



Immingham Green Energy Terminal

9.49 Applicant's Comments on D1 Submissions from CLdN
Ports Killingholme Limited

Infrastructure Planning (Examination Procedure) Rules 2010
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1. Introduction

Overview

- 1.1 This document has been prepared to accompany an application made to the Secretary of State for Transport (the "Application") under Section 37 of the Planning Act 2008 ("PA 2008") for a Development Consent Order ("DCO") to authorise the construction and operation of the proposed Immingham Green Energy Terminal ("the Project").
- 1.2 The Application is submitted by Associated British Ports ("the Applicant"). The Applicant was established in 1981 following the privatisation of the British Transport Docks Board. The **Funding Statement [APP-010]** provides further information.
- 1.3 The Project as proposed by the Applicant falls within the definition of a Nationally Significant Infrastructure Project ("NSIP") as set out in Sections 14(1)(j), 24(2) and 24(3)(c) of the PA 2008.

The Project

- 1.4 The Applicant is seeking to construct, operate and maintain the Project, comprising a new multi-user liquid bulk green energy terminal located on the eastern side of the Port of Immingham (the "Port").
- 1.5 The Project includes the construction and operation of a green hydrogen production facility, which would be delivered and operated by Air Products (BR) Limited ("Air Products"). Air Products will be the first customer of the new terminal, whereby green ammonia will be imported via the jetty and converted on-site into green hydrogen, making a positive contribution to the United Kingdom's ("UK's") net zero agenda by helping to decarbonise the UK's industrial activities and in particular the heavy transport sector.
- 1.6 A detailed description of the Project is included in **Environmental Statement ("ES") Chapter 2: The Project [APP-044]**.

Purpose and Structure of this Document

- 1.7 The Applicant provides the following comments on aspects of the submissions made by CLdN Ports Killingholme Limited ("CLdN") at Deadline 1 that are contained within the following:
 - Issue Specific Hearing 3 (ISH3) Post Hearing Submissions **[REP1-090]**
 - Response to Q1.11.2.8 contained within CLdN's responses to the Examining Authority's First Written Questions **[REP1-091]**
- 1.8 The Applicant requested that Anatec assess the impact of IGET in terms of the additional speed restrictions on passing vessels operated by CLdN to/from Killingholme. Anatec's A4977 IGET Speed Restriction Analysis is provided as **Appendix 1**.

2. Applicant's Comments on the Summary of Oral Submissions from CLdN Ports Killingholme Limited

Claimed Potential Impacts on CLdN's Services

Aspects of REP1-090 and REP1-091

Applicant's Comments

Within its Deadline 1 submissions provided in [REP1-090], CLdN submits that the Project has the potential to impact on CLdN's services as a result of:

1. *"Sailing speed restrictions for vessels passing the IGET Proposed Development;*
2. *Exclusion zones related to types of hazardous cargo to be handled at IGET;*
3. *Accidents and/or major incidents under the Control of Major Accident Hazards Regulations 2015 that could interrupt vessel traffic or, in a worst case scenario, close the Humber to traffic completely; and*
4. *Unknown additional/new activities at the berth in the future."* ([REP1-090] Item 5(ii))

In addition, CLdN's written submission of its oral case at ISH3 [REP1-090] in respect of Item 5(ii) draws all of these points together by indicating its objective is that it:

"wants to ensure that its established and future operations are not adversely affected by the subsequent development of the IGET facility and that assessed levels and assumptions are not different or exceeded in delivery and operation. CLdN consider that this is not only fair and reasonable, but it is also consistent with the 'agent of change' principle embedded in the National Planning Policy Framework at paragraph 187."

In response, the Applicant comments as follows:

- (a) The assessment of navigational and other effects of the Project that has been undertaken is based upon a worst case assessment of 292 vessel calls per year (see the Applicant's answer to Q1.11.2.1 provided within **[REP1-032]**).
- (b) The assessment considered both ammonia and CO₂ carrier vessels, and the risk control (mitigation measures) identified are applicable and appropriate for managing the marine navigational risk associated with both of these products and types of vessel (see the Applicant's answer to Q1.11.2.1 provided within **[REP1-032]**).
- (c) The imposition of a speed restriction of 5 knots for vessels passing the IGET jetty head when a vessel is present on the IGET berth has been assessed as adding around 2 minutes to the transit time of vessels travelling along that stretch of the Humber between two points 500m west of IOT and 500m east of the site of the proposed IGET. The 5 knot speed restriction would result from the application of existing navigation bylaw 14(3) (Navigation and Speed of Vessels) of the Humber Navigation Byelaws, which states:

"The master of a vessel shall ensure that the vessel does not exceed a speed of 5 knots when approaching and passing any jetty when any vessel is mooring, moored or unmooring at the jetty."

This speed limit is, therefore, an existing speed limit that applies automatically to any jetty at any location on the Humber, and is a situation which reflects, therefore, what already occurs in respect of vessels passing the adjacent three Immingham Oil Terminal ("IOT") jetty heads which CLdN services sail past on a daily basis. Currently, with any of the IOT berths occupied this stretch of the River takes around 12.8 minutes to transit. An additional 2 minutes to the transit time for this stretch of the River is not a material increase to transit times and would clearly be negligible and insignificant in respect of, for example, the overall time taken for a vessel passing the IGET facility to then undertake or complete a longer North Sea crossing (see the Applicant's answer to Q1.11.2.3 provided in **[REP1-032]** and also the Applicant's summary of ISH3 oral submissions **[REP1-066]**).

- (d) The application of a 150m exclusion zone around the IGET jetty head when a vessel is present on the IGET berth – a zone applicable to both ammonia and CO₂ vessels – is similarly an addition to the existing arrangements in place for the adjacent existing IOT berths and would similarly have no material impact on the passage of vessels in this part of the Humber (see the Applicant's answer to Q1.11.2.3 provided in **[REP1-032]** and also the Applicant's summary of ISH3 oral submissions **[REP1-066]**). The existing exclusion zone for the IOT is set by a General Direction of the Harbour Master, Humber. A new General Direction related to the Project will establish the exclusion zone for the Project.

(e) The Project will need to comply as necessary with the requirements of separate regulatory regimes such as those under the Control of Major Accident Hazard (“COMAH”) Regulations 2015 and the Planning (Hazardous Substances) Regulations 2015 which will ensure that risks associated with accidents and/or major incidents are reduced to ‘as low as reasonably practicable’ (“ALARP”). **ES Chapter 22: Major Accidents and Disasters [APP-064]** provides a comprehensive assessment of identified major accident and disaster risk event scenarios for the Project, which includes the consideration of risk event scenarios that relate to activity on the marine infrastructure, that demonstrates how, with the imposition of appropriate mitigation measures, the risks are mitigated to ALARP.

(f) In terms of additional/new activities at the IGET berth in the future, the Applicant has clarified in various submissions that the use of the IGET berth for additional activities other than in respect of ammonia or CO₂ would require some form of additional landside infrastructure, and potentially even marine side infrastructure changes, that would trigger the need for further necessary consents and approvals, along with associated consultation with relevant stakeholders and assessment of impacts through the Environmental Impact Assessment process as necessary. The acceptability of any such future proposal would have to be judged through the relevant statutory process against the relevant policy and material considerations applicable at the time (see for example the Applicant’s answer to Q1.2.1.3 provided in **[REP1-023]**).

(g) The ‘agent of change’ principle is explained within Paragraph 193 of the National Planning Policy Framework (“NPPF”) in the following terms (emphasis added):

*“Planning policies and decisions should ensure that new development can be integrated effectively with existing business and community facilities (such as places of worship, pubs, music venues and sports clubs). Existing businesses and facilities should not have **unreasonable restrictions** placed on them as a result of development permitted after they were established. Where the operation of an existing business or community facility could have a **significant adverse effect** on new development (including changes of use) in its vicinity, the applicant (or ‘agent of change’) should be required to provide **suitable mitigation before the development has been completed.**”*

Thus, where the “agent of change” principle is engaged, it is only concerned with the principle of avoiding “unreasonable” restrictions on an existing business arising from a “significant” adverse effect on a new development as a result of that existing business which will need to be subject to “suitable mitigation” by the proposed new use or development. As explained above, the Project is not imposing ‘unreasonable restrictions’ on CLdN’s services to and from the Port of Killingholme. In addition, for the avoidance of doubt and for completeness, CLdN’s operations will not have a significant adverse effect on the Project.

Furthermore, in considering matters relating to the 'agent of change' principle, it is not possible to ignore or seek to set aside what is often referred to as the *Gateshead* approach (*Gateshead MBC v Secretary of State for the Environment* [1995] Env LR 37). That is a separate principle that where there is a separate non-planning process in place for appropriately controlling in some way an aspect of a development, then the planning process has to assume that such a separate process will operate effectively. This principle is reflected and reinforced in Paragraph 194 of the NPPF and also Section 4.11 (specifically Paragraph 4.11.3) of the National Policy Statement for Ports ("NPSfP"). This is of relevance to the matters raised by CLdN because there already exists a separate process for controlling navigational safety on the River Humber, a process operated by the Harbour Master Humber, and a separate process, under COMAH, that requires risks to be carefully controlled and reduced to a level that can be demonstrated to the Health and Safety Executive to be ALARP.

Having regard to all of the above evidence, it can be clearly seen that the Project will not result in unreasonable restrictions being placed on the operations of CLdN to and from the Port of Killingholme. The evidence does not begin to show that the Project would give rise to any issue under the 'agent of change' principle. Furthermore, in respect of the considerations required under Section 104(7) of the Planning Act 2008, the evidence also does not begin to show that the non-material adverse implications of the Project for CLdN and its business in any way outweighs the benefits of the Project.

3. Appendix 1: Anatec A4977 IGET Speed Restriction Analysis

1 Introduction

Anatec were requested by ABP to assess the impact of IGET in terms of the additional speed restrictions on passing vessels operated by CLdN to/from Killingholme.

The IGET NRA assumes the same speed restrictions will apply to those for the neighbouring Immingham Oil Terminal (IOT). For IOT the Notice to Mariners No. S.H. 34 on “Passing Immingham Jetties” references Humber Navigation bylaws 14 (3) which states:

The master of a vessel shall ensure that the vessel does not exceed a speed of 5 knots when approaching and passing any jetty when any vessel is mooring, moored or unmooring at the jetty.

Anatec has reviewed AIS data to understand how this speed limit affects regular passing vessels operated by CLdN and then extrapolated this to IGET. It is noted that speeds broadcast on AIS are speeds over the ground.

The assessment has been carried out without and with vessels at IOT as this will influence the impact of a speed limit at IGET.

2 Speed Analysis – IOT Vacant

Figure 2.1 presents the AIS vessel positions broadcast by the *Delphine* and *Laureline* recorded on the 31st August 2022 (inbound and outbound), when there were no vessels at any of the three IOT berths. This means the CLdN vessels can transit at their optimal speed for this stretch of the river.

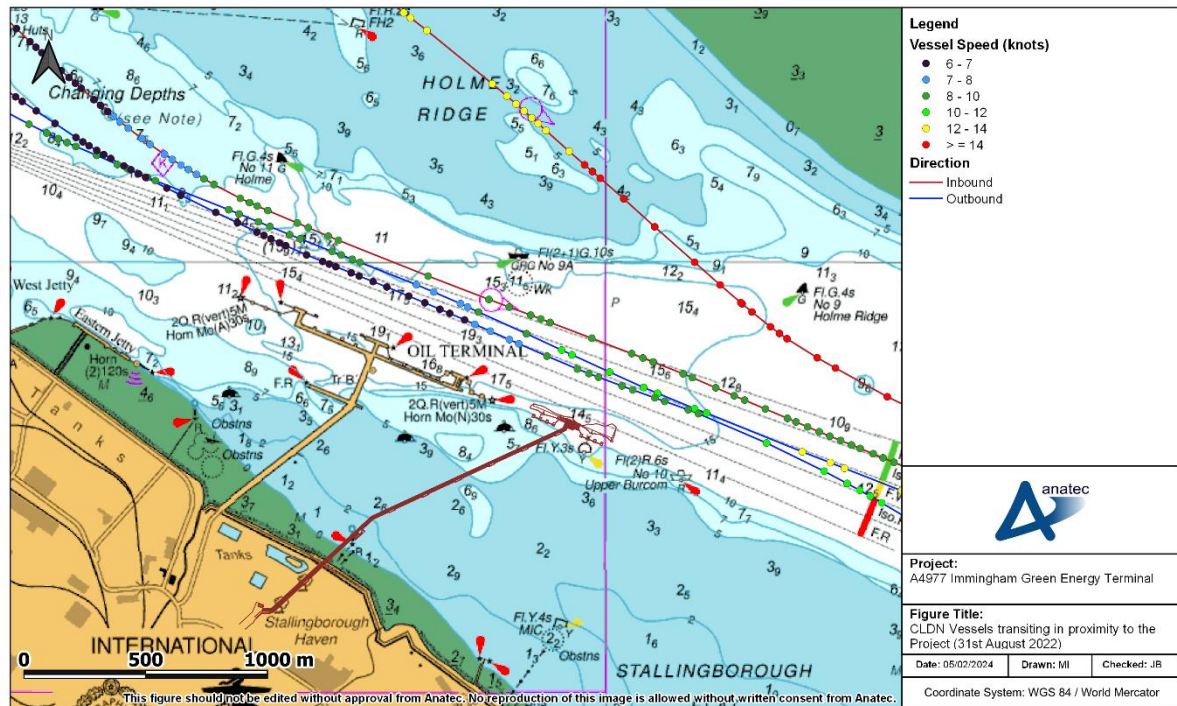


Figure 2.1 CLdN Vessels transiting in proximity to the Project (31 August 2022)

CLdN vessels were transiting at speeds of up to 9 knots when passing parallel to IOT when all its berths were vacant. One CLdN vessel was observed to use the secondary channel via Foul Holme, further to the north of both IOT and IGET, and this vessel was travelling at up to 14.4 knots.

3 Speed Analysis – IOT Occupied

Figure 3.1 presents the AIS vessel positions broadcast by the *Laureline* on 20th July 2022 (outbound), when vessels were occupying all IOT berths.

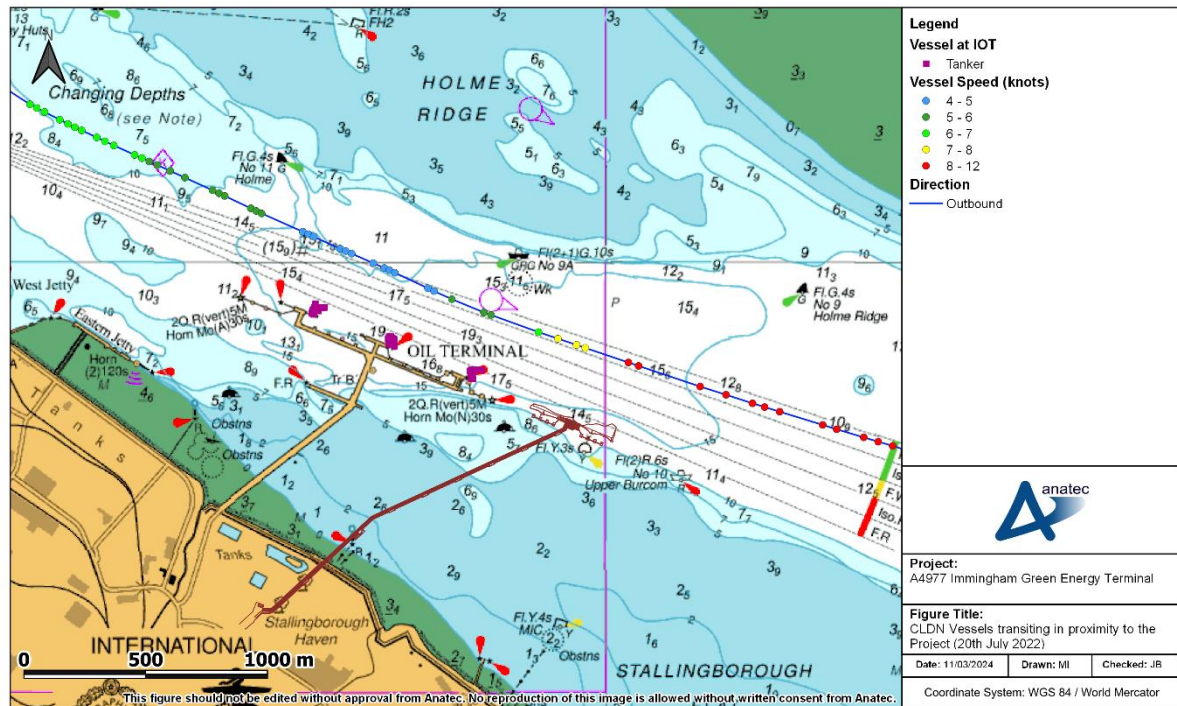


Figure 3.1 CLdN Vessel Transiting in Proximity to the Project (20 July 2022)

The vessel *Laureline* was observed at speeds of around 5 knots when transiting (outbound) parallel to IOT.

4 Impact of IGET

This section assesses the expected impact of the 5 knots speed limit which will apply when there is a vessel at IGET.

The net impact on transit times has been estimated for when vessels are transiting between two points, shown in Figure 4.1:

- A. 500m east of IGET
- B. 500m west of IOT

The distance between these points is approximately 1.3 nautical miles (2.4 kilometres).

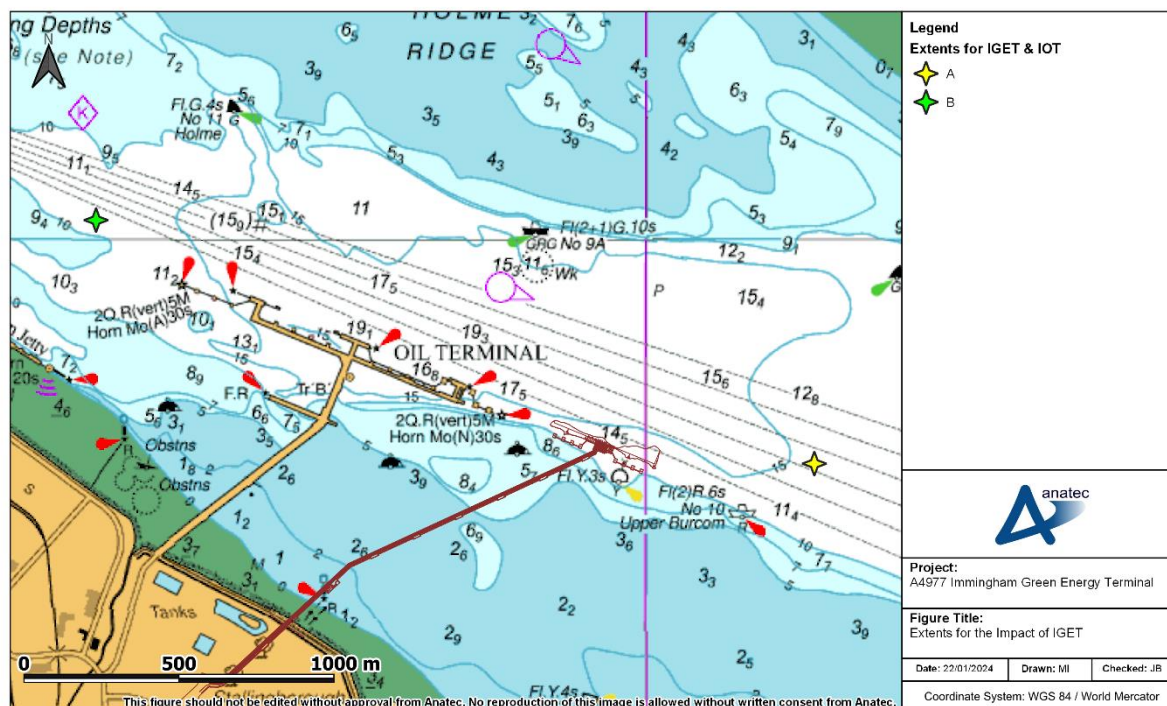


Figure 4.1 Extents used in the Transit Time Estimates for passing IGET

The transit time difference between the two points was estimated for two scenarios:

- IOT vacant
- IOT occupied

Table 4.1 presents the difference in transit times for CLdN vessels when going from Points A to B. The IOT vacant scenario uses data from *Laureline* on 31 August 2022 (see Figure 2.1), while the IOT occupied scenario uses data for the same vessel on 20 July 2022 (see Figure 3.1) with speeds adjusted to adhere to the 5 knot limit.

Table 4.1 CLdN Transit Times With and Without IGET

Scenario	Case	Time Taken (minutes)
IOT Vacant	Without IGET	9.2
	With IGET (occupied)	11.3 (+2.1)
IOT Occupied	Without IGET	12.8
	With IGET (occupied)	14.6 (+1.8)

In both scenarios, the additional transit time due to IGET being occupied is estimated to be similar at around two minutes. The overall transit time is longer when both IOT and IGET are occupied due to the extended length of the speed restriction. However, the net impact of

IGET is less when IOT is occupied as vessels already have to slow down to be within the 5 knots speed limit at IOT, which reduces the subsequent impact of IGET.

It is noted that, according to the AIS data, at least one IOT berth is occupied most of the time (greater than 90% of the year).