



## Meeting note

<b>Project name</b>	Immingham Eastern Ro-Ro Terminal
<b>File reference</b>	TR030007
<b>Status</b>	<b>Final</b>
<b>Author</b>	The Planning Inspectorate
<b>Date</b>	06 February 2023
<b>Meeting with</b>	The Applicant
<b>Venue</b>	Microsoft teams
<b>Meeting objectives</b>	Project Update meeting
<b>Circulation</b>	All attendees

### Summary of key points discussed and advice given

The Planning Inspectorate (the Inspectorate) advised that a note of the meeting would be taken and published on its website in accordance with section 51 of the Planning Act 2008 (the PA2008). Any advice given under section 51 would not constitute legal advice upon which applicants (or others) could rely.

**Appendix A:** Request for signposting Information, including the Applicants response

**Appendix B:** s51 advice issued to the Applicant following its withdrawal of the DCO Application

### ***Work Number (No) 13 – marine environmental enhancement at Skeffling***

In response to the Planning Inspectorate's s51 advice (attached at Annex B), the Applicant is proposing to remove the Skeffling land from the application and it will not be included within the order limits. The Applicant explained that the main document making references to the Skeffling works was the Marine Environmental Plan (MEP), and that its intention is to remove the MEP from the application documentation, making any consequential amendments to remaining references to Skeffling in the application. The Inspectorate agreed with the Applicant's approach and agreed that the Applicant should explain the Skeffling scheme, and its purpose and its relationship with the DCO application. The Planning Inspectorate advised that the Environmental Statement (ES) and any other relevant application documents should also reflect the removal of works at Skeffling from the application.

The Applicant explained it is intending to make reference to the Skeffling scheme during the Immingham Eastern Ro-Ro Terminal examination should the application be accepted, however making it clear that it does not form part of the DCO application.

The Inspectorate queried if the approach to remove Work No. 13 has any implications for the environmental baseline and cumulative effects assessment within the ES. The Applicant confirmed that no implications for the baseline are anticipated and no changes will need to be

made regarding the cumulative assessment as the consented ongoing Skeffling scheme has already been included. The Inspectorate advised the Applicant to make this clear in their documentation.

### ***Dredging disposal***

The Applicant explained its need to comply with the waste hierarchy which means that a commitment cannot be expressly made to avoid transportation by road should an alternative beneficial use for the dredged arisings, as opposed to disposal at sea, be identified. It stated that its intention, however, was to include a requirement within the dDCO that should an alternative beneficial route be identified, no dredged arisings will be transported by road unless approved by the relevant highway authority.

The Inspectorate advised the Applicant to ensure its rationale is clearly explained in the application, including the implications of the waste hierarchy for the activities to be allowed by the dDCO.

### ***Rochdale envelope – building schedule***

The Applicant stated its intention to remove any references to ‘approximate’ heights and other building parameters and will instead make references to maximum/ worst case parameters. The Applicant explained it will submit a schedule of building heights and dimensions which will address all proposed buildings.

### ***Lighting Plan***

The Applicant confirmed it will re-size and adjust the scales accordingly following on from the S51 provided by the Applicant.

### ***Book of Reference - NELC land for East Gate***

The Applicant confirmed it will include the NELC land for East Gate in the Book of Reference but it will be clear that no Compulsory Acquisition powers will be sought over that land.

### ***Highways Signage***

The Applicant confirmed it will not be proposing any new off-site highway signage as part of the DCO application, and this will be clarified in the application. It explained that it does still intend to make a change to existing signage but this is in response to a general need for clear signage to the Port’s East Gate as opposed to a need arising specifically as a result of the IERRT proposals. The new signage will, as a consequence, be effected outside the DCO process.

### ***Article 21 (2) – passengers***

The Applicant referred to the Planning Inspectorates s51 advice on Article 21 (2) and sought clarification on this topic. The Inspectorate advised there wouldn’t be an expectation for the Applicant to secure movement in the DCO itself but it should explain the assumptions around passenger movements on which the design and assessments in the application have been based.

## **AOB**

The Applicant stated it will produce a signposting document for re-submission which will point towards any amendments/ changed documents and anything that has been changed will be dated February 2023. The Inspectorate agreed this is a helpful approach.

The Applicant asked for confirmation that the key matters for acceptance identified in the previous application had been addressed in the discussion. The Inspectorate referred back to its s51 advice letter and confirmed that the omission of Work No. 13 Skeffling from the environmental assessments and the lack of clarity as to its purpose within the DCO was the key matter.

### ***Specific decisions/ follow-up required?***

The following actions were agreed:

- The Applicant confirmed it intends to re-submit its DCO application on the 10 February 2023.
- The Applicant will re-submit the revised GIS shapefile on 06 February 2023. **Post Meeting Note:** The Applicant submitted revised GIS shapefile to the Inspectorate on 06 February 2023.



# The Planning Inspectorate

National Infrastructure  
Planning  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Customer: 0303 444 5000  
Services: [imminghameasternroroterminal@planninginspectorate.gov.uk](mailto:imminghameasternroroterminal@planninginspectorate.gov.uk)  
E-mail: [ate.gov.uk](mailto:ate.gov.uk)

By email

Your Ref:

Our Ref: TR030007

Date: 24 January 2023

Dear Mr Greenwood

## Planning Act 2008 (as amended)

### Application by Associated British Ports for an Order Granting Development Consent for Immingham Eastern Ro-Ro Terminal

The Inspectorate has yet to make a decision on acceptance in relation to Immingham Eastern Ro-Ro Terminal (IERRT) DCO application. The Planning Inspectorate is seeking assistance from the applicant in signposting it to information within the application in order to proceed with the acceptance decision.

Please note, the Planning Inspectorate cannot consider any new or additional information and can only make the acceptance decision on the basis of the information within the application documents submitted to the Planning Inspectorate on 5 January 2023. To that end, please provide only signposting information as specifically requested in the table below. Could you please provide us with the requested information by 10:00am Thursday 26 January 2023.

	<b>Questions to Applicant for Clarification:</b>	<b>Document Reference and section reference within application documents</b>
1.	Work 13 is referred to in the context of both mitigation and enhancement within the application. Requirement 11 of the draft Development Consent Order (Document 3.1 dDCO) is titled as "Off-site mitigation", while the two management	<p><b>Please direct the Planning Inspectorate to where the purpose of Work 13 is definitively provided.</b></p> <p>The purpose of Work No.13 is definitively provided in Section 14 of ES Appendix 4.2 (Application Document 8.4.4(b)).</p>

<p>plans for these works have enhancement in their title. The Environmental Statement (ES) and Schedule 1 of the dDCO refers to these Works as enhancement.</p> <p>The Marine Enhancement Plan (MEP, Document 9.3) describes the purpose of the wider Outstrays to Skeffling Managed Realignment Scheme (OtSMRS) as providing ecological enhancements. However, it also includes a link to the Environment Agency website for the OtSMRS which states that the purpose it to create new <i>compensatory</i> habitats for wildlife. Paragraph 2.3.55 of the ES furthers this and refers to the scheme providing flooding and climate change benefits.</p> <p>The Explanatory Memorandum to the dDCO (Document ref 3.2, Paragraphs 2.19 to 2.22), MEP, ES and Planning Statement (PS, Document 5.3) advise that OtSMRS is subject to an extant planning permission and a marine licence all of which were assessed and approved to provide new intertidal habitat. The construction phase has already begun and is expected to be completed by the end of 2024 or early 2025 (see Paragraph 2.2.9 of the MEP). The reason for including Work 13 within the DCO as part of the OtSMRS is therefore unclear, as the creation of the intertidal habitat is currently being delivered.</p> <p>Paragraph 2.3.5 of the MEP explains that the 1ha parcel of land was chosen based on the “hydrodynamic modelling conducted for the site” and Paragraph 2.3.4 of the MEP</p>	<p>Paragraph 14.1 of that document states - <i>“Although the IERRT project will not create an adverse effect in terms of environmental impact, ABP has nevertheless decided, in light of its overriding statutory obligations and policy requirements in terms of the need to enhance biodiversity interests, ....to make provision for certain environmental enhancements as part of the scheme .....</i>”.</p> <p>Paragraph 14.2 continues - <i>‘The objective is to meet those policy requirements of relevance to the IERRT which indicate that advantage should be taken of opportunities to enhance biodiversity conservation interests as part of new development proposals.’</i></p> <p>These policy requirements are then considered within the Planning Statement (Application Document 5.1), including in respect of paragraphs 5.1.4 and 5.1.5 of the NPSfP (PA Appendix 1, page 145), Policy B1O2 of the East Marine Plans (PA Appendix 2, page 250) and Policy 41 of the North East Lincolnshire Local Plan (PA Appendix 3, page 295).</p> <p>The rationale for Work No 13, therefore, is to provide an element ecological enhancement to meet extant policy aspirations.</p> <p>Work 13 is not being provided to act as either ecological mitigation or ecological compensation.</p> <p>As ES Chapter 9 (Application Document 8.2.9) and the Habitats Regulations Assessment (Application Document 9.6) make clear, Work No. 13 is not required nor is it in any way needed to make the development acceptable from an environmental impact or Habitats Regulations perspective – see for example Table 9.26 of ES Chapter 9.</p>
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	<p>states that it was chosen as an ecological enhancement to align with local and national policy. The PS at Paragraph 8.3 advises that policy implications of implementing the OtSMRS were taken account of as part of obtaining the planning permission for this scheme. The PS advises that the inclusion of Work 13, insofar as it relates to the land at Skeffling, would address some national and local policies concerning enhancing biodiversity. However, it is not clear how any diversity enhancement at Skeffling would be brought forward in connection with the IERRT NSIP rather than the extant planning permission.</p> <p>This has implications for the adequacy of the ES should Work 13 be relied upon as mitigation for the outcomes of the EIA. This may also have implications for the adequacy of the information informing any appropriate assessment to be undertaken under the Habitats Regulations, noting that Habitats Regulations Assessment (Document 9.6) does not provide information in relation to derogations or compensatory measures under the Habitats Regulations.</p> <p><b>Please direct the Planning Inspectorate to where the purpose of Work 13 is definitively provided.</b></p>	<p>The reference to 'Off-site mitigation' as the heading to Requirement 11 in the draft DCO (Application Document 3.1) is an error and should be amended to read 'Off site enhancement'. It is clear from the wording of the requirement itself and the documents to which it cross refers, however, that the Requirement is concerned with the provision of environmental enhancement and not environmental mitigation.</p> <p>ABP propose that the draft DCO should be amended at the appropriate time.</p>
2.	<p>Within the ES Chapter 2: Project Description (Paragraphs 2.3.54 to 2.3.56) sets out a summary for the OtSMRS which it is intended Work 13 would form a part of. However, in Paragraph 2.3.56 it is expressly stated that "...it should be noted that the intertidal enhancements at the</p>	<p><b>Please direct the Planning Inspectorate to any other application documents which consider the environmental effects in relation to Work 13 as part of the Proposed Development.</b></p> <p>As identified in the queries raised by PINS, the fact that the Outstrays to Skeffling Managed Realignment</p>

<p>OtSMRS are not specifically assessed in this ES, given the fact that the necessary environmental assessments have already been completed as part of the consenting process for that scheme".</p> <p>Noting that the EIA Regulations 2017, Regulation 14 (2)(b) requires an ES to include "a description of the likely significant effects of the proposed development on the environment" and 14(2) (c) which requires an ES to include "a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment."</p> <p><b>Please direct the Planning Inspectorate to any other application documents which consider the environmental effects in relation to Work 13 as part of the Proposed Development.</b></p>	<p>Scheme (OtSMRS) already benefits from planning permission and marine licence approval and is currently in the process of being implemented, is referenced in various application documents.</p> <p>The objective of developing the OtSMRS is explained in the Marine Enhancement Plan (MEP) (Application Document 9.3) at paragraph 2.2.6, where it is made clear that the objective is to - "create new intertidal habitat that can then be taken into account as necessary and appropriate, in the context of future port development on the Humber."</p> <p>The MEP, for example in paragraphs 1.3.1, 2.2.7 and 2.3.8 explains that ABP proposes to provide, by means of the allocation of the ecological benefits of one hectare of this already consented (and under construction) scheme, an element of ecological enhancement. The one hectare identified within the Skeffling site is being specifically allocated for the IERRT project – effectively being "ringfenced" from any other ABP projects which may be forthcoming in the future and which may require compensatory habitat, mitigation or as with IERRT, ecological enhancement. It should be noted incidentally that no such other projects have as yet been brought forward.</p> <p>The physical delivery of the OtSMRS, including the one hectare element referenced in the IERRT application documentation, does not, therefore, form part of the IERRT 'proposed development', as this is occurring under a separate process. Rather it is the act of allocating the ecological benefits generated by the identified one hectare area of the OtSMRS,</p>
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		<p>which forms part of the IERRT 'proposed development'. It is considered that this is made clear in the MEP (Application Document 9.3).</p> <p>It is, however, acknowledged, having regard to the queries raised, that the wording describing Work 13 in the draft DCO could be clarified by the addition, after the words - "<i>..... East Riding of Yorkshire Council</i>" by the words - "<i>in accordance with planning permission 19/00786/STPLFE and marine licence L/2020/00271/1...</i>".</p> <p>The physical delivery of the one hectare element of the OtSMRS does not, therefore need to be assessed within the IERRT documentation as this has already been addressed under a separate process and does not form a part of the IERRT 'proposed development'.</p> <p>In terms of the act of allocating the ecological benefits generated by the identified one hectare area the MEP demonstrates that this will generate beneficial environmental effects. Chapter 9 of the ES (Application Document 8.2.9) - for example within the last entry to Table 9.7 – makes it clear that further information on this element of the project is provided within the MEP (Application Document 9.3).</p> <p>Table 7 of the Consultation Report (Application Document 6.1) - which provides the summary record of the Continuous Consultation undertaken outside the statutory consultation process - (at page 97) makes clear that in July 2022 ABP engaged in email correspondence with East Riding of Yorkshire Council as one of the consenting authorities for the</p>
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		<p>OtSMRS to advise the Council that the IERRT project now included the use of land at Skeffling – being the 1 ha of land of the OtSMRS project allocated to the IERRT project. In this context it should be noted that Chapter 6 of the ES (Application Document 8.2.6) also records a comment from Natural England in Table 6.1 (pages 6.26 to 6.27) as follows - “<i>Natural England welcomes the commitment by ABP to include one hectare of land owned by ABP within the Skeffling managed realignment site as a marine environmental enhancement (for clarity, this will not be compensation or mitigation)</i>”.</p>
3.	<p>Some of the elements of the project description, in particular vertical alignments/ height parameters are described variably in the ES and DCO.</p> <p>ES Chapter 3: Details of Project Construction and Operation (Document 8.2.3) explains the need for flexibility in the design and as such the worst-case parameters have been assessed and refers to the Rochdale Envelope. There is however limited reference to maximum or minimum infrastructure parameters within the ES Chapters 2 (Document 8.2.2) and 3, their associated figures and the General Arrangement Plans (Document 2.5) and the Engineering Sections, Drawings and Plans (Document 2.6). The drawings in Documents 2.5 and 2.6 for example do not clearly identify where lighting masts might be located and how tall they would be relative to existing and any new structures, with there being a vertical cut line in the two sections that do show lighting masts (B2429400-JAC-00-ZZ-DR-ZZ-0740 and</p>	<p><b>A) - Please direct the Planning Inspectorate to any application documents which set out the building heights (including parameters) identified above.</b></p> <p>The inclusion of the notation ‘Do not scale’ on the General Arrangement Plans (Application Document 2.5) and the Engineering Sections, Drawings and Plans (Application Document 2.6) is an error, that simply reflects a default setting on the drawing package used.</p> <p>ABP can confirm that these plans and drawings have all been produced to scale and, along with the description given in ES Chapter 2 (Application Document 8.2.2), represent the scheme description information on which the environmental assessment has been undertaken. For clarity, ES Chapter 2 – at paragraph 2.3.5 – highlights the relationship between Chapter 2 and the various plans, drawings and sections listed.</p> <p>Requirement 7 is designed to ensure that any future departure from the ‘authorised development’ as defined – should one prove necessary – is bound by the parameters presented in</p>

<p>B2429400-JAC-00-ZZ-DR-ZZ-0741), with that drawing being notated “Do Not Scale”. The approximate dimensions provided in the ES and the information included on the plans accompanying the application are not sufficient to establish a worst case (“Rochdale Envelope”) approach (note Paragraph 2.4 of Advice Note Nine: Rochdale Envelope).</p> <p>The drawings accompanying the application do not have building or structure heights notated on them and given the do not scale rider notated on them cannot be used to ascertain heights. Requirement 7 of the dDCO states that construction of the buildings under Work 4f (includes the Malcolm West Fork Lifts Ltd according to the General Layout Plans), Work 5(c) (terminal building, welfare building and ancillary buildings) and Work 5(e) (UK Border Force Facilities) would not be commenced until details for them have been approved by the relevant planning authority.</p> <p>Any departure from the indicative layout drawings would only be in accordance with the authorised development if it did not give risk to any materially new or different effects from those assessed in the ES. However, as the parameters for the proposed structures and buildings have not been clearly defined within the ES and on the application drawings, it is unclear what the Rochdale envelope for the Proposed Development would be and how compliance with Requirement 7 would be measured.</p>	<p>ES Chapters 2 and 3, the accompanying application plans, drawings and sections and the application documentation generally.</p> <p>In respect of the specific lighting mast query that has been raised, the detail of the lighting is provided in the Lighting Plan document (Application Document 2.8) which includes, at Appendix A, a plan showing the proposed lighting arrangement including the height of the different lighting masts and their positioning.</p> <p><b>B) - With reference to Paragraph 3.1.2 of the ES, please provide all necessary document references to explain how the ‘Rochdale Envelope’ for the Proposed Development has been defined and how it has been secured in the dDCO.</b></p> <p>For the purposes of this assessment, it has not been considered necessary for the ‘Rochdale Envelope’ to be specifically defined. That said, the Rochdale Envelope approach has clearly been adopted in that a series of relevant development parameters have been identified that result in the worst case environmental effects being identified and assessed.</p> <p>Both the description of the development provided in Chapter 2 of the ES (Application Document 8.2.2) supported by the accompanying plans, drawings and sections, and the details of the project construction and operation provided in Chapter 3 of the ES (Application 8.2.3) take account of worst-case environmental effects parameters referred to in ES paragraph 3.1.2.</p> <p>By way of examples, paragraph 2.3.8 of the ES highlights the maximum diameter of piles that have been considered, paragraph 2.3.17 of the</p>
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<p><b>A) - Please direct the Planning Inspectorate to any application documents which set out the building heights (including parameters) identified above.</b></p> <p>Regulation 14(2) (a) and Schedule 4, Part 1 of the EIA Regulations 2017 require a description of the proposed development. A lack of clarity on what the Proposed Development includes and what has been assessed has implications for the adequacy of the ES.</p> <p><b>B) - With reference to Paragraph 3.1.2 of the ES, please provide all necessary document references to explain how the ‘Rochdale Envelope’ for the Proposed Development has been defined and how it has been secured in the dDCO.</b></p>	<p>ES indicates that the maximum spatial extent of the dredge has been considered and paragraph 3.1.13 of the ES sets out the maximum pile driving scenario that has been considered.</p> <p>In certain instances, the information in Chapters 2 and 3 of the ES has been supplemented by further details contained within the different assessment chapters. For example, paragraph 14.8.27 of ES Chapter 14 (ES Chapter 8.2.14) indicates that for the purposes of the noise assessment all relevant plant has been assumed to be operating at the realistic closest point to Noise Sensitive Receptors.</p> <p>Through a combination of the information contained within Chapters 2 and 3 of the ES (supported by the plans drawings and sections) and measures detailed in relevant topic assessments the documentation identifies those parameters that have ensured that the worst-case environmental effects have been identified and assessed as required in the first bullet point to paragraph 2.3 of PINS Advice Note Nine – namely the adoption of a “cautious ‘worst case’ approach” In light of the signposting above it is considered that the level of information provided is sufficient to have enabled “the main” or ‘likely significant’ effects to be assessed, as referenced by bullet point 2 of paragraph 2.3 of PINS Advice Note Nine.</p> <p>ABP is, therefore, of the view that these matters have been appropriately secured through the relevant Requirements included within the draft DCO (for example, Requirements 3, 6, 7, 8, 9, 14, 15 and 16) and the conditions included within the draft Deemed Marine Licence.</p> <p>In light of the above, again with reference to paragraph 2.3 of PINS</p>
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		Advice Note Nine, ABP is of the view that by the imposition of the controls outlined above and the adoption of a worst case approach, the “need for flexibility” has not been abused.
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Yours sincerely

*Gail Boyle*

**Gail Boyle**  
**Operations Lead – National Infrastructure and Environment**

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# The Planning Inspectorate

National Infrastructure  
Planning  
Temple Quay House  
2 The Square  
Bristol, BS1 6PN

Customer 0303 444 5000  
Services: [imminghameasternroroterminal@planninginspectorate.gov.uk](mailto:imminghameasternroroterminal@planninginspectorate.gov.uk)  
e-mail: [gov.uk](mailto:gov.uk)

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To the Applicant  
(By email only)

Your Ref:

Our Ref: TR030007

Date: 2 February 2023

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Dear Brian Greenwood

## **Planning Act 2008 (as amended) – Section 51**

### **Application by Associated British Ports for an Order Granting Development Consent for the Immingham Eastern Ro-Ro Terminal**

Following the Applicant's withdrawal of the application for examination on 1 February 2023, the Planning Inspectorate would make the following observations about the application submitted on 5 January 2023. The applicant may wish to consider these observations should it be minded to re-submit a new application for examination. Some of the following observations are provided on a topic basis, while others concern specific documents.

This letter comprises advice to the Applicant provided under section 51 of the PA2008.

The Inspectorate requested signposting information from the Applicant on 24 January 2023, the Applicant provided a response on 26 January 2023. This has been provided at Annex A.

### **Proposed Work Number (No) 13 – marine environmental enhancement at Skeffling**

Within Schedule 1 of the draft Development Consent Order (draft DCO, Document 3.1) Work No 13 was listed without describing what that work would actually entail. Reference was made to Work No 13 being undertaken in accordance with a Marine Enhancement Plan (MEP, Doc 9.3).

The work at Skeffling would concern a one hectare plot of land forming part of the Outstrays to Skeffling Managed Realignment Scheme (OtSMRS), which benefits from two extant planning permissions granted by the East Riding of Yorkshire Council. The OtSMRS being a scheme relating to a much more extensive area of land which is in the

process of being implemented. The location for Work No 13 was shown on sheet 6 of the Land Plans (Document 2.2).

The MEP at Paragraph 2.3.5 described the one hectare plot of land as having been “... chosen on the basis of hydrodynamic modelling conducted for the site. It will form new intertidal habitat when the managed realignment site is breached”. The MEP, however, provided no further description of what Work No 13 would involve. In Paragraph 2.3.56 of Chapter 2 of the Environmental Statement (ES) (Document 8.2.2) it was stated:

*“... the 1 ha area of intertidal habitat will be provided as part of the IERRT project as ecological enhancement. Further information as to this element of the IERRT project is provided in the MEP (Application Document Reference number 9.3) although it should be noted that the intertidal enhancements at the OtSMRS are not specifically assessed in this ES, given the fact that the necessary environmental assessments have already been completed as part of the consenting process for that scheme.”*

The originally submitted application therefore provided very little about what works would be undertaken as part of Work No 13. In response to the clarification requested by the Inspectorate on 24 January the applicant advised.

*“The purpose of Work No.13 is definitively provided in Section 14 of ES Appendix 4.2 (Application Document 8.4.4(b)). Paragraph 14.1 of that document states - “Although the IERRT project will not create an adverse effect in terms of environmental impact, ABP has nevertheless decided, in light of its overriding statutory obligations and policy requirements in terms of the need to enhance biodiversity interests, ....to make provision for certain environmental enhancements as part of the scheme .....”.*

*Paragraph 14.2 continues - ‘The objective is to meet those policy requirements of relevance to the IERRT which indicate that advantage should be taken of opportunities to enhance biodiversity conservation interests as part of new development proposals.’ ...*

*The rationale for Work No 13, therefore, is to provide an element ecological enhancement to meet extant policy aspirations.*

*Work 13 is not being provided to act as either ecological mitigation or ecological compensation.*

*As ES Chapter 9 (Application Document 8.2.9) and the Habitats Regulations Assessment (Application Document 9.6) make clear, Work No. 13 is not required nor is it in any way needed to make the development acceptable from an environmental impact or Habitats Regulations perspective – see for example Table 9.26 of ES Chapter 9. ...*

*The one hectare identified within the Skeffling site is being specifically allocated for the IERRT project – effectively being “ringfenced” from any other ABP projects which may be forthcoming in the future and which may require compensatory habitat, mitigation or as with IERRT, ecological enhancement. It should be noted incidentally that no such other projects have as yet been brought forward.*

*The physical delivery of the OtSMRS, including the one hectare element referenced in the IERRT application documentation, does not, therefore, form part of the IERRT 'proposed development', as this is occurring under a separate process. Rather it is the act of allocating the ecological benefits generated by the identified one hectare area of the OtSMRS, which forms part of the IERRT 'proposed development'. It is considered that this is made clear in the MEP (Application Document 9.3)."*

The applicant's view is that "Work No 13 is not required nor is it in any way needed to make the development acceptable from an environmental impact or Habitats Regulations perspective" there appears therefore to be no need for Work No 13 to be included in a draft DCO and for its delivery to be secured by means of a requirement in any DCO that might be made.

The inclusion of Work No 13 in a made DCO does not appear to the Inspectorate to be an appropriate means of securing the apportionment of some of the land comprised within the OtSMRS to the proposed development as a means of meeting any planning policy requirements.

If the application is resubmitted and the applicant considers that Work No 13 should be included as a work and a requirement securing its provision would need to form part of a made DCO, then it is the Inspectorate's view that the nature of the proposed works at Skeffling would need to be more thoroughly described than was the case in the originally submitted MEP and draft DCO.

The works at Skeffling proposed as Work No 13 would need to be fully assessed in line with the requirements of the Environmental Impact Assessment Regulations and the assessment reported in the ES.

The Inspectorate is further of the view that the effects of providing Work No 13 would need to be included in the applicant's Habitats Regulations Assessment report, so that those effects could be examined by an Examining Authority, as may be necessary, and taken into account in by the Secretary State for Transport when undertaking any appropriate assessment, as may be required as part of the determination of any resubmitted application.

The Inspectorate advises the Applicant to fully address the above advice prior to the re-submission of the application.

The following advice identifies errors and omissions within the submitted application which the Applicant is advised to amend/correct in order to facilitate an effective examination if the application is accepted by the Planning Inspectorate.

### **Dredging disposal**

Paragraphs 2.3.20 to 24 of Chapter 2 of the ES (Document 8.2.2) describe how dredged material is expected to be disposed of at two licensed disposal sites in the river Humber. Other ES Chapters, including the Chapter 17 (Traffic and Transport [Doc 8.2.17]) and other application documentation reach conclusions based on marine dredging disposal. For example, in Paragraph 5.1.7 of the Transport Assessment (Appendix 17.1, Document 8.4.17(a)) it is stated "*The dredged material is not currently considered suitable for beneficial use elsewhere, such as for reclamation purposes ... Therefore, it is envisaged that the dredged material will be transported to licensed disposal sites offshore (depending*

*on the type of material) by barge ... On this basis no assessment or allowance for land-based movements arising from the dredge are covered in this report”.*

The Inspectorate notes that National Highways in its pre-application responses requested confirmation that dredging disposal would be off-shore and would not have an impact on the strategic highway network (electronic page 217 in Appendix L to the Consultation Report, Document 6.2).

While dredging powers, including disposal, were sought in the draft DCO, the marine disposal of dredged material was not to be secured in the draft DCO. The applicant is therefore advised to consider including a requirement within any draft DCO that would have the effect of precluding the on-shore disposal of dredged material, so as to ensure consistency with the conclusions reached in the ES and what is stated in any other application documentation. Alternatively, the applicant should undertake an assessment of the effects of on-shore dredging disposal and report on that assessment in the ES.

Within the withdrawn application reference was made to two nearby dredging disposal sites within the river Humber. In that regard the co-ordinates for those sites were identified in the deemed marine licence (Schedule 3 of the draft DCO). However, the location of those sites were not shown on any of the submitted plans identifying the extent of the Order Limits for the proposed development. That is inconsistent with the approach that has been taken in the case of a number of windfarm applications, where the locations for disposal sites have been identified by means of reference to plans and co-ordinates. The applicant is therefore advised to identify the location for any dredging sites by means of reference to both plans and co-ordinates in any resubmitted application.

## **Rochdale Envelope**

Some of the elements of the project description, in particular vertical alignments/height parameters were described variably in the ES and draft DCO.

ES Chapter 3 (Details of Project Construction and Operation, Document 8.2.3) explained the need for flexibility in the design and as such the worst-case parameters had been assessed and briefly refers to the Rochdale Envelope. There were however limited references to maximum or minimum infrastructure parameters within the ES's Chapters 2 (Document 8.2.2) and 3, their associated figures and the General Arrangement Plans (Document 2.5) and the Engineering Sections, Drawings and Plans (Document 2.6). The drawings in Documents 2.5 and 2.6 for example did not clearly identify where lighting masts might be located and how tall they would be relative to existing and any new structures, with there being a vertical cut line in the two sections that do show lighting masts (B2429400-JAC-00-ZZ-DR-ZZ-0740 and B2429400-JAC-00-ZZ-DR-ZZ-0741). The drawings accompanying the application did not have building or structure heights notated on them.

The applicant is therefore advised to review the way maximum parameters for the development are presented in any resubmitted application and ensure that the maximum parameters (width, depth and height), opposed to approximate measurements, for all of the proposed buildings and structures are clearly stated: 1) in writing in an application document, whether that be in one of the ES's chapters or another document that can be readily identified amongst the other application documentation; and 2) on plans/drawings where appropriate.

Chapters 2 and 3 of the ES were prone to some duplication and the applicant may wish to consider merging those chapters into a single chapter. Descriptions for the site and proposed development were also included in other application documents, for example the Planning Statement (Document 5.1) and in the interests of brevity the applicant is advised to avoid any such repetition and to use cross referencing where appropriate.

## **Document specific comments**

### **Works Plans (Document 2.3)**

Given the colour palette that was used, and the fineness of lines used to depict individual works, where works overlap with one another and/or the boundary of the Order Limits made it difficult to differentiate some of the works from one another without significant computer screen enlargement.

The applicant is advised to reconsider how the individual works are depicted on the Works Plan.

### **Nature Conservation Plans (Document 2.4) and Environment Statement: Vol 2 Figures: Chapter 9: Nature Conservation and Marine Ecology (Document 8.3.9)**

The figures showed the location of the statutorily designated wildlife sites in relation to the Proposed Development but did not show the full extent or boundaries for those sites. Any resubmitted application should be accompanied by plans/maps that show the full extent of the statutorily designated wildlife sites.

### **Lighting Plan (Document 2.8)**

The plan in Appendix A “Concept Lighting Layout” of the lighting plan document did not have a scale bar and has been drawn at a scale of 1:3000 for a paper size of AO.

The applicant is advised that it should reconsider the presentation of the information presented in any resubmitted lighting plan document so that the location of any lighting masts and columns etc can readily be identified on a standalone plan, with information of relating to the predicted lighting intensity being presented on a separate plan. Those plans, and for that matter any other plans that are submitted, should have scale bars shown on them, be drawn at scales using commonly used scales and be capable of being scaled.

### **Draft Development Consent Order (DCO, Document 3.1)**

The term “the Company” was used to identify who would undertake the proposed development throughout much of the draft DCO, ie in multiple articles and for example in Schedule 2 (Requirements), while the term “undertaker” was used in the Deemed Marine Licence (Schedule 3) and the terms “transferee” and “grantee” were also used.

Undertaker, as opposed to company, for the party undertaking an authorised development is the term usually used and the applicant is advised to reconsider the use of ‘company’ as opposed to undertaker in any resubmitted draft DCO.

## **Articles**

Article 2 (Interpretation) identified North East Lincolnshire Council as the “relevant planning authority”. However, Work No 13 (marine environmental enhancement) concerns land in East Riding of Yorkshire Council’s area, which is a separate planning authority. The applicant should ensure that all relevant planning authorities are defined in any resubmitted draft DCO and the subsequent wording of the draft DCO takes account of there potentially being multiple relevant planning authorities.

Article 21 (Operation and use of development) at sub-section (1) sought to identify a maximum annual limit of 660,000 accompanied and unaccompanied wheeled vehicle “Ro-Ro units” be handled during the proposed development’s operational phase. There was, however, no definitions for accompanied and unaccompanied wheeled vehicles or Ro-Ro unit in either Article 2 (Interpretation) or Article 21. The omitted definitions should be included in a resubmitted draft DCO.

Sub-section (2) of Article 21 referred to up to 100 passengers per day being permitted to board vessels departing the proposed development, however, that article did not state what the position would be with respect to any passengers arriving at the proposed development. Clarification should be provided in that regard in any subsequent application made.

## **Schedule 2 – Requirements etc**

Requirement 11 was titled “Off-site mitigation” while the two plans referred to in this requirement, the MEP and the Woodland Enhancement Management Plan (WEMP, Document 9.4) had enhancement in their titles. In defining what “the permitted preliminary works” meant Paragraph 1 (Interpretation) of Part 1 of Schedule 1 of the draft DCO reference was made to “off-site mitigation works”. Various Chapters in the ES and other application documents refer to the works covered by the MEP and the WEMP as being for enhancement. The applicant should ensure that any resubmitted draft DCO uses wording that is consistent with any plans or documents that are being referred to.

Requirement 12 (Off-site traffic management) would have required the approval of details for highway signage to be installed on roads under the jurisdiction of National Highways or “the relevant local planning authorities”. Annex N in Appendix 17.1 of the ES (Transport Assessment [Document 8.4.17(a)]) provided details for highway signage in various locations beyond the Order Limits that the applicant proposed would be altered.

The applicant is advised to consider whether the locations for the highway signage it proposes to alter would need to be included in the Order Limits and amend any of the application plans and other documents, including the Book of Reference, as necessary.

There was no Requirement 20 in Part 1 of Schedule 2 of the draft DCO, while the draft Explanatory Memorandum (EM, Document 3.2) referred to a Requirement 20. The applicant should ensure there is consistency between the draft DCO and EM.

## **Explanatory Memorandum (EM, Document 3.2)**

The text in Paragraph 5.6(c) ended abruptly without quoting precedents from any local Acts. The wording of Paragraph 5.6(c) should be reviewed and in the event of any local

Acts being referred to, relevant extracts from those acts should accompany any resubmitted application.

Paragraph 5.6(d) stated the “*Order Land*” refers to the land which is coloured pink on the land plans which comprise the interests in land or the rights over land that ABP wishes to acquire for the purposes of the authorised development”. The Land Plans, however, showed land other than coloured pink that it was intended a made order would relate to. The Order Land was therefore not limited just to the land just coloured pink. The wording for this paragraph in the EM should be reviewed to ensure it states what is intended.

An EM should explain the purpose and effect of each provision of a draft DCO, explaining for amongst other things, why individual articles or requirements are considered to be necessary to the particular circumstances of the case in question. The EM in the case of Article 3 (Disapplication of legislative provisions, paragraphs 5.10 to 5.16) did not explain why in the applicant’s view the provisions of the cited legislation would specifically need to be disapplied to facilitate the implementation of the proposed development. The explanation for the intended disapplication of legislation should be made more explicit in any resubmitted EM.

Paragraphs 5.17 and 6.5 of the EM referred to the intention under Articles 4 and 6 of the draft DCO to incorporate some, but not all, of the provisions Harbours, Docks and Piers Clauses Act 1847 (the 1847 Act). However, the EM did not provide an explanation as to why the applicant considered it necessary for some of the provisions of the 1847 Act to be incorporated into a made DCO. The explanation for the intended incorporation of legislation should be made more explicit in any resubmitted EM.

Paragraph 7.8 in connection with Article 12 (Private rights over land) of the draft DCO referred to the definition of private rights being provided in “Paragraph 8”, however the last paragraph in Article 12 was numbered (7). The applicant should this part of the EM is consistent with the provisions of any resubmitted draft DCO.

Paragraphs 8.1 to 8.3 addressed Article 21(1) of the draft DCO and the imposition of an annual throughput limit of 660,000 “units” for the proposed development. Unit (ie Ro-Ro unit) was, however, not defined in the draft DCO, particularly in the context of the definition for units stated in section 24(6) of the Planning Act 2008 which refers to “... any item of wheeled cargo (whether propelled or not self-propelled)” and would appear to include cars and other vehicles. The applicant should ensure that Ro-Ro unit is defined in any resubmitted draft DCO and the choice for that definition should be explained in the EM.

Paragraph 8.4 advised that Article 21(2) of the draft DCO imposed a 100 passenger per day limit for the operational phase of the proposed development. There was, however, no explanation in the EM for why there was an intention to set a 100 passenger limit and that could only be established by reference to Chapter 18 of the ES (Document 8.2.18). Any resubmitted EM should provide an explanation for a daily passenger limit.

The explanation for Article 27 (Protective work to buildings) provided in Paragraph 9.14 did identify precisely which buildings within the Order Limits might need to become the subject of this proposed article, with the justification for its inclusion being based on precedents in two previously made DCOs. A resubmitted EM should provide a case specific justification for the inclusion of Article 27.

Paragraph 10.15 explained why the applicant intended that certain local legislation concerning the river Humber and Humber Estuary should be disapplied under Article 34 of a made DCO. Extracts from the local legislation putting the intended legislative disapplication in context was not included with the submitted application documentation. The relevant parts of that legislation should be submitted with any resubmitted application.

Paragraph 10.26 in referring to Article 43 and Schedule 4 (Protective Provisions) does not explain why protective provisions are being sought for most of the parties identified in Schedule 4.

Paragraph 12.3 listed the requirements included in Schedule 2 of the draft DCO. While brief summaries for each of the requirements was provided, the case specific reasons for why the applicant considered individual requirements were necessary and should be included in a made DCO were not provided. For example, for Requirement 10 (Noise insulation) there was no explanation as to why the applicant would need to be “... *obliged to offer noise insulation to a number of residential dwellings on Queen’s Road*”. Similarly for Requirement 11 (Off-site mitigation [enhancement]) there was no explanation as to why the applicant considered it necessary to undertake “... *environmental mitigation for the Project*”. Any resubmitted EM should include case specific reasons for the inclusion of intended requirements.

In Paragraph 12.3 the abbreviation “ABPO” is used, but that abbreviation is not explained in the EM. The accuracy/need for that abbreviation should be checked by the applicant.

Paragraph 12.3v) referred to there being a Requirement 20 (Temporary suspension of navigation in connection with the construction of the impact protection measures) in the draft DCO, while there was no Requirement 20 in the draft DCO. The consistency between the EM and the draft DCO should be checked.

### **Book of Reference (BoR, Document 4.1)**

Land owned by North East Lincolnshire Council (NELC) forming Work No 12(e) “*the extension of the footway from East Gate to the Queens Road bus stop*” is notated on the Land Plans as having not been included in the BoR (the NELC land).

While the applicant did not seek powers of compulsory acquisition in relation to the NELC land, through the operation of Requirement 13 in the draft DCO it is evident that the bringing into operation of the proposed development would be dependent on works affecting the NELC land being undertaken. The Inspectorate considers that the NELC land should be included in the BoR because it is land owned by a party other than the applicant and there is an intention that a made DCO would include a work affecting it. Should the applicant not be in agreement with the Inspectorate’s view then it should explain in the EM and/or the Statement of Reasons (Document 4.2) the basis for the NELC land’s exclusion from the BoR.

### **Statement of Reasons (Document 4.2)**

In Paragraph 2.3.2 it was stated “*On the landside, the works required for the new Ro-Ro facility will be undertaken entirely within the statutory port estate of the Port of Immingham, which is owned and operated by ABP, the applicant*”. However, Work Nos 12 and 13 included some works either in the public highway or on the north bank of the Humber that

would appear to be outside the statutory port estate. The wording for Paragraph 2.3.2 should be reviewed prior to the resubmission of any EM.

### **Consultation Report Appendices (Document 6.2)**

Appendix L summarised consultees' comments made about the ES prior to the application's submission. The fourth column in the tables commencing on electronic page 17 was intended by to advise how the applicant had responded to consultees' comments. There were, however, a number of occasions in the table where intended cross references to other documents had not been included, with instead it being stated "*Error! Reference source not found*"; for example, see page electronic page 51.

In the event of the application being resubmitted the applicant should ensure that all cross referencing in the Consultation Report, including its Appendices, and any other application documents is complete.

### **Environmental Statement (ES)**

#### **Chapter 17 of the ES "Traffic and Transport" (Document 8.2.17)**

This chapter of the ES made a number of cross references to Appendix 17.1 (the Transport Assessment [Document 8.4.17(a)]) without identifying precisely which part of the Transport Assessment was being referred to. Should the application be resubmitted the applicant should ensure that any crossing referencing in Chapter 17 of the ES to the Transport Assessment is precise.

Paragraph 17.84 referred to a daily average of 100 loads of material being delivered by heavy goods vehicles (HGVs) during the construction period, while the Transport Assessment at Paragraph 5.1.3 referred to a daily average of 90 loads being delivered by HGVs and an annual average daily traffic figure of 110 (Annex F). The applicant should ensure that there is consistency in what is stated in Chapter 17 of the ES and the Transport Assessment, including its annexes, that principle of internal consistency should also be applied to all parts of the ES, as well as other application documentation.

#### **ES Appendix 17.1 Transport Assessment (Doc 8.4.17(a))**

The Transport Assessment contained 962 pages, including 55 pages of introductory text and 14 imbedded annexes, with some of the annexes having annexes/appendices within them. While an index with page numbering was included the quoted numbers did not match the actual (electronic) page number in the document. Some of the annexes had printed internal page numbering, while other annexes had no numbering. The Transport Assessment's incomplete pagination made this document difficult to negotiate. Any resubmitted version of the Transport Assessment should be fully paginated, including the provision of consecutive page numbering from the first to the last page of this document.

In Paragraph 8.2.6 a daily for utilisation unit handling figure of "1,8000" was referred to. It is presumably that figure should have been 1,800 units to be consistent with what is stated in Paragraph 5.2.5 and an annual throughput maximum of 660,000 units. The applicant should make any corrections as necessary.

The figures presented in Tables 8, 9, 13 and 14 (electronic pages 42, 43, 48 and 49) have been subject to some rounding, the need for which is unclear given whole numbers are quoted in columns two and three and has given rise to some incorrect totals being included in this table's final column. For example, in the second row of Table 8 the sum of 2 plus 1 is stated as 2 rather than 3 and in Table 13 in the final row for West Gate the sum of 0 plus 0 is stated to be 1. The applicant should review the content of Tables 8, 9, 13 and 14 for accuracy.

Should the applicant be minded to resubmit the application it should pay close attention to the advice set out in this letter. If the applicant is minded to follow the Inspectorate's advice and change any aspects of its proposals, prior to an application being resubmitted it should consider whether there would be a need to undertake any consultations with statutory and non-statutory consultees.

We trust you find this advice helpful, however if you have any queries on these matters please do not hesitate to contact our office using the contact details at the head of this letter.

Yours sincerely

*Gail Boyle*

**Gail Boyle**  
**Operations Lead – National Infrastructure and Environment**

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