applicant understands that two principal issues remain outstanding with Natural England as stated in **[REP9-018]**:
- In-combination effects of intertidal habitat loss with other plans and projects on the ‘H1140 - mudflats and sandflats not covered by

seawater at low tide' feature and A2.2 and A2.3 sub features of the 'H1130 – Estuaries' feature of the Humber Estuary SAC; and

- Effects of construction disturbance on the Humber Estuary SPA bird features.

7.4 Natural England is of the view that an adverse effect on integrity (AEoI) cannot be ruled out in relation to these effects.

7.5 The Applicant has set out in detail on multiple occasions why it considers this not to be the case. Rather than repeat this again here, the Applicant would like to direct the ExA towards its previous submissions:

- Applicant's Response to Relevant Representations **[REP1-013]**;
- Applicant's Response to Natural England's Written Representation **[REP3-014]**;
- Applicant's Response to Natural England's Deadline 6 submission **[REP7-027]**;
- Applicant's Response to Natural England's Deadline 7 submission **[REP8-024]**; and
- Applicant's Response to Natural England's Deadline 8 submission **[REP9-013]**.

7.6 The Applicant is also providing at Deadline 10 (at Application Document 10.2.106) a full and detailed response to these two issues in its response to Natural England's Deadline 9 submission.

7.7 The Applicant has also provided information in multiple updates to the Habitats Regulations Assessment Report (HRAR) to satisfy NE's request for further information **[APP-115, REP5-020, REP7-014, REP8-014]**.

7.8 As well as the above, ten meetings and presentations have been given to NE, with supporting signposting documents and meeting notes¹, to explain the findings of the assessments (see Table 2.1 in SoCG **[REP6-010]**).

7.9 The Applicant notes with frustration the lack of clear and constructive advice from Natural England until very late in the process, where it has 'sat on the fence' on many key issues, preventing constructive discussions taking place. This is despite the Applicant's multiple requests for engagement with Natural England to understand its position and attempts to reach a mutually agreeable position. The fact that Natural England did not attend any of the Issue Specific Hearings despite the obvious importance of the issues it has raised, serves to demonstrate this point.

7.10 Overall, the Applicant's position is that noise and visual disturbance to birds during construction (with the proposed mitigation in place based on a 200 m

¹ The information contained in these signposting documents and meeting notes has been submitted to the examination in the revisions to the HRAR or in the Applicant's submissions at each deadline.

disturbance distance) does not have the potential to cause an AEol. Similarly, the intertidal loss of habitat in-combination with other plans and projects is not considered to result in an AEol. The Applicant has gone through great effort to provide Natural England with the information it has requested, and a substantial and robust evidence base has been gathered to support the Applicant's assessment. Conversely, Natural England has not been able to provide any substantive material or evidence to promote taking an (in the Applicant's view an overly) precautionary approach. Further detail on the Applicant's position is set out in Application Document 10.2.106.