

**PROPOSED ASSOCIATED BRITISH PORTS (IMMINGHAM GREEN ENERGY TERMINAL)  
DEVELOPMENT CONSENT ORDER**

**DEADLINE 3**

---

Written Summary of Oral Representations made at Issue Specific Hearing 7 on behalf of Harbour  
Master, Humber

PINS Reference Number	TR030008
Interested Party Reference Number	20047053
Document Ref.	HMH 7
Author	Winckworth Sherwood LLP
Date	3 May 2024

---

Arbor  
255 Blackfriars Road  
London  
SE1 9AX  
DX: 156810 London Bridge 6

T 020 7593 5000  
F 020 7593 5099  
[www.wslaw.co.uk](http://www.wslaw.co.uk)

**Winckworth**  
Sherwood

**Solicitors and  
Parliamentary Agents**

1. Victoria Hutton, on behalf of Harbour Master, Humber (**HMH**), provided an overview of the statutory regime operated by the Conservancy (that is, the Statutory Conservancy and Navigation Authority for the Humber) and HMH.
2. It was explained that it is important, for the purposes of the draft Development Consent Order (**dDCO**), to distinguish between two types of function of the Conservancy and HMH. These relate to: (a) the licensing of works and (b) general management of the river and its users.
3. With regards to licensing:
  - (a) Under section 9 of the Humber Conservancy Act 1899 the Conservancy is given authority for licensing works. In effect the Conservancy is a body from whom permission is required to construct works in the Humber.
  - (a) Section 9 enables the Conservancy to attach conditions to the construction and operation of those works.
  - (b) The dDCO is a streamlined consent procedure – therefore it disapplies section 9 – however, through the protective provisions for the Conservancy, it maintains the power for the Conservancy to attach conditions relating to both the construction and operation of the new development.
  - (c) That approach has precedent in the Able Marine Energy Park DCO and other statutory instruments where consents have been disapplied and substituted with a streamlined regime for detailed plans and specifications.
  - (d) It is obviously sensible given the statutory authority which the Conservancy has in relation to the safe and efficient operation of the river Humber.
4. With regards to the general management of the river, this applies across the River Humber to all development within it. In short:
  - (a) The Conservancy and HMH are required to manage the safety of navigation on the Humber in compliance with the Port Marine Safety Code.

- (b) HMM sets marine procedures to form a Marine Safety Management System for the Humber (**MSMS**) based upon risk assessment. This is designed to reduce risks to 'as low as reasonably practicable' (**ALARP**).
- (c) The safety regime is effected through a number of mechanisms which HMM has addressed in his Written Representation [**REP1-100**] (they include pilotage, the VTS which provides an oversight in the scheduling and management of vessels in the Estuary and the provision of suitable aids to navigation and hydrography, notices to mariners the Humber Passage Plan etc.).
- (d) In light of the ExA's questions, counsel touched on the following mechanisms available to the Conservancy to regulate movements on the Humber in light of safety requirements: Byelaws, General Directions and Special Directions.
- (e) The current byelaws are the Humber Byelaws 1990 (made under section 12(2) of the Associated British Ports Act 1987). These include Byelaw 14 which deals with navigation and speed of vessels when passing a jetty when any vessel is mooring moored or unmooring at the jetty. A breach of the Byelaws is a criminal offence (see byelaw 40).
- (f) General directions can be issued by the Conservancy following consultation with prescribed bodies (see section 6 of the Transport and Docks Act 1972 (**1972 Act**)). These can be made for the purpose of promoting or securing conditions conducive to the ease, convenience or safety of navigation in the Humber. These take some time due to the consultation requirement. However, in practice, requirements would be relayed through Notices to Mariners and instructions to Pilots and those with Pilot Exemption Certificates, as well as via VTS and Dockmaster standard operating procedures, all of which can be backed up by a special direction should that be necessary. There is a current General Direction regarding the 150m exclusion zone for IOT.
- (g) Special directions may be issued by HMM under section 7 of 1972 Act. These are a particular power of HMM. These can be made for:

- i. requiring a vessel to comply with a requirement made in or under a general direction:
- ii. regulating or requiring for the ease, convenience, or safety of navigation the movement, mooring, or unmooring of a vessel;
- iii. regulating for the safety of navigation the manner in which a vessel takes in or discharges cargo, fuel, water or ship's stores.

(h) The breach of either general direction or a special direction is a criminal offence.

(i) Additionally, and importantly, under section 13 1972 Act, if a special direction is not complied with within a reasonable time the HMM may put persons aboard the vessel to carry out the direction or may otherwise cause the vessel to be handled in accordance with the direction. The Dock Master has his own powers of special direction in relation to the Port of Immingham SHA and the identical power to enforce those directions.

5. Counsel explained that when considering that general statutory regime, it is necessary to note that it applies across the Humber including taking into account all infrastructure within it, regardless of ownership or operator. It is comprehensive both in geography but also in terms of the breadth of powers which the Conservancy has.
6. The powers available to the Conservancy and HMM are flexible and allow HMM and his team to react to any changing circumstances. That could be the introduction of new infrastructure. It could also be changing weather/tidal patterns or changes in the frequency or type of vessels entering the river. It is essential that this flexibility is maintained.
7. What does **not** happen is individual pieces of infrastructure are granted consent and lay down fixed safety procedures which would have the effect of constraining the powers of HMM.
8. Having set out that statutory regime which is comprehensive and, crucially, flexible it is finally necessary to highlight what is commonly known as the 'Gateshead Principle' which is, put simply, that where there is another statutory regime in place for addressing matters such as safety then the decision maker should assume that this regime will work effectively. That principle applies here.

**9.** It is also relevant to have regard to section 145(2) of the Planning Act 2008, which states:

- (2) An order granting development consent may include provision changing the powers or duties of a harbour authority only if—
- (a) the development to which the order relates is or includes the construction or alteration of harbour facilities, and
  - (b) the authority has requested the inclusion of the provision or has consented in writing to its inclusion.

What that demonstrates is that Parliament considers it important that the powers and duties of the SHA (in this case, the Conservancy) are protected. It is essentially the working out of the Gateshead principle in the statute.

**10.** Ultimately Parliament has given powers to the Conservancy and HMH to manage the safety of navigation on the river. Ultimately HMH can prevent any vessel from even approaching a jetty if he does not consider it safe to do so. It would be inappropriate for the DCO to duplicate or replace these controls.

**11.** In response to a question about the proposed speed limit. HMH explained that the 5 knot speed limit applies to all jetties on the Humber and that this mitigates the risk of a vessel on the jetty being affected hydrodynamically. A vessel moving along water is pulling an amount of water and this affects nearby vessels. This can affect the vessel alongside a jetty. It can move moorings and cause them to break. The speed limit manages this risk.

**12.** In response to a query about the 150m exclusion zone, HMH explained that this is a General Direction which is in place to mitigate against the risk of a collision of a vessel with another vessel or with the jetty itself. It was brought in following an incident in 2000 when a vessel made contact with a vessel alongside the IOT jetty. Thus, the exclusion zone is concerned with proximity and potential for collision whereas the 5 knot speed limit is concerned with hydrodynamic effects.

**13.** HMH confirmed that the protective provisions for the Conservancy are agreed. The most relevant paragraphs in terms of construction are paragraph 3 concerning approval of tidal works which provides for plans to be submitted and approved before any tidal works commence and which allows the Conservancy to impose requirements under sub-paragraph (2). Thus approval may be given subject to the Conservancy's reasonable requirements for

the protection of traffic regulation, the use of the river and performance of the Conservancy's functions. The Applicant would be required to comply with those requirements. The most relevant paragraph in terms of operation is paragraph 16 which required the applicant to submit for approval a written statement of operating procedures for access and egress to the authorized development. The Applicant must operate only in accordance with the approved procedures.

- 14.** HMM confirmed that for practical purposes the protective provisions replace section 9 of the Harbour Conservancy Act which governs any works not covered by a DCO that are carried out today elsewhere on the river. It is a procedure that the Conservancy has been through many times for developments large and small. Risk assessment is carried out and HMM and his team ensure that the works are carried out safely through approval of contractors, approval of works requirements, promulgation of information and, for operational procedures, both through the Conservancy's pilotage functions and its control of vessel movements. VTS Humber would be very involved in those procedures as well.
- 15.** HMM went on to elaborate, explaining that larger vessels for the IGET jetty would come under the Humber Passage Plan. Development of the amendments needed to the current Humber Passage Plan will be effected through development of procedures and risk assessment involving all stakeholders, whether that is pilots, towage companies, the operator themselves or other river users. It is a well-established process, although emanating in this case from a different form of consent.
- 16.** Finally, counsel for HMM explained that in terms of who is responsible for ensuring safety, the answer is really everyone. The Conservancy would retain responsibilities for managing safety of the Humber generally and complying with the Port Marine Safety Code. Vessel masters themselves have responsibilities under the Byelaws and under general legislation. For example, byelaw 7 requires vessel masters to maintain a listening watch on the appropriate channel. Byelaw 9 requires them to navigate their vessels with due care and attention and at a speed and in a manner which shall not endanger the safety of any person or any other vessel. Under the Merchant Shipping Act 1995 it is a criminal offence for a vessel master to conduct himself in a manner that endangers structures or individuals. There is also a duty imposed on vessel masters by section 11 of the British Transport Docks Act 1972 which makes it clear that, where a general or special direction is given, that does not diminish in any way the responsibility of the master for their vessel and for the persons on board, the cargo and

other property. Section 16 of the Pilotage Act makes it clear that having a pilot on board does not diminish the responsibility of the vessel master and owner. Thus, there is a raft of responsibilities on various people and bodies which would remain in place with the IGET development.

**Winckworth Sherwood LLP**