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for Transport

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4 October 2024

Associated British Ports  
25 Bedford Street  
London  
WC2E 9ES

Dear Sir/Madam,

**Planning Act 2008**  
**Application for the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order**

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the report dated 25 April 2024 of the Examining Authority (“ExA”), comprised of Grahame Gould BA MPhil MRTPI, Stephen Bradley BA DipArch MA MSc ARB RIBA and Mark Harrison BA(Hons) DipTP LLM MioL MRTPI, who conducted an Examination into the application (“the Application”) made on 10 February 2023 by Associated British Ports (“the Applicant”) for the Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 (“the Order”) under section 37 of the Planning Act 2008 as amended (“the 2008 Act”);
- the responses to the further consultations undertaken by the Secretary of State following the close of the Examination in respect of the Application; and
- late representations received by the Secretary of State following the close of the Examination.

2. Published alongside this letter on the Planning Inspectorate website is a copy of the ExA’s Report of Findings, Conclusions and Recommendation to the Secretary of State (“the Report”). All “ER” references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form “ER x.xx.xx” as appropriate. References to “requirements” are to those in Schedule 2 to the Order as the ExA recommended at Appendix E to the Report (“the draft Order”).

## The Application

3. The Application was accepted for Examination on 6 March 2023. The Examination began on 26 July 2023 and was completed on 25 January 2024. The Examination was conducted based on written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook an accompanied site inspection, one unaccompanied site inspection and one bespoke Familiarisation Site Inspection because the vast majority of the marine and landside areas of the Order Limits could not be observed from the publicly accessible vantage points [ER 1.4.10].

4. The Order as applied for would grant development consent for the construction, within the existing Port of Immingham on the Humber Estuary/river, of a new roll on/roll off (“Ro-Ro”) terminal comprising three berths and associated landside works, storage areas, terminal buildings and a road bridge (“the Proposed Development”) [ER 1.1.1].

5. The marine elements of the Proposed Development comprises [ER 1.3.15]:

- an approach jetty;
- two finger piers; and
- vessel impact protection measures.

6. The main elements of the landside works comprise [ER 1.3.20]:

- a northern storage area to accommodate: 266 trailer bays; 65 container (40 foot) ground slots; and 19 “trade unit” slots;
- a central storage area to accommodate: 211 trailer bays; 75 staff parking spaces; and 15 equipment parking spaces, some UK Border Force search and welfare accommodation and a new internal bridge linking the northern and southern storage areas;
- a southern storage area to accommodate 397 trailer bays, six trade unit ground slots, 50 pre-gate HGV parking spaces, and some parking for passengers and staff. Provision will also be made for tug parking and holding/marshalling lanes for accompanied units and passenger vehicles. The main customs and passport accommodation for the UK Border Force functions to be exercised and the main terminal building would also be sited in the southern storage area;
- a western storage area to accommodate 800 trailer bays;
- a two-lane internal bridge spanning an internal port road (Robinson Road);
- widening of the width of the Port of Immingham’s East Gate to provide two lanes of entry and the installation of a replacement gate house, and on the adjoining public highway (Queens Road) the relocation of a bus stop, removal of a lay-by and the installation of a new length of footway;
- alterations to two internal port roads, Robinson Road and Gresley Way; and
- environmental enhancement works.

7. The location of the Proposed Development lies within the administrative area of North East Lincolnshire Council (“NELC”). Although the Proposed Development

wholly lies within the administrative boundaries of NELC, parts of the Port of Immingham are within the administrative area of North Lincolnshire Council (“NLC”) [ER 1.3.1].

8. During the Examination, the Applicant put forward four change requests, which it considered non-material and would improve the performance and efficiency of the Proposed Development, to address various concerns raised by Interested Parties (“IPs”) and the ExA during the examination [ER 1.5.1]. In summary, the change requests sought were to allow for [ER 1.5.4]:

- Change 1 – the realignment of the approach jetty and associated work to the marine infrastructure;
- Change 2 – the realignment and shortening of the Proposed Development’s onshore internal bridge;
- Change 3 – the realignment of the UK Border Force facilities; and
- Change 4 – the potential installation of a ‘dolphin’ structure, as an impact protection measure at the western end of the Immingham Oil Terminal finger pier.

9. The ExA considered the materiality of the proposed changes and concluded that the changes, either individually or collectively, were not material changes. The ExA therefore accepted the changes [ER 1.5.5]. The ExA also considered that the changes to the documentation, including amendments made to the ES during the Examination, together with the change requests did not individually or cumulatively undermine the scope and assessment of the ES [ER 2.6.4]. The Secretary of State agrees with the ExA that these changes should be accepted as part of the Proposed Development for the reasons set out in the ExA’s procedural decision letter dated 6 December 2023 in respect of the above changes sought by the Applicant to the Order.

## **SUMMARY OF EXA’S RECOMMENDATION**

10. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad headings:

- The Principle of the Development and Need (including urgency)
- Consideration of alternatives to the Proposed Development
- Navigation and Shipping effects
- Marine Ecology, Biodiversity and Natural Environment
- Terrestrial Traffic and Transport
- Climate Change
- Flood Risk
- Water Environment
- Socio-Economic, Commercial and Economic effects
- Air Quality

- Noise and Vibration
- Landscape and Visual Effects
- Historic Environment
- Coastal Physical Processes, Waste Management and Dredge Disposal
- Land Use Planning
- Cumulative and In Combination Effects
- Habitats Regulations Assessment
- Compulsory Acquisition and related matters
- Draft Development Consent Order and related matters.

11. For the reasons set out in the Report, the ExA concluded that the Proposed Development meets the tests in section 104 of the 2008 Act, and recommended that the Secretary of State grant the Order in the form attached at Appendix D to the Report, subject to the securing of the allocation of 1.0 hectare of the Outstrays to Skeffling Managed Realignment Scheme as compensatory land [ER 8.3].

## **SUMMARY OF SECRETARY OF STATE’S DECISION**

12. The Secretary of State has decided under section 114 of the 2008 Act to make, with modifications, an Order granting development consent for the proposals in this Application. The letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).

## **SUMMARY OF SECRETARY OF STATE’S CONSIDERATION**

13. The Secretary of State’s consideration of the Report, responses to the consultations of 9 May 2024 and 9 July 2024, representations received after the close of Examination and all other material considerations are set out in the following paragraphs. Where consultation responses and late representations are not otherwise mentioned in this letter, it is the Secretary of State’s view that these representations do not raise any new issues that were not considered by the ExA and do not give rise to an alternative conclusion or decision on the Order.

14. The Secretary of State has had regard to the Local Impact Report prepared by NELC. The Secretary of State also notes the ExA’s assessment, set out in section 2 of the Report, regarding relevant legislation and other relevant policies and agrees these are matters to be considered in deciding this Application.

15. The Secretary of State has also had regard to the environmental information associated with the Proposed Development as defined in regulation 3(1) of the 2017 Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

16. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations as set out in the Report and the reasons given for the Secretary of State's decision are those given by the ExA in support of the conclusions and recommendations.

#### The Principle of the Development and Need

17. The Secretary of State is content that the Proposed Development is a Nationally Significant Infrastructure Project in accordance with section 14(1)(h) and section 22(1) of the 2008 Act for the reasons set out at ER 1.1.3 and that section 104(2) of the 2008 Act has effect in relation to the Proposed Development. In determining this Application, the Secretary of State must therefore have regard to any relevant National Policy Statements ("NPS"), Local Impact Reports, any matters prescribed in relation to the Proposed Development, and any other matters the Secretary of State considers to be both important and relevant to the decision. Under section 104(3) of the 2008 Act, the Secretary of State must decide this Application in accordance with any relevant NPS which in this case is the National Policy Statement for Ports ("NPSfP").

18. The Secretary of State agrees with the ExA that the NPSfP and the East Inshore Marine Plan ("EIMP") (which forms part of the East Inshore and Offshore Marine Plans 2014) form the primary policy basis for the consideration of the Principle of the Development (and Need) [ER 3.2.1].

19. The NPSfP sets out the case for the need for the provision of new port infrastructure. The Government's policy, as outlined in the NPSfP, is not just about matching supply and demand, but also seeks to increase competition while making port capacity more resilient (i.e. adaptable to peaks in demand, weather conditions, accidents and other operational difficulties) [ER 3.2.5]. Paragraph 3.4.11 of the NPSfP outlines that capacity therefore needs to be provided at a wide range of facilities and locations so that there is flexibility to match the changing demands of the market, possibly with traffic moving from existing ports to new facilities generating surplus capacity.

20. The NPSfP purposely does not seek to dictate where new port development should take place, with new development needing to be responsive to changing commercial demands and competition being encouraged as a means of driving efficiency and reducing costs (NPSfP 3.4.12).

21. Paragraph 3.5.1 of the NPSfP explains that the Secretary of State in determining an application should accept the need for future capacity to: cater for long term forecasted growth in volumes of imports and exports; support the development of offshore sources of renewable energy; encourage coastal shipping; ensure effective competition amongst ports and provide resilience; and take account of the potential contribution port developments might make to regional and local economies. Paragraph 3.5.2 sets out that, given the level and urgent need for infrastructure as outlined in the NPSfP, there is a presumption in favour of granting consent to applications for port development which meets the criteria set out in paragraph 3.5.1 of the NPSfP. This presumption applies unless any more specific and relevant policies in the NPSfP or another NPS clearly indicate that consent should be refused. The presumption is also subject to the provisions of the 2008 Act.

22. EIMP's policy dictates that new port development should avoid or minimise interference with existing port activities and provide mitigation when interference cannot be avoided [ER 3.2.12].

#### Need for the Proposed Development

23. Chapter 4 of the Environmental Statement ("ES"), supplemented by the Applicant's Markets Forecast Study Report, Planning Statement (incorporating Harbour Statement) and addendum sets out the Applicant's case for the need for the Proposed Development [ER 3.2.13]. In examining the Application, the ExA considered:

- existing Ro-Ro Capacity on the Humber;
- the Need for Additional Ro-Ro capacity on the Humber;
- the Proposed Development's Capacity;
- contribution to Port Capacity Resilience on the Humber;
- competition to Ro-Ro services on the Humber; and
- urgency for Capacity on the Humber [ER 3.2.40].

24. The ExA's summary of the issues considered during the Examination and its conclusions on these matters is found at paragraphs 3.2.33 – 3.2.130 of the Report.

#### *Existing Ro-Ro Capacity on the Humber*

25. The Secretary of State notes that CLdN Ports Killingholme Limited ("CLdN"), the operators of the Port of Killingholme, consider that there will be some growth in the freight market on the Humber but consider that the Applicant's forecasting was bullish, particularly in the short term [ER 3.2.73]. It challenged the Applicant's need case and raised concerns regarding the Applicant's Market Forecast Study Report during the Examination. In particular, CLdN considered that:

- the Applicant had overstated the need to increase the Humber's unaccompanied Ro-Ro unit handling capacity [ER 3.2.41 – 3.2.44];
- the Applicant's assessment made no allowance for the current expansion at the Port of Killingholme or further expansion that is expected to take place in future through permitted development rights or by obtaining any necessary express planning permission(s) [ER 3.2.42];
- the Applicant's assessment relied on an unrealistic dwell time [ER 3.2.43]; and
- the Applicant's underestimation of the Port of Killingholme's capacity and the use of an unrealistic dwell time means that the capacity for unaccompanied Ro-Ro units would not be exceeded until sometime between 2031 and 2044 [ER 3.2.47].

26. The Secretary of State notes that following a request by the ExA [ER 3.2.50], the Applicant updated its Market Forecast Study Report to take into account, among other things, capacity at the Port of Killingholme [ER 3.2.52 – 3.2.53]. Nevertheless, the ExA recorded continued disagreement on capacity in the Humber region and at the Port of Killingholme [ER 3.2.55 – 3.2.58].

27. On the existing and future capacity at the Port of Killingholme, the ExA considered CLdN's evidence to be more persuasive than that provided by the Applicant [ER 3.2.54]. The ExA concluded that the Port of Killingholme's capacity is currently not constrained, and that the Applicant's earlier reliance on a dwell time of 2.25 days was excessive, resulting in an underestimation of the Humber's current capacity [ER 3.2.62]. The ExA therefore considered that any shortage in the Humber's existing unaccompanied Ro-Ro handling capacity had been overstated by the Applicant and that this has implications for the weight to be attached to the Applicant's claim that there is a compelling and urgent need for the Proposed Development [ER 3.2.63].

#### *The Need for Additional Ro-Ro capacity on the Humber*

28. The ExA reports that the Applicant and CLdN submitted considerable amounts of evidence on the possible level of future demand for unaccompanied Ro-Ro freight handling capacity [ER 3.2.75]. The ExA highlighted the eight different scenarios contained within the Applicant's response to CLdN's Deadline 4 Submissions (9 October 2023), and that these scenarios suggest that the annual volume of units handled by 2050 could be anywhere between 1.6 and 2.2 million [ER 3.2.76]. The ExA considered that it is likely that further Ro-Ro freight capacity on the Humber is required, but that there is currently too much uncertainty to rely on any particular scenario [ER 3.2.77]. The Secretary of State notes that the disagreement between the Applicant and CLdN on the current unit handling capacity and the future demand for capacity was not resolved by the end of the Examination. [ER 3.2.105]. The Secretary of State is also aware that CLdN questioned the reliability of the Applicant's forecasts, including Gross Domestic Product forecasts [ER 3.2.65 – 3.2.67], and that it considered that storage capacity for unaccompanied Ro-Ro units would not be exceeded by 2026 as suggested by the Applicant and could give rise to the over provision of Ro-Ro handling capacity on the Humber [ER 3.2.68].

29. Based on the evidence presented, the ExA considered that the Proposed Development would contribute to the expansion of the handling capacity for unaccompanied Ro-Ro units on the Humber, aligning with the policy support for new port infrastructure stated in the NPSfP. However the ExA was of the view that, as the Applicant underestimated the amount of existing capacity on the Humber, the compelling and urgent need made by the Applicant had been exaggerated [ER 3.2.78], and that this should attract little positive weight in the making of the Order [ER 3.2.124].

#### *The Proposed Development's Capacity*

30. The Secretary of State has considered CLdN's representations on the Proposed Development's capacity [ER 3.2.79 – 3.2.89] and notes that it argued that if the Proposed Development operated with an average dwell time of 2.25 days, then the maximum annual throughput of 660,000 units for the Proposed Development as presented by the Applicant would not be possible [ER 3.2.79 – 3.2.80]. The ExA reports that the Applicant maintained that the Proposed Development would be capable of handling a maximum of 660,000 Ro-Ro units per year, with an efficient annual throughput level of 80% [ER 5.2.81 – 5.2.83]. The Secretary of State notes that the ExA concluded, after considering the responses from Stena Line [ER 3.2.86] and the Applicant [ER 3.2.87] to its questions on this matter, that the Proposed Development's throughput would be sensitive to the capacity of the vessels used and their capacity utilisation. The ExA therefore considered that there is a possibility that

the annual throughput could be more modest than the efficient annual throughput or the maximum annual throughput figures provided by the Applicant [ER 3.2.88]. The Secretary of State notes that the ExA also considered that a partial or phased implementation of the Proposed Development would reduce its contribution that could be made to meeting the need for additional port capacity [ER 3.2.89].

31. Overall, the ExA concluded that the Proposed Development would contribute to meeting the need for additional port capacity identified in the NPSfP, notwithstanding how much of that capacity might actually be utilised. The Proposed Development would therefore align with the policy support for providing new port infrastructure stated in the NPSfP. The ExA also considered that the Proposed Development would be consistent with the East Inshore Marine Plan, particularly Policy PS3, as long as the additional port capacity provided would not unacceptably interfere with existing activities at the Port of Immingham [ER 3.2.90]. The Secretary of State's consideration of the Proposed Development's impacts on existing activities at the Port of Immingham is considered further in the Navigation and Shipping Effects section below.

#### *Competition to Ro-Ro services on the Humber*

32. The Secretary of State notes that CLdN argued that the Proposed Development would not support competition [ER 3.2.91], an argument challenged by the Applicant during the Examination [ER 3.2.92 and 3.2.97]. The ExA recognised that although the Proposed Development would increase Ro-Ro handling capacity on the Humber, this increased capacity would not necessarily lead to a greater choice amongst Ro-Ro service providers on the Humber. This is because an existing Ro-Ro service provider, Stena Line, would relocate its two existing services, one currently operating from the Port of Immingham's inner dock and the other from the Port of Killingholme, to the Proposed Development [ER 3.2.94]. Stena Line submitted that there would be potential for it to provide one or more additional services in the future [ER 3.2.94], but the ExA recorded that no clear evidence was provided to demonstrate that Stena Line would do so [ER 3.2.128]. The ExA also noted that no evidence was provided during the Examination to show that the capacity vacated by Stena Line at the Port of Immingham's inner dock and the Port of Killingholme would be backfilled by new entrant Ro-Ro shipping lines [ER 3.2.95]. Therefore, the ExA concluded that there would be no immediate change in the number of Ro-Ro operators using the Port of Immingham because once Stena had vacated the port's inner dock, there is no guarantee that part of the port would remain in Ro-Ro use [ER 3.2.96].

33. Overall, the ExA concluded that since the Applicant expected Stena Line would be the primary user of the Proposed Development, and because no clear evidence was presented to demonstrate that Stena Line would increase its services or that new entrant Ro-Ro service providers would enter the Humber port market, the Proposed Development would do little to add to effective competition among the Humber ports [ER 3.2.100 and ER 3.2.128]. Furthermore, the ExA concluded that it had not been demonstrated that the Proposed Development would either ensure effective competition or make available spare capacity to ensure real choices for port users, in accordance with paragraphs 3.4.1. and 3.4.13 of the NPSfP [ER 3.2.101].

#### *Contribution to Port Capacity Resilience on the Humber*



34. The Secretary of State is aware that CLdN and the Applicant disagreed on the contribution the Proposed Development would make on port capacity resilience on the Humber [ER 3.2.102 – 3.2.104]. The ExA considered that the Applicant had understated the current handling capacity, particularly in connection with the facilities available at the Port of Killingholme, and that there is considerable uncertainty about how additional capacity will be required to meet future demand [ER 3.2.106]. Noting that the NPSfP supports the provision of additional port infrastructure that contributes to resilience and that this support is unqualified by any reference to where and how much additional capacity should be provided for resilience purposes, the ExA concluded that the Proposed Development would be consistent with the NPSfP policy for building resilience into the port sector, noting that Policy PS3 of the East Inshore Marine Plan would also need to be met [ER 3.2.107].

#### *Urgency for Capacity on the Humber*

35. The ExA reported that the Applicant claimed there was an urgent need for the Proposed Development on the Humber, and that this urgency primarily arose from Stena Line's need to vacate its existing operations at the Port of Killingholme by 1 May 2025 [ER 3.2.108]. The ExA concluded that the urgency set out by the Applicant is not necessarily of the kind envisaged by paragraph 3.5.1 of the NPSfP [ER 3.2.116]. The ExA considered this to be the case in light of its conclusion that current capacity on the Humber is not as constrained as put forward by the Applicant, and that it is only because of the breakdown of negotiations between Stena Line and CLdN that the former is seeking to move all of its operations from the Port of Killingholme [ER 3.2.113]. In addition, the ExA concluded that although the Proposed Development would allow for the handling of freight, it would be in a location where it has not been demonstrated there is clear absence of capacity in the short to medium term [ER 3.2.116].

36. Overall, the ExA concluded that the Proposed Development would contribute to meeting the broad need for additional port capacity in the UK, and that it therefore benefits from the presumption in favour of the granting of the Order as set out in paragraph 3.5.21 of the NPSfP [ER 3.2.123]. The ExA concluded that the contribution the Proposed Development would make in terms of additional resilience among the Humber ports should carry moderate positive weight [ER 3.2.130, second bullet]. However, as set out above, the ExA also concluded that the following matters affect the weight that the Secretary of State should give in the planning balance:

- given its conclusion that there is existing available capacity on the Humber and that the compelling and urgent need case made by the Applicant has been exaggerated [ER 3.2.278], the ExA concluded that the contribution of the Proposed Development to meet the generalised need for additional port capacity attracts little positive weight in favour of the making of the Order [ER 3.2.130, first bullet];
- although the ExA concluded that the contribution that the Proposed Development would make in terms of resilience should carry moderate positive weight [ER 3.2.130, second bullet]; it had doubts as to the precise contribution the Proposed Development would make to meeting the need for additional Ro-Ro handling capacity on the Humber [ER 3.2.126];

- the ExA considered that the Proposed Development would not add to effective competition on the Humber as it would be operated by Stena Line, an established Ro-Ro service operator on the Humber [ER 3.2.128] and there was no evidence that any new Ro-Ro service providers would enter the Humber market [ER 3.2.95]; and
- the ExA concluded that the urgency for the Proposed Development should attract little positive weight because the case put forward by the Applicant primarily stems from Stena Line's need to vacate the Port of Killingholme by 1 May 2025 for contractual reasons. The ExA considered that although the contract renewal discussions between Stena Line and CLdN have broken down, the Port of Killingholme could physically accommodate Stena Line. That is because Stena Line has historically operated both of its Humber services from the Port of Killingholme, and the Port of Killingholme is currently being expanded [ER 3.2.129].

### The Secretary of State's Conclusion on Need for the Proposed Development

37. The Secretary of State agrees with the ExA that the Application benefits from the presumption in favour of consent set out by the NPSfP [ER 3.2.123], and that the resilience that the Proposed Development carries moderate positive weight in the planning balance [ER 3.2.130, second bullet]. However, she does not agree with the weight the ExA has recommended that she gives to a number of matters for the reasons set out below.

#### *Capacity*

38. The Secretary of State has considered the ExA's overall conclusion that the current capacity across the Ro-Ro terminals on the Humber is not as constrained as was implied by the Applicant in its Market Forecast Study Report [ER 3.2.113] and that the need for additional capacity as been exaggerated by the Applicant [ER 3.2.124].

39. The Secretary of State considers that it is the NPSfP that establishes the long-term national need for port infrastructure to accommodate growth of imports and exports by sea for all commodities, and is underpinned by the 2006 MDS Transmodal forecasting report (NPSfP 3.5.1) which was updated by The UK Port Freight Traffic 2019 Forecasts. The NPSfP is clear that it is Government policy to allow judgments about when and where new developments might be proposed to be made on the basis of commercial factors by the port industry or port developers operating within a free market environment (NPSfP 3.3.1, second bullet). It also states that it is for each port to take its own commercial view and its own risks on its particular traffic forecasts (NPSfP 3.4.7). The NPSfP states that it is then for the Secretary of State to determine whether any likely impacts that are expected to occur as a result of the Development have been assessed and addressed (NPSfP 3.4.13). In terms of decision-making, the NPSfP is clear that the Secretary of State should accept the need for port development including the need to cater for long-term forecast growth through a combination of existing and new capacity (NPSfP 3.4.16 and 3.5.1, third bullet).

40. The NPSfP also highlights that new facilities may result in surplus capacity (NPSfP 3.4.11), and that spare capacity is necessary to allow choices for port users and to accommodate any fluctuations in demand (NPSfP 3.4.13). Therefore, while the

Secretary of State notes that the Port of Killingholme is currently expanding with the benefit of an express planning permission [ER 3.2.42] and she accepts that there may be spare capacity at the Port of Killingholme, this is not a reason for excluding the possibility of new port developments on the Humber (NPSfP 3.4.11 and 3.4.16). She also places very little weight on capacity that has yet to be consented or capacity that might be released through permitted development rights or future planning applications. This is because there is no certainty that such capacity would come forward.

41. The Secretary of State does not consider that any of the demand scenarios for capacity at the regional Humber level considered by the ExA or any other representations submitted during the Examination on this matter have included evidence that would require her to diverge from Government policy detailed in the NPSfP in taking a decision on this Application.

### *Resilience*

42. The Secretary of State has considered the ExA's conclusion that there is a possibility that the capacity, that the Applicant has stated that the Proposed Development will deliver, could be lower, and this would reduce its contribution to meeting the need for port infrastructure. In terms of resilience, the NPSfP is clear that it is spare capacity that enables resilience of national port infrastructure, and that capacity is required nationally at a variety of locations and covering a range of cargo and handling facilities (NPSfP 3.4.15). The NPSfP states that spare capacity is required to build resilience to allow the continuous flow of goods, for example, to meet short-term peaks in demand and where disruptive events such as adverse weather conditions, accidents, operational difficulties and other events that might occur at other port locations. Additionally, there is no requirement in the NPSfP for an applicant to demonstrate the exact level of capacity contribution it will make to the need for port infrastructure identified by the NPSfP or to demonstrate that it is better placed than an existing port to deliver the capacity it seeks to deliver. The NPSfP also recognises that efficient operation of a port is not the same as operating at full physical capacity (NPSfP 3.4.13). Therefore, the Secretary of State disagrees with the ExA that available capacity at the Port of Killingholme or the lack of clarity on the precise level of capacity the Proposed Development will deliver are matters that would affect the weight she should give to this matter. The Secretary of State therefore considers that this weighs substantially in favour of the granting of the Order.

### *Competition*

43. As with resilience, the NPSfP states that sufficient spare capacity is required to ensure effective competition at the national level. The NPSfP welcomes and encourages competition between UK ports as well as with ports in continental Europe as this will drive efficiency and lower costs for industry and consumers and therefore leading to the competitiveness of the UK economy. The NPSfP is clear that it is for the port industry and port developers to assess their ability to attract businesses to their facilities and the level of any new capacity that will be commercially viable (NPSfP 3.4.13). The Secretary of State accepts that spare capacity may be available at the regional Humber level, and the Proposed Development may not result in an increase in competition on the Humber in the short to medium term. However, she is satisfied that the capacity that the Proposed Development will deliver is likely to help meet the

demand for capacity established by the NPSfP to enable effective long-term competition at the national level.

### *Urgency*

44. The Secretary of State does not agree with the ExA [ER 3.2.116] that the Applicant has not demonstrated the kind of urgency contemplated by the NPSfP for its Proposed Development. Contrary to the ExA's conclusions regarding the types of infrastructure contemplated by paragraph 3.5.1 of the NPSfP, the Secretary of State considers that the proposed development does cater for long-term forecast growth. The NPSfP expressly provides that infrastructure which meets that test is urgently needed. (NPSfP 3.5.2). Nevertheless, and in any case, the Secretary of State notes that despite the ExA finding that the urgency case attracts little positive weight, the ExA still concluded the Proposed Development was acceptable in planning terms [ER 5.3.7].

45. Overall, the Secretary of State is satisfied that the Proposed Development would contribute to the urgent need to meet the long-term demand for port capacity at the national level as identified in the NPSfP [ER 3.2.78]. Granting the Proposed Development would provide additional capacity for the movement of goods and commodities (NPSfP 3.4.16), and therefore the overall need for the Proposed Development weighs heavily in favour of the granting of the Order.

### Consideration of alternatives to the Proposed Development

46. Section 4.3. of Chapter 4 of the ES sets out the Applicant's consideration of alternatives. The ExA's consideration of the Applicant's assessment of alternatives and options appraisal is set out in paragraphs ER 3.2.24 to ER 3.2.32 and in paragraphs ER 3.2.118 - 3.2.122 of the Report.

47. The Secretary of State notes that the main issues considered during the Examination in relation to alternatives were:

- whether river frontage locations at the Port of Grimsby, the Port of Hull, and between the Port of Immingham and the Port of Killingholme would be able to accommodate the Proposed Development;
- whether the Port of Killingholme should be considered as an alternative; and
- whether consideration of alternatives is necessary for the purposes of an assessment under the Conservation of Habitats and Species Regulations 2017.

### The Secretary of State's conclusion on alternatives

48. The NPSfP states that, from a policy perspective, there is no general requirement to consider alternatives or to establish whether a proposed project represents the best option (NPSfP 4.9.1). However, it also states that an applicant should include factual information about the main alternatives they have considered in the ES submitted in support of their application (NPSfP 4.9.2).

49. With regard to the Applicant's assessment of alternative locations for the Proposed Development, the Secretary of State notes that there is agreement amongst

the Interested Parties that the Port of Grimsby, the Port of Hull and the riverside between the Port of Immingham and the Port of Killingholme would be unable to accommodate the Proposed Development and the ExA saw no reason to reach a contrary position in this regard [ER 3.2.119]. The Secretary of State agrees with that conclusion.

50. The Secretary of State notes that the Applicant discounted the Port of Killingholme as an alternative because it was considered incapable of meeting Stena Line's needs [ER 3.2.31], an argument contested by CLdN [ER 3.2.120]. As set out in the 'Need for the Development' section above, the Secretary of State accepts that while there may be spare capacity at the Port of Killingholme, the NPSfP expressly contemplates that new port developments may result in spare capacity, and that spare capacity enables effective competition and builds resilience in the national port infrastructure. The NPSfP is also clear that it is spare capacity that will allow ports to operate efficiently, and that operating at efficient levels is not the same as operating at full physical capacity (NPSfP 3.4.13). As also set out above, the NPSfP does not require an applicant to demonstrate that it is better placed to deliver the capacity it seeks to deliver in comparison to an existing port in a different location (NPSfP 4.9.1).

51. The Secretary of State is satisfied that the Applicant has considered a number of alternative locations for the Proposed Development, and has adequately set out the reasons for their proposal.

52. In addition to the above, paragraph 4.9.2 of the NPSfP also states that there can be legislative requirements for an applicant and decision-maker to consider alternatives such as under the Habitats Directive, and that where there is such a legal requirement the Applicant should describe the alternatives considered in compliance with those requirements (NPSfP 4.9.3). The Secretary of State notes that the berths proposed by the Applicant would be in the Humber Estuary Special Area of Conservation ("SAC"), the Humber Estuary Special Protection Area ("SPA") and the Humber Estuary Ramsar site, and the Applicant concluded there would be no adverse effect on the integrity of those sites [ER 3.2.24]. The Applicant therefore considered it unnecessary to demonstrate that there would be no alternative to the Proposed Development for the purposes of undertaking an assessment under the Conservation of Habitats and Species Regulations 2017 [ER 3.2.24]. However, the Secretary of State is aware that due to Natural England's outstanding concerns during the Examination regarding impacts on the Humber Estuary SAC [ER 3.4.35], the Applicant submitted, on a without prejudice basis, an HRA Derogation Report setting out potential compensatory measures. Section 3 of the HRA Derogation Report details the Applicant's assessment of alternatives. The Secretary of State's consideration of this matter is set out in her Appropriate Assessment [ER 3.4.36].

#### Navigation and Shipping Effects

53. The Secretary of State is aware that the Immingham Oil Terminal ("IOT"), which serves two refineries at Immingham, is nationally critical infrastructure for energy supply security. She notes that the proposed Berth 1 of the northernmost finger pier would be approximately 95 metres from the IOT's finger pier [ER 3.3.2], and that the location of the Proposed Development's Ro-Ro berths, relative to the IOT's jetties handling hazardous substances, is approximately 95 metres. Further, the Secretary of State also notes that the near proximity of the Proposed Development to a Control of

Major Accident Hazard (“COMAH”) site and its position in a fast-flowing tideway site is, in the ExA’s consideration, without precedence in the UK [ER 3.3.91].

54. A Navigational Risk Assessment (“NRA”) was included in Appendix 10.1 of Chapter 10 of the ES submitted in support of the Application [ER 3.3.21]. The Secretary of State notes that the NRA included an assessment of the risks of allision between a vessel and the IOT’s marine infrastructure, the Port of Immingham’s Eastern Jetty, and/or a moored vessel, and that the NRA concluded the risks, if unmitigated, to be intolerable. The NRA also concluded that those risks could be reduced to As Low as Reasonably Practicable if mitigation measures were applied [ER 3.3.22]. The NRA further suggested that project-specific ‘adaptive procedures’ could be applied as risk controls (mitigation measures) for the protection of the IOT infrastructure [ER 3.3.23]. The Secretary of State notes that during the Examination further evidence, clarifications and simulations were submitted by the Applicant and other Interested Parties as detailed in the paragraphs 3.3.60 – 3.3.90 in the Report.

55. The Secretary of State is aware that the ExA considered a number of issues raised by Interested Parties during the Examination [ER 3.3.26 – 3.3.59]. The Secretary of State notes that the effects from the risks to maintaining safe navigation, accidental damage to existing infrastructure and/or moored vessels, and risks of interference to existing shipping service remained areas of outstanding disagreement at the close of the Examination. [ER 3.3.1]. The Secretary of State in particular notes the representations by:

- Humber Oil Terminals Trustee Limited and Associated Petroleum Terminals (Immingham) Limited (collectively referred to as “the IOT Operators”) who raised concerns regarding the risk of vessel allision with IOT infrastructure or tankers berthed there [ER 3.3.27-3.3.39], the inadequacy of the Applicant’s NRA [ER 3.3.31-3.3.32], the appropriateness of the Applicant’s governance structure [ER 3.3.40] and the adequacy of the wind and tide vessel simulations [ER 3.3.43] in particular regarding the use of maximum design vessels (DV) [ER 3.3.46].
- DFDS Seaways (“DFDS”) who raised concerns regarding the wind and tide berthing simulations on vessels manoeuvrability [ER 3.3.48], the Port of Immingham congestions resulting from a shortage of pilotage [ER 3.3.49] and potential congestion from vessels overlapping with the approach area for the proposed berthing spaces [ER 3.3.50], the risk of vessel allision with the IOT’s finger pier or trunkway [ER 3.3.53] and the adequacy of the NRA [ER 3.3.52-3.3.54].
- CLdN, the operators of the Port of Killingholme, who raised concerns regarding the potential for the Proposed Development’s construction to interfere with the running of the scheduled services operating at the Port of Killingholme [ER 3.3.58-3.3.59]. The Secretary of State has considered CLdN’s concerns under the Protective Provisions subsection of the Compulsory Acquisition section below.

#### *Safety Governance*

56. During the Examination, in response to the concerns raised by both the IOT Operators and DFDS, the Applicant clarified that although those who cover statutory roles related to safety are employed by the Applicant [ER 3.3.60], its designated

person for the purposes of the Applicant's Marine Safety Management System does not have a direct connection with the Port of Immingham's commercial management or the promotion of the Proposed Development and thus is able to act independently on safety matters [E3.3.64].

57. The Secretary of State notes that the Harbour Master for the River Humber ("the Harbour Master") leads both the tidal Humber's Statutory Harbour Authority and the Humber's Competent Harbour Authority, which have been combined into the Statutory Conservancy and Navigation Authority [ER 3.3.61]. During the Examination, the Harbour Master confirmed that both the Statutory Harbour Authority and the Competent Harbour Authority are statutory bodies and act independently from the Applicant. The Harbour Master further confirmed that it may issue byelaws and General Directions controlling operations in the Humber under the statutory powers of the Statutory Harbour Authority and Competent Harbour Authority. The Secretary of State notes that these directions could include specific instructions to vessels [ER 3.3.81]. The ExA recognised that the safety culture and risk appetite of the project team for this Application may be influenced by commercial considerations but on the evidence presented the ExA was content that the Harbour Master, would not be influenced in that way [ER 3.3.106]. Separately, the Harbour Master, as head of the Statutory Conservancy and Navigation Authority, was provisionally satisfied with the NRA and simulation work put forward by the Applicant and the initial assessment would be subject to further and more vigorous appraisal in the event of the Proposed Development being consented [ER 3.3.104]. The ExA was also satisfied that the Applicant had assessed the risk tolerability standards of the Proposed Development in line with those other ports currently operated by the Applicant [ER 3.3.107]. The Secretary of State also notes the ExA's conclusion that the Group Safety Director was a reliable witness and that it has no reason to doubt their integrity when evaluating risks and mitigations. Nevertheless, the ExA considered that the 'wearing of two hats' by the Group Safety Director presents the potential for a conflict of interest to arise [ER 3.3.109].

58. The Secretary of State notes the alleged conflict of interest concerns raised by the Interested Parties in their response to DfT's letter of 9 July 2024. The ExA concluded that the Statutory Harbour Authority and Competent Harbour Authority for Humber pilotage would be able to exercise their statutory duties in the interests of navigational safety without there being any unacceptable conflict with the Applicant's commercial interests as a port operator [ER 3.3.193]. The Secretary of State agrees with that assessment.

#### *Appropriateness of the NRA*

59. During the Examination, the Applicant's NRA was criticised for assessing risks using incorrect methodology [ER 3.3.112], for using words rather than numbers to describe the likelihood and frequency of risks [ER 3.3.113], and for applying incorrect rating tolerability when assessing risks [ER 3.3.114].

60. The Secretary of State is aware that the Applicant conducted numerous navigational simulations to establish the expected safe operational limits for the proposed berths that would be acceptable to the Harbour Master [ER 5.2.12]. The ExA was satisfied that by the close of the Examination an adequate NRA had been

submitted [ER 5.2.14]. In particular, the ExA was satisfied that the NRA was appropriately comprehensive [ER 3.3.124], given that the Applicant had:

- adequately assessed tidal currents' effects on pilotage by carrying out surveys and additional modelling [ER 3.3.119];
- adequately assessed the effects of wind during berthing/unberthing manoeuvres by carrying out additional wind tests and simulations [ER 3.3.120];
- adequately assessed the risk of release of hazardous substances from collisions by complying with the relevant policies [ER 3.3.121];
- adequately assessed the navigational hazard consequences for people and property by proposing controls to reduce the risks to tolerable levels from the perspective of navigation [ER 3.3.122]; and
- adequately assessed marine navigational risks as the Harbour Authority and Safety Board as the Duty Holder has considered appropriate advice in concluding that all risks assessed can be mitigated to an acceptable residual level subject to the identified risk controls being applied [ER 3.3.123].

61. The Secretary of State is aware that the Harbour Authority and Safety Board is the Duty Holder under the Port of Immingham's Safety Management System and acceptance by the Harbour Authority and Safety Board serves as Stage 5 of the formal safety assessment process promoted under the Port Marine Safety Code [ER 3.3.25].

#### *Compliance with the Environmental Impact Assessment Regulations*

62. As described in the Applicant's Non-Technical summary in its ES, the proposed berths have been designed based on a maximum design vessel with an overall length of up to 240 metres, a beam of up to 35 metres and a draught of up to 8 metres [ER 1.3.26]. In light of the concerns raised by Interested Parties regarding the adequacy of the Applicant's pre-application simulations, the ExA requested further simulations applying challenging current and wind conditions close to and above those that the Harbour Master expected would limit the operation of the proposed berths [ER 3.3.125]. The ExA reports that most of the simulations have been carried out using a model for the Stena T class vessel that is already being used by Stena Line on the Humber, and some simulations have been carried out using a model for the larger 'Jinling' class of Ro-Ro vessel which is closer in dimensions to the maximum design vessel used for assessing the Proposed Development in the ES [ER 3.3.129].

63. The Secretary of State is aware that concerns were raised related to the maximum design vessel defined in the ES and the NRA, the simulations with smaller vessels, and the lack of assessment in the ES on the risks of operating a vessel with the parameters of the maximum design vessel [ER 3.3.125-142]. Interested Parties considered that the Applicant's failure to assess the impacts of the maximum design vessel means it would be unlawful to grant development consent for the Proposed Development [ER 3.3.135] unless the use of the Proposed Development is restricted to the smaller vessels assessed by the Applicant [ER 3.3.134]. These concerns were reiterated in responses to the Secretary of State's consultation during the decision-making stage.



64. The Secretary of State notes that Interested Parties agreed that while a G9 class vessel was used during loss of power simulations in December 2023, G9 vessels do not have the manoeuvrability and propulsion characteristics of the maximum design vessel. Therefore, the Applicant and other Interested Parties considered the G9 class vessel unsatisfactory for simulating berthing at the Proposed Development [ER 3.3.130].

65. The ExA was content, based on the simulation work that had been undertaken, that the Stena T class vessel can be safely berthed and unberthed at the Proposed Development [ER 3.3.131] even if Stena T class vessels are smaller than the maximum design vessel.

66. The Applicant confirmed during the course of the Examination that the maximum design vessel does not currently exist as a vessel with characteristics suitable for operation at the Proposed Development [ER 1.3.26]. While accepting that the propulsion and manoeuvrability characteristics for the maximum design vessel are currently unknown, the ExA reported that it is the siting and dimensions of the proposed berths the Applicant seeks consent for rather than for the vessels that would use those berths, and was satisfied that the ES gave adequate and appropriate regard to the siting of the proposed berths relative to existing port infrastructure and the maximum physical dimensions of the proposed maximum design vessel [ER 3.3.137].

67. The Secretary of State has noted that a vessel with the dimensions, manoeuvrability, and power characteristics of the maximum design vessel does not yet exist [ER 3.3.133]. Instead, the Applicant simulated berthing using Stena Class T vessels and a 'Jinling' class of Ro-Ro vessel. The Applicant and other Interested Parties agreed that while 'Jinling' vessels are highly manoeuvrable, and its simulation model had been used during the Development of the Immingham Outer Harbour. The ExA reports that the 'Jinling' vessels are similar in dimensions to a maximum design vessel [ER 3.3.129], but that their displacement is less substantial than that of a maximum design vessel and thus they were not considered in assessing impacts from the Proposed Development in the ES [ER. 3.3.130]. Nevertheless, the ExA was content that the Jinling vessel simulations have demonstrated that a vessel of its handling characteristics would be likely to be acceptable [ER 3.3.131].

68. The ExA and concluded that while the NRA has yet to demonstrate that a vessel of the proposed dimension of the maximum design vessel could be safely operated at the Proposed Development, it is the siting and dimension of the proposed berths for which the Applicant seeks consent and not the vessels that would use those berths [ER 3.3.137]. While accepting that the propulsion and manoeuvrability characteristics for the maximum design vessel are currently unknown, the ExA concluded that the ES gave adequate and appropriate regard to the siting of the proposed berths relative to existing port infrastructure and the maximum physical dimensions of the proposed maximum design vessel. The ExA was also persuaded that it would be reasonable for the assessment of the ability of the Proposed Development to accommodate vessels of the maximum design vessels parameters to be completed by the Statutory Conservancy and Navigation Authority and the Statutory Harbour Authority should such a need arise following the making of the proposed Order [ER 3.3.142].

69. The ExA also placed importance on the fact that the Harbour Master did not object to the Proposed Development and considered that the proposed berths could

be operated safely and that it could, by acting on behalf of the Statutory Conservancy and Navigation Authority, restrict the types of vessels using the proposed berths in the interests of navigational safety and such restrictions would be imposed disregarding commercial considerations [ER 3.3.138].

### *Risk of Allision*

70. The Secretary of State has considered the ExA's detailed summary of the concerns raised by Interested Parties regarding the control of risk of allision (accidental impact of vessels with existing infrastructure, moored vessels, or other objects) which is set out in paragraphs 3.3.143 – 3.3.161 of the Report. The Secretary of State is aware that the risk of allision was a contentious matter during the Examination, with the hazards described by the ExA as concerning both Ro-Ro vessels arriving at or departing from the proposed berths or other vessels arriving at or departing from the same part of the Port of Immingham [ER 3.3.150]. The ExA reported that the fundamental disagreement between the Applicant and other Interested Parties concerned what level of control for allision risk with the IOT's infrastructure would be 'reasonably practicable' and how that could be secured in any made Order [ER 3.3.152].

71. The Secretary of State is aware that the Applicant has undertaken several simulations for navigational conditions close to and above those expected by the Harbour Master to be the operational limits for the proposed berths both before and during the Examination [ER 3.3.192]. The Applicant's additional simulations confirmed the challenging nature, even with tug assistance, of avoiding allision with the IOT's finger pier while berthing in moderately strong south-westerly winds [ER 3.3.156]. Nevertheless, the ExA reports that the Harbour Master was of the opinion that the installation of impact protection measures may not be required until demonstrated by progressive testing and operational experience although the ExA considered a precautionary approach should be applied [ER 3.3.162]. The Secretary of State notes that ExA considered that the risk of a vessel alliding with the IOT's pipeline trunkway would be lower than an allision of the finger pier [ER 3.3.199]. On the risk of allision between coastal tankers with the western end of the IOT's finger pier, the ExA disagreed with the Harbour Master and considered that the risk of allision would increase given the spatial constraints on pilotage, and the effect would be exacerbated by the presence of moored vessels at the proposed Berth 1 [ER 3.3.153].

72. During the Examination, the ExA requested the Applicant to submit a new requirement, requirement 19, to ensure that the 'dolphin' impact protection measures proposed for Work No. 3(b) are installed at the finger pier's western end prior to the operation of proposed Berth 1 [ER 7.3.24 - 7.3.25]. The ExA has suggested further amendments to the version of requirement 19 submitted by the Applicant on a without prejudice basis. The ExA's recommends in relation to new requirement 19 some changes to that provided by the Applicant so as to make it specific to the first commercial use of proposed Berth 1 (the berth closest to the IOT's finger pier), necessitating the incorporation of a reference to a plan and Work No. 3(b), to aid precision and enforceability [ER 7.3.26]. The ExA also recommended that the term 'IOT Operators' is used instead of 'the operator of the Humber Oil Terminal' and suggested that this term is used in requirement 18, and new requirement 19 [7.3.27], and recommended that the use of the term 'IOT Operators' may be a matter on which the Secretary of State should seek the Applicant's views [ER 8.2.4].

## The Secretary of State Conclusions on Navigation and Shipping Effects

73. For the reasons outlined above, the Secretary of State agrees with the ExA that based on the evidence submitted by both the Applicant and separately by the Harbour Master, there is no reason to doubt the soundness and effectiveness of the safety process and management systems that apply to the Port of Immingham and across the Humber, which are audited periodically [ER 3.3.103]. The Secretary of State also agrees with the ExA that based on the provided evidence the Statutory Harbour Authority and Competent Harbour Authority for Humber pilotage would be able to exercise their statutory duties in the interests of navigational safety without there being any unacceptable conflict with the Applicant's commercial interests as a port operator. [ER 3.3.193]. The Secretary of State also accepts the ExA's conclusion that while the Applicant has not yet demonstrated that a vessel of the maximum design vessel dimensions could safely use the proposed berths, this would not preclude the proposed Order being made.

74. In regard to the concerns regarding the appropriateness of the NRA, the Secretary of State is aware that the Applicant conducted numerous navigational simulations both during pre-Application and the Examination to establish the expected safe operational limits for the proposed berths that would be acceptable to the Harbour Master [ER 5.2.12]. The Secretary of State agrees with the ExA that by the close of the Examination, an adequate and appropriately comprehensive NRA had been submitted [ER 3.3.196], and that the Proposed Development meets the requirements set out in the NPSfP, the Marine Policy Statement and the East Inshore Marine Plan [ER 5.2.14].

75. The Secretary of State has carefully considered the concerns raised regarding the maximum design vessel dimensions and the assessment of smaller vessels in the Applicant's simulations. The Secretary of State also recognises that new port infrastructure will typically be a long-term investment and therefore needs to remain in operation over many decades. In light of this, the Secretary of State is supportive of the Applicant's approach to future proofing the Proposed Development by designing the berths so that it is physically able to cater for vessels with the maximum design vessel parameters should a demand for the use of the Proposed Development by such vessels arise in future. If such demand does materialise, the Secretary of State agrees with the ExA that vessels of the maximum design vessel dimensions will only be able to utilise the Proposed Development if the Statutory Conservancy and Navigation Authority and the Harbour Master are satisfied that it is safe for them to do so. Therefore, the Secretary of State considers that it is not necessary to restrict, through the proposed Order, the use of the Proposed Development to the smaller vessels simulated and modelled by the Applicant so as to exclude vessels of the maximum design vessel considered for 'Rochdale envelope' purposes. The Secretary of State is also satisfied with the ExA's conclusion that the Applicant has demonstrated that the Stena T class vessel could safely use the proposed berths and that the simulations for the Jinling class vessel have demonstrated that vessels of its size and handling characteristics can be operated safely at the Proposed Development, both subject to pilotage controls being developed and tested, together with 'soft-start' training and adaptation for marine pilots and pilot exemption certificate holders [ER 3.3.194].

76. As recommended by the ExA, the Secretary of State consulted the IOT operators and other Interested Parties regarding the ExA's suggested changes to

requirement 18 and new requirement 19 which was suggested by the ExA to reduce the risk of vessel allision with the IOT Operators' infrastructure to as low as reasonably possible. In response to the Secretary of State's first consultation, putting to one side Interested Parties views on whether additional protection measures are required to address navigational risks, the Secretary of State notes that both the IOT Operators and DFDS reiterated that the suggested impact protection measures should be built before the commencement of operations of the Proposed Development although they did not agree that the measures go far enough. Additionally, the IOT Operators stated that the requirement included no mechanism to identify the design of the mitigation measures, and for such measures to be delivered in accordance with that design. The IOT Operators considered that if such a design mechanism were to be included, it would be essential for the IOT Operators to at the very least have a significant influence on this design, or for the IOT Operators to approve the specification of the measures. The IOT Operators also stated that there would also be a need for an independent determination mechanism to resolve any disagreements.

77. In response to the Secretary of State's second round of consultation, DFDS responded to raise concerns regarding the Applicant's wording of requirement 18 which would leave the design of the impact protection measures to the Applicant and requires it to consult parties such as the IOT Operators and only have regard to their views. While DFDS acknowledge that the measures would need to accord with the engineering and general arrangement plans, it noted that the plans do not contain any specification details or details on what impact and at what speed they must be designed to resist. DFDS also stated that in order to address its and other Interested Parties concerns, the design and implementation of the impact protection measures would have to be substantially different, that it is too late to address this issue following the close of the Examination by way of a change of the Application, the Application should be refused and a new application should be brought forward by the Applicant should it wish to still go ahead with this project. The IOT Operators responded to reiterate their concerns regarding the lack of protection measures that were required in addition to those considered by the Applicant, and that even with requirements 18 and 19 the level of impact protection would remain inadequate.

78. The Secretary of State has carefully considered the responses to her consultation on allision risk and, for the reasons set out in this letter and in the ExA's report, is satisfied that the impact protection measures to the western end of the IOT's finger pier (Work No. 3(b)) should be constructed prior to the proposed berth 1 becoming operational [ER 3.3.164]. The Secretary of State also agrees with the ExA that while the consequences of allisions between a Ro-Ro vessel and the IOT Trunkway could be severe, the likelihood of such an event occurring would be less likely than the risk of allision with the IOT's finger pier [ER 3.3.166], as demonstrated by the Applicant's simulations demonstrated that a 'dead ship' of 50,600 tones displacement in a peak spring ebb tide could be controlled by tug support before passing through the gap between proposed berth 1 and IOT berth 8 [ER 3.3.167]. The Secretary of State therefore agrees with the ExA that it is not necessary to require the implementation of Work No. 3(a) before the operation of the proposed berths, and that it is reasonable for these works to be left as a matter for consideration by the Harbour Master following commencement of the use of the berths and further testing of operational controls including tug assistance [ER 3.3.169].

79. Overall, the Secretary of State agrees with the ExA that, subject to the mitigation discussed above, the residual adverse effects on navigation and shipping carry little negative weight against the making of the proposed Order. The Secretary of State also agrees with the ExA that, after mitigation, there would be limited potential interference for other users of the Port of Immingham and the Humber, which neither weighs for nor against the making of an Order [ER 3.3.202]. The Secretary of State is satisfied that as the Proposed Development would not unacceptably interfere with the use of the Humber or the Port of Immingham by other users, it would be compliant with Policy PS3 of the East Inshore Marine Plans [ER 3.3.201] and agrees with the ExA that it also complies with the requirements of the NPSfP and NPS EN-1 [ER 3.3.196].

#### Marine Ecology, Biodiversity and Natural Environment

80. Chapter 9 of the ES sets out the Applicant's assessment of any potentially significant effects of the Proposed Development on nature conservation and marine ecology and identifies proposed mitigation measures. The assessment focussed on the area over which the Proposed Development's potential direct and indirect effects were predicted to occur during construction and operation, that is to say the Port of Immingham and the proposed disposal sites for dredged material with consideration of the wider Humber Estuary for any indirect effects [ER 3.4.9].

81. During Examination, no substantive matters regarding onshore ecological matters were raised and issues were focussed on the Proposed Development's marine ecology effects [ER 3.4.29].

82. Twenty impact pathways during construction and operation were considered in the ES including direct loss of habitat, direct and indirect changes to habitats and species, changes in water and sediment quality, the potential introduction and spread of non-native species, underwater noise and vibration, air borne noise and visual disturbance [ER 3.4.11].

83. The Applicant identified the following international and national designated sites within its ES:

- Humber Estuary Special Area of Conservation ("SAC")
- Humber Estuary Special Protection Area ("SPA")
- Humber Estuary Ramsar site
- The Greater Wash SPA
- North Killingholme Haven Pits Site of Special Scientific Interest ("SSSI")
- The Lagoons SSSI
- Holderness Inshore Marine Conservation Zone ("MCZ")

84. Matters relating to the SACs, SPA and Ramsar site have been addressed in the Habitats Regulations Assessment ("HRA") section of this Decision Letter and in the Secretary of State's HRA Report, which should be read in conjunction with this Decision Letter.

85. The North Killingholme Haven Pits SSSI is approximately 5km northwest of the Proposed Development. The Applicant's ES concluded that there would be no direct effects and any indirect effects would be negligible on the SSSI. The Lagoons SSSI is 20km east of the Proposed Development on the northern side of the Humber Estuary. The Applicant's conclusion was that the Proposed Development would not have any direct or indirect effects on this SSSI [ER 3.4.16].

86. The Holderness Inshore MCZ is approximately 20km east of the Proposed Development. The Applicant concluded in the ES that there would be no direct or indirect effects on the MCZ and therefore an MCZ Assessment was not necessary [ER 3.4.17].

87. The Applicant concluded that during construction the direct loss of intertidal and subtidal habitats would be insignificant [ER 3.4.22]. This issue is addressed in the Secretary of State's HRA Report and summarised below in this Decision Letter. The potential impact on fish and marine mammals from underwater noise and vibration during construction was identified and the following mitigation measures were proposed [ER 3.4.23]:

- soft start – gradually increasing piling power, to give fish and mammals the opportunity to move away from the area before full power is achieved;
- vibro piling to be used wherever possible, rather than percussive piling;
- seasonal piling restrictions, to minimise the impacts on migratory fish;
- night-time piling restrictions to minimise impacts on upstream migration of river lamprey and also glass eel migratory activity; and
- establishment of a 500 metre "*mitigation zone*" from the piling locations and employment of a Marine Mammal Observer to search for the presence of marine mammals within the zone before and during piling.

88. The impact of noise and visual disturbance during construction on coastal waterbirds is addressed in the Secretary of State's HRA Report and summarised below in the HRA section of this Decision Letter. The ES proposed the following mitigation measures to reduce the impacts on coastal waterbirds from noise and visual disturbance during construction [ER 3.4.24]:

- restriction of certain activities to avoid construction on the approach jetty and inner finger pier between October and March;
- placement of acoustic barrier / screening on construction barges and the approach jetty to limit disturbance;
- the use of noise suppression systems during piling for the outer finger pier;
- applying soft start procedures during piling; and
- restriction of construction activities during cold weather when birds are considered more vulnerable to disturbance.

89. While the impacts from the operational phase of the Proposed Development were assessed as being minor, the Applicant's ES identified a potential disturbance to coastal waterbirds. The Applicant proposed screening to reduce the potential visual disturbance stimuli for waterbirds on the foreshore, on a precautionary basis. The

removal of the screening would be a phased after two years of operation and there would be coastal waterbird monitoring during these first two years [ER 3.4.26].

90. The other potential impacts on nature conservation and marine ecology receptors were assessed as being insignificant to minor adverse and therefore not significant in Applicant's ES (Chapter 9) [ER 3.4.27].

91. Voluntary Biodiversity Net Gain ("BNG") has not been offered by the Applicant, but an onshore environmental enhancement has been proposed at the nearby "*Long Wood*" off Laporte Road. This is set out in the Woodland Enhancement Management Plan which would be secured by requirement 11 of the draft DCO [ER 3.4.28].

92. Natural England raised several matters relating to HRA during Examination., As mentioned above the Secretary of State has addressed these in more detail in her HRA Report and summarised in this Decision Letter.

93. During Examination, the Marine Management Organisation ("MMO") and the Lincolnshire Wildlife Trust raised a number of concerns. The MMO considered that issues in relation to the marine environment, including the impacts and duration of the proposed piling works needed to be resolved and included suggested amendments to the proposed Deemed Marine Licence in Schedule 3 of the draft Order. Those concerns, following discussions between the Applicant and MMO and additional material submitted by the Applicant including amendments to the Deemed Marine Licence, were resolved. The MMO confirmed in its representation at Deadline 10 that it considered all its concerns had been resolved. The signed statement of common ground between the Applicant and MMO confirmed that all matter between them were agreed [ER 3.4.56].

94. In its relevant representation the Lincolnshire Wildlife Trust raised a number of points in relation to the impacts on the European sites. By the close of the Examination, these matters were confirmed as resolved in the signed statement of common ground between the Applicant and Lincolnshire Wildlife Trust other than in combination effects [ER 3.4.57]. The Secretary of State has addressed in combination impacts in her HRA Report and summarised in this Decision Letter.

#### The Secretary of State's Conclusions on Marine Ecology, Biodiversity and Natural Environment

95. The Secretary of State considers that biodiversity and ecology have been adequately assessed and that the policy requirements of the NPSfP, the MPS and the EIMP have been met. The environmental measures at Long Wood subject to the proposed Woodland Enhancement Management Plan would provide ecological enhancement. The Secretary of State considers the effects on marine ecology, diversity and the natural environment to attract little positive weight for the making of an Order [ER 3.4.61].

#### Terrestrial Traffic and Transport

96. The Applicant's assessment of traffic and transport matters is set out within its Transport Assessment, Chapter 17 of the ES [ER 3.5.18]. Terrestrial traffic and transport issues considered by the ExA during the examination [ER 3.5.28 – 3.5.46]

and the ExA's conclusions on these matters are set out in ER 3.5.47 and 3.5.48. The key concerns raised by IPs are listed by the ExA as:

- the adequacy of the baseline traffic surveys used to inform the Applicant's Transport Assessment, as well as the assumptions underpinning the Transport Assessment [ER 3.5.29];
- capacity at existing junctions and whether the Proposed Development makes sufficient provision for the anticipated numbers of Ro-Ro units [ER 3.5.29];
- the adequacy of the Applicant's worst case scenario assessment [ER 3.5.30];
- an error in the Transport Assessment in respect of the conversion of HGVs to passenger car units [ER 3.5.32];
- the distribution of vehicular traffic between the East Gate and West Gate that would result from the Proposed Development [ER 3.5.33];
- impacts from additional HGV traffic that would be generated and the impacts on the surrounding road network and local villages [ER 3.4.44]; and
- measures to protect Royal Mail Group Limited's road based operation during construction of the Proposed Development [ER 3.5.46].

97. The ExA also mentioned under this subject matter that an objection was lodged by Network Rail Infrastructure Limited in respect of the need for safeguarding its interests and the safety and integrity of the operational railway [ER 3.5.45]. This is considered further in the Protective Provision subsection of the Compulsory Acquisition section below

98. The ExA listed the following concerns raised by DFDS and CLdN as outstanding at the close of examination:

- junction capacity and the need for off-site mitigation, the adequacy of the Applicant's worst case scenario, the need for sufficient off-site mitigation and the capacity of the Proposed Development to handle the proposed volume of Ro-Ro units [ER 3.5.40 – 3.5.41]; and
- the assessment undertaken by the Applicant on the expected vehicular traffic split between the East and West Gate [ER 3.5.42].

99. The Secretary of State is aware that in response to the concerns raised by Interested Parties regarding the baseline data surveys and assumptions underpinning the Transport Assessment [ER 3.5.29 and ER 3.5.30], the Applicant submitted a Transport Assessment Addendum during the examination which took into account the passenger car units conversion error and a sensitivity test for the traffic expected to use the Port of Immingham's East and West Gates. The Secretary of State notes that the Transport Assessment Addendum reached the same conclusion of no adverse impact on highway safety or capacity as set out in the Transport Assessment submitted in support of the Application [ER 3.5.38].

100. The Secretary of State notes that both DFDS and CLdN consider that capacity at junctions on key access routes to and from the Port of Immingham would be



exceeded during operation of the Proposed Development creating negative impacts on junction capacity in the local area that require mitigation [ER 3.5.41]. The ExA noted that the Ratio Flow Capacity used in both the Transport Assessment and Transport Assessment Addendum show certain junctions as “*approaching capacity*” during operation of the Proposed Development, and that any exceedances of junction capacity would be relatively marginal and not significant. The ExA therefore concluded that there would not be a significant impact on the road network as a result of the Proposed Development, and mitigation is not required at the affected existing junctions [ER 3.5.41]. The Secretary of State agrees with the ExA’s conclusion on this issue.

101. The Secretary of State is also aware that in response to concerns as to whether the Applicant had assessed the worst case scenario for the daily handling of Ro-Ro units, the Applicant agreed to a daily cap of 1,800 Ro-Ro units per day as opposed to the annual cap of 660,000 units [ER 3.5.35 and 3.5.36] and to an Operational Freight Management Plan to minimise the impact of HGV movements and measures to ensure the maximum daily throughput cap of 1,800 units would not be exceeded [ER 3.5.37]. The Secretary of State notes that the Operational Freight Management Plan is secured by requirement 13 of the Order, and that the final version of this requirement must be approved by NELC and National Highways as the relevant highways authority. The Secretary of State also notes that the daily throughput cap of 1,800 Ro-Ro units is secured by article 21 of the Order.

102. The Secretary of State notes that DFDS considered the Applicant’s assumption that only 15% of the new HGV traffic would use the Port of Immingham’s West Gate and the remaining 85% would use the East Gate as unrealistic. The Secretary of State has considered the Applicant’s sensitivity test which included an assessment of the impacts of 60% of traffic from the Proposed Development using the West Gate and notes that this found that the conclusions reached in the Applicant’s Transport Assessment remained unaltered. The ExA concluded, taking into account its review of the internal vehicle routes within the Port of Immingham during its accompanied site inspection, that it was more likely that the majority of drivers utilising the Proposed Development are likely to use the East Gate over the West Gate given the closer proximity of the East Gate to the Proposed Development and given the less favourable route to and from the West Gate [ER 3.5.42]. The Secretary of State accepts the ExA’s findings on this matter.

103. Finally, the Secretary of State has considered the Statement of Common Ground (“SoCG”) between the Applicant and National Highways and NELC. The Secretary of State notes that both National Highways and NELC accept the conclusions in the Transport Assessment Addendum to be appropriate, and that no further mitigation is required. It is also noted that NLC raised no concerns in its SoCG with the Applicant [ER 3.5.39]. Like the ExA, the Secretary of State considers it important that none of these highways authorities have raised any concerns about the ability of the surrounding strategic and local highways networks to safely and efficiently accommodate the traffic that is expected to be generated as a result of the Proposed Development [ER 3.5.43]. The Secretary of State therefore agrees with the ExA’s overall conclusion that the impacts deriving from the Proposed Development would not be significant on the road network and that mitigation is not required at affected junctions.

#### The Secretary of State Conclusions on Terrestrial Traffic and Transport

104. The Secretary of State acknowledges that the Proposed Development would generate additional vehicular traffic to the surrounding highway network. She agrees with the ExA that requirements 5, 12 and 13 in the Order include measures to adequately mitigate against any potential negative impacts from an increase in traffic [ER 3.5.47]. The Secretary of State also agrees with the ExA's conclusion that the highway network in the vicinity of Immingham would be able to accommodate the expected level of increase in traffic as a result of the Proposed Development. In addition, the Secretary of State notes that no concerns were raised by any Highways Authority about the ability of the strategic road network and local road networks to safely and efficiently accommodate the increase in traffic expected as a result of the Proposed Development [ER 3.5.43].

105. The Secretary of State is satisfied that the Proposed Development aligns with the transport and traffic policies in the NPSfP and the National Planning Policy Framework (NPPF) [ER 3.5.48]. The Secretary of State notes that the ExA recommended that the transport and traffic impacts are neutral and should weigh neither for nor against the granting of the Development. The Secretary of State agrees that terrestrial traffic and transport effects weigh neither for or against the making of the Order.

## Climate Change

### *Background*

106. The UK's international obligations include its obligations under the Paris Agreement, which was ratified by the UK Government in 2016 after the NPSfP was designated in 2012. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008. In June 2019, the Government announced a new carbon reduction 'Net Zero' target for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019. This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050.

107. The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target. Six carbon budgets have been adopted. The time periods covering the fourth ("4CB"), fifth ("5CB") and sixth ("6CB") carbon budgets are 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas (GHG) emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target. Compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement.

108. Paragraph 4.12.3 of the NPSfP states that a decision-maker is not required to take into account how a new port development might affect the GHG emissions produced by ships traveling to and from the port. Paragraph 4.12.4 of the NPSfP further clarifies that while the emissions resulting from ships in ports are unlikely to be significant contributors to climate change, it suggests that, in circumstances where an ES is required, applicants should outline the proposed mitigations aimed at minimising emissions effects in the local area and determine their likely contribution to GHG. However, if a development is expected to lead to significant increases in inland traffic,

then the impacts from CO<sub>2</sub> and other GHG will need to be assessed in the ES and accompanied by a Transport Assessment (paragraph 4.12.5).<sup>1</sup>

### *Climate Change Assessment*

109. The Secretary of State notes that the Applicant carried out an assessment of GHG and climate change resilience in Chapter 19 of the ES for both the construction and operational phases of the Proposed Development [ER 3.6.7]. The Applicant's ES assessed that the most substantial GHG impact during the construction phase derives from the construction materials, which account for up to 97% of the total emissions. Additionally, it is noted that GHG emissions from the construction activities are expected to last for up to two years (Table 19.3 (construction phase GHG emissions (2024 to 2025)) of ES, Chapter 19). Nevertheless, the GHG emissions from the construction works are assessed to contribute 1% of the total GHG emissions of the Proposed Development, assuming an engineering design standard period of 50 years (ES, Chapter 19, paragraph 19.8.16).

110. The Secretary of State notes that while all the GHG emissions generated by the Proposed Development were deemed significant, in accordance with the Institute of Environmental Management Assessment guidance, the Applicant considered the impacts of constructing and operating the Proposed Development as low. This determination is based on the assessment that these emissions, when measured against the UK Carbon Budgets, amount to less than 1% of the UK Carbon Budgets (ES, Chapter 19, paragraph 19.11.3) and as such, this would not prevent the UK to meeting its Carbon Budgets [ER 3.6.9]. Nevertheless, the Applicant assessed the potential residual effects of GHG resulting from the Proposed Development as minor/adverse for both the construction and operational phases [ER 3.6.8].

111. The climate change resilience of the Proposed Development was assessed in Chapter 19 of the Applicant's ES. The Secretary of State notes that, while several risks and impacts were identified in the ES, the Applicant concluded that climate resilience mitigation measures are embedded in the design of the Proposed Development [ER 3.6.10].

### The Secretary of State Conclusions on Climate Change

112. The Secretary of State notes that, while the Environment Agency, raised some issues regarding the Proposed Development, these matters were resolved prior to the conclusion of the Examination [ER 3.6.12]. The Secretary of State also notes that no concerns were raised by any other Interested Party [ER 3.6.11] and that a SoCG between NELC and the Applicant, confirming compliance of the Proposed Development with the policies of the North East Lincolnshire Local Plan of 2018 (NELLP), was submitted [ER 3.6.13].

113. The Secretary of State agrees with the ExA that the Proposed Development is unlikely to generate significant effects for climate change and that reasonable mitigation measures could be secured [ER 3.6.14]. The Secretary of State also agrees

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<sup>1</sup> <https://assets.publishing.service.gov.uk/media/5a78c20ae5274a277e68f3b1/national-policy-statement-ports.pdf>

with the ExA that the climate change matters are neutral and neither weight for nor against the granting of the Proposed Development.

### Flood Risk

114. The Secretary of State notes that the Applicant assessed coastal protection, flood risk and drainage both during construction and operation in Chapter 7 (Physical Processes) of its ES. She further notes that the Proposed Development is located in Flood Zone 3a, and that there is a presence of flood defences along the Port of Immingham and estuary frontage [ER 3.6.27]. Section 5.2 of the NPSfP states that applications for port development in Flood Zone 3 areas should be accompanied by a Flood Risk Assessment (“FRA”) [ER 3.6.16].

### *Flood Risk Assessment*

115. The Secretary of State has considered the Applicant’s FRA and notes that it has considered all potential flooding sources, including tidal, fluvial, groundwater, land drainage, overland flow and sewer drainage, and inclusive of allowances for climate change [ER 3.6.27]. The Secretary of State is satisfied that the FRA has been considered in accordance with the requirements of paragraph 5.2.5 of the NPSfP.

116. The NPSfP states that the decision maker should be satisfied that, where relevant:

- the application is supported by an appropriate FRA;
- the Sequential Test has been applied as part of site-selection, as appropriate;
- the proposal is in line with any relevant national and local flood risk management strategy;
- a sequential approach has been applied at the site level to minimise risk by directing the most vulnerable uses to areas of lowest flood risk;
- priority has been given to the use of sustainable drainage systems and the requirements set out in the next paragraph on National Standards have been met; and
- in flood risk areas the project is appropriately flood resilient and resistant, including safe access and escape routes where required, and that any residual risk can be safely managed over the lifetime of the development. [ER 3.6.17]

117. The Secretary of State notes that the FRA concluded that the risk of tidal flooding from tidal sources as being low because tidal flood defences are in place where the Proposed Development is located [ER 3.6.27]. The conclusion of the Applicant’s assessment in Chapter 7 (Physical Processes) of the ES was that there will be no or little impact on the significance on water levels, flow speed, flood direction, erosion and accretion patterns or wave propagation as a result of the Proposed Development’s marine elements [ES Appendix 11.1: Flood Risk Assessment, paragraph 9.1.2, seventh bullet].

118. The Applicant's assessment indicates no likely significant effects to coastal protection, flood risk and drainage during the construction of the Proposed Development. The assessment also identified the residual impacts during operation of the Proposed Development as being no greater than slight adverse. For Habrough Marsh Drain the Applicant concluded no greater than slight beneficial effect, and for the drainage infrastructure a moderate beneficial effect [ER 3.6.30]. The Secretary of State is satisfied with the Applicant's conclusion that there would be no residual off-site impacts as a result of the Proposed Development and that the Proposed Development's flood risk can be mitigated to a level which is low and acceptable [ER 3.6.27].

119. The Secretary of State agrees with the conclusions of the ExA that the flood risk considerations weigh neither for nor against the making of the Order [ER 3.6.37] and is satisfied that the Proposed Development would be unlikely to have any significant effects for flood risk and that appropriate mitigation could be secured in the recommended Order and that it accords with the flood risk policies contained within the NPSfP and NELLP [ER 3.6.36].

#### *Sequential and Exception Tests*

120. Paragraph 5.2.12 of the NPSfP states that for development in Flood Zone 3, consent should not be given unless the decision maker is satisfied that the sequential and exception test requirements have been met. Under the sequential test, if there are no reasonably available sites in Flood Zones 1 and 2, then nationally significant infrastructure can be located in Zone 3, subject to the exception test (paragraph 5.2.13) [ER 3.6.18].

121. In respect of the requirements of the sequential test, the Secretary of State notes that the analysis undertaken by the Applicant in ES Chapter 4 (Need and Alternatives) demonstrates that there is no alternative to the Proposed Development that could meet the need and objectives that have been defined. The analysis demonstrates that in respect of the sequential test that there is no reasonably available site within Flood Zones 1 and 2 where the Proposed Development could alternatively be located, and that the Proposed Development will be located entirely in Flood Zone 3A [Planning Statement, page 160]. The Secretary of State also notes that the terminal building, which the Applicant describes as the key sensitive element of the Proposed Development in terms of flood risk, will be located in a part of the site that has the lowest flood hazard, water depth and flood velocities [Planning Statement, page 165].

122. The Secretary of State also notes that the NELC's Local Impact Report advises that although the Port of Immingham is in Flood Zone 3 it is an allocated site in the NELLP, and the Proposed Development is deemed to be acceptable under the sequential test of Policy 33 of the NELLP and would also accord with Policy 34 with regard to drainage [ER 3.6.31].

123. In its Planning Statement, the Applicant states that the Proposed Development falls within the 'Water Compatible Development' classification in line with policy contained within both the NPSfP and the NPPF and, as made clear in the NPPF, Water Compatible Development does not need to be subject to the exception test when proposed within Flood Zone 3a [Planning Statement, page 277]. Further, the ExA reported that the NPSfP considers port development appropriate in Flood Zone 3 if

appropriate mitigation can be provided [ER 3.6.27]. Notwithstanding, the Secretary of State also notes that the Applicant has still carried out the exception test and demonstrated that the Proposed Development would meet the requirements of the test. Specifically:

- the Proposed Development would provide wider sustainability benefits to the community, as outlined in the Applicant's ES Appendix 11.1: flood risk assessment and Planning Statement, page 278;
- the Proposed Development would be located on developable previously developed (brownfield) land (which also forms part of the operational area of the Port of Immingham); and
- the design of the Proposed Development has taken account of flood risks as appropriate, as demonstrated in the FRA and supporting documentation.

#### The Secretary of State Conclusions on Flood Risk

124. The NPSfP states that port development is acceptable in Flood Zone 3 if appropriate mitigation can be provided. The Secretary of State agrees with the ExA that the Proposed Development would be unlikely to have any significant effects for flood risk and that appropriate mitigation is secured in the recommended draft Order. She also notes that the ExA considers that the Proposed Development would accord with the relevant policies in the NPSfP and NELLP relating to flood risk [ER 3.6.36].

125. In addition, the Secretary of State notes that at the close of the Examination, there were no outstanding concerns or matters concerning flood risk or drainage [3.6.35]. The ExA recorded that the principal concerns raised by the Environment Agency when the Application was originally submitted had subsequently been resolved, including the safeguarding of the flood defences and protecting water quality [ER 3.6.32]. Furthermore, the ExA reported that the North East Lindsey Drainage Board confirmed that it has no objection to the Proposed Development, provided it adheres to the Drainage Plan and achieves stipulated allowable discharge rates for the Habrough Marsh Drain [ER 3.6.33]. The SoCG between the Applicant and NELC confirmed compliance with the NELLP's policies [ER 3.6.34].

126. The ExA recommended flood risk considerations should weigh neither for nor against the granting of the Development [ER 3.6.37]. The Secretary of State agrees and has given this matter neutral weight in the planning balance as set out in the Planning Balance section below.

#### Water Environment

127. The Secretary of State considered the Applicant's assessment of ground conditions including land quality, water and sediment quality matters as detailed in Chapter 12 (Ground Conditions including Land Quality) and Chapter 8 (Water and Sediment Quality) of its ES that identifies the main effects during the construction and operational phases together with mitigation measures [ER 3.6.40]. The Secretary of State notes that, in the absence of quantified UK standards for marine sediment quality, the Applicant reports that it is common practice to use the Centre for Environment, Fisheries and Aquaculture Science Guideline Action Levels for the disposal of dredge material. Furthermore, she notes that the Applicant agreed a

sampling plan with the Marine Management Organisation, in consultation with the Centre for Environment, Fisheries and Aquaculture Science, with sediment samples collected from ten locations across the Proposed Development's dredge area [ER 3.6.44].

128. A summary of the assessed impact pathways, the identified residual impacts and the level of confidence is presented by the Applicant in Table 8.18 of Chapter 8 of the ES. The Applicant's assessment shows that all potential impacts from the Proposed Development on water and sediment quality are between insignificant to minor adverse and therefore, no specific mitigation measures have been identified as being required. However, tertiary mitigations would be undertaken to manage commonly occurring environmental effects during the construction phase. The mitigation measures to manage water quality impacts, as outlined in the section 8.9 of Chapter 8 of the ES, have been incorporated in the Offshore and Onshore Construction Environmental Management Plans respectively [ER 3.6.45]. Further, the Secretary of State acknowledges that the outcomes of the Applicant's water and sediment quality assessment informed its Water Framework Directive Compliance Assessment [ER 3.6.46].

129. The Secretary of State notes that at the close of the Examination, there were no outstanding concerns or matters concerning the water environment [ER 3.6.49]. The ExA recorded that the SoCG between the Applicant and NELC confirmed compliance with the NELLP's policies [ER 3.6.47] and the Environment Agency confirmed that all matters between it and the Applicant had been resolved [ER 3.6.48].

#### The Secretary of State Conclusions on Water Environment

130. The Secretary of State notes that the ExA is satisfied that the Proposed Development would be unlikely to have any significant effects for land or water quality and that appropriate mitigation is secured in the draft Order. Further, she notes that the ExA considers that the Proposed Development would accord with the relevant policies in the NPSfP and MPS relating to water quality [ER 3.6.50]. The ExA considered that the effects on the water environment neither weigh for nor against the granting of the Development [ER 3.6.51] and the Secretary of State agrees with that conclusion.

#### Socio-Economic, Commercial and Economic effects

131. The Secretary of State is aware that Chapter 16 of the ES sets out the Applicant's socio-economic assessment [ER 3.7.8]. The Secretary of State agrees with the ExA that the Applicant has, for the most part, adequately assessed the Proposed Development's socio-economic effects and has provided sufficient evidence to support its conclusions about those effects [ER 3.7.25].

132. For the construction phase, the Secretary of State agrees with the ExA that the Applicant's assessment that the employment and Gross Value Added effects would be moderately beneficial, while the effects on local services, temporary accommodation (housing for construction workers) and existing businesses would be negligible [ER 3.7.18].

133. For the operational phase, the Secretary of State notes that the ExA disagrees with the Applicant's assessment of the contribution to employment as being

moderately beneficial, as the assessment does not take into account Stena Line's intention to relocate its existing Humber services to the Proposed Development [ER 3.7.19]. The ExA instead considers the Proposed Development's employment effect to be more likely negligible to minor beneficial, and that it would only be greater if the presence of the proposed berths resulted in a net increase in Ro-Ro services being operated on the Humber [ER 3.7.19].

134. The ExA accepted that the Proposed Development's construction phase would in socio-economic terms be beneficial for the Grimsby Travel to Work Area ("TTWA"), most particularly in terms of employment opportunities and Gross Value Added [ER 3.7.18]. In that regard the ExA shares the Applicant's view that for the construction phase the employment and Gross Value Added effects would be moderately beneficial, with the effects for local services, temporary accommodation (i.e., housing for construction workers) and existing benefits being "negligible". For the operational phase, the ExA concluded that the impacts would be minor beneficial, with the impact on local services being negligible [ER 3.7.20] for the reasons set out in ER 3.7.19.

135. The ExA had reservations regarding the Applicant's conclusion that the operational phase's effect on local businesses would be negligible, as outlined in paragraphs ER 3.7.21 to ER 3.7.24. The ExA noted in particular that while the Applicant has reached agreements with three tenants that would be affected by the construction of the proposed Northern Storage Area, it had not yet reached an agreement with Volkswagen Group ("VWG"), who occupy the proposed Western Storage Area (Plot 9) regarding its relocation to the Port of Grimsby. The ExA therefore did not accept the Applicant's conclusion as the effects for VWG as being "negligible" [ER 3.7.24].

#### Secretary of State conclusions on Socio-Economic, Commercial and Economic effects

136. The ExA concluded that overall, the Applicant has adequately assessed the socio-economic effects and has provided sufficient evidence to support their conclusion that the Proposed Development will have an overall beneficial economic effect on the Grimsby TTWA economy. The ExA therefore accepted that the Proposed Development would provide some support for economic development in the area and would accord with the relevant policies in the NPSfP [ER 3.7.25]. The Secretary of State agrees.

137. As set out above in respect of the impacts from the Proposed Development on local businesses during the operational phase, the ExA's recommended that little positive weight should be attached to the socio-economic effects that would arise as a result of the Proposed Development due to its reservations about the Applicant's forecasted employment benefits during the operation and the potential effect upon VWG's operations on the Humber. The ExA also recommended, however, that if the matter of relocating VWG to the Port of Grimsby were to be resolved the Proposed Development's socio-economic effects would attract greater positive weight [ER 3.7.25].

138. As set out in the Compulsory Acquisition section below, the Secretary of State notes from the responses to her consultations that while the negotiations required to secure the move for VWG from the Port of Immingham to the Port of Grimsby are still ongoing, these negotiations are considered by VWG to be proceeding extremely



positively and amicably, draft heads of Terms for an Agreement for Lease are in an advanced stage with the design and specification for the new site in Grimsby being finalised, VWG expects to conclude an Agreement for Lease for it to occupy premises at the Port of Grimsby in the first Quarter 1 of 2025 and the commencement of the construction of the storage areas will focus on the Northern, Central and Southern storage areas so as to avoid the Western Storage Area. In light of these developments since the conclusion of the examination, the Secretary of State therefore accepts the Applicant's conclusion that the impacts from the Proposed Development as being negligible. The Secretary of State agrees with the ExA recommendation that, as these matters are approaching resolution, a greater positive weighting should be attached to the socio-economic effects and has given them moderate positive weight in the planning balance.

### Air Quality

139. The Secretary of State has considered the air quality assessment on human receptors as set out in Chapter 13: Air Quality of the Applicant's ES concerning the likely effects during both the construction and operation phases of the Proposed Development.

140. The Secretary of State notes that Chapter 13 of the ES reports that the vessel activity generated from construction of the Proposed Development would be approximately 1.5km away from the nearest human sensitive receptors and that construction traffic impacts would be below the required threshold [3.8.14].

141. The ES noted the potential for significant on-site dust impacts on human receptors during the construction phase. However, the Applicant recognised that by implementing adequate mitigation measures, these adverse effects could be minimised to levels deemed insignificant. The on-site operational effects for human receptors were assessed as being insignificant [ER 3.8.15].

142. The Secretary of State notes that the on-site effects from the operational phase of the Proposed Development are assessed as insignificant [ER 3.8.16], and that off-site likely effects from construction and operation, as well as the anticipated residual effects on human health, were all deemed insignificant. She further notes that the operational effects are likely to further diminish over time owing to the expected increased utilisation of emissions reduction technology [ER 3.8.17].

143. The Secretary of State is aware that there were no issues raised on air quality during the Examination and that NELC agreed with the Applicant's air quality assessment subject to the implementation of the mitigations measure set out in Chapters 13 and 14 of the ES [ER 3.8.22].

### The Secretary of State Conclusions on Air Quality

144. The Secretary of State agrees with the ExA that the Applicant's assessment on air quality on human receptors is adequate and that appropriate mitigation measures have been identified by the Applicant which it has proposed would be included in the draft Order. The ExA considered with respect to air quality it is unlikely there would be any significant residual effects for humans [ER 3.8.24]. The Secretary of State notes that the ExA concluded with respect to air quality for humans there would be no conflict with the relevant policies in the NPSfP, EIMP and NELLP and she agrees with the ExA

that the impacts on air quality neither weigh for nor against the granting of the Order [ER 3.8.25].

### Noise and Vibration

145. The Secretary of State notes that there were no issues raised on noise and vibration during the Examination and that NELC agreed with the Applicant's noise and vibration assessment subject to the implementation of the mitigation measures set out in Chapters 13 and 14 of the ES [ER 3.8.22]. Nevertheless, the Secretary of State notes that the Applicant's assessment of noise and vibration in Chapter 14: Airbourne Noise and Vibration of the ES identified some effects on human receptors resulting from both the construction and operations of the Proposed Development [ER 3.8.19-.20].

146. The assessment in Chapter 14 of the ES predicted the noise impacts resulting from the construction of the Proposed Development as being minor adverse to the occupiers of the dwellings on Queens Road, and as being moderate adverse to the occupiers of the Port of Immingham. The vibration impacts resulting from the construction of the Proposed Development were assessed in the ES as negligible/minor adverse to the occupiers of premises within the Port of Immingham [ER 3.8.19].

147. The Secretary of State notes that while the on-site noise effects resulting from the operation of the Proposed Development was assessed as minor adverse to the occupiers of the dwellings on Queens Road and Kings Road, the off-site increase in road traffic noise experienced during the operational phase of the Proposed Development by the residents of Queens Road were assessed as being moderate/major adverse and therefore significant. The Secretary of State notes that a requirement within the draft Order secures a noise insulation mitigation package for the owners of affected properties which would reduce the effect for residents of Queens Road to minor adverse at worst. For occupiers of the Port of Immingham, the operational noise effects have been assessed as ranging between major adverse to minor adverse. It is noted that the Applicant has assessed that the occupiers of the Port of Immingham, the effect is expected to reduce to "minor adverse or less with windows and doors facing the Proposed Development kept closed and the use of alternative means of ventilation". The Applicant also considered that the anticipated electrification of port vehicles and equipment would reduce the level of noise associated with the operation of the Proposed Development [ER 3.8.20].

### The Secretary of State Conclusions on Noise and Vibration

148. The Secretary of State agrees with the ExA that the Applicant's assessment on noise and vibration on human receptors is adequate and that appropriate mitigation measures have been identified by the Applicant which it has proposed would be included in the draft Order. The ExA considered that with respect to noise and vibration it is unlikely there would be any significant residual effects for humans [ER 3.8.24]. The Secretary of State has noted that with respect to noise and vibration for humans there would be no conflict with the relevant policies in the NPSfP, EIMP and NELLP and she agrees with the ExA's recommendation that noise and vibration effects should neither weigh for nor against the granting of the Order [ER 3.8.25].

### Landscape and Visual Effects

149. The Secretary of State notes that the Planning Inspectorate agreed that the landscape/seascape and visual impact could be scoped out of the application “on the grounds that new structures within the Proposed Development would be within the existing port environment and would be similar to existing structures”. Responding to advice within the Scoping Opinion, the Application included a Lighting Plan and a lighting design concept report [ER 3.8.21].

150. The Secretary of State notes that there were no concerns or matters raised on landscape and visual effects during the Examination [ER 3.8.22].

#### The Secretary of State Conclusions on Landscape and Visual Effects

151. The Secretary of State notes that having inspected the site and taking into account the industrial character of the Port of Immingham, the ExA was content that the Proposed Development would not have any adverse landscape and visual effects [ER 3.8.24]. She agrees with the ExA’s recommendation that landscape and visual effects should neither weigh for nor against the granting of the Order [ER 3.8.25].

#### Historic Environment

152. The Secretary of State notes that no IPs raised issues on Historic Environment during the Examination [ER 3.8.34 and ER 3.8.41]. The ES and supplementary documents submitted by the Applicant suggested that the Proposed Development would lie outside the setting of any heritage assets for which setting makes a contribution to the significance of those assets, and not cause any harm to any terrestrial heritage assets, an assessment accepted by NELC in its SoCG with the Applicant [ER 3.8.31 and ER 3.8.39].

153. The Secretary of State notes the ExA’s summary of the Applicant’s marine historic environment assessment at ER 3.8.33 and that, in their SoCGs, both Historic England’s and NELC’s acceptance of the Applicant’s assessment [ER 3.8.44 and ER 3.8.46]. In respect of the intertidal zone the ExA was also content that the Applicant has adequately consulted NELC about its Applicant’s Written Scheme of Investigation (WSI) aimed at reducing negative impacts [ER 3.8.46].

#### The Secretary of State Conclusions on the Historic Environment

154. The Secretary of State considers that the Applicant has taken reasonable steps to assess the terrestrial and marine historic environment and that adequate mitigation measures are secured in the draft Order [ER 3.8.47]. The Secretary of State agrees with the ExA that after mitigation secured through the Order the Proposed Development would be unlikely to result in harm to designated or non-designated heritage assets and that the impacts on the historic environment weigh neither for nor against the making of the Order [ER 3.4.47-3.4.48].

#### Coastal Physical Processes, Waste Management and Dredge Disposal

155. The Applicant’s physical processes assessment is in Chapter 7 of the ES which has been informed by the Applicant’s HRA report [ER 3.8.54]. The Secretary of State notes that the physical processes assessment that the Applicant undertook, as outlined in its ES, concluded that changes resulting from the Proposed Development’s construction and operation are considered small in both magnitude and extent and the resultant exposure to change is assessed as low [ER 3.8.55].

156. The Secretary of State also considered the Waste Hierarchy Assessment that the Applicant undertook to determine the Best Practical Environmental Option for the disposal of dredge arisings. The Applicant's assessment concluded that landside disposal is not considered feasible due to practical, economic and environmental costs. The chemical analysis from sediment samples indicated that the material to be dredged "does not contain levels of contamination that would restrict the material being disposed of in the marine environment" [ER 3.8.56]. Since no beneficial use was identified for the dredge arisings and the dredged material was assessed as suitable for disposal in the sea at an appropriate licensed disposal site, the option for disposal in the Humber Estuary was selected as the Best Practical Environmental Option. The Applicant's assessment also reports that two of the Humber's existing licensed disposal sites have sufficient capacity to accommodate the worse-case maintenance dredging arising from the Proposed Development [ER 3.8.57]. The impact of dredge disposal was assessed further as part of the coastal physical processes assessment. The ExA recorded that to protect the marine and coastal environment, the Deemed Marine Licence, Schedule 3 in the draft Order contains conditions relating to dredge disposal and on the management of construction waste [ER 3.8.58].

157. The Construction Environmental Management Plan ("CEMP") included with the Application includes a Site Waste Management Plan [ER 3.8.89]. The Applicant's assessment of ground conditions and land quality concluded that there would be no likely significant residual effects after mitigation during the construction phase. The mitigation is secured in the draft Order through adherence to the offshore and onshore CEMPs [ER 3.8.60]. The Secretary of State notes that no Interested Parties raised concerns about waste management during the Examination and that clarifying questions that the ExA asked in relation to the disposal of dredged material and the wording of the CEMPs were all addressed to the ExA's satisfaction [ER 3.8.61]. The Secretary of State also notes that the SoCG between the Applicant and the MMO which confirmed that all comments and questions concerning physical process and sediment related impacts had been resolved [ER 3.8.62].

#### The Secretary of State conclusions on Coastal Physical Processes, Waste Management and Dredge Disposal

158. The Secretary of State notes the conclusions of the ExA that there would be no conflict with the policies concerning coastal physical processes, waste management and dredge disposal policies included in the NPSfP and the MPS and she agrees that the effects of these matters weigh neither for nor against the granting of the Order [ER 3.8.63].

#### Land Use Planning

159. The Applicant confirmed that security measures would be applied to the land use for the Proposed Development [ER 3.8.68].

160. The Secretary of State notes that during the statutory consultation the Ministry of Defence confirmed that it had no safeguarding concerns with the Proposed Development [ER 3.8.69] and the UK Health Security Agency submitted that it was satisfied that the Proposed Development should not result in any significant adverse impact on human health [ER 3.8.73].

161. Chapter 18: Land Use Planning of the ES provides an assessment of risks in relation to land use planning and human health and advises that there would be no storage or processing of hazardous substances. The Proposed Development would not therefore require Hazardous Substances Consent nor would it be subject to the COMAH Regulations. However, the Proposed Development lies within the consultation distance for a number of COMAH sites and the Applicant consulted with the Health and Safety Executive. Vessels using the proposed berths would lie beyond the low water mark and would not be subject to the COMAH Regulations [ER 3.8.70]. It is noted that although Section 18.9 of the ES demonstrates that the Proposed Development would not be a COMAH site, Section 18.10 assess the risks to users of the Proposed Development from the nearby COMAH sites. Section 18.13 concluded that the Proposed Development would not of itself contribute to any risks to the safety and health of people and that there was no reason why the Health and Safety Executive (“HSE”) would advise against the Proposed Development [ER 3.8.71].

162. With regard to the proximity of the Proposed Development to the adjoining COMAH sites, DFDS had contended that the HGV drivers should be included in the 100 passenger limit that the HSE has accepted. However, the Secretary of State noted that in the SoCG between the Applicant and the HSE, the HSE confirmed its agreement with the Applicant’s assessment and a daily limit of 100 departing passengers in cars prescribed in the draft Order plus HGV drivers using the Proposed Development. The HSE accepted that HGV drivers need not be counted in the passenger limit and the ExA did not disagree with that position. DFDS submitted its concern that the safety of passengers had not been properly assessed but the ExA was content with the Applicant’s case that safety management for passengers on site is a normal matter for the port operator that does not need to be secured in the Order [ER 3.8.72].

#### The Secretary of State conclusions on Land Use Planning

163. The Secretary of State notes that the Applicant has given appropriate consideration to land use planning and agrees with the ExA’s conclusion that the Proposed Development would accord with the relevant policies of the NSPpP, MPS and NELLP. She agrees with the ExA’s recommendation that land use planning effects neither weigh for or against the granting of the Order [ER 3.8.74].

#### Cumulative and In Combination Effects

164. The Secretary of State notes the Applicant’s cumulative and in combination assessment, as set out in Chapter 20 of the ES [ER 3.9.1], concluded that the Proposed Development would not give rise to any unacceptable cumulative/in combination effects [ER 3.9.2].

165. During the Examination, two other NSIP applications were accepted: 1) the Immingham Green Energy Terminal (“IGET”) [ER 1.3.31]; and 2) the Viking Carbon Capture and Storage pipeline [ER 1 3 32]. The Applicant’s revised ES Chapter 20 (REP7-008) concluded that the Viking Carbon Capture and Storage pipeline cumulative and in combination assessment concluded that cumulative and in combination impacts were not predicted.

166. The Secretary of State notes the concerns raised by Natural England regarding in combination adverse effects on integrity for physical loss of intertidal habitat effects

with IGET [ER 3.4.34]. She also notes that the ExA recommended that the Secretary of State enter into a section 106 agreement with the Applicant to secure allocation of compensatory land in relation to that concern [ER 3.4.37]. Following the Secretary of State's consultation (9 July 2024), Natural England confirmed (23 July 2024) that in combination impacts between IGET and the Proposed Development had been adequately addressed through the IGET project and therefore compensatory measures were no longer required for either project. This matter has been addressed more fully in the Secretary of State's HRA Report and summarised in this Decision Letter.

167. Some questions from the MMO relating to cumulative effects on coastal processes were resolved by the Applicant's Deadline 1 response. There were no matters of disagreement between these parties as noted by the signed SoCG submitted at Deadline 10. The Secretary of State notes that the ExA was content that initial concerns the MMO had regarding the cumulative effects had been adequately addressed [ER 3.9.4].

168. Taking into consideration the above and taking into account the mitigation measures identified by the Applicant, the Secretary of State is content that the Proposed Development would be unlikely to give rise to significant cumulative and in combination effects. It is noted that the necessary mitigation measures can be secured through requirements or Deemed Marine Licence conditions included in the proposed Order [ER 3.9.6].

#### The Secretary of State's conclusions on Cumulative and In combination Effects

169. The Secretary of State is content that the assessment of cumulative and in combination effects accords with the EIA Regulations and the NPSfP. The ExA considered that the cumulative and in combination effects neither weigh for nor against making of an Order [ER 3.9.7]. The Secretary of State agrees with this conclusion.

#### Habitats Regulations Assessment

170. This section should be read alongside the Secretary of State's Habitats Regulations Assessment for an Application under the 2008 Act – Immingham Eastern Roll on Roll off Terminal (October 2024).

171. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations'), the Secretary of State, as the competent authority, is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site. The purpose of the likely significant effects ("LSE") test is to identify the need for an 'appropriate assessment' ("AA") and the activities, sites or plans and projects to be included for further consideration in any AA.

172. Where LSE cannot be ruled out, the Secretary of State must undertake an AA under regulation 63(1) of the Habitats Regulations to assess potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking a plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the plan or

project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest apply (regulation 64).

173. The Secretary of State notes that the Proposed Development is not directly connected with, or necessary to, the management of a European site [ER C. 1.1.11] and that the European sites that were considered in the Applicant's assessment of LSE were: the Humber Estuary SAC, the Humber Estuary Ramsar site, the Humber Estuary SPA and the Wash and North Norfolk Coast SAC. The Secretary of State notes that Natural England's submission to supplement its Relevant Representation [AS-015], advised that the Wash and North Norfolk Coast SAC should be included in relation to the harbour [common] seal feature. Following this, no IPs raised any further concerns about the scope of the European sites considered or their qualifying features. [ER 1.2.4].

174. The Applicant screened out the Greater Wash SPA within Table 2 of the initial HRA report and identified no pathways to be screened in at Stage 1 screening that could have any LSE on the qualifying features of the SPA. The Applicant had concluded no LSE would occur from the Proposed Development either alone or in-combination with any plans or projects, a conclusion that Natural England confirmed it agreed with [ER C.1.2.27].

#### Likely Significant Effects Assessment

175. The Applicant identified impacts from the Proposed Development considered to have the potential to result in LSE alone and in-combination on the remaining sites as summarised in Table C, Appendix C of the ExA Recommendation Report. Those sites were [ER C.1.2.28]:

- Humber Estuary SAC
- Humber Estuary SPA
- Humber Estuary Ramsar
- The Wash and North Norfolk SAC

176. The Applicant identified impacts from the Proposed Development considered to have the potential to result in LSE alone and in combination on the remaining sites in Table C. The impacts considered by the Applicant to have the potential to result in LSE during construction and operation were set out in ER Table C.

177. Having considered the assessment material submitted during and since the Examination, the Secretary of State considers that LSE in relation to the construction and operation of the Proposed Development could not be ruled out in relation to the Humber Estuary sites and The Wash and North Norfolk SAC. The Secretary of State therefore considered that an AA should be undertaken to discharge her obligations under the Habitats Regulations. The AA is provided in detail within the Secretary of State's Habitats Regulations Assessment published alongside this letter and should be read in conjunction with it.

#### Appropriate Assessment

### *The Wash and North Norfolk Coast SAC*

178. The only impact pathway that was identified during the screening to give rise to LSE were underwater noise effects on marine mammals resulting from capital dredging, piling, dredge disposal and vessel operations including maintenance dredge and maintenance dredge disposal [ER. C 1.2.33 Table C]. The Applicant put forward the case [REP5-020, Table 32] that it is unlikely that the immediate vicinity of the Proposed Development is within the core range for harbour [common] seal qualifying features of the SAC, which is located over 75 km from the Proposed Development. The ExA and the Secretary of State are satisfied that, with the correct mitigation secured in the CEMP [REP8-010] and the Outline Offshore CEMP [REP8-012] secured in the Order there would be no adverse effect on site integrity from the Proposed Development alone or in combination with other plans or projects [ER 1.9.5].

### *Humber Estuary SAC*

179. In relation to the Humber Estuary SAC, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, in relation to lamprey species and grey seal, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievements of the conservation objectives arising from the LSE identified. The ExA [ER 4.5.3] was satisfied that with the correct mitigation secured in the Order, CEMP and the Outline Offshore CEMP there would be no adverse effect on site integrity from the Proposed Development alone. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.

180. Post Examination, outstanding issues in relation to the in combination effects on the SAC between the Applicant and Natural England were resolved. Natural England confirmed during consultation with the Secretary of State on 23 July 2024 that in combination effects between the Proposed Development and other plans or projects - including the Immingham Green Energy Terminal and the Humber Stallingborough Phase 3 Defence Improvement Scheme - in relation to physical habitat loss and physical damage through disturbance and/or smothering of habitat can be ruled out, and a conclusion of no adverse effect on integrity ("AEoI") can be drawn.

### *Humber Estuary SPA*

181. In relation to the Humber Estuary SPA, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievement of the conservation objectives arising from the LSE identified. The ExA [ER 4.5.3] was satisfied that with the correct mitigation secured in the proposed Order, CEMP and Outline Offshore CEMP there would be no adverse effect on site integrity from the Proposed Development alone. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.

182. In addition, the Secretary of State is satisfied that the only impact pathway that was not resolved by the end of the Examination that was identified to have a potentially likely significant effect was airborne noise and visual disturbance during construction. By the end of the Examination, Natural England and the Applicant had not agreed on suitable disturbance buffer distances to use as mitigation in relation to this impact



pathway. The Applicant held that a 200 m buffer zone would be sufficient to mitigate visual and airborne noise disturbance during the construction phase of the Proposed Development, whereas Natural England recommend a precautionary approach at 300 m. The Secretary of State has considered the Applicant's further arguments for a 200 m buffer distance [REP-013] and [REP5-020] and considers 200 m to be adequate in this instance, and did not consider further enquiries needed to be made on this issue. The Secretary of State has therefore concluded no AEoI due to visual and airborne noise disturbance during construction, both alone and in combination with other plans and projects [ER 4.5.5 and 4.5.6].

#### *Humber Estuary Ramsar site*

183. In relation to the Humber Estuary Ramsar site, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievements of the conservation objectives arising from the LSE identified. The ExA [ER 4.5.3] was satisfied that with the correct mitigation secured in the Order, CEMP and the Outline Offshore CEMP there would be no adverse effect on site integrity from the Proposed Development alone. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.

184. In addition, the same impact pathways identified above for the Humber Estuary SAC of physical habitat loss and physical damage through disturbance and/or smothering of habitat were identified to potentially have a significant effect on the Ramsar site in combination with other plans or projects. However, AEoI has been ruled out by the Secretary of State due to the same arguments set out above under the Humber Estuary SAC of this decision letter. As such, a conclusion of no AEoI has been drawn.

#### *Appropriate Assessment Conclusions*

185. The Secretary of State concludes that when mitigation measures are taken into account, adverse effects, from the Proposed Development alone and in combination with other plans and projects, on the integrity of the Humber Estuary SPA, the Humber Estuary SAC, the Humber Estuary Ramsar site and The Wash and North Norfolk Coast SAC. These conclusions are set out in more detail in the HRA that accompanies this letter.

#### The Secretary of State's conclusion on the Habitats Regulations Assessment

186. The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of these European sites and where relevant, the measures in place to avoid and reduce the potential harmful effects, there would not be any implications for the achievement of the conservation objectives for all of the European sites identified from the Proposed Development alone and in combination with other plans or projects.

187. At the time of the ExA Recommendation Report Natural England had not come to an agreement with the Applicant on excluding AEoI beyond reasonable scientific doubt on in combination effects with other plans or projects on the Humber Estuary SAC and the Humber Ramsar site. The Applicant was therefore requested to produce a 'Without Prejudice Derogations Report' [REP8-033] which assessed the Project

against three tests. Each test must be passed sequentially before proceeding to the next in order for the project to proceed. This report set out a consideration of alternatives, imperative reasons of overriding public interest, and suitable compensation measures for the Proposed Development to continue. Although the Secretary of State welcomes this submission and notes that the Derogations Report states that the Proposed Development would pass the derogations tests, further information was submitted during the IGET<sup>2</sup> examination in July 2024 and Natural England are now in agreement with the Applicant that any AEoI of the Humber Estuary SAC and the Humber Estuary Ramsar site can be excluded beyond reasonable scientific doubt. As such, the HRA undertaken by the Secretary of State has concluded at Stage 2: Appropriate Assessment and the need to engage with the HRA derogations, including the need for compensatory measures, is no longer required.

188. The Secretary of State, as the competent authority for the purposes of the Habitats Regulations, has therefore concluded that, taking into account the package of mitigation measures, it is permissible for her to grant development consent for the Proposed Development.

## **Planning Balance**

189. The ExA's recommendations on the weight that the Secretary of State should give to the principle issues is found in section 5.3 of the Report. The ExA recommend that the following matters should weigh in favour of the Proposed Development:

- the Proposed Development's contribution to meeting the general need for additional port capacity attracts little positive weight for the making of the Order [ER 5.3.1];
- providing that compensatory habitat at the Outstrays to Skeffling Managed Realignment Scheme can be secured, the effects on Marine Ecology, Biodiversity and the Natural Environment attract little positive weight to the making of the Order [ER 5.3.2]; and
- the generation of employment and gross value added benefits for the local economy that would occur as a result of the Proposed Development attracts little positive weight [ER 5.3.3];

190. The ExA concluded that other issues and matters should weigh neutrally in the planning balance [ER 5.3.5] which include:

- terrestrial traffic and transport effects;
- climate change matters;
- flood risk considerations;
- the effects on the water environment;
- effects on air quality;
- noise and vibration matters;

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<sup>2</sup> Immingham Green Energy Terminal Shadow Habitats Regulations Assessment: [Immingham Green Energy Terminal Volume 7 - July 2024 \(planninginspectorate.gov.uk\)](https://www.planninginspectorate.gov.uk/imm-gheta-volume-7-july-2024/)

- landscape and visual effects; and
- land use planning effects.

191. The ExA concluded the following issue should weigh against the Proposed Development:

- Navigation and Shipping – little negative weight on residual adverse navigation and shipping effects [ER 3.3.202 and 5.3.4].

#### The Secretary of State's Conclusions on Planning Balance

192. Unless otherwise stated below, the Secretary of State agrees with the ExA's recommendation in respect of the weighting for matters set out above.

193. The Secretary of State places substantial weight on the capacity that the Proposed Development would deliver and the contribution this would make towards: meeting the long-term demand for port capacity to cater for growth in volumes and imports and exports by sea at the national level as established by the NPSfP; ensuring resilience of the national port infrastructure and effective competition among UK ports at the national level and with neighbouring trade partners; and ensuring port capacity at a variety of locations nationally to match existing and expected trade (NPSfP 3.5.1). Further, the Secretary of State notes the discussion on alternatives and is content that it is in line with Section 4.9 of the NPSfP which states that from a policy perspective there is no general requirement to consider alternatives or to establish whether a proposed project represents the best option [ER 3.2.122]. The Secretary of State also notes and agrees with the ExA's conclusion that there would be no conflict with the policies of the NPSfP, the MPS and the EIMP [ER 5.3.6]. For the reasons set out in the Socio-Economic, Commercial and Economic Effects section of this letter, the Secretary of State disagrees with conclusion reached by the ExA and has placed moderate positive weight on the socio-economic benefits identified by the ExA in paragraph ER 3.7.25.

194. Having carefully weighed the expected benefits against the potential negative impacts, the Secretary of State is of the view that the need and other benefits that are expected as a result of the Proposed Development outweigh the potential negative impacts.

195. The Secretary of State agrees with the ExA that the Proposed Development is acceptable in principle in planning terms and that the case for Development Consent has been made [ER 5.3.7].

## **COMPULSORY ACQUISITION**

196. The Secretary of State notes that the Application seeks compulsory acquisition powers for the acquisition of new permanent rights over land and the extinguishment and/or suspension of rights over land for the construction, operation and maintenance of the Proposed Development [ER 6.1.1 and 6.2.1]. Section 122(2) of the 2008 Act requires that the land to be compulsorily acquired must be required for the development to which development consent relates, is required to facilitate or be incidental to that development, or is replacement land which is to be given in exchange for the order land. Section 122(3) of the 2008 Act requires that there must be a

compelling case in the public interest for the land to be acquired compulsorily. Section 123 of the 2008 Act requires that one of three conditions is to be met, namely:

- a) the application for the Order included a request for compulsory acquisition of the land to be authorised;
- b) all persons with an interest in the land consent to the inclusion of the provision;  
or
- c) the prescribed procedure has been followed in relation to the land.

197. In addition, a number of general considerations from the former Department for Communities and Local Government 'Planning Act 2008: Guidance related to procedures for the compulsory acquisition of land' ("the compulsory acquisition guidance") need to be addressed to demonstrate that there is compelling evidence that the public benefits that would be derived from compulsory acquisition would outweigh the private loss suffered by those whose land would be acquired [ER 6.5.2].

198. The Secretary of State notes that the ExA, in reaching its overall conclusions, applied the relevant tests to the land over which compulsory acquisition powers are sought by the Applicant regardless of whether any objections or representations were raised [ER 6.7.1]. The ExA's consideration of compulsory acquisition powers and related matters is set out in sections 6, 7.3 and 7.5 of the Report.

#### Funding

199. The Secretary of State notes that as part of the Examination the ExA considered the funding statement submitted by the Applicant in support of their Application and concluded that there is sufficient funding available to meet any necessary compensation that might arise in connection with the Proposed Development [ER 6.6.13]. The Secretary of State sees no reason to disagree with the ExA's conclusion.

#### Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6

200. The Secretary of State agrees with the ExA that Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 are required for the construction and operation of the North, Central and South storage areas [ER 6.7.12] and that therefore the test in section 122(2)(a) of the 2008 Act has been met. The Secretary of State is aware that no objections were raised to the compulsory acquisition powers sought in respect of Plots 1, 2a, 2b, 3, 4, 5a, 5b and 6 [ER 6.7.11 and ER 6.4.3]. The Secretary of State notes that the ExA considered that the proposed interference would be lawful, necessary, proportionate and justified in the public interest and that the compulsory acquisition powers sought are compatible with the Human Rights Act 1998 and the European Convention of Human Rights [ER 6.8.9]. It is noted that the ExA concluded that the acquisition of these plots would be necessary, proportionate and that any private harm would be outweighed by the public benefit from the Proposed Development and that section 122 has been met [ER 6.9.1]. The Secretary of State agrees with these conclusions.

#### Plot 9 – Land occupied by VWG

201. The Secretary of State notes that at the close of the Examination, VWG had not withdrawn its objection to the compulsory acquisition powers sought by the Applicant

over Plot 9 [ER 6.8.10] which would make up the proposed West storage area and is currently leased to VWG as a vehicle storage area [ER 6.7.2]. Overall, the ExA concluded that the Applicant had not clearly demonstrated that Plot 9 is required for the Proposed Development and had therefore failed to comply with section 122(2)(a) of the 2008 Act. The ExA was also of the view that the Applicant had not complied with section 122(3) of the 2008 Act because the Applicant has not clearly demonstrated that there is a compelling case in the public interest for Plot 9 to be subject to compulsory acquisition [ER 6.7.9] in that the public benefit would outweigh the private loss that could occur [ER 6.7.10]. The ExA's conclusions were based on its views that:

- the phased construction of the west storage area suggesting that this land was not essential for operation of the Proposed Development, while noting that the absence of the West storage area would reduce port resilience on the Humber and could affect the efficient operation of the Proposed Development [ER 6.7.8, first bullet];
- the need case for the Proposed Development being overstated, the capacity at the Port of Killingholme has being underestimated, and the physical capacity available at the Port of Killingholme meaning that it cannot be discounted as an alternative to the Proposed Development [ER 6.7.8, second bullet]; and
- the lack of agreement between VWG and the Applicant could result in adverse effects on VWG's business continuity [ER 6.7.8, fourth bullet] and there would not be a compelling case in the public interest for Plot 9 to be acquired compulsorily. The ExA also considered that the proposed interference with VWG's interests would not be lawful, proportionate and justified in the public interest and that there would be incompatibility with the Human Rights Act 1998 and the ECHR [ER 6.8.10].

#### The Secretary of State Consultations on Plot 9

202. In light of the ExA's recommendation that she consult further on this outstanding issue, the Secretary of State consulted both the Applicant and VWG for an update on the status of their negotiations [ER 6.9.2]. The Secretary of State notes that both the Applicant's representation dated 23 July 2024 and VWG's representation dated 19 July 2024 state that while negotiations remain ongoing, a lease is expected to be agreed in the first quarter of 2025, and that this issue would not cause the Applicant difficulties in implementing the Proposed Development. The Secretary of State is aware that this is because the Applicant intends to concentrate works on the Northern and Central storage areas in advance to commencing any works in the West storage area (Plot 9), which VWG currently occupies. The Secretary of State notes that while both the Applicant and VWG state that they remain committed to securing a solution in relation to these works and are confident that negotiations will be successfully concluded, VWG has not withdrawn its objection, and the Applicant considers that it requires the compulsory acquisition powers seeks in order to ensure the delivery of the Proposed Development.

203. The Secretary of State does not agree with the ExA that the delay in the construction of the West storage area suggests that this area is not essential to the operation of the Proposed Development. The Secretary of State notes that the West storage area would have an area of 9.6ha and would accommodate 800 trailer bays

[ER 1.3.20, fourth bullet] and it is clearly a necessary and important part of the Proposed Development. The Secretary of State understands that while it is the Applicant's preference to implement the Proposed Development as a single entity, it has considered construction initially focusing on the North, Central and South storage areas in order to allow VWG the time required to accommodate its move from the Port of Immingham to the Port of Grimsby. The Secretary of State therefore considers that the ExA's conclusion that the possibility of the West storage area not being constructed, or construction being deferred for an indeterminate period [ER 3.2.89] is unlikely to materialise.

204. The Secretary of State does however agree with the ExA's conclusion that the absence of the West storage area has the potential to impact the Applicant's ability to operate efficiently if sufficient storage is not available at the Proposed Development [ER 6.7.8, first bullet]. It is for this reason that the Secretary of State is satisfied that Plot 9 is required for the Proposed Development and that the test in section 122(2)(a) of the 2008 Act is met.

205. On the ExA's conclusion that the need for the Proposed Development has been overstated and that the Port of Killingholme could be an alternative to the Proposed Development, as already set out above:

- the Secretary of State disagrees with the ExA's conclusions on need to the extent that it is based on there being spare capacity at the regional Humber level [ER 3.2.126]. The NPSfP sets out the need for developments of the type proposed by the Applicant to meet long-term demand at the national level, which is the Secretary of State's focus in taking a decision on this Application [ER 3.2.106];
- while the Secretary of State accepts that there may be spare capacity available at the Port of Killingholme, the Secretary of State is only able to place little weight on capacity that could in principle be released through permitted development or through future planning applications as there is no certainty that such capacity will come forward. In addition, the NPSfP accepts that new developments may result in surplus capacity; and
- The NPSfP is also clear that, from a policy perspective, it does not require an Applicant to consider alternatives or to establish whether a proposed development represents the best option. Therefore the Secretary of State is not required, in taking a decision on this Application, to consider whether the Port of Killingholme is a better option in comparison to the Proposed Development, or an alternative.

206. On the ExA's suggested exclusion of Plot 9 from the compulsory acquisition powers [ER 6.7.10] unless agreement has been reached about VWG's vacation of Plot 9 and availability at the Port of Killingholme [ER 6.9.2], the Secretary of State does not agree with the ExA that doing so would be consistent with the compulsory acquisition guidance. Paragraph 16 of the compulsory acquisition guidance states that circumstances where the Secretary of State might remove all or some compulsory acquisition provisions in a development consent order might include where the Secretary of State is not persuaded that all of the land the applicant wishes to acquire has been shown to be necessary, or where a scheme should be modified in a way that affects the requirement for land which would otherwise be subject to compulsory

acquisition. As set out above the Secretary of State is satisfied that Plot 9 is necessary for the Proposed Development.

207. For the reasons set out above, the Secretary of State is satisfied with the purpose for which compulsory acquisition is sought and is also satisfied that the requirements of sections 122 and 123 of the 2008 Act are met. She is also content that the land to be acquired by powers of compulsory acquisition would be required and are proportionate to facilitate or to be incidental to the Proposed Development and that there is a compelling case in the public interest for the land to be acquired compulsorily for the reasons set out above. She notes that, as part of the Examination, the ExA considered the funding statement submitted by the Applicant in support of its Application and concluded that there is sufficient funding available to meet any necessary compensation that might arise in connection with the Proposed Development [ER 6.6.13]. The Secretary of State also considers that the public benefits associated with the Proposed Development would outweigh the private loss suffered by those whose land would be affected and that there is no disproportionate or unjustified interference with human rights.

#### Crown Land

208. The Secretary of State notes drafting amendments were made to the draft Order following comments from the Crown Estate Commissioners in a letter dated 25 January 2024. The ExA concluded that with the amendments that have been made to Article 40, there is no impediment under s135(2) of the 2008 Act to rights concerning Crown land within Plot 14 being included in the proposed Order [ER 6.8.3]. The Secretary of State agrees.

#### Protective Provisions

209. The Secretary of State notes that the proposed Order contains Protective Provisions for a number of Statutory Undertakers in Schedule 4. The ExA concluded that the protective provisions contained within the proposed Order would provide adequate protection for the following parties: the Statutory Conservancy and Navigation Authority for the Humber; the Environment Agency; Exolum, Northern Powergrid, Network Rail, North Lincolnshire Council (as the lead local flood authority) and the Operators of Electronic Communications Code Networks [ER 7.5.2].

210. The Secretary of State notes that at the end of the Examination, there remained considerable disagreement between the Applicant and the IOT Operators on protective provisions [ER 8.2.5]. The Secretary of State also notes that the ExA highlighted that all but two of the Statutory Undertakers have agreed to the Protective Provisions (“PP”) proposed by the Applicant in the draft Order [ER 7.5.1].

#### *IOT Operators*

211. The ExA records that at the end of the Examination, considerable disagreement between the Applicant and the IOT Operators remained regarding the protective provisions in the draft Order [ER 8.2.5]. The Secretary of State notes that the IOT operators considered the protective provisions in the Applicant’s draft Order inadequate and submitted an alternative set of protective provisions during the Examination [ER 7.3.29]. The ExA describes the disagreement between these Interested Parties as one of detailed contractual type drafting, and given the nature of

the disagreement was unable to offer much in the way of a recommendation other than to say that the protective provisions should apply to the Proposed Development's operational phase [ER 7.3.30]. The ExA therefore recommended the Secretary of State consult the Applicant and the IOT Operators regarding the status of the protective provisions for the IOT Operators and the ExA's recommended amendments to requirement 18.

212. In response to the Secretary of State's consultation during her decision-making period, the IOT Operators responded to say that negotiations had not progressed and there was no change in the positions to that at the close of the Examination. The Applicant responded to confirm that it was satisfied the protective provisions (the Secretary of State is aware that the Applicant was not necessarily agreeing that the protective provisions should apply to the operational phase and she considers that matter further below), together with the amendment to Requirement 18 proposed by the Secretary of State, are reasonable and provide all of the necessary protections. The Applicant also stated that it would inform the Secretary of State of any progress made in its discussions with the IOT Operators going forward.

213. In response to the Secretary of State's second round of consultation, the IOT Operators responded to reiterate the concerns they raised during the Examination regarding navigation safety and risks, and the need for additional impact protection measures beyond those proposed by the Applicant to address these concerns. The details of their concerns are set out in the navigational safety and risks section above. The IOT Operators also stated that even with the Secretary of State's proposed amendments to requirements 18 and 19, the level of impact protection would remain inadequate.

214. The Secretary of State agrees with the ExA that the protective provisions should apply to the Proposed Development's operational phase [ER 7.3.33]. Although the Applicant considers that the operation of the Proposed Development would not adversely affect the operation of the IOT's finger pier, the Secretary of State agrees with the ExA that, if that were to be the case, then the IOT Operators would have no need to make use of the protective provisions. The Secretary of State has therefore accepted the ExA's amendments to paragraph 34 of Part 4 of Schedule 4 of the draft Order.

215. The ExA also recommended that the Secretary of State should enquire as to whether any further consideration has been given to any need for a level of insurance cover to be incorporated into the protective provisions [ER 7.3.34], while noting that the Applicant is known to have financial strength and might not need to be so reliant on insurance to indemnify the IOT Operators. The ExA however also noted that this might not necessarily be the case if the benefit of any made Order was to be transferred to a party other than the Applicant pursuant to Article 9. However, a transfer of the benefit of any made Order would require the written consent of the Secretary of State and such matters would be addressed as part of that process.

#### *Anglian Water*

216. During the Examination, Anglian Water contended that the wording of paragraph 55 of Schedule 4 Part 6 of the protective provisions in the draft Order, which stated that the protective provisions for Anglian Water would cease to have effect once



the Proposed Development became operational, was not agreeable. [ER 7.3.35]. The Applicant argued that there would be no need for the protective provisions to be effective once the Proposed Development had become operational because the affected Order Limits contains no live Anglian Water assets and only one decommissioned asset [ER 7.3.36].

217. The Secretary of State agrees with the ExA that there would be no need for the protective provisions during the operational phase of the Proposed Development because the asset in question is a decommissioned pipe and it is unlikely that the Proposed Development's operation could affect the condition of a decommissioned asset [ER 7.3.37].

#### *Cadent*

218. During the Examination, Cadent contended that the protective provisions outlined in paragraph 99 of Schedule 4 Part 9 of the draft Order, intended only for the construction period, were inconsistent with the drafting of paragraph 107, which also covers the operational phase of the Proposed Development. Cadent further argued that the proposed indemnity in paragraph 107 should be supported by £50 million in insurance cover [ER 7.3.38].

219. The Applicant stated that the proposed West storage yard is already functioning as a port vehicle storage area and is protected by an existing easement for Cadent's gas main. Consequently, the Applicant believes there is no need to apply the protective provisions during the authorised operational phase. Additionally, the Applicant argued that providing an indemnity supported by a £50 million insurance cover as unnecessary due to their strong financial position [ER 7.3.39].

220. The Secretary of State agrees with the ExA's conclusion that it would be reasonable for the protective provisions for Cadent to apply to both the construction and operational phases of the Proposed Development. This is because the storage activity in this particular area might have different ground loading characteristics from its current use, with implications for the integrity of the below-ground gas main. The Secretary of State also agrees with the ExA that there is no need for the indemnity included in the protective provisions to be supported by the scale of insurance proposed by Cadent [ER 7.3.41].

#### *CLdN*

221. The ExA reported that the Applicant had not included protective provisions for CLdN in its draft Order, and that during the Examination, CLdN submitted a representation seeking protective provisions in its favour for the reasons set out by the ExA in the Report [ER 7.3.51]. The ExA concluded that:

- the Proposed Development would generate up to an additional six vessel movements per day and the ExA considers that volume of extra river traffic would be unlikely to interfere with the operation of the Port of Killingholme. The ExA therefore considers it would be unnecessary for the protective provisions the Applicant has included in the draft Order to be applied to the operational phase of any development authorised by any made Order for the Proposed Development [ER 7.3.54];

- the construction and operation of the Proposed Development would not affect the Port of Killingholme's access to the rail network, if at some future date the Port of Killingholme was to make use of the rail network [ER 7.3.56];
- as any approval of the landside CEMP and the operational freight management plan by North East Lincolnshire Council and National Highways would engage consideration by the relevant highway authorities, it would not be appropriate for a protective provision for CLdN to require consultation on those plans [ER 7.3.57]; and
- no evidence has been submitted demonstrating anything contained in the draft Order would contradict, limit or amend the statutory rights and powers vested with the Port of Killingholme's statutory harbour authority;

222. Overall, the ExA recommended that no changes are needed to the protective provisions for CLdN included in the draft Order [ER 7.3.59]. The Secretary of State agrees and has made no changes in the Order.

### *DFDS*

223. The Secretary of State is aware that the Applicant's Order as initially drafted did not contain protective provisions for DFDS who repeatedly raised safety concerns both at the pre-application stage and the Examination of the Application [ER 3.3.55]. The Secretary of State is aware that DFDS sought protective provisions on the basis of its operations [ER 7.3.43]. The ExA reported that while the Applicant was generally of the view that protective provisions in favour of DFDS would be unnecessary, it indicated at Issue Specific Hearing 6 that it would be prepared to include protective provisions for DFDS [ER 7.3.44]. The ExA also reported that the Applicant has argued that protective provisions are not required during the operational phase as it would be able to manage the movement of the vessels to and from the proposed berths without prejudicing the operation of the rest of the Port of Immingham as part of its statutory harbour authority duties. The ExA concluded that it would be reasonable for the protective provisions to cover both the construction and operational phases of the Proposed Development to protect DFDS' interests, noting that if the Applicant is correct that there would be no interference to DFDS' operations during operation, the protective provisions for DFDS would never need to be relied on. The Secretary of State agrees with the ExA that were there to be interference with DFDS' operations during operation, then it is reasonable that protective provisions should be available to safeguard DFDS' interests [ER 7.3.49]. and has therefore accepted the ExA's proposed amendments so that the protective provisions for DFDS apply during both construction and operation.

### The Secretary of State's Overall Conclusions on Compulsory Acquisition

224. For the reasons set out above, the Secretary of State is satisfied with the purpose for which compulsory acquisition is sought and that the requirements of section 122 and section 123 of the 2008 Act are met. She is also satisfied that the land to be acquired by compulsorily would be required and is proportionate to facilitate or to be incidental to the Proposed Development and that there is a compelling case in the public interest for the land to be acquired compulsorily. The Secretary of State accepts the ExA's conclusion that there is sufficient funding available to meet any necessary compensation that might arise in connection with the Proposed Development [ER 6.6.13].

225. The Secretary of State has considered the potential infringement of human rights by the Proposed Development as a result of the inclusion of compulsory acquisition powers in the Order. She considers that any interference with human rights arising from implementation of the Development in relation to Plots 1, 2a, 2b, 3, 4, 5a, 5b, 6 and 9 is proportionate, legitimate and strikes a fair balance between the rights of the individual and the public interest, and, that compensation would be available in respect of any quantifiable loss. The Secretary of State also considers that the public benefits associated with the Proposed Development would outweigh the private loss suffered by those whose land would be affected and that there is no disproportionate or unjustified interference with human rights.

## **LATE REPRESENTATIONS AND CONSULTATION RESPONSES**

226. Following the close of the Examination, the Secretary of State received responses to her consultation questions and other representations which were outside of any consultation period. The Secretary of State has treated the correspondence as late representations and has published them as such alongside this letter on the Planning Inspectorate website. She notes that on 6 September 2024, Clyde & Co wrote on behalf of the Applicant on various matters but, in particular, indicating that discussions with the IOT Operators were about to recommence. Subsequent letters from Burges Salmon of 18 and 24 September 2024 on behalf of the IOT Operators acknowledged further meetings with the Applicant but confirmed that the position of the IOT Operators had not changed. While encouraging continued dialogue between the Applicant and the IOT Operators, the Secretary of State notes the lack of substantive progress so far. Unless addressed elsewhere in this letter, the Secretary of State considers that these late representations and responses to her consultation, do not raise any new issues that are material to the decision on the Proposed Development. As such, the Secretary of State is satisfied that there is not any new evidence or matter of fact in these late representations that need to be referred again to Interested Parties under Rule 19(3) of the Infrastructure Planning (Examination Procedure) Rules 2010 before proceeding to a decision on the Application.

## **GENERAL CONSIDERATIONS**

### Human Rights

227. In taking her decision, the Secretary of State has had regard to The Human Rights Act 1988. The Secretary of State agrees with the ExA's overall conclusions on CA related matters and notes in particular that:

- adequate and secure funding would be available for CA [ER 6.6.13]; and
- in examining the Application, the ExA has ensured a fair and public hearing and thus meeting the obligations set out in Article 6 (right to a fair hearing) [ER 6.8.8];
- Further, she notes that in respect of Plots 1, 2a, 2b, 3, 4, 5a, 5b, 6 and 14 that:
  - any interference with human rights arising from implementation of the Proposed Development would be for a legitimate purpose that would

justify such interference in the public interest and to a proportionate extent [ER 6.8.9].; and

- there would be no disproportionate or unjustified interference with human rights that would conflict with the provisions of the Human Rights Act 1998 [ER 6.8.9].

228. In respect of Plot 9, the Secretary of States notes that at the close of the Examination an agreement was not reached between VWG and the Applicant. The ExA concluded that the proposed interference with VWG's interests would not be lawful, proportionate and justified in the public interest and that there would be incompatibility with the Human Rights Act 1998 and the ECHR [ER 6.8.10]. The ExA therefore recommended that the Secretary of State should make further enquiries of the Applicant and VWG and that Plot 9 should be excluded from the CA powers sought in the draft Order unless agreement has been reached about the timing for vacating Plot 9 and the availability of replacement facilities at the Port of Killingholme [ER 6.9.2].

229. In regard to Plot 9, as set out in the Compulsory Acquisition section above the Secretary of State is satisfied that this land is required for the Proposed Development. Given the urgency for developments of the type proposed by the Applicant set out in the NPSfP, the Secretary of State is also satisfied that there is a compelling case in the public interest for the compulsory acquisition of this land. The Secretary of State has therefore decided, taking note of both the Applicant and VWG's commitment to successfully conclude their negotiations, to grant the CA powers sought by the Applicant in relation to Plot 9.

230. On the basis of her conclusions in relation to Plot 9, the Secretary of State does not share the view reached by the ExA [ER 6.7.10] in relation to the justification for the compulsory purchase powers for Plot 9 in the event that agreement was not reached.

#### The Equality Act 2010 and the Public Sector Equality Duty

231. The Equality Act 2010 established the Public Sector Equality Duty, which requires public authorities to have due regard in the exercise of their functions to the need to eliminate unlawful discrimination, harassment and victimisation and any other conduct prohibited under that Act; advance equality of opportunity between people who share a protected characteristic and those who do not; and foster good relations between people who share a protected characteristic and those who do not in respect of the following "protected characteristics": age; gender; gender reassignment; disability; marriage and civil partnerships; pregnancy and maternity; religion and belief; and race.

232. The Secretary of State notes that the Examining Authority, in coming to its conclusions in the Report, has had due regard to the duties under this legislation in throughout the Examination and in its consideration of the issues set out in its Report [ER 6.8.11 and 8.1.10]. The ExA concluded that the Proposed Development would not harm the interests of persons who share a protected characteristic or have any adverse effect on the relationships between such persons and persons who do not share a protected characteristic, and on that basis found no breach of the Public Sector Equality Duty [ER 8.1.10]. The Secretary of State agrees with the ExA's conclusions and is also satisfied that no evidence has been submitted to suggest that the Proposed Development would not accord with section 149 of the Equality Act 2010 and that she

has had due regard to the needs identified in the Public Sector Equality Duty in reaching her decision [ER 6.8.11].

### Natural Environment and Rural Communities Act 2006

233. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 as amended by section 102 of the Environment Act 2021 has to consider what action she should take, consistently with the proper exercise of her functions, to further the general biodiversity objective and, in accordance with regulation 7 of the Infrastructure Planning (Decisions) Regulations 2010, having regard to the purpose of conserving and enhancing biodiversity and, in particular, to the United Nations Environmental Programme on Biological Diversity of 1992. She has had regard to both of these duties in deciding whether to grant development consent. The Secretary of State notes the ExA's conclusions that biodiversity, ecological and nature conservation issues have been adequately assessed, that the requirements of NPSfP, Marine Policy Statement of 2011 (MPS) and EIMP would be met. The Secretary of State agrees with these conclusions and, in reaching a decision to grant development consent, has had due regard to the duty of conserving and enhancing biodiversity.

## **DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS**

234. The Secretary of State has made a number of minor textual amendments to the ExA's recommended draft Order in the interests of clarity, consistency and precision. Further to the textual amendments the Secretary of State also makes the following modifications:

- a) article 2(1) (interpretation) has been amended to:
  - remove a number of definitions where those terms are only used in one provision elsewhere in the Order where those definitions can now be found,
  - vary the definition of "HGV" as the term 'heavy goods vehicle' was not defined. The Order now defines this term by way of the definition of 'heavy goods vehicle' in section 58(1) of the Goods Vehicles (Licensing of Operators) Act 1995, and
  - vary the definition of "tidal works" to refer to the authorised development as applicable, as the original definition referred to works, a term not otherwise defined in the order.
- b) article 9(4) has been removed as the Order does not interfere with section 72(7) and (8) of the 2009 Act, so it is not necessary to provide that those provisions will continue to apply.
- c) article 10 has been amended to account for a new Schedule 5 introduced by the ExA, rather than the book of reference as recommended by the ExA. Schedule 5 contains a list of the land to which the compulsory purchase powers are limited to the acquisition of rights as set out in that Schedule.
- d) article 12(5)(a)(iv) has been amended to remove the reference to notice given by the undertaker "before the undertaker's taking possession of it". The

Secretary of State notes the ExA's conclusion that the Applicant is not seeking temporary possession powers as part of its application, and therefore, this provision has been deemed unnecessary.

- e) article 24(4) has been amended, and a new paragraph (11) has been inserted to provide that the definition of "specified work" is the same as that set out in Part 13 of Schedule 4. The term specified work was previously not defined at any place in the Order outside that Part of Schedule 4. It is assumed that the intention was for the same meaning to be applied to this article.
- f) article 24(9) has been amended to:
  - insert the words "from the commencement of the authorised development" in relation to the duty to report to the Board. It was unclear when this duty was intended to be commenced. It is the Secretary of State's view that this aligns with requirement 9 in Schedule 2, and
  - remove the obligation that the monitoring contemplated "be based on appropriate methods", as it is not clear what more is intended in this context.
- g) requirement 1 has been amended to remove several definitions where those definitions are only used in one requirement elsewhere, or alternatively, where that definition has already been provided at article 2(1) of the Order.
- h) requirement 6(3) has been amended to provide that "capital dredge" has the same meaning as found in Part 1 of Schedule 3 (the deemed marine license).
- i) requirement 12(b) has been amended to insert the phrase "constituting Work No. 12" in relation to the "agreed works". It was unclear what the "agreed works" were originally referring to. Based on the context of the provision this has been amended to clarify that the agreed works would be Work No. 12, subject to any such agreements as contemplated by requirement 12(a).
- j) paragraph 1 of Part 1 of Schedule 4 has been amended to vary the definition of "area of jurisdiction", to qualify that the area within the harbour limits refers to the area in which the powers of the dock master may be exercised. Originally, the extent of the harbour limits was not defined and this amendment provides clarity for the purposes of Part 1 of that Schedule.

## **SECRETARY OF STATE'S OVERALL CONCLUSION AND DECISION**

235. For all the reasons set out in this letter, the Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the 2008 Act for the Secretary of State to make the Order as now proposed.

## **CHALLENGE TO DECISION**

236. The circumstances in which the Secretary of State's decision may be challenged are set out in Annex A of this letter.

## **PUBLICITY FOR THE DECISION**

237. The Secretary of State's decision on this Application is being publicised as required by section 116 of the 2008 Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

## **ANNEX A**

### **LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS**

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The Associated British Ports (Immingham Eastern Ro-Ro Terminal) Development Consent Order 2024 (as made) is being published on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR030007>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).