

Department of Transport  
Great Minster House  
33 Horseferry Road  
London  
SW1P 4DR

By email to – [imminghameasternroroterminal@  
Planninginsectorate.gov.uk](mailto:imminghameasternroroterminal@Planninginsectorate.gov.uk)

██████████@clydeco.com  
Dir Line: +44 ██████████

Our Ref  
BG/10276966

Your Ref

Date  
6 September 2024

Dear Sir/Madam

## **Planning Act 2008 and the Infrastructure Planning (Examination Procedure) Rules 2010**

### **Application by Associated British Ports Seeking Development Consent for the Immingham Eastern Ro-Ro Terminal (“the Proposed Development”)**

#### **1 Introduction**

1.1 We write on behalf of our client Associated British Ports, (the “Applicant”) in relation to the above Proposed Development. On 9 May 2024 the Secretary of State wrote to the Applicant and a number of Interested Parties posing a number of questions. The Applicant’s response to the Secretary of State’s request was provided by letter dated 23 May 2024.

1.2 In that letter, we undertook to keep the Secretary of State informed as to any development in the light of the Applicant’s ongoing discussions with the various Interested Parties and we trust the following may be of assistance –

#### **2 Habitats Regulations Assessment**

2.1 It is our understanding that Natural England have now agreed that the Proposed Development will not have an “adverse effect on integrity” either in combination or cumulatively – their letter dated 23 July 2024.<sup>1</sup> In their response, Natural England have concluded as follows -

*Natural England consider that in-combination impacts between IERRT [i.e., the Proposed Development] and IGET [i.e., the adjacent Immingham Green Energy*

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<sup>1</sup> (Response to the Secretary of State Consultation 2 of 9<sup>th</sup> July from Natural England – Immingham Eastern Ro-Ro Terminal).  
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Project] *have now been adequately addressed through the IGET project and therefore compensatory measures are no longer required for either project*

2.2 To that end, the Applicant has agreed the terms of a Unilateral Undertaking made under the provisions of section 106 of the Town and Country Planning Act 1990 with the East Riding of Yorkshire Council (the relevant Local Planning Authority for the area) by which the Applicant undertakes to allocate an area of one hectare within the Outstrays to Skeffling managed Realignment Scheme for a period of not less than 30 years as “environmental enhancement”- intertidal habitat. The terms of the agreement have been agreed by both the Applicant and the Local Planning Authority and the Unilateral Undertaking is currently being executed and it is anticipated will be completed imminently.

### 3 ***Volkswagen Group United Kingdom Limited (“VWG”)***

3.1 Whilst the Applicant wishes to retain the powers of compulsory acquisition in relation to VWG as noted in our letter of 23 May 2024, positive negotiations are ongoing and as previously stated, the Applicant remains confident “*that the current negotiations will be successfully concluded and VWG relocated in advance of the Applicant’s need to commence works in the Western Storage Area*” thereby avoiding the need for the Applicant to rely on its powers of compulsory acquisition.

### 4 ***Network Rail Infrastructure Limited (“Network Rail”)***

4.1 The Secretary of State will be aware that Network Rail had objected to the Proposed Development on the basis that they required certain assurances regarding the operation of the adjacent rail infrastructure. Those assurances have now been provided by the Applicant, and by letter dated 23 August 2024 addressed to the Transport Infrastructure Planning Unit, the solicitors to Network Rail have confirmed that their client’s objection has been withdrawn.

### 5 ***Impact Protection Measures***

5.1 In the Secretary of State’s letter of 9<sup>th</sup> May, the Applicant was asked by the Secretary of State to consider a number of options in the context of the provision of Impact Protection Measures (IPM) designed to provide added protection to the adjacent marine infrastructure operated by the “IOT Operators” as defined in the draft DCO. The Secretary of State is aware that the Applicant, in acknowledging the suggestions made, has responded that in light of its statutory obligations as the Statutory Harbour Authority and as the operator of the Port of Immingham – as rehearsed during the examination – it is legally required to remain the final arbiter as to whether IPMs should be provided – and as the Secretary of State is aware, all of the evidence given during the course of the examination by the Applicant as supported by the Applicant’s external consultants indicated that IPMs were not in fact required.

5.2 The Applicant also pointed out that to impose an obligation on it in its capacity as SHA and operator of the Port of Immingham would be to create a serious precedent which would have implications for all port operators/SHA’s throughout the UK by reason of the fact that statute has provided that the decision and statutory responsibility for the safe operation of a port lies with the operator and the SHA – and so it follows, does the liability.

5.3 On that basis, the Applicant remains of the view that whilst IPMs are not required in the context of the Proposed Development. As the Secretary of State is aware, however, having considered the Secretary of State’s suggestions set out in the letter of 9 May, the Applicant is prepared to accept that should the Statutory Conservancy and

Navigation Authority (essentially the Humber SHA) or the Port of Immingham's Dock Master at any time inform the Applicant as the operator of the Port that IPMs are required, then the said IPMs must be provided by the Applicant in compliance with the terms and conditions set out in Schedule 1 of our letter dated 23 May.

- 5.4 Nonetheless, the Applicant has throughout been fully cognisant of the IOT Operators' concerns and has no wish to perpetuate a break in commercial relations with an important and valued tenant within the Port. Indeed, it is unfortunate that both the Applicant and the IOT Operators by the close of the examination had reached seemingly diametrically opposed positions.
- 5.5 To this end, the Applicant has recently met with the IOT Operators to establish whether some form of positive compromise regarding the provision of IPM could be achieved. The Applicant indicated at the meeting that it has no wish to perpetuate the differences between the parties and has queried whether the IOT Operators would be prepared to reopen discussions regarding the provision of IPMs – albeit at this late stage.
- 5.6 Whilst it is still early days in terms of resolving the issues between the two parties the Secretary of State will, we hope, be pleased to learn that positive discussions between the Applicant and the IOT Operators are hopefully about to recommence
- 5.7 In the meantime, for the record, the IOT Operators will understandably wish to maintain their objection to the Proposed Development whilst the Applicant's position must remain as before - for the reasons as set out in its letter to the Secretary of State in its letter of 25 May 2024 and summarised in the paragraphs above.

We trust the above is assistance for the Secretary of State and should there be any change, we will endeavour to inform the Secretary of State immediately.

Yours faithfully

*Brian Greenwood*

**Brian Greenwood**  
**Partner**

**Clyde & Co LLP**