

Immingham Eastern Ro-Ro Terminal

Response to Secretary of State Consultation Letter

**Associated Petroleum Terminals (Immingham) Limited and
Humber Oil Terminals Trustee Limited**

Planning Inspectorate Ref: TR030007

22 May 2024

1 EXECUTIVE SUMMARY

- 1.1 These comments are filed on behalf of the IOT Operators in response to the Secretary of State's consultation letter dated 9 May 2024, which requests comments from the IOT Operators at paragraphs 6 to 10.
- 1.2 The Secretary of State at paragraph 8 offers amendments to Requirements 18 and 19 which may be required "if he were to agree with the IOT Operators' position on this matter". The IOT Operators are concerned that there has been a misunderstanding of their position so for clarity would restate that the IOT Operators consider that the proposed IERRT Development cannot be considered acceptable. That would remain the case with the amendments proposed to Requirements 18 and 19.
- 1.3 It is submitted that the critical context for consideration of these issues is the national significance of the IOT Operators' facilities (the oil terminal and the two refineries which depend on it) and their important contribution to energy security within the UK. This provides a strong countervailing need to the claimed demand for the IERRT and the risks to the IOT operations should be approached with particular care and caution.
- 1.4 Without adequate mitigation the adverse impact of the proposed development would outweigh its benefits and accordingly require refusal of the development consent. The Applicant has failed to provide a development proposal which provides adequate mitigation.
- 1.5 The amendments proposed by the Secretary State mandating the inadequate mitigation measures in Work No. 3(b) would not change IOT Operator's position in that regard. They are preferable to those proposed by the Applicant, but remain insufficient. If they were to be imposed, they should enable the IOT Operators to approve the proposed specification of the measures proposed, and delivery of **both** Works 3(a) and 3(b) should be mandatory.
- 1.6 Even in those circumstances, the IOT Operators' case would be that the mitigation would be inadequate. The footprint allowed by the Applicant is simply insufficient. However, it would be an improvement on the Applicant's seriously flawed proposals.

2 IOT OPERATORS' POSITION

- 2.1 As has been set out in previous representations to the ExA, and does not appear to have been disputed, the IOT Operators' facilities are of national significance to UK energy security. The Relevant Representation **[RR-003]**, Written Representation **[REP2-062]**, and various submissions through to their Deadline 9 submissions **[REP9-028]** submitted by the IOT Operators set out the importance of the IOT and the refineries to UK energy security. This has been emphasised by the recent draft version of NPS EN-1 and in the UK Government's recent Energy Security Plan which is clear that notwithstanding the move to net zero, security of energy supply from fossil fuels will remain crucial.
- 2.2 The IOT and the refineries form a critical national resource with the refineries making up approximately 27% of the UK's refining capacity and around 45% of UK's marine oil going through the IOT – percentages which are expected to increase with the imminent closure of the Grangemouth refinery in 2025. Issues such as shipping and navigation and its potential impact on the IOT Operators' Control of Major Accident Hazards safety case is an important consideration. The IOT and the refineries form a strong countervailing need to the claimed demand for the IERRT and the risks to the IOT operations should be approached with particular care and caution on an agent of change basis.
- 2.3 The context for considering the DCO and mitigation measures also includes the fact that there are no comparable facilities advanced by ABP which involve the operation of a large ferry terminal in such proximity to an oil terminal and associated infrastructure. This adds to the need for a significant precautionary approach to be adopted towards the proposals and mitigation.

- 2.4 The IOT Operators consider that the development, both as proposed and with the incorporation of the amendments outlined in the change request, remains inadequate. That was outlined in its closing submissions to the examination, including for example their Deadline 7 submissions [REP7-069] and restated in their Deadline 9 submissions [REP9-028].
- 2.5 The mitigation measures, in terms of vessel impact protection, are those identified by the Secretary of State as Works No. 3(a) and 3(b). The issue is that those works – even if both were required in absolute terms – would not amount to adequate mitigation of the risks identified by the IOT Operators.
- 2.6 The detailed commentary provided by the IOT Operators to the Applicant on the inadequacy of the proposed mitigation measures is set out in a letter appended to Deadline 6 submissions [REP6-046]. Whilst the queries and issues raised in those submissions developed during the course of examination, the fundamental concerns raised about the inadequacy of the proposed mitigated remained.
- 2.7 The mitigation measures the IOT Operators have consistently identified as being necessary for the safe operation of the IERRT are not included in the development as proposed and the vessel impact protection being offered by the Applicant is inadequate to address the IOT Operators' concerns. The impact protection measures included in the proposal are not designed to withstand the size and displacement of vessels that will visit the IERRT as anticipated by the design vessel specified in the Applicant's ES [APP-038].
- 2.8 The IOT Operators seek appropriate controls, requirements and protective provisions that would adequately mitigate the risk of a potentially catastrophic collision between vessels associated with the IERRT and the IOT as a top tier COMAH site.
- 2.9 Should the development be found to be acceptable such that the DCO is granted, and without prejudice to their primary case, the IOT Operators set out in their Deadline 9 submissions that the scheme should be subject to at least both of the following:
- (a) Protective provisions, requiring the delivery of appropriately designed vessel impact protection offered by ABP in its change request; and
 - (b) Additional operational controls, secured together with those other protective provisions sought by the IOT Operators.
- 2.10 This secondary position also remains unchanged should the Secretary of State's proposed amendments be incorporated as all impact protection measures offered by the Applicant are still not mandatorily required and no additional operational controls have been secured to adequately mitigate the risk inherent in the proposed development.

3 PROPOSED AMENDMENTS

- 3.1 Without prejudice to the IOT Operators' position, the Secretary of State's proposed amendments to Requirements 18 and 19 are much to be preferred, in comparison to the Applicant's preferred DCO, but are not acceptable without the further measures put forward by the IOT Operators.
- 3.2 All impact protection measures offered in the proposed development should be secured and delivered prior to the introduction of the risk. The IOT Operators therefore consider that Work No. 3(a) should equally be secured on a mandatory basis, as would appear to be intended with regard to Work No. 3(b).
- 3.3 In respect of Work No. 3(b) and Requirement 19, it is noted that there is no mechanism suggested to identify the design of the mitigation measures, and for such measures to be delivered in accordance with that design. If such a Requirement were to be included, it is essential that the IOT Operators approve the specification of the measures proposed or at the very least have a significant influence on its design. Indeed, it would be appropriate for there to be an independent determination mechanism to resolve any disagreements.

- 3.4 However, as expressed above, mandating inadequate protection measures does not address the fundamental safety concerns raised by the IOT Operators. These amendments would be an improvement on the Applicant's fundamentally flawed design, but that design would remain incapable of adequately mitigating the risks identified.

4 ENGAGEMENT ON PROTECTIVE PROVISIONS

- 4.1 In response to the request for an update on Protective Provisions, the Applicant has made no attempt to engage on this since the close of examination and there is no change from the position at that time. It will be for the Applicant to explain why it has taken that approach.
- 4.2 The Applicant's assertion that the provisions sought by the IOT Operators were not feasible due to "navigational, engineering, environmental and scheme viability reasons" (as addressed in the IOT Operators Deadline 9 Submissions **[REP9-028]**) is not justified.

5 REFERENCES TO THE IOT OPERATORS

- 5.1 In response to the proposed replacement of the term "the operator of the Humber Oil Terminal" with the term "IOT Operators", with the terms "IOT" and "IOT Operators" being added to the interpretation is appropriate and accepted.

6 ENVIRONMENTAL IMPACT ASSESSMENT

- 6.1 Without repeating in detail its submissions made during the Examination (see Deadline 7 Submissions **[REP7-069]** which also cross references the information in **[REP5-036]**; Deadline 9 submissions **[REP9-028]** and Additional Submissions **[AS-091]**), the IOT Operators repeat the point that the ES failed to undertake a compliant *Rochdale* envelope exercise and to undertake the task it said in Chapter 2 of its ES that it would do so by reference to the design vessel. ABP failed to assess in the ES and NRA the impact of the design vessel and instead assessed much smaller vessels.
- 6.2 The consequence of this failure is that unless the DCO limits the use of the proposed IERRT to those vessels assessed by the ES (including the NRA which forms part of it), the DCO cannot be granted as a matter of law: reg. 4(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017.

7 BALTIMORE BRIDGE INCIDENT

- 7.1 The recent incident involving the containership *Dali* demonstrates the potentially catastrophic outcomes of large vessel shipping accidents and the crucial need for robust impact protection measures.
- 7.2 A power and propulsion failure caused the *Dali* to strike the bridge's southern pier, leading to the tragic fatalities of six construction workers and significant infrastructural damage.
- 7.3 The bridge was equipped with protective dolphins and a fendering system around the pier, designed to absorb impact and prevent direct contact. However, whilst the protective measures may have reduced the impact, they were ultimately insufficient to prevent the collision's severe consequences when the vessel lost directional control.
- 7.4 This incident underscores the necessity for comprehensive impact protection measures to be in place and to a sufficient level to prevent similar tragedies and protect vital infrastructure from significant damage. It also underlines the need for a far more precautionary approach than ABP was prepared to accept.
- 7.5 It is also relevant to note that although there was impact protection in place at Baltimore, the size of vessels using the port had increased considerably since it was put in place. This further emphasises the need to limit the vessel sizes at the IERRT in the DCO to that assessed as part of the ES and used to inform the design of impact protection measures.

8 CONCLUSION

- 8.1 The importance of the IOT, as well as the Humber and Lindsey Oil Refineries, as nationally significant pieces of infrastructure has been consistently emphasised in submissions from the IOT. Vessel movements to and from the IOT are critical to the operation of the Refineries and any adverse material impact to the operations at the IOT may result in prejudice to the continuing operations of the Refineries.
- 8.2 Any adverse material impact to the continuing operation of the Humber Refinery or the Lindsey Oil Refinery would be contrary to the public interest in terms of the impacts on the local and national economy and on the UK's energy security. The essential need for the IOT and Refineries means that the need for the IERRT Development, and any risks it creates for the safe and efficient operation of the IOT and refineries, should be considered in this context.
- 8.3 It is important to consider whether in any event the DCO application is EIA compliant and, if not, to impose conditions limiting the scale of the vessels able to use the proposed facility.
- 8.4 The protection measures included in the development as proposed are inadequate to mitigate the adverse impacts and risks identified by the IOT Operators. Whilst the Secretary of State's proposed amendments to the DCO Requirements are an improvement on the Applicant's proposals, the protection measures would nevertheless remain insufficient to enable the safe operation of the IERRT and IOT.