

IMMINGHAM EASTERN RO-RO TERMINAL



Applicant's Response to the ExA's
Schedule of Proposed Changes to the draft Development Consent Order

Document Reference: 10.2.71

APFP Regulations 2009 – Regulation 5(2)(q)

PINS Reference – TR030007

December 2023

Document Information

Document Information		
Project	Immingham Eastern Ro-Ro Terminal	
Document Title	Applicant's Response to the ExA's Schedule of Proposed Changes to the draft Development Consent Order	
Commissioned by	Associated British Ports	
Document ref	10.2.71	
APFP Reg 2009	Regulation 5(2)(q)	
Prepared by	IERRT Project Team	
Date	Version	Revision Details
11/12/2023	01 Deadline 7	Submitted at Deadline 7

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1 Purpose of this document

- 1.1. The Examining Authority (ExA) issued its Schedule of proposed changes to the draft Development Consent Order (“dDCO”) **[PD-019]**.
- 1.2. A glossary of terms and a list of acronyms can be found in Section 3 of this document.
- 1.3. Column 4 of the Tables below provides the Applicant’s response to each of the changes to the dDCO proposed by the ExA.
- 1.4. The Applicant notes that the ExA in its Procedural Decision dated 6 December 2023 **[PD-020]** has amended the Examination Timetable such that the final dDCO is to be submitted at Deadline 8 (Monday 11 January 2023). Accordingly, the ExA’s proposed changes to the dDCO will be addressed in that version of the dDCO, as necessary.

2 Applicant’s Response to the ExA’s Proposed Schedule of Changes to the dDCO

	ExA’s Proposed Changes	ExA’s Reasoning	Applicant’s Response
Articles			
Article 2	<p><i>“maintain” includes inspect, repair, adjust, alter and remove or reconstruct and any derivative of “maintain” is to be construed accordingly</i></p>	<p>The ExA on the basis of the contents of the Environmental Statement does not consider that reconstructing what might be substantial elements of the authorised works has been fully assessed.</p>	<p>The Applicant believes that “reconstruct” should be allowed to remain the draft DCO. As has been indicated, there is precedent for its inclusion in both the Tilbury 2 and the Lake Lothing Third Crossing DCO where the action of reconstruction was similarly not specifically assessed.</p> <p>The Applicant’s view is that the inclusion of “reconstruct” enable the Applicant to reconstruct works the impact of which has been assessed as part of the proposed development. Works of reconstruction which go beyond that assessment would not be permitted by the DCO and would have to be subject to separate assessment and consent. On that basis, the Applicant does not consider that it is necessary for this to be deleted. As has already been reference, “reconstruct” is ordinarily included in a DCO definition of “maintain” without reconstruction explicitly being mentioned in the Environmental Statement – see paragraphs 8.4 – 8.7 of [REP5-032] and document reference 10.2.63 – Written Summary of the Applicant’s Oral Case at Issue Specific Hearing 6.</p>
Article 7(b)(i)	Limits for vertical deviation	<p>For Article 7(b)(i) to be capable of being enforced the submitted the landside engineering sections and plans [REP4-004] need to be annotated so as to identify what are existing ground levels and proposed finished ground levels.</p>	<p>The Applicant submitted an updated version of the engineering sections drawings and plans with its Change Application – which is now accepted into the Examination. These sections and drawings show the existing ground levels and proposed finished ground levels [AS-050].</p>
Article 21	<p>Operation and use of development</p> <p><i>21.—(1) The undertaker may operate and use the authorised development as harbour facilities in connection with the import and export of ro-ro units to include all forms of accompanied and unaccompanied wheeled cargo units up to a maximum of 660,000 1,800 ro-ro units a year per day together with occasional use by passengers travelling by vehicle when space is available on a departing vessel.</i></p> <p><i>(2) On those occasions where space is available on a departing vessel—</i></p> <p><i>(a) no more than 100 passengers per day may depart by vessel from the authorised development; and</i></p>	<p>With respect to sub-paragraph (1) a change to a maximum of 1,800 ro-ro units to day, as opposed to an annual limit of 660,000 units reflects the discussions held at Issue Specific Hearings 5 and 6 (ISH5 and ISH6) and will ensure that the maximum daily movement of units to and from the Proposed Development would align with the maximum level of heavy goods vehicle traffic assessed in the submitted Environmental Statement.</p> <p>In relation to the ‘tailpiece’ text following sub-paragraph (2) and sub-paragraph 3’s symbiotic relationship with that tailpiece text, it is considered that those parts of text should be removed from Article 21. That is because the need for the 100 person a day threshold stems from case specific land use planning advice provided by the Health and Safety Executive and that threshold is intended to safeguard the safety of members of the public given the proximity</p>	<p>The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8.</p>

	<p>(b) <i>all such passengers must board the departing vessel or vessels by means of vehicular transport.</i></p> <p>unless otherwise agreed in writing with the Council and subject to obtaining all necessary consents and approvals.</p> <p>(3) Approval under sub-paragraph (2) must not be given except where it has been demonstrated to the satisfaction of the Council that the subject matter of the approval sought does not give rise to any significant adverse effects that have not been assessed in the environmental statement.</p>	<p>of adjoining major hazard sites to the landside elements of the Proposed Development. In the event of an order being made by the Secretary of State and the Proposed Development being element it would be open to the undertaker to seek a material change to any made order.</p>	
Schedule 2 - Requirements			
Requirement 4	<p>Construction hours – associated development onshore works</p> <p><i>“4.—(1) Subject to sub-paragraph (2), no works of construction for the associated development Work Numbers 4 to 13 inclusive and any ancillary works associated with those onshore works numbers are shall take place on bank holidays nor outside the hours of 07:00 to 19:00 - Monday to Friday and 07:00 to 13:00 Saturday unless otherwise agreed with the Council. ...”</i></p>	<p>As discussed at ISH6 there is a need to provide a clear distinction between the onshore construction hours and the marine construction hours subject to Requirement 6.</p> <p>The tailpiece at the end of sub-paragraph 1 would not accord with best practice and would appear to be unnecessary given the exemptions stated in sub-paragraph (2).</p>	<p>The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8 with the exception of the deletion of “- Saturday” – the Applicant assumes this has been erroneously struck out in the ExA’s schedule.</p>
Requirement 5	<p>Travel plan</p> <p><i>“5.—(1) The operation Operation of the authorised development may must not be commenced until a final version of the travel plan has been submitted to and approved in writing by the Council. ...”</i></p>	<p>Revisions suggested to aid precision and enforceability.</p>	<p>Noted and agreed.</p>
Requirement 7	<p>External appearance and height of the authorised development</p> <p><i>“7.—(1) Construction of— ...</i></p> <p><i>must not be commenced until the details of the location, heights relative</i></p>	<p>Revisions suggested to sub-paragraph (1) to aid precision and enforceability, particularly in relation to establishing the heights of buildings and structures relative to the proposed finished ground levels.</p>	<p>The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8, although the Applicant will review Article 7(2) in terms of the amendment proposed.</p>

	<p>to the proposed finished ground levels and external materials to be used in the construction of all new permanent buildings and structures, including the colour, materials and finishes, have been submitted to and approved in writing by the Council. Thereafter the authorised development must be implemented in accordance with the details approved by the Council. ...”</p>	<p>An implementation clause has been added to ensure Requirement 7 is wholly self-contained in terms of submitting details for the Council’s written approval and the implementation of the authorised development in compliance with any subsequently approved details.</p>	
<p>Requirement 8</p>	<p>Construction and environmental management plan (CEMP)</p> <p>Separate final versions of marine and onshore CEMPs should be submitted for approval. The coverage for the separate CEMPs to be determined by the works coming within respective compliance/enforcement jurisdictions for the Marine Management Organisation (MMO) and the Council.</p> <p>Separately worded Requirements for marine and onshore CEMPs will need to be incorporated into the dDCO based on the following generic wording.</p> <p>(1) <i>No part of the authorised development shall be commenced until a marine/onshore Construction Environmental Management Plan has been submitted to and approved in writing by the Marine Management Organisation/Council, following consultation with {list of consultees as relevant to be inserted by the Applicant}. The construction of the authorised development must be undertaken in accordance with the approved marine/onshore Construction Environmental Management Plan.</i></p> <p>(2) <i>The marine/onshore Construction Environmental Management Plan submitted and approved under</i></p>	<p>As discussed at ISH6 the division of the matters to be covered by each of the CEMPs should be determined by the works coming within respective compliance/enforcement jurisdictions for the Marine Management Organisation (MMO) and the Council. The ExA has suggested generic wording for a CEMP Requirement or Requirements for the Applicant to consider when redrafting Requirement 8.</p> <p>In redrafting a Requirement or Requirements to accommodate separate marine and onshore CEMPs the Applicant should ensure that the list of consultees is relevant to the Requirement or Requirements relating to the marine and onshore CEMPs.</p>	<p>The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8.</p>

	<p><i>sub-paragraph (1) must be in accordance with the outline marine/onshore Construction Environmental Management Plan, including the outline plans and skeleton management plans for [Applicant to insert the titles for the relevant documents] included in the outline marine/onshore Construction Environmental Management Plan.</i></p>		
<p>Requirement 9</p>	<p><i>Surface water drainage</i></p> <p>“9.—(1) No part of the The authorised development <u>may must not be</u> commenced, save for the permitted preliminary works, until the undertaker has consulted with the Board in relation to the a the permanent surface water and submitted the drainage strategy has been submitted to and approved in writing by the Board for their approval—such approval not to be unreasonably withheld. The onshore parts of the authorised development shall be implemented in accordance with the approved permanent surface water drainage strategy.</p> <p>(2) The drainage strategy submitted and approved under paragraph (1) shall be in general accordance with the drainage strategy annexed to the flood risk assessment which forms Appendix 11.1 of the environmental statement.</p> <p>(3) If the Board considers that the outfall of the Habrough Drain has been obstructed as a direct result of the construction and/or operation of the authorised development and that obstruction has the potential to impede the flow of water from the Habrough Drain into the River Humber ... (b)(ii) ... arbitration”</p>	<p>Further to the discussion held during ISH6, it is considered that the wording of sub-paragraph (1) should be revised in the interests of precision and enforceability.</p> <p>With respect to sub-paragraph (3) it is considered that this should be deleted because it would appear to address matters that would more appropriately included in a protective provision in favour of the North East Lindsey Internal Drainage Board.</p> <p>The ExA is mindful that the ongoing discussions between the Internal Drainage Board and the Applicant may affect the necessity for this requirement and its possible substitution with protective provisions. The Internal Drainage Board and the Applicant MUST urgently conclude their discussions so that by Examination Deadline 7 (Monday 11 December 2023) either agreed wording for Requirement 9 or Protective Provisions in favour of the Internal Drainage Board can be submitted for the ExA’s consideration.</p>	<p>The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8. The ExA should note, however, that in addition, it does not intend to retain the wording “permanent surface water” before “drainage strategy”. This is because that text is considered to be superfluous and drainage strategy is already defined. Instead, the Applicant proposed that Requirement 9(1) is drafted as follows:</p> <p>Surface water drainage</p> <p><u>9.—(1) No part of the authorised development must not may be commenced, save for the permitted preliminary works, until the undertaker has consulted with the Board in relation to the details of the permanent surface water and submitted a final version of the drainage strategy <u>have been submitted to and approved in writing by to</u> the Board, for their approval—such approval not to be unreasonably withheld. <u>The onshore parts of the authorised development shall be implemented in accordance with the approved drainage strategy.</u></u></p> <p>With respect to the Internal Drainage Board, positive discussions have taken place since ISH6, and the Applicant is currently discussing the terms of a Protective Provisions in favour of the Board. The Applicant expects these will be in an agreed form in the updated version of the dDCO to be submitted at Deadline 8.</p>

Requirement 10	Noise insulation	The Applicant should consider incorporating within the wording for Requirement 10 an actual internal noise level for which any mitigation measures would need to attain.	As the Applicant has explained, whilst other DCOs contain internal noise levels in such provisions, that is to cover circumstances when the promoter believes that not all the relevant properties will qualify for noise insulation measures. That is not the case with the proposed IERRT development in that the Applicant intends to, and has already offered, noise insulation measures to every residential house/unit in Queen’s Road. As a consequence, the Applicant does not believe a specific internal noise level is required.
Requirement 11	<p>Environmental enhancement “Woodland management</p> <p>11.—(1) Operation The operation of the authorised development may must not be commenced until a final version of the WEMP has been submitted to and approved in writing by the Council. and The authorised development must be implemented in accordance with the approved WEMP.”</p> <p>(2) The WEMP approved in accordance with sub-paragraph (1) forms the environmental enhancement that is being provided in connection with the delivery of the authorised development.</p>	Revised wording has been recommended to make it specific to the proposed woodland enhancement management plan and aid its precision and enforceability.	The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8.
Requirement 12	<p>East Gate Improvements</p> <p>“12. Operation The operation of the authorised development may must not be commenced until—</p> <p>(a) ... (b) the agreed works have been completed and are available for use. to the satisfaction of the Council.”</p>	Revisions suggested to aid precision and enforceability.	The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8. That said, the Applicant queries the amendment to sub-paragraph (b) in that the works on the public highway must be completed to the satisfaction of the Council?
Requirement 14	Lighting strategy	Revisions suggested to aid precision and enforceability.	<p>The Applicant would prefer not to make this amendment – certainly not at this stage. Positive negotiations/discussions are currently ongoing with Network Rail in terms of a protective provision and the Applicant may wish to review this Article prior to deadline 8.</p> <p>It should be noted that the “lighting strategy” is actually the amended Lighting Plan submitted with the Applicant’s Changes Application [AS-050]. The Applicant will amend the definition of “lighting strategy” to reflect this.</p>

	<p>authorised development and Network Rail in respect of the onshore elements of the authorised development.</p> <p>(2) The written scheme submitted under paragraph (1) must be in general accordance with the lighting strategy. ...”</p> <p>(For sub-paragraph (2) the Applicant is to clarify what the “lighting strategy” is, ie the “Lighting Plan” [APP-012] or the “Concept Lighting Design Stage Summary Report” [APP-077] or both?).</p>		
<p>Requirement 15</p>	<p>“Construction and operational plans and documents “Flood risk assessment</p> <p>15. The authorised development must be constructed and operated in accordance with the flood risk assessment.” following documents</p> <p>a) The construction environmental management plan; b) The drainage strategy; c) The WEMP; and d) The flood risk assessment.</p>	<p>With the making of preceding Requirements self contained with respect to the submission and approval of details and the inclusion of compliance clauses, Requirement 15 need only cover compliance with the flood risk assessment. Accordingly, revisions are recommended to that effect.</p>	<p>The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8.</p>
<p>Requirement 16</p>	<p>Contaminated land</p> <p>“16. (1) No works in relation to any part of the associated development as defined may commence until the undertaker has carried out such additional ground investigations as may be required by the Environment Agency and the Council.</p> <p>(2) (1) No part of Work Nos. 4 to 13 inclusive and any ancillary works associated with those onshore works numbers the associated development as defined is to shall be commenced until a written remediation strategy applicable to that the relevant part of Work Nos. 4 to 13 inclusive,</p>	<p>Revisions suggested to aid precision and enforceability.</p>	<p>The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8, save for sub-paragraph 3 shall read “Any remediation...” as opposed to “The remediation...”</p>

	<p>to dealing with any contamination of that land, including groundwater and ground gas, within the Order limits which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, after consultation with the Environment Agency, been submitted to and approved in writing by the Council.</p> <p>(2) (2) The remediation strategy submitted for approval must include an investigation and assessment report, prepared by a suitably qualified person, to identify the extent of any contamination and the remedial measures to be taken to render the land fit for its intended purpose, together with a management plan which sets out long-term measures with respect to any contaminants remaining on the site. The remediation strategy submitted for approval must also include a procedure for handling any unexpected contamination encountered during the undertaking of the construction works.</p> <p>(4) (3) The Remediation must be carried out in accordance with the approved remediation strategy” and the management plan.</p>		
<p>Requirement 18A</p>	<p>Suggested additional Requirement</p> <p>“Operating limits for Berths 1, 2 and 3</p> <p>18A.— (1) A berth forming part of the authorised development must not be brought into use until the [Harbour Master for the Humber river/Dockmaster/or both], acting on behalf of the [..... Authority]*, has made and published an initial [direction/notice]* specifying the operating limits for that berth. Thereafter each of the berths</p>	<p>The suggested additional Requirement arises out of the discussions held during ISH5 and ISH6 and the ExA’s view that any made DCO should, at the very minimum, address the availability of initial operating limits for the proposed berths. Given the navigational safety concerns raised by some Interested Parties and the view expressed by the Harbour Master Humber that a Requirement expressly defining the operating limits for the proposed berths and/or a consenting mechanism for establishing the operating limits for those berths should not be incorporated into any made DCO, the</p>	<p>The Applicant has had the benefit of being able to review a draft of the Harbour Master Humber’s response to this proposed change, and fully supports and aligns itself with it. Should, when the HMM’s response is submitted for DL7, the Applicant wish to add any further comments, it will do so by Friday 15 December.</p>

	<p>forming part of the authorised development must be operated in accordance with the initial [direction/notice]* relevant to the berth, unless those directions are superseded by revised General Directions made and published by the [Harbour Master for the Humber river/Dockmaster/or both]* pursuant to powers available to the [..... Authority]*.</p> <p>(2) Notwithstanding the provisions of sub-paragraph (1) operational trials held under the supervision of the [Harbour Master for the Humber river/Dockmaster/or both]* may be undertaken prior to the publication of the [direction/notice]*.”</p> <p>[*The Applicant and/or the Harbour Master Humber to identify the full name of the relevant authority or authorities and correct name for the direction/ notice to be inserted for the text highlighted in grey. In the event of the relevant authority being the Competent Harbour Authority, the Applicant should consider whether a standalone definition for that authority would need to be added to in Article 2 (Interpretation) or whether the existing definition for the Statutory Conservancy and Navigation Authority would be sufficient].</p>	<p>suggested additional Requirement is of “Grampian” type which would require initial direction/notice specifying operating limits to have been made and published by the Harbour Master for the Humber river/Dockmaster/or both (pursuant to the powers available to the office holder(s)) prior to proposed Berths 1, 2 and 3 being brought into use.</p> <p>The ExA considers that the inclusion of the suggested Requirement of itself would not interfere with the statutory process to be followed by the Harbour Master for the Humber river/Dockmaster/or both in establishing what the operating limits for the proposed berths would be. However, the publication of the initial direction/notice prior to any new berth being brought into use would ensure that the operating limits would be known to all users and occupiers of the Port of Immingham and users of the river Humber. The publication of the initial direction/notice would in effect record that a decision had been made under the relevant legislation about how the proposed berths were to be used, rendering that decision capable of being made the subject of a High Court challenge by a concerned party, on the grounds of illegality and/or irrationality, as submitted by the Harbour Master Humber and the Applicant in writing or during the course of Issue Specific Hearing 6.</p> <p>The wording of the suggested Requirement recognises that:</p> <p>a) Over time there may be a need for the Harbour Master for the Humber river/Dockmaster/or both to adapt the initial operating limits and publish revised limits to take account of operational experience and the potential for the berths to be used by vessels of differing sizes and/or handling characteristics, not least because the “design vessel” for the Proposed Development does not</p>	
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		<p>currently exist and would be likely to take several years to be procured.</p> <p>b) There may be a staged bringing into use of the proposed berths, with the initial published direction/notice potentially needing to be reviewed, with revised directions/notices then being published to accommodate a change from a single berth to a multiple berth operation or an initial two berth operation being replaced by a three berth operation.</p> <p>c) Prior to any of the berths being brought into use trial/training vessel manoeuvring possibly being required to assist with determining the initial operating limits.</p>	
<p>Requirement 18</p>	<p>Impact Protection Measures</p> <p><i>“18.—(1) The undertaker must implement Work No. 3 if, in the interests of navigational safety, it receives from the Statutory Conservancy and Navigation Authority any direction to implement Work No. 3 either prior to the first use of Berth 1 or at any later time and the receipt of that direction is not made the subject of an appeal under paragraph 22 of Part 2 of this Schedule. The undertaker must give due consideration to any recommendation received from the Statutory Conservancy and Navigation Authority that Work No. 3 is required in the interests of navigational safety in the River Humber.</i></p> <p><i>(2) (2) After receiving a direction from the Statutory Conservancy and Navigation Authority requiring the implementation of Work No. 3, the undertaker must within 10 business days notify the MMO and the operator of the Humber Oil Terminal of the need for Work No. 3 to be implemented and the timescale for</i></p>	<p>Revisions suggested to aid precision and enforceability. The reordering of sub-paragraphs 2 and 3 is recommended because it would appear more appropriate for the Marine Management Organisation and the operator of the Humber Oil Terminal to be notified of the issuing of a direction to undertake Work No. 3 prior to there being a consultation about the detailed design for the works.</p> <p>Should the undertaker disagree with any direction to implement Work No. 3 it received from the Statutory Conservancy and Navigation Authority the receipt of the direction would be appealable under the provisions of a recommended change to paragraph 22 of Part 2 of Schedule 2, see below.</p>	<p>Then Applicant strongly resists this proposed amendment. Again, the Applicant has seen a draft of the response proposed to be submitted by the HMH at Deadline 7, and fully aligns itself with it.</p> <p>The ExA should be aware that the acceptance of such an amendment would create an adverse operational precedent, not just for the port of Immingham and the Humber ports generally, but indeed for all ports across the UK.</p> <p>As with the Applicant’s response to proposed Requirement 18A the Applicant resists this proposed amendment and ,should it wish to enlarge on the response submitted by the HMH, it will do so by Friday 15 December – although in this context, it should be noted that Requirement 18 was discussed in draft with the HMH prior to its inclusion in the draft DCO.</p>

	<p>undertaking that work. If the undertaker receives such a recommendation from the Statutory Conservancy and Navigation Authority it must (a) ...; and (b) ... recommendation."</p> <p>(2) (3) No works for the The construction of Work No. 3 may must not be commenced until the undertaker has consulted with the Statutory Conservancy and Navigation Authority, the operator of the Humber Oil Terminal and the MMO as to the detailed design of Work No. 3 and has had regard to the any consultative representations made to received by the undertaker by any such person.</p> <p>(4) The detailed design referred to in sub-paragraph (2) (3) must be:</p> <p>(a) within the limits of deviation shown on the relevant plans of the works plans;</p> <p>(b) in general accordance with the detail shown on the relevant engineering, sections, drawings and plans; and</p> <p>(c) in general accordance with the detail shown on the relevant general arrangement plans."</p>		
<p>Paragraph 19</p>	<p>Interpretation</p> <p>"19. In this Part of this Schedule, "discharging authority" means—</p> <p>... (b) ... ; or</p> <p>(c) the Statutory Conservancy and Navigation Authority further to the issuing of a direction under Requirement 18 of Part 1 of this Schedule."</p>	<p>Included to clarify that any direction issued by the Statutory Conservancy and Navigation Authority under Requirement 18 would be capable of being appealed.</p>	<p>The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8 although the sub-paragraph should also refer to the dock master. This is because the amended Requirement 18 will also make clear that the dock master may make a direction/recommendation in respect of the impact protection measures.</p>
<p>Paragraph 22</p>	<p>Appeals</p>	<p>Changes recommended to sub-paragraphs (1) and (2) to bring any direction issued by the Statutory Conservancy and Navigation</p>	<p>The Applicant will make the amendments proposed by the ExA in the updated dDCO to be submitted at Deadline 8, albeit with the inclusion of the dock master.</p>

	<p><i>"22.—(1) The undertaker may appeal to the Secretary of State in the event that—</i></p> <p><i>... (d) ... ; or</i></p> <p>(e) on receipt of a direction from the Statutory Conservancy and Navigation Authority under Requirement 18 of Part 1 of this Schedule.</p> <p><i>(2)(a) ... decision, or determination or direction, ...</i></p> <p><i>(10) If an approval is given by the adjudicator pursuant to this Part of this Schedule, it is deemed to be an approval for the purpose of Part 1 of this Schedule as if it had been given by the discharging authority. The discharging authority may confirm any determination given by the adjudicator in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) is not to be taken to affect or invalidate the effect of the adjudicator's determination."</i></p>	<p>Authority under Requirement 18 within the scope of the appeal procedure.</p> <p>In relation to paragraph (10) the deletion of the second sentence is recommended because it would be superfluous given that in sub-paragraph (9) it is stated that the decision of an adjudicator on appeal would be binding on the parties unless quashed following a successful claim for judicial review.</p>	<p>As far as paragraph 10 is concerned, at this stage the Applicant would wish to resist this deletion in that it should still be open for the discharging authority to be able to confirm, for its purposes, the adjudicator's consent.</p>
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Other Schedules

<p>Schedule 4 Protective Provisions</p> <p>Part 4 Humber Oil Terminal Trustees Limited</p>	<p>The proposed Protective Provisions in favour of Humber Oil Terminal Trustees Limited below are the version provided as a Microsoft Word format document by Humber Oil Terminal Trustees Limited on 23 November 2023 as an action arising out of the holding of Issue Specific Hearing 6. While the Applicant submitted a further revised version of these Protective Provisions on 29 November, the ExA has discounted them for the purposes of inclusion in this schedule of proposed changes to the dDCO. That is because the Applicant's commentary note explaining the differences between the two versions of the Protective Provisions was only received late on the afternoon of 30 November, leaving insufficient time for the ExA to consider its contents in preparing this schedule of recommended changes to the dDCO.</p> <p>The ExA has not made any comments about the content of this set of protective provisions and it is included in this schedule of changes to the dDCO so that the Applicant can advise on the provisions that it does or does not accept and put forward any revised wording. In the case of any provisions that are not accepted by the Applicant, it should provide a detailed explanation of why that is the case.</p>	<p>The Applicant's comments on the draft protective provisions are attached as an Appendix to this response.</p>
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“Application

1.—(1) For the protection of —

- (a) Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd (together the “IOT Operators”); and
- (b) Phillips 66 Limited and Prax Lindsey Oil Refinery Limited (together the “IOT Operators’ Owners”)

the following provisions, unless otherwise agreed in writing at any time between the undertaker and the IOT Operators or the IOT Operators’ Owners, have effect.

Interpretation

2. In this Part of this protective provision—

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the duration of the construction period of Work Nos. 1, 2 and 3, and after the construction period of Work Nos. 1, 2 and 3 in respect of any use and maintenance of such works by or on behalf of the undertaker and arranged with an insurer whose security/credit rating is not lower than: “A-” if the rating is assigned by Standard & Poor’s Ratings Group or Fitch Ratings, and “A3” if the rating is assigned by Moody’s Investors Services Inc., such insurance shall include (without limitation):

- (a) *a waiver of subrogation and an indemnity to principal clause in favour of the IOT Operators*
- (b) *pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;*

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the IOT Operators to enable the IOT Operators to fulfil its functions in a manner no less efficient than previously;

“apparatus” means any part of Immingham Oil Terminal Jetty and associated oil terminal and tank farm including the pipe-line and storage system, structures and other infrastructure owned or maintained by the IOT Operators and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“Associated Petroleum Terminals (Immingham) Ltd” means Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

“authorised development” has the same meaning as in article [2] (interpretation) of this Order (unless otherwise specified) and includes any associated development authorised by the Order and for the purposes of this Part includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

	<p><i>"functions" includes powers and duties;</i></p> <p><i>"Humber Oil Terminals Trustee Ltd" means Humber Oil Terminals Trustee Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;</i></p> <p><i>"in" in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;</i></p> <p><i>"IOT" means the Immingham Oil Terminal jetty which is operated by Associated Petroleum Terminals (Immingham) Ltd on behalf of Humber Oil Terminals Trustee Ltd;</i></p> <p><i>"IOT Finger Pier" means the IOT finger pier and its associated infrastructure;</i></p> <p><i>"IOT Mitigation Measures" means the measures to be delivered by the undertaker in consultation with the IOT Operators to the reasonable satisfaction of the IOT Operators to ensure the safe use of the IOT and must include:</i></p> <p>(a) <i>a modified IOT Finger Pier designed in consultation with the IOT Operators to enable two Coastal tankers of up to [max size to be added] to berth on the northern side of the finger pier and two barges of up to [max size to be added] to berth on the southern side of the finger pier in accordance with [Work No. X];</i></p> <p>(b) <i>completion of Work No. 3; unless otherwise agreed in writing between the undertaker and the IOT Operators.</i></p> <p><i>"IOT Operators" means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminals Trustee Ltd;</i></p> <p><i>"Marine and Liaison Plan" means a plan for the construction and operational phases of the authorised development detailing the construction methodology and schedule of works for the authorised development and to manage procedural controls such as berth limits, towage requirements and operational deconfliction relating to the authorised development which is to be developed by the Undertaker in consultation with the IOT Operators;</i></p> <p><i>"Phillips 66 Limited" means Phillips 66 Limited, company number 00529086 registered at 7th Floor, 200-202 Aldersgate Street, London EC1A 4HD, and any successor in title;</i></p> <p><i>"Prax Lindsey Oil Refinery Limited" means Prax Lindsey Oil Refinery Limited, company number 00564599 registered at Harvest House, Horizon Business Village, Weybridge KT13 0TJ, and any successor in title;</i></p> <p><i>"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by the IOT Operators and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in the IOT Operators in respect of those items;</i></p> <p><i>"plans" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;</i></p> <p><i>"specified works" means any of the authorised development or activities undertaken in association with the authorised development which will or may be situated on, over, under or within 50 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or</i></p>	
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involve embankment works within 50 metres of any apparatus or may in any way adversely affect any apparatus; and
"working day" means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of land and apparatus

3.— (1) *Irrespective of any provision in this Order or anything shown on the land plans or contained in the book of reference—*

- (a) the Undertaker must not acquire or take temporary possession of any land interest of the IOT Operators or any apparatus or appropriate, acquire, extinguish, interfere with or override any easement or other interest of the IOT Operators or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with the IOT Operators; and*
- (b) any right of the IOT Operators to operate, maintain, repair, renew, adjust, alter or inspect any apparatus must not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the IOT Operators.*

Retained apparatus

4.—(1) *Not less than 56 days before the commencement of any specified works, the undertaker must submit to the IOT Operators a plan.*

(2) The plan to be submitted to IOT Operators under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;*
- (b) the manner of their construction including details of excavation and positioning of plant;*
- (c) the position of all apparatus;*
- (d) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;*
- (e) any intended maintenance regimes; and*
- (f) an assessment of risks of rise of earth issues.*

(3) The undertaker must not commence any specified works until the IOT Operators has given written approval of the plan so submitted.

(4) Any approval of the IOT Operators required under sub-paragraph (3) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);

(5) In relation to any specified works, the IOT Operators may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) The specified works must only be executed in accordance with the plan submitted under sub-paragraph (1) as approved or as amended from time to time by agreement between the undertaker and the IOT Operators and in

accordance with such reasonable requirements as may be made in accordance with the paragraph by the IOT Operators for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the IOT Operators is entitled to watch and inspect the execution of those works.

(7) Where under sub-paragraph (3) the IOT Operators requires any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the IOT Operators' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and the IOT Operators must give 56 days' notice of its requirement for such works from the date of submission of a plan in line with this paragraph (except in an emergency).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(9) At all times when carrying out any part of the authorised development, the undertaker must comply with relevant guidance issued by the Health and Safety Executive and with the Control of Major Accident Hazards Regulations 2015.

Offshore Works

5.—(1) The undertaker must not except with the agreement of the IOT Operators carry out Work Nos. 1, 2 and 3, or any part of it.

(2) Before any berths forming part of Work No. 1 are commissioned, the undertaker must deliver the IOT Mitigation Measures in consultation with the IOT Operators;

(3) Before beginning to construct Work Nos. 1, 2 and 3, or any part of it, the undertaker must provide a Marine and Liaison Plan to minimise any conflict between the authorised development and the operations of the IOT and submit to the IOT Operators plans of Work Nos. 1, 2 and 3 (or part of it) including sufficient detail to show that the jetty, berths and impact protection works will provide adequate impact protection to sufficiently protect the IOT in the IOT Operators' reasonable opinion and such further particulars available to it as the IOT Operators may request within 21 days of receipt of the plans reasonably requested.

(4) Work Nos. 1, 2 and 3 must not be constructed except in accordance with such plans as may be approved in writing by the IOT Operators.

(5) Any approval of the IOT Operators required under this Schedule—

(a) must not be unreasonably withheld or delayed;

(b) in the case of refusal must be accompanied by a statement of grounds of refusal; and

(c) may be given subject to such reasonable requirements as the IOT Operators may have in connection with the safe, economic and efficient use, operation and maintenance of the IOT or otherwise for the protection of any apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested pursuant to sub-paragraph (c) the undertaker is permitted to refer such matters to arbitration pursuant to article [36].

(6) The IOT Operators must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If the IOT Operators require further particulars, such particulars must be requested by the IOT Operators no later than 21 days from the submission of plans and thereafter the IOT Operators must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

(7) The undertaker must give to the IOT Operators not less than 14 days' notice in writing of its intention to commence construction of any part of Work Nos. 1, 2 and 3 and notice in writing of its completion not later than 7 days after the date on which it is completed and the IOT Operators are entitled by its officer to watch and inspect the construction of such works.

(8) If any part of Work Nos. 1, 2 and 3 or the IOT Mitigation Measures is constructed otherwise than in accordance with this Part of this Schedule the IOT Operators may by notice in writing identify the extent to which the works do not comply with the approved details or otherwise with this Part of this Schedule and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of this Part of this Schedule or such alternative works as may be agreed with the IOT Operators or as otherwise may be agreed between the parties.

(9) Subject to sub-paragraph (9), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (8) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the IOT Operators may execute the works specified in the notice and any reasonable expenditure incurred by the IOT Operators in so doing will be recoverable from the undertaker.

(10) In the event of any dispute as to whether sub-paragraph (8) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the IOT Operators must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (9) until the dispute has been finally determined in accordance with article [36] (arbitration).

Operation of Offshore Works

6. The IOT Operators' agreement under paragraph [5(1)] of this Part of this Schedule may be made subject to requirements in relation to the construction or operational phases of the authorised development to ensure that the IOT Operators

do not suffer more interference than is reasonably practicable and may require reasonable commitments by the undertaker to ensure that vessels and tankers using the IOT are given priority over vessels using the authorised development.

Expenses

7. Save where otherwise agreed in writing between the IOT Operators and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to the IOT Operators within 30 days of receipt of an itemised invoice or claim from the IOT Operators all charges, costs and expenses reasonably incurred by the IOT Operators in, or in connection with the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by the IOT Operators in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;*
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;*
- (c) the making safe of redundant apparatus;*
- (d) the approval of plans;*
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and*
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.*

Damage to property

8.—(1) The undertaker must permit the IOT Operators access to any apparatus during the carrying out of any specified works reasonably required for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice.

Indemnity

(2) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purpose of those works) or property of the IOT Operators, or there is any interruption in any service provided

by the IOT Operators, or the IOT Operators or the IOT Operators' Owners becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand accompanied by an invoice or claim from the IOT Operators or the IOT Operators' Owners the cost reasonably and properly incurred by the IOT Operators or the IOT Operators' Owners in making good such damage or restoring the supply; and
- (b) indemnify the IOT Operators and the IOT Operators' Owners for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the IOT Operators or the IOT Operators' Owners, by reason or in consequence of any such damage or interruption or the IOT Operators or the IOT Operators' Owners becoming liable to any third party as aforesaid other than arising from any default by the IOT Operators.

(3) The fact that any act or thing may have been done by the IOT Operators on behalf of the undertaker or in accordance with a plan approved by the IOT Operators or in accordance with any requirement of the IOT Operators as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the IOT Operators fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the IOT Operators.

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the IOT Operators, its officers, employees, contractors or agents; and
- (b) any authorised development or any other works authorised by this Part carried out by the IOT Operators as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article [8] (benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus") any works yet to be executed and not falling within this sub-paragraph (b) are subject to the full terms of this Part including this paragraph in respect of such new apparatus.

(5) The IOT Operators and the IOT Operators' Owners must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme, without first consulting the undertaker and considering its representations.

(6) The IOT Operators and the IOT Operators' Owners must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(7) The undertaker shall not carry out Work Nos. 1, 2 and 3, or any part of such works, unless and until the IOT Operators are satisfied acting reasonably that the undertaker has procured acceptable insurance and the IOT Operators have confirmed the same in writing to the undertaker.

(8) Co-operation and reasonableness

9.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker requires the removal of apparatus under this Part of this Schedule or the IOT Operators makes requirements for the protection or alteration of apparatus under this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the IOT Operators' undertaking and the IOT Operators must use its best endeavours to co-operate with the undertaker for that purpose.

(2) the undertaker and the IOT Operators must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.

Miscellaneous

10. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the IOT Operators in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Part of this Schedule. In the case of any inconsistency, the provisions of this Order, including this Part of this Schedule, prevail.

Emergency circumstances

11.—(1) The undertaker acknowledges that the IOT Operators provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.

(2) In the following circumstances, the IOT Operators may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this Order and the IOT Operators are not in breach of its obligations to proceed:

- (a) circumstances in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or*
- (b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for*

	<p><i>assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or</i></p> <p><i>(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or</i></p> <p><i>(d) any circumstances identified as such by the COBRA committee of His Majesty's Government (or any successor committee thereof); or</i></p> <p><i>(e) any situation, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.</i></p> <p><i>(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which includes costs of demobilising and remobilising any workforce, and any costs to protect the IOT Operators' apparatus "mid-works") to account for the suspension.</i></p> <p><i>(4) The IOT Operators are not liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.</i></p>	
<p>Protective Provisions DFDS</p>	<p>The proposed Protective Provisions in favour of DFDS below are the version provided as a Microsoft Word format document by DFDS on 23 November 2023 following Issue Specific Hearing 6 (originally submitted as [REP2-042]). That is because while the Applicant submitted a revised version of these Protective Provisions on 29 November, the Applicant has not submitted an explanation for the differences between the two versions of the Protective Provisions.</p> <p>The ExA has not made any comments about the content of this set of protective provisions and it is included in this schedule of changes to the dDCO so that the Applicant can advise on the provisions that it does or does not accept and put forward any revised wording. In the case of any provisions that are not accepted by the Applicant, it should provide a detailed explanation of why that is the case.</p> <p>“Application</p> <p><i>121. For the protection of DFDS the following provisions, unless otherwise agreed in writing at any time between the undertaker and DFDS, have effect.</i></p> <p>Interpretation</p> <p><i>122. In this Part of this Schedule—</i></p> <p><i>“authorised work” means any work specified in schedule 1;</i> <i>“DFDS” means DFDS Seaways plc, company number 01554521 registered at Nordic House, Western Access Road, Immingham Dock, Immingham, DN40 2LZ; and</i></p>	<p>The Applicant's comments on the draft protective provisions are attached as an Appendix to this response.</p>

	<p><i>“environmental document” means the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement including, but not limited to the Navigation Risk Assessment and Transport Assessment.</i></p> <p><i>123. At least 28 days before the undertaker commences the construction of any authorised work, or any phase of any authorised work, that has been assessed in any environmental document that may interfere with DFDS’ use of the Port of Immingham or the surrounding road network, the undertaker must consult DFDS in writing stating what is proposed and have regard to any response received from DFDS.</i></p> <p>Indemnity</p> <p><i>124. (1) The undertaker is responsible for and must make good to DFDS all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by DFDS by reason of—</i></p> <ul style="list-style-type: none"> <i>(a) the construction or operation of the authorised works or the failure of the authorised works; or;</i> <i>(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the authorised works or dealing with any failure of the authorised works,</i> <p><i>and the undertaker must indemnify DFDS from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.</i></p> <p><i>(2) DFDS must give the undertaker no less than 28 days’ notice in writing, providing a reasonable explanation for any claim or demand, as is referred to in subparagraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.</i></p> <p><i>DFDS Scheduled Services</i></p> <p><i>125. [Drafting to be provided by DFDS as soon as possible]</i></p> <p>Operations</p> <p><i>126. Before commencing marine commercial operations the undertaker must provide DFDS with a copy of the Statutory Conservancy and Navigation Authority’s approval of the written statement of proposed safe operating procedures for access to and egress from the authorised development, including any approved alteration made from time to time.</i></p> <p>Disputes</p>	
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	<p>127. Any dispute arising between the undertaker and DFDS under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).”</p>	
<p>Protective Provisions CLdN</p>	<p>The proposed Protective Provisions in favour of CLdN below are the version provided as a Microsoft Word format document by CLdN on 23 November 2023 following Issue Specific Hearing 6 (originally submitted as part of [REP4-018]).</p> <p>The ExA has not made any comments about the content of this set of protective provisions and it is included in this schedule of changes to the dDCO so that the Applicant can advise on the provisions that it does or does not accept and put forward any revised wording. In the case of any provisions that are not accepted by the Applicant, it should provide a detailed explanation of why that is the case.</p> <p>“1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Company and CLdN, for the protection of CLdN in relation to the construction, maintenance and operation of the authorised development.</p> <p>Interpretation</p> <p>2.—(1) Where the terms defined in article 2 (interpretation) of this Order are inconsistent with sub-paragraph (2), the latter prevail.</p> <p>(2) In this Part of this Schedule— “the affected highways” means the following highways: M180 (West of A15), A15 (North of M180), A180 (West of A160 to M180 and East of A160 to A1173), A180 (East of A1173), A160 (North of A180 to A1173), A1173 (East of A160 to A180), Humber Road; “the affected junctions” means the following junctions: Kings Road/A1173 Roundabout, A1173/Kiln Lane Roundabout, A1173/SHIIP Roundabout, A160/Humber Road/Manby Road Roundabout (Manby Roundabout), A160/Ulceby Road/Habrough Road/East Halton Road Roundabout (Habrough Roundabout), A180/A1173 Roundabout, A160/A180 Roundabout (Brocklesby Interchange) including slip roads for entering or exiting the junctions; “CLdN” means CLdN Ports Killingholme Limited, company number 00278815, whose principal office is at 130 Shaftesbury Avenue, 2nd Floor, London, W1D 5EU as statutory harbour authority for and operator of the Port and any successor in title or function to the Port; “the CLdN disposal site” means Humber 3A/Clay Huts (HU060) disposal site situated adjacent to Clay Huts and Holme Ridge in the river Humber; “the Port” means any land (including land covered by water) at Killingholme for the time being owned or used by CLdN for the purposes of its statutory undertaking, together with any quays, jetties, docks, river walls or works held in connection with that undertaking; “specified work” means any work, activity or operation authorised by this Order, by the Town and Country Planning Act (General Permitted Development) Order 2015 or by any planning permission given under the Town and Country Planning Act 1990, and any associated traffic, rail and vessel movements, which may affect the Port or access (including over water) to and from the Port, CLdN’s</p>	<p>The Applicant received a revised draft set of protective provisions from CLdN at 6pm on Friday 8 December for its consideration. The Applicant had intended to provide comments on the draft protective provisions as an appendix to this response but must now update its position in light of the recent CLdN document. The Applicant will, therefore, provide comments as soon as possible after Deadline 7.</p>

ability to carry out disposal activities at the CLdN disposal site, or the functions of CLdN as the statutory harbour authority for the Port; and “the West Gate access” means the western access to the Port of Immingham from Humber Road.

Cooperation

3. The Company and CLdN must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

Notice of and consultation on works and vessel movements

4. The Company must inform CLdN in writing of the intended start date and the likely duration of the carrying out of any specified work at least 30 days prior to the commencement of the specified work.

5. Any operations for the construction of any specified work, once commenced, must be carried out by the Company so that CLdN does not suffer more interference than is reasonably necessary.

6.—(1) The Company must not allow vessels associated with the construction of the authorised development to obstruct or remain in the main navigation channel when vessels are sailing to or from the Port.

(2) CLdN must provide the Company with a schedule of movements to which sub-paragraph (1) applies and must give the Company reasonable notice of any changes to scheduled sailings or other vessel movements of which it has informed the Company.

7. Where CLdN notifies the Company that there is disruption to navigation to or from the Port as a consequence of construction of a specified work, the Company must immediately cease construction of the relevant specified work until such time as it can be resumed without causing disruption to navigation to or from the Port, or otherwise with the consent of CLdN as to how construction of the specified work may resume in a way that will cause minimal disruption to navigation to or from the Port.

Railways

8. The construction and operation of the authorised development must not cause unreasonable interference with or unreasonably prevent the free, uninterrupted and safe use by CLdN of the railway network to which the Port is connected.

Highway access

9.—(1) Before the commencement of the authorised development, the Company must submit a construction traffic management protocol to CLdN for approval.

	<p><i>(2) The construction traffic management protocol must include measures to minimise the impact of construction traffic on CLdN including but not limited to—</i></p> <ul style="list-style-type: none"> <i>(a) the procedures to be followed by vehicles and construction workers accessing the Order Limits for the purposes of construction of the authorised development;</i> <i>(b) the arrangements for informing CLdN of planned closures or diversion of traffic for the purposes of construction of the authorised development;</i> <i>(c) the proposals for erection of temporary signage at the main junctions to appropriately direct all HGV traffic relating to the proposed development (both accessing and egressing the site) towards the construction compounds;</i> <i>(d) a suggested process by which advanced notification will be given to CLdN of the number of vehicular movements, including abnormal indivisible loads, expected to access the Order Limits for the purposes of construction within a period to be agreed with CLdN, and for updates to this information to be provided at the end of agreed period, for the next agreed period; and</i> <i>(e) a suggested process by which variations to construction traffic management protocol are consulted upon and approved by CLdN.</i> <p><i>(3) The approval of CLdN under sub-paragraph (1) must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as CLdN may make for the protection of the Port and its customers, including in respect of their current and future operations, the use of its operational land or the river for the purposes of performing its functions; or the performance of any of its functions connected with environmental protection.</i></p> <p><i>(4) The Company must ensure that its employees, agents and contractors comply with the agreed construction traffic management protocol.</i></p> <p><i>10. The construction and operation of the authorised development must not unreasonably interfere with or obstruct the free, uninterrupted and safe use of the affected highways, the affected junctions or the West Gate access, by vehicles serving the Port, unless in any case an alternative access that is suitable and commodious is provided prior to and for the duration of any such interference.</i></p> <p>Indemnity</p> <p><i>11.—(1) The Company is to be responsible for, and must indemnify CLdN against all losses, costs, charges, damages, expenses, claims and demands however caused, including indirect and consequential losses and loss of profits, which may reasonably be incurred or occasioned to CLdN by reason or arising in connection with—</i></p> <ul style="list-style-type: none"> <i>(a) any obstruction which prevents or materially hinders access into or out of the Port, which is caused by or attributable to the Company or its agents or contractors in exercising the power of this Order;</i> 	
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	<p>(b) <i>the undertaking by CLdN of works or measures to prevent or remedy a danger or impediment to navigation or access to or from the Port; or</i></p> <p>(c) <i>any additional costs of disposal of dredging arisings from the Port incurred by CLdN as a result of the Company's use of the CLdN disposal site.</i></p> <p>(2) <i>Nothing in sub-paragraph (1) imposes any liability on the Company with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of CLdN, its officers, servants, contractors or agents.</i></p> <p>(3) <i>Without limiting the generality of sub-paragraph (1), the Company must indemnify CLdN from and against all claims and demands arising out of, or in connection with, such construction, maintenance or failure or act or omission as is mentioned in that sub-paragraph.</i></p> <p>Statutory powers</p> <p>12. <i>Save to the extent expressly provided for, nothing in this Order affects prejudicially any statutory or other rights, powers or privileges vested in or enjoyed by CLdN at the date of this Order coming into force.</i></p> <p>13. <i>With the exception of any duty owed by CLdN to the Company which is expressly provided for in this Part of this Schedule, nothing in this Order is to be construed as imposing upon CLdN either directly or indirectly, any duty or liability to which CLdN would not otherwise be subject and which is enforceable by proceedings before any court.</i></p> <p>Arbitration</p> <p>14. <i>Unless otherwise agreed in writing, any dispute arising between the Company and CLdN under this Part of this Schedule is to be determined by arbitration as provided in article [35] (arbitration)."</i></p>	
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3 Glossary and List of Acronyms

ABP	Associated British Ports
CEMP	Construction Environmental Management Plan
CLdN	CLdN Ports Killingholme Limited
dDCO	Draft Development Consent Order
DFDS	DFDS Seaways Limited
DML	Deemed Marine Licence
ES	Environmental Statement
ExA	Examining Authority
HOTT	Humber Oil Terminals Trustee Ltd
IERRT	Immingham Eastern Ro-Ro Terminal (the Proposed Development)
IOT	Immingham Oil Terminal
IOT Operators	Associated Petroleum Terminals (Immingham) Limited and Humber Oil Terminals Trustee Limited
IP	Interested Party
ISH	Issue Specific Hearing
MMO	Marine Management Organisation
PP	Protective Provision

4 Appendix – Applicant’s Response to IOT and DFDS Protective Provisions

Explanation of the Applicant's Position in Respect of Protective Provisions

The IOT Operators and DFDS

On 1 December 2023, the Examining Authority (“ExA”) issued its Schedule of Proposed Changes to the draft Development Consent Order (“dDCO”). In respect of the protective provisions included in Schedule 4 of the dDCO in favour of Humber Oil Terminal Trustees Limited, DFDS Seaways Plc and CLdN Ports (Killingholme) Limited the ExA stated that:

“The ExA has not made any comments about the content of this set of protective provisions and it is included in this schedule of changes to the dDCO so that the Applicant can advise on the provisions that it does or does not accept and put forward any revised wording. In the case of any provisions that are not accepted by the Applicant, it should provide a detailed explanation of why that is the case.”

This document has been produced in response to this request.

As the ExA is aware, both DFDS and the IOT Operators are tenants of the Applicant and as such, there are already in place legal protections for the benefit of both bodies through the existing licence/lease arrangements – including a legal requirement for the Applicant to indemnify the IOT Operators for any damage caused to their infrastructure – both marine and landside.

On that basis, it has always been open for the Applicant to resist the provision of protective provisions for either party bearing their mind the legal protections that already benefit both parties – as indeed is the case for a number of other tenants within the port, such as Cadent and Northern Powergrid.

As it is, despite the entirely proportionate protections already in place, the Applicant is prepared to provide additional protections for both IOT Operators and DFDS provided the protections –

- i) Are for only for a limited period, namely during construction; and
- ii) They are proportionate.

Draft, Confidential and Legally Privileged

In the Tables below, Column 1 sets out the latest iteration in turn of first the IOT Operators' and the DFDS proposed protection provisions. The second column contains the Applicant's comments and response.

The Applicant's proposed draft protective provisions for the IOT Operators and DFDS are annexed to this document.

Table 1: Humber Oil Terminal Trustees Limited/ IOT Operators Protective Provisions

Humber Oil Terminal Trustees Limited/ IOT Operators are existing tenants/ licensees of the Applicant.. As a result, the Applicant believes that the existing commercial relationships should prevail, save for the extent that construction works for the IERRT could potentially affect IOT Operators’ operations.

To do otherwise once the IERRT is operational - in addition to the regime of risk controls which will have been imposed by the SCNA and the Port of Immingham SHA and when there has been a return to ‘business as usual’ (albeit with the addition of the IERRT) would fundamentally alter the existing commercial relationship between the Applicant and IOT Operators in a disproportionate manner to the serious detriment to the Applicant and the substantial betterment of the IOT Operators.

IOT Operator’s draft PP	Applicant’s Comments
<p>1. Application</p> <p>For the protection of —</p> <p>(a) Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd (together the “IOT Operators”); and</p> <p>(b) Phillips 66 Limited and Prax Lindsey Oil Refinery Limited (together the “IOT Operators’ Owners”)</p> <p>the following provisions, unless otherwise agreed in writing at any time between the undertaker and the IOT Operators or the IOT Operators’ Owners, have effect.</p>	<p>Beneficiaries - The Applicant is prepared to provide protective provisions to IOT Operators, and will update its next iteration of the draft DCO in order to adopt a definition which refers to either Associated Petroleum Terminals or (Immingham) Ltd and Humber Oil Terminal Trustees Ltd as IOT Operators.</p> <p>The Applicant does not, however, accept that it should provide indemnities and protections to the owners of Phillips 66 Limited and Prax Lindsey Oil Refinery Limited. No other protective provisions within the dDCO make reference to group companies and, as adequate protections are to be afforded to Associated Petroleum Terminals (Immingham) Ltd and the IOT Operators, the Applicant considers that this would constitute ‘double indemnification’ should it have to indemnify and protect parent companies of port tenants.</p> <p>During construction only - The Applicant does not consider that the indemnities and protections afforded to IOT Operators are required following the completion of construction at which time additional navigational controls will have been brought into effect. As effective risk mitigations to protect the</p>

	<p>IOT will be put in place, no additional ongoing indemnity is required – apart from the indemnity already provided in the existing licence/lease agreements between the Applicant and IOT Operators should prevail. To provide indemnities and other protections in perpetuity would fundamentally alter the existing commercial relationship between the Applicant and IOT Operators, in such a manner as to act to the serious detriment of the Applicant and for the substantial betterment of the IOT Operators.</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>1. Application</p> <p>For the protection of the IOT Operators the following provisions, unless otherwise agreed in writing at any time between the Undertaker and IOT Operators, have effect until the commencement of the operation of the authorised development.</p>
<p>2. Interpretation</p> <p>In this Part of this Schedule —</p> <p>“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than £50,000,000.00 (fifty million pounds) per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained for the duration of the construction period of Work Nos. 1, 2 and 3, and after the construction period of Work Nos. 1, 2 and 3 in respect of any use and</p>	<p>The Applicant considers that adequate indemnities are being provided to IOT Operators, and that there is no justification for requiring the Applicant to take out what is considered to be a prohibitively expensive and heavily restrictive policy of insurance in addition to the already offered indemnity. There has been no question of ABP’s covenant strength in respect of the indemnities, and IOT Operators should already hold insurance for their infrastructure as a matter of course. Requiring the Applicant to acquire a policy of insurance such as this would be entirely disproportionate.</p>

<p>maintenance of such works by or on behalf of the undertaker and arranged with an insurer whose security/credit rating is not lower than: "A-" if the rating is assigned by Standard & Poor's Ratings Group or Fitch Ratings, and "A3" if the rating is assigned by Moody's Investors Services Inc., such insurance shall include (without limitation):</p> <p>(c) a waiver of subrogation and an indemnity to principal clause in favour of the IOT Operators</p> <p>(d) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than £10,000,000.00 (ten million pounds) per occurrence or series of occurrences arising out of one event or £20,000,000.00 (twenty million pounds) in aggregate;</p> <p>(e) "alternative apparatus" means appropriate alternative apparatus to the satisfaction of the IOT Operators to enable the IOT Operators to fulfil its functions in a manner no less efficient than previously;</p> <p>"apparatus" means any part of Immingham Oil Terminal Jetty and associated oil terminal and tank farm including the pipe-line and storage</p>	<p>The proposed development will not lead to the acquisition, compulsory or otherwise, of the IOT Operators' interests in land. All provisions which relate to acquisition of land are, therefore, to be restricted to the minimum which would be necessary should any unforeseen need to interfere with IOT Operators' interests – such as a need to access the finger pier or trunkway.</p> <p>As the IOT Operators are fully aware, the proposed development will not lead to the diversion or replacement of any of the IOT Operators' apparatus.</p>
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<p>system, structures and other infrastructure owned or maintained by the IOT Operators and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;</p> <p>“Associated Petroleum Terminals (Immingham) Ltd” means Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;</p> <p>“authorised development” has the same meaning as in article [2] (interpretation) of this Order (unless otherwise specified) and includes any associated development authorised by the Order and for the purposes of this Part includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;</p> <p>"functions" includes powers and duties;</p> <p>“Humber Oil Terminals Trustee Ltd” means Humber Oil Terminals Trustee Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;</p>	<p>All provisions which relate to acquisition or reprovision of apparatus are, therefore, to be deleted.</p>
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"in" in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

"IOT" means the Immingham Oil Terminal jetty which is operated by Associated Petroleum Terminals (Immingham) Ltd on behalf of Humber Oil Terminals Trustee Ltd;

"IOT Finger Pier" means the IOT finger pier and its associated infrastructure;

"IOT Mitigation Measures" means the measures to be delivered by the undertaker in consultation with the IOT Operators to the reasonable satisfaction of the IOT Operators to ensure the safe use of the IOT and must include:

(a) a modified IOT Finger Pier designed in consultation with the IOT Operators to enable two Coastal tankers of up to [max size to be added] to berth on the northern side of the finger pier and two barges of up to [max size to be added] to berth on the southern side of the finger pier in accordance with [Work No. X];

(b) completion of Work No. 3;

The Applicant does not agree that Work No. 3 (Impact Protection Measures) should be required in all circumstances. This would result in a protective provision which directly contradicts Requirement 18 of the dDCO. Further, it would not be appropriate for IOT to interfere with the Harbour Master Humber's statutory responsibility for ensuring navigational safety by permitting IOT Operators to decide whether impact protection is required and/ or is sufficient.

<p>unless otherwise agreed in writing between the undertaker and the IOT Operators.</p> <p>“IOT Operators” means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminals Trustee Ltd;</p> <p>“Marine and Liaison Plan” means a plan for the construction and operational phases of the authorised development detailing the construction methodology and schedule of works for the authorised development and to manage procedural controls such as berth limits, towage requirements and operational deconfliction relating to the authorised development which is to be developed by the Undertaker in consultation with the IOT Operators;</p> <p>“Phillips 66 Limited” means Phillips 66 Limited, company number 00529086 registered at 7th Floor, 200-202 Aldersgate Street, London EC1A 4HD, and any successor in title;</p> <p>“Prax Lindsey Oil Refinery Limited” means Prax Lindsey Oil Refinery Limited, company number 00564599 registered at Harvest House, Horizon Business Village, Weybridge KT13 0TJ, and any successor in title;</p>	<p>The Applicant does not accept that it should provide indemnities and protections to the owners of the IOT Operators, being Phillips 66 Limited and Prax Lindsey Oil Refinery Limited. No other protective provisions within the dDCO make reference to group companies and, as adequate protections are to be afforded to Associated Petroleum Terminals (Immingham) Ltd and IOT Operators, the Applicant considers that this would constitute ‘double indemnification’ should it have to indemnify and protect parent companies of port tenants.</p>
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"pipe-line" means the whole or any part of a pipe-line belonging to or maintained by the IOT Operators and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in the IOT Operators in respect of those items;

"plans" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised development or activities undertaken in association with the authorised development which will or may be situated on, over, under or within 50 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 50 metres of any apparatus or may in any way adversely affect any apparatus; and

The Applicant does not consider that it is appropriate to provide IOT Operators with the power to prevent construction works through withholding their approval of plans. To agree this provision would be to provide the IOT Operators with an effective veto over the proposed development, creating uncertainty over the delivery of a nationally significant infrastructure project. Further, it would not be appropriate for IOT to interfere with the Harbour Master Humber's statutory responsibility for ensuring navigational safety by permitting IOT Operators to decide whether impact protection is required and/ or is sufficient.

<p>"working day" means any day other than a Saturday, Sunday or English bank or public holiday.</p>	<p>Other amendments to this paragraph are made as a result of amendments to other paragraphs contained in this protective provision.</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>2. Interpretation</p> <p>In this Part of this protective provision—</p> <p>“apparatus” means the pipe-line and storage system owned or maintained by IOT Operators and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;</p> <p>“Associated Petroleum Terminals (Immingham) Ltd” means Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;</p> <p>“functions” includes powers and duties;</p> <p>“Humber Oil Terminal Trustees Ltd” means Humber Oil Terminal Trustees Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;;</p> <p>“in” in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;</p> <p>“IOT Operators” means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd;</p>
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	<p>“pipe-line” means the whole or any part of a pipe-line belonging to or maintained by IOT Operators and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in IOT Operators in respect of those items;</p> <p>“specified work” means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and</p> <p>“working day” means any day other than a Saturday, Sunday or English bank or public holiday.</p>
<p>3. Acquisition of land and apparatus</p> <p>Irrespective of any provision in this Order or anything shown on the land plans or contained in the book of reference—</p> <p>(a) the Undertaker must not acquire or take temporary possession of any land interest of the IOT Operators or any apparatus or appropriate, acquire, extinguish, interfere with or override any easement or other interest of the IOT Operators or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with the IOT Operators; and</p> <p>(b) any right of the IOT Operators to operate, maintain, repair, renew, adjust, alter or</p>	<p>The proposed development will not lead to the acquisition, compulsory or otherwise, of the IOT Operators’ interests in land. All provisions which relate to acquisition of land are, therefore, to be restricted to the minimum which would be necessary should any unforeseen need to interfere with IOT Operators’ interests – such as a need to access the finger pier or trunkway.</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>3. Acquisition of apparatus</p> <p>Irrespective of any provision in this Order or anything shown on the land plans—</p>

<p>inspect any apparatus must not be extinguished by the undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the IOT Operators.</p>	<p>(a) the Undertaker may not acquire any apparatus or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with IOT Operators; and</p> <p>(b) any right of IOT Operators to maintain, repair, renew, adjust, alter or inspect any apparatus may not be extinguished by the Undertaker until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of IOT Operators.</p>
<p>4. Retained Apparatus</p> <p>(1) Not less than 56 days before the commencement of any specified works, the undertaker must submit to the IOT Operators a plan.</p> <p>(2) The plan to be submitted to IOT Operators under sub-paragraph (1) must include a method statement and describe—</p> <ul style="list-style-type: none"> (a) the exact position of the works; (b) the manner of their construction including details of excavation and positioning of plant; (c) the position of all apparatus; (d) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; (e) any intended maintenance regimes; and 	<p>The proposed development will not lead to the diversion or replacement of any of the IOT Operators’ apparatus. All provisions which relate to acquisition or reprovision of apparatus are, therefore, to be deleted.</p> <p>The Applicant does not consider that it is appropriate to provide IOT Operators with the power to prevent construction works through withholding their approval of plans. This provides the IOT Operators with an effective veto over the proposed development, creating uncertainty over the delivery of a nationally significant infrastructure project. Further, it would not be appropriate for IOT to interfere with the Harbour Master Humber’s statutory responsibility for ensuring navigational safety by permitting IOT Operators to decide whether impact protection is required and/ or is sufficient.</p> <p>The Applicant, therefore, proposes the deletion of IOT Operators’ wording.</p>

<p>(f) an assessment of risks of rise of earth issues.</p> <p>(3) The undertaker must not commence any specified works until the IOT Operators has given written approval of the plan so submitted.</p> <p>(4) Any approval of the IOT Operators required under sub-paragraph (3) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);</p> <p>(5) In relation to any specified works, the IOT Operators may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.</p> <p>(6) The specified works must only be executed in accordance with the plan submitted under sub-paragraph (1) as approved or as amended from time to time by agreement between the undertaker and the IOT Operators and in accordance with such reasonable requirements as may be made in accordance with the paragraph by the IOT Operators for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the IOT Operators is entitled to watch and inspect the execution of those works.</p> <p>(7) Where under sub-paragraph (3) the IOT Operators requires any protective works to be carried out either by itself or by the undertaker</p>	
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<p>(whether of a temporary or permanent nature) such protective works must be carried out to the IOT Operators' satisfaction prior to the commencement of any authorised development (or any relevant part thereof) for which protective works are required and the IOT Operators must give 56 days' notice of its requirement for such works from the date of submission of a plan in line with this paragraph (except in an emergency).</p> <p>(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.</p> <p>(9) At all times when carrying out any part of the authorised development, the undertaker must comply with relevant guidance issued by the Health and Safety Executive and with the Control of Major Accident Hazards Regulations 2015.</p>	
<p>5. Offshore Works</p> <p>(1) The undertaker must not except with the agreement of the IOT Operators carry out Work Nos. 1, 2 and 3, or any part of it.</p> <p>(2) Before any berths forming part of Work No. 1 are commissioned, the undertaker must deliver the IOT Mitigation Measures in consultation with the IOT Operators;</p>	<p>The Applicant does not agree that Work No. 3 (Impact Protection Measures) should be required in all circumstances, as this would result in a protective provision which directly contradicts Requirement 18 of the dDCO and which would conflict with the Harbour Master Humber's statutory responsibility for ensuring navigational safety. It must be for the Harbour Master's ultimate discretion whether Work No.3 is required at all or in place of/ in addition to operational controls.</p>

(3) Before beginning to construct Work Nos. 1, 2 and 3, or any part of it, the undertaker must provide a Marine and Liaison Plan to minimise any conflict between the authorised development and the operations of the IOT and submit to the IOT Operators plans of Work Nos. 1, 2 and 3 (or part of it) including sufficient detail to show that the jetty, berths and impact protection works will provide adequate impact protection to sufficiently protect the IOT in the IOT Operators' reasonable opinion and such further particulars available to it as the IOT Operators may request within 21 days of receipt of the plans reasonably requested.

(4) Work Nos. 1, 2 and 3 must not be constructed except in accordance with such plans as may be approved in writing by the IOT Operators.

(5) Any approval of the IOT Operators required under this Schedule—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of refusal must be accompanied by a statement of grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the IOT Operators may have in connection with the safe, economic and efficient use, operation and maintenance of the IOT or otherwise for the protection of any apparatus,

provided always that in relation to a refusal under sub-paragraph (b) or any requirements requested

The Applicant does not consider that it is appropriate to provide IOT Operators with the power to prevent construction works through withholding of their approval of plans and other documents. This provides the IOT Operators with an effective veto over the proposed development, creating uncertainty over the delivery of a nationally significant infrastructure project.

The Applicant, therefore, proposes the deletion of IOT Operators' wording.

pursuant to sub-paragraph (c) the undertaker is permitted to refer such matters to arbitration pursuant to article [36].

(6) The IOT Operators must employ reasonable endeavours to respond to the submission of any plans within a period of 56 days from the date of submission of the plans. If the IOT Operators require further particulars, such particulars must be requested by the IOT Operators no later than 21 days from the submission of plans and thereafter the IOT Operators must employ reasonable endeavours to respond to the submission within 56 days from receipt of the further particulars.

(7) The undertaker must give to the IOT Operators not less than 14 days' notice in writing of its intention to commence construction of any part of Work Nos. 1, 2 and 3 and notice in writing of its completion not later than 7 days after the date on which it is completed and the IOT Operators are entitled by its officer to watch and inspect the construction of such works.

(8) If any part of Work Nos. 1, 2 and 3 or the IOT Mitigation Measures is constructed otherwise than in accordance with this Part of this Schedule the IOT Operators may by notice in writing identify the extent to which the works do not comply with the approved details or otherwise with this Part of this Schedule and request the undertaker at the undertaker's own expense carry out remedial works so as to comply with the requirements of this

<p>Part of this Schedule or such alternative works as may be agreed with the IOT Operators or as otherwise may be agreed between the parties.</p> <p>(9) Subject to sub-paragraph (9), if within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (8) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the IOT Operators may execute the works specified in the notice and any reasonable expenditure incurred by the IOT Operators in so doing will be recoverable from the undertaker.</p> <p>(10) In the event of any dispute as to whether sub-paragraph (8) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the IOT Operators must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph () until the dispute has been finally determined in accordance with article [36] (arbitration).</p>	
<p>6. Operation of Offshore Works</p> <p>The IOT Operators' agreement under paragraph [5(1)] of this Part of this Schedule may be made subject to requirements in relation to the construction or operational phases of the</p>	<p>The Applicant considers that any potential issues of marine congestion are for the Harbour Master Humber and the Dock Master Immingham, in conjunction with Vessel Traffic Services. It would not be appropriate for the protective provision to attempt to contradict these statutory jurisdictions, or for the Applicant to be required to provide a protective provision which it has no power to undertake.</p>

<p>authorised development to ensure that the IOT Operators do not suffer more interference than is reasonably practicable and may require reasonable commitments by the undertaker to ensure that vessels and tankers using the IOT are given priority over vessels using the authorised development.</p>	<p>The Applicant, therefore, proposes the deletion of IOT Operators' wording.</p>
<p>7. Expenses</p> <p>Save where otherwise agreed in writing between the IOT Operators and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to the IOT Operators within 30 days of receipt of an itemised invoice or claim from the IOT Operators all charges, costs and expenses reasonably incurred by the IOT Operators in, or in connection with the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus which may be required in consequence of the execution of any such works as are referred to in this Part including without limitation—</p> <ul style="list-style-type: none"> (a) any costs reasonably incurred by or compensation properly paid by the IOT Operators in connection with the acquisition of rights or the exercise of statutory powers for such apparatus; (b) in connection with the cost of the carrying out of any diversion work or the provision of 	<p>The Applicant recognises that IOT Operators' reasonable costs incurred in connection with the construction works should be indemnified. This indemnity should not, however, go beyond those which are reasonably necessary in order to protect IOT Operators' interests, and indeed beyond precedents from other DCOs. To do otherwise would potentially set a dangerous precedent for future DCOs in requiring protections which are overly onerous, costly and damaging for the applicants.</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>4. Expenses</p> <p>Subject to the following provisions of this paragraph, during the construction of the authorised development the Undertaker must pay to IOT Operators the reasonable costs and expenses incurred by IOT Operators in, or in connection with—</p> <ul style="list-style-type: none"> (a) the inspection, removal, alteration or protection of any apparatus; or (b) the watching and inspecting the execution of any specified work; or (c) the imposition of reasonable requirements for the protection or alteration of apparatus,

<p>any alternative apparatus, where no written diversion agreement is otherwise in place;</p> <p>(c) the making safe of redundant apparatus;</p> <p>(d) the approval of plans;</p> <p>(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and</p> <p>(f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part.</p>	<p>which may reasonably be required in consequence of the execution of any such works as are required under this Schedule.</p>
<p>8. Damage to Property</p> <p>8.(1) The undertaker must permit the IOT Operators access to any apparatus during the carrying out of any specified works reasonably required for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice.</p> <p>(2) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised</p>	<p>The Applicant considers that many of the elements included in the IOT Operators' draft indemnity provision go beyond those which are reasonably necessary in order to protect IOT Operators' interests, and indeed beyond precedents from other DCOs.</p> <p>The Applicant would ask the ExA to bear in mind that the Applicant owns the IOT Trunkway and Finger Pier under leasehold title HS342601. The IOT Operators in turn have rights of access over the Finger Pier and trunkway under the terms of a licence ("the Licence") dated 14 August 2013 and made between Associated British Ports (1) Humber Oil Terminals Trustee Limited ("HOTT") (2) Total Lindsey Oil Refinery Limited (4) and Phillips 66 Limited (4). Under the terms of the Licence the trunkway and Finger Pier belong to the Applicant, with the Applicant granting HOTT rights to bring onto and keep pipelines and other equipment on the Trunkway and Finger Pier and to berth HOTT Vessels at the trunkway and Finger Pier.</p>

<p>by it) in the course of carrying out such works (including without limitation works carried out by the undertaker under this Part or any subsidence resulting from any of these works), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purpose of those works) or property of the IOT Operators, or there is any interruption in any service provided by the IOT Operators, or the IOT Operators or the IOT Operators' Owners becomes liable to pay any amount to any third party, the undertaker must—</p> <ul style="list-style-type: none">(a) bear and pay on demand accompanied by an invoice or claim from the IOT Operators or the IOT Operators' Owners the cost reasonably and properly incurred by the IOT Operators or the IOT Operators' Owners in making good such damage or restoring the supply; and(b) indemnify the IOT Operators and the IOT Operators' Owners for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the IOT Operators or the IOT Operators' Owners, by reason or in consequence of any such damage or interruption or the IOT Operators or the IOT Operators' Owners becoming liable to any third party as aforesaid other than arising from any default by the IOT Operators.	<p>Importantly, under the terms of the Licence, the Applicant is already responsible for the maintenance, repair and insurance of the Trunkway and Finger Pier, whilst IOT Operators are only responsible for the maintenance and repair of the “HOTT Equipment”.</p> <p>As a result, the Applicant accepts that, in order to supplement its existing obligations in relation to the jetty itself, it should indemnify IOT Operators for any losses and damage caused to the IOT pipelines and equipment as a result of construction of the IEERT development.</p> <p>The same indemnities will not be required after the construction period, when operations at the IERRT have begun under the regime of risk controls required by the Harbour Master Humber. As effective risk mitigations to protect the IOT will be put in place, no ongoing indemnity is required and the existing legal agreements between the Applicant and IOT Operators should prevail. To provide indemnities in perpetuity would fundamentally alter the existing commercial relationship between the Applicant and IOT Operators to the serious detriment of the Applicant and substantial betterment of the IOT Operators. It would simply not be possible for the Applicant to commit to this.</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>5. Damage to Property and other losses</p>
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(3) The fact that any act or thing may have been done by the IOT Operators on behalf of the undertaker or in accordance with a plan approved by the IOT Operators or in accordance with any requirement of the IOT Operators as a consequence of the authorised development or under its supervision does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the IOT Operators fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not materially accord with the approved plan or as otherwise agreed between the undertaker and the IOT Operators.

(4) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the IOT Operators, its officers, employees, contractors or agents; and
- (b) any authorised development or any other works authorised by this Part carried out by the IOT Operators as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article [8] (benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”) any works yet to be executed and not falling within this sub-paragraph (b)

(1) Subject to the following provisions of this paragraph, the Undertaker must—

- (a) grant IOT Operators, upon reasonable notice access to any apparatus during the carrying out of any relevant works reasonably required for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice. For the purposes of this subparagraph (a), ‘apparatus’ includes any connection into pipelines or associated infrastructure operated by IOT Operators and/or any successor pipeline system operator.**
- (b) pay IOT Operators for all loss, damage, liability, costs and expenses reasonably suffered or incurred by IOT Operators for which IOT Operators is legally liable as a result of legally sustainable claims brought against IOT Operators by any third party solely arising out of the carrying out of any relevant works;**
- (c) pay the cost reasonably incurred by IOT Operators in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works; and**
- (d) pay the cost reasonably incurred by IOT Operators in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to IOT Operators for any other expenses, losses, damages, penalty or costs incurred by IOT Operators by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works.**

(2) Irrespective of anything to the contrary elsewhere in this protective provision—

- (a) the Undertaker and IOT Operators must at all times take reasonable steps to prevent and mitigate any loss, damage,**

<p>are subject to the full terms of this Part including this paragraph in respect of such new apparatus.</p> <p>(5) The IOT Operators and the IOT Operators' Owners must give the undertaker reasonable notice of any claim or demand and no settlement, admission of liability or compromise or demand must be made, unless payment is required in connection with a statutory compensation scheme, without first consulting the undertaker and considering its representations.</p> <p>(6) The IOT Operators and the IOT Operators' Owners must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.</p> <p>(7) The undertaker shall not carry out Work Nos. 1, 2 and 3, or any part of such works, unless and until the IOT Operators are satisfied acting reasonably that the undertaker has procured acceptable insurance and the IOT Operators have confirmed the same in writing to the undertaker.</p>	<p>liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and</p> <p>(b) neither the Undertaker nor IOT Operators are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.</p> <p>(3) IOT Operators must give to the Undertaker reasonable notice of any claim or demand to which this paragraph 39 applies. The Undertaker may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. IOT Operators must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. IOT Operators must, at the request of the Undertaker, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.</p> <p>(4) In this paragraph— “relevant works” means such of the authorised development as— (a) does, will or is likely to affect any apparatus; or (b) involves a physical connection or attachment to any apparatus.</p>
<p>9. Co-operation and reasonableness</p> <p>(1) Where in consequence of the proposed construction of any of the authorised development,</p>	<p>The Applicant considers that IOT Operators must act reasonably, and that the parties should be required to agree that works are necessary prior to their being carried out.</p>

<p>the undertaker requires the removal of apparatus under this Part of this Schedule or the IOT Operators makes requirements for the protection or alteration of apparatus under this Part of this Schedule, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the IOT Operators' undertaking and the IOT Operators must use its best endeavours to cooperate with the undertaker for that purpose.</p> <p>(2) the undertaker and the IOT Operators must act reasonably in respect of any given term of this Part of this Schedule and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required by this Part of this Schedule it must not be unreasonably withheld or delayed.</p>	<p>The Applicant, therefore, proposes the following alternative wording:</p> <p>6. Co-operation and reasonableness</p> <p>(1) Where as a consequence of the construction of any part of the authorised development, the Undertaker requires the removal of apparatus or IOT Operators, acting reasonably, requires the protection or alteration of apparatus, the Undertaker must, if it agrees that such works are necessary, use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of IOT Operators's undertaking and IOT Operators must use its best endeavours to cooperate with the Undertaker for that purpose.</p> <p>(2) the Undertaker and IOT Operators must act reasonably in compliance with the terms of this protective provision and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required it must not be unreasonably withheld or delayed.</p>
<p>10. Miscellaneous</p> <p>Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and the IOT Operators in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made provided that the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this Part of this Schedule.</p>	<p>The Applicant considers that the protective provisions should only override any enactment or agreement where the contradiction relates to the construction of the authorised development.</p> <p>The Applicant does not consider that it is for the protective provisions to override pre-existing enactments or agreements relating to the Applicant and IOT Operators in any other circumstances.</p>

<p>In the case of any inconsistency, the provisions of this Order, including this Part of this Schedule, prevail.</p>	<p>The Applicant, therefore, proposes the following alternative wording:</p> <p>7. Miscellaneous</p> <p>Nothing in this protective provision affects the provisions of any enactment or agreement regulating the relations between the Undertaker and IOT Operators in respect of any apparatus laid or erected in land belonging to the Undertaker on the date on which this Order is made provided that in connection with the construction of the authorised development, the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this protective provision. In the case of any inconsistency in the context of the authorised development, the provisions of this Order, including this protective provision, prevail.</p>
<p>11. Emergency circumstances</p> <p>2.—(1) The undertaker acknowledges that the IOT Operators provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.</p> <p>(2) In the following circumstances, the IOT Operators may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any apparatus under this Order and the IOT Operators are not in breach of its obligations to proceed:</p> <p>(a) circumstances in which, in the determination of the Secretary of State,</p>	<p>The Applicant intends to provide IOT Operators with the same emergency protections as have been afforded to (and agreed with) Exolum in recognition of the IOT's role in the importation of petroleum products. The Applicant does not consider that IOT Operators' amendments to these provisions are necessary, in light of Exolum's agreement to the Applicant's wording.</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>8. Emergency Circumstances</p> <p>(1) The Undertaker acknowledges that Humber Oil Terminals Trustees Ltd provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.</p>

<p>there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or</p> <p>(b) circumstances in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or</p> <p>(c) circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or</p> <p>(d) any circumstances identified as such by the COBRA committee of His Majesty's Government (or any successor committee thereof); or</p> <p>(e) any situation, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.</p>	<p>(2) In the following circumstances, Humber Oil Terminals Trustees Ltd may on written notice to the Undertaker require the immediate suspension of works to construct the authorised development if such works necessitate the stopping or suspending of the supply of product through any apparatus and Humber Oil Terminals Trustees Ltd shall not be in breach of its obligations under this protective provision in circumstances—</p> <p>(a) in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or</p> <p>(b) in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or</p> <p>(c) in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or</p> <p>(d) identified by the COBRA committee of His Majesty's Government (or any successor committee thereof) as identified as falling within any of the above sub-paragraphs of this paragraph; or</p> <p>(e) where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.</p>
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<p>(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which includes costs of demobilising and remobilising any workforce, and any costs to protect the IOT Operators' apparatus "mid-works") to account for the suspension.</p> <p>(4) The IOT Operators are not liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.</p>	<p>(3) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect IOT Operators's apparatus "mid-works") to account for the suspension.</p> <p>(4) IOT Operators shall not be liable for any costs, expenses, losses or liabilities the Undertaker incurs as a result of the suspension of any activities under this paragraph or delays caused by it.</p>
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Table 2: DFDS Protective Provision

DFDS are existing tenants of the Applicant, operating a commercial ro-ro business in a commercially competitive environment. The Applicant believes that the existing commercial relationships should prevail, save for the extent that construction works for the IERRT could potentially affect DFDS operations.

To do otherwise once the IERRT is operational - in addition to the regime of risk controls which will have been imposed by the SCNA and the Port of Immingham SHA following a return to ‘business as usual’ (albeit with the addition of the IERRT) - would fundamentally alter the existing commercial relationship between the Applicant and DFDS in a disproportionate manner, to the serious detriment to the Applicant and the substantial betterment of the DFDS.

DFDS’s Draft PP	Applicant’s comments
<p>121. Application</p> <p>For the protection of DFDS the following provisions, unless otherwise agreed in writing at any time between the undertaker and DFDS, have effect.</p>	<p>The Applicant believes that the protections afforded to DFDS in the protective provision will not be required after the construction period, when operations at the IERRT have begun under the regime of risk controls required by the Harbour Master Humber. At this time, the existing legal agreements between the Applicant and DFDS should prevail. To provide protections for DFDS in perpetuity would fundamentally alter the existing commercial relationship between the Applicant and DFDS.</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>121. Application</p> <p>For the protection of DFDS the following provisions, unless otherwise agreed in writing at any time between the undertaker and DFDS, have effect until the commencement of the operation of the authorised development.</p>

<p>122. Interpretation</p> <p>In this Part of this Schedule—</p> <p>“authorised work” means any work specified in schedule 1;</p> <p>“DFDS” means DFDS Seaways plc, company number 01554521 registered at Nordic House, Western Access Road, Immingham Dock, Immingham, DN40 2LZ; and</p> <p>“environmental document” means the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement including, but not limited to the Navigation Risk Assessment and Transport Assessment.</p>	<p>Amendments to this paragraph are made as a result of amendments to other paragraphs contained in this protective provision.</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>122. Interpretation</p> <p>In this Part of this Schedule—</p> <p>“authorised work” means any work specified in schedule 1;</p> <p>“DFDS” means DFDS Seaways plc, company number 01554521 registered at Nordic House, Western Access Road, Immingham Dock, Immingham, DN40 2LZ; and</p> <p>“environmental document” means the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement.</p>
<p>123. Consultation and Notification</p> <p>At least 28 days before the undertaker commences the construction of any authorised work, or any phase of any authorised work, that has been assessed in any environmental document that may interfere with DFDS’ use of the Port of Immingham or the surrounding road network, the undertaker must consult DFDS in</p>	<p>The Applicant believes that a requirement to consult and notify DFDS of works should be limited to those works which have been assessed as being likely to interfere with DFDS’s operation. It is considered that a significant proportion of the works to be undertaken will not impact DFDS’s operation.</p>

<p>writing stating what is proposed and have regard to any response received from DFDS.</p>	<p>The Applicant, therefore, proposes the following alternative wording:</p> <p>123. Consultation and Notification</p> <p>The Undertaker must, at least 28 days before the undertaker commences the construction of any authorised work, or any phase of any authorised work, that has been assessed in any environmental document as being likely to interfere with DFDS’ use of the Port of Immingham or the surrounding road network, inform DFDS in writing stating what is proposed and have regard to any response received from DFDS.</p>
<p>124. Indemnity</p> <p>(1) The undertaker is responsible for and must make good to DFDS all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by DFDS by reason of—</p> <ul style="list-style-type: none">(a) the construction or operation of the authorised works or the failure of the authorised works; or;(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction or operation of the	<p>The Applicant believes that it has provided sufficient indemnities to protect DFDS’s legitimate interests, limited to circumstances where claims can be properly justified. References to the failure of works appear to come from precedent DCO’s in which there is a risk that the failure in the functioning of the development might lead to impacts on stakeholders (such as a bridge failing to open in order to allow vessels to pass). This is not applicable in this case.</p> <p>The Applicant, therefore, proposes the following alternative wording:</p> <p>124. Indemnity</p>

<p>authorised works or dealing with any failure of the authorised works,</p> <p>and the undertaker must indemnify DFDS from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.</p> <p>(2) DFDS must give the undertaker no less than 28 days' notice in writing, providing a reasonable explanation for any claim or demand, as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.</p>	<p>(1) The undertaker is responsible for and must make good to DFDS all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by DFDS by reason of—</p> <p style="padding-left: 40px;">(a) the construction of the authorised works; or;</p> <p style="padding-left: 40px;">(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the authorised works.</p> <p>(2) DFDS must give the undertaker no less than 28 days' notice in writing, providing a detailed explanation and justification for any such claim, as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.</p> <p>(3) Nothing in sub-paragraph (1) imposes any liability on the Undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DFDS, its officers, servants, contractors or agents. '</p>
<p>125. DFDS Scheduled Services and use of DFDS berths</p> <p>(1) In relation to the construction and operational phases of the authorised development the undertaker will use all reasonable endeavours to ensure—</p> <p style="padding-left: 40px;">(a) vessels operating to and from the authorised development do not cause interference with vessels operated by</p>	<p>The Applicant considers that any potential issues of marine congestion are for the Harbour Master Humber and the Dock Master Immingham, in conjunction with Vessel Traffic Services. It would not be appropriate for the protective provision to attempt to contradict these statutory jurisdictions, or for the Applicant to be required to provide a protective provision which it has no power to undertake.</p> <p>The Applicant, therefore, proposes the deletion of DFDS's wording</p>

<p>DFDS and other scheduled services using DFDS berths in the Port of Immingham; and</p> <p>(b) vessels operated by DFDS and other scheduled services using DFDS berths in the Port of Immingham will be given priority over vessels using the authorised development in accordance with the schedule of services operated by DFDS and other scheduled services using DFDS berths at the date of this Order, as may be amended by agreement between DFDS and the undertaker.</p>	
<p>126. Operations</p> <p>Before commencing marine commercial operations the undertaker must provide DFDS with a copy of the Statutory Conservancy and Navigation Authority’s approval of the written statement of proposed safe operating procedures for access to and egress from the authorised development, including any approved alteration made from time to time.</p>	<p>The Applicant and DFDS agree on this wording.</p>
<p>127. Arbitration</p> <p>Any dispute arising between the undertaker and DFDS under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).</p>	<p>The Applicant and DFDS agree on this wording.</p>

ANNEX 1

The protective provision wording provided below is the latest version Applicant's proposed wording of the IOT Operators protective provision.

PART 1

FOR THE PROTECTION OF IOT OPERATORS

Application

3. For the protection of IOT Operators the following provisions, unless otherwise agreed in writing at any time between the Company and IOT Operators, have effect until the commencement of the operation of the authorised development.

Interpretation

4. In this Part of this protective provision—

“apparatus” means the pipe-line and storage system owned or maintained by IOT Operators and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“Associated Petroleum Terminals (Immingham) Ltd” means Associated Petroleum Terminals (Immingham) Limited, company number 00564394 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;

“functions” includes powers and duties;

“Humber Oil Terminal Trustees Ltd” means Humber Oil Terminal Trustees Limited, company number 00874993 registered at Queens Road, Immingham, Grimsby, N E Lincolnshire, DN40 2PN, and any successor in title;;

“in” in a context referring to apparatus in land, includes a reference to apparatus under, over or upon land;

“IOT Operators” means Associated Petroleum Terminals (Immingham) Ltd and Humber Oil Terminal Trustees Ltd;

“pipe-line” means the whole or any part of a pipe-line belonging to or maintained by IOT Operators and includes any ancillary works and apparatus; all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers; and such legal interest and benefit of property rights and covenants as are vested in IOT Operators in respect of those items;

“specified work” means any work which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus; and

“working day” means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of apparatus

5. Irrespective of any provision in this Order or anything shown on the land plans—

- (a) the Company may not acquire any apparatus or obstruct or render less convenient the access to any apparatus, otherwise than by agreement with IOT Operators; and
- (b) any right of IOT Operators to maintain, repair, renew, adjust, alter or inspect any apparatus may not be extinguished by the Company until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of IOT Operators.

Expenses

6. Subject to the following provisions of this paragraph, during the construction of the authorised development the Company must pay to IOT Operators the reasonable costs and expenses incurred by IOT Operators in, or in connection with—

- (a) the inspection, removal, alteration or protection of any apparatus; or
- (b) the watching and inspecting the execution of any specified work; or
- (c) the imposition of reasonable requirements for the protection or alteration of apparatus,

which may reasonably be required in consequence of the execution of any such works as are required under this Schedule.

Damage to property and other losses

7.—(1) Subject to the following provisions of this paragraph, the Company must—

- (a) grant IOT Operators, upon reasonable notice access to any apparatus during the carrying out of any relevant works reasonably required for the purposes of inspection, maintenance and repair of such apparatus and upon reasonable notice. For the purposes of this subparagraph (a), ‘apparatus’ includes any connection into pipelines or associated infrastructure operated by IOT Operators and/or any successor pipeline system operator.

- (b) pay IOT Operators for all loss, damage, liability, costs and expenses reasonably suffered or incurred by IOT Operators for which IOT Operators is legally liable as a result of legally sustainable claims brought against IOT Operators by any third party solely arising out of the carrying out of any relevant works;
 - (c) pay the cost reasonably incurred by IOT Operators in making good any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising from or caused by the carrying out of any relevant works; and
 - (d) pay the cost reasonably incurred by IOT Operators in stopping, suspending and restoring the supply through its pipeline and make reasonable compensation to IOT Operators for any other expenses, losses, damages, penalty or costs incurred by IOT Operators by reason or in consequence of any such damage or interruption provided that the same arises in consequence of the carrying out of any relevant works.
- (2) Irrespective of anything to the contrary elsewhere in this protective provision—
- (a) the Company and IOT Operators must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers as a result of the other's negligence or breach of this Part of this Schedule; and
 - (b) neither the Company nor IOT Operators are liable for any loss, damage, liability, claim, cost or expense suffered or incurred by the other to the extent that the same are incurred as a result of or in connection with the sole, partial or complete breach of this protective provision or negligence arising out of an act, omission, default or works of the other, its officers, servants, contractors or agents.
- (3) IOT Operators must give to the Company reasonable notice of any claim or demand to which this paragraph 39 applies. The Company may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. IOT Operators must not compromise or settle any such claim or make any admission which might be prejudicial to the claim. IOT Operators must, at the request of the Company, afford all reasonable assistance for the purpose of contesting any such claim or action, and is entitled to be repaid all reasonable expenses incurred in so doing.
- (4) In this paragraph—
- “relevant works” means such of the authorised development as—
- (a) does, will or is likely to affect any apparatus; or
 - (b) involves a physical connection or attachment to any apparatus.

Co-operation and reasonableness

- (5) —(1) Where as a consequence of the construction of any part of the authorised development, the Company requires the removal of apparatus or IOT Operators, acting reasonably, requires the protection or alteration of apparatus, the Company must, if it agrees that such works are necessary,

use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of IOT Operators's undertaking and IOT Operators must use its best endeavours to cooperate with the Company for that purpose.

(2) the Company and IOT Operators must act reasonably in compliance with the terms of this protective provision and, in particular, (without prejudice to generality) where any consent or expression of satisfaction is required it must not be unreasonably withheld or delayed.

Miscellaneous

8. Nothing in this protective provision affects the provisions of any enactment or agreement regulating the relations between the Company and IOT Operators in respect of any apparatus laid or erected in land belonging to the Company on the date on which this Order is made provided that in connection with the construction of the authorised development, the terms of the relevant enactment or agreement are not inconsistent with the provisions of this Order, including this protective provision. In the case of any inconsistency in the context of the authorised development, the provisions of this Order, including this protective provision, prevail.

Emergency circumstances

9.—(1) the Company acknowledges that Humber Oil Terminals Trustees Ltd provides services to His Majesty's Government, using its apparatus, which may affect any works to be carried under this Order.

(1) In the following circumstances, Humber Oil Terminals Trustees Ltd may on written notice to the Company require the immediate suspension of works to construct the authorised development if such works necessitate the stopping or suspending of the supply of product through any apparatus and Humber Oil Terminals Trustees Ltd shall not be in breach of its obligations under this protective provision in circumstances—

- (a) in which, in the determination of the Secretary of State, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or
- (b) in which a request has been received, and a decision to act upon such request has been taken, by His Majesty's Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or
- (c) in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by His Majesty's Government or the Secretary of State; or
- (d) identified by the COBRA committee of His Majesty's Government (or any successor committee thereof) as identified as falling within any of the above sub-paragraphs of this paragraph; or

- (e) where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas, in connection with which the Secretary of State requires fuel capacity.
- (2) The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which shall include costs of demobilising and remobilising any workforce, and any costs to protect IOT Operators's apparatus "mid-works") to account for the suspension.
- (3) IOT Operators shall not be liable for any costs, expenses, losses or liabilities the Company incurs as a result of the suspension of any activities under this paragraph or delays caused by it.

ANNEX 2

The protective provision wording provided below is the latest version Applicant’s proposed wording of the DFDS protective provision.

PART 12

FOR THE PROTECTION OF DFDS SEAWAYS PLC

Application

122. For the protection of DFDS the following provisions, unless otherwise agreed in writing at any time between the undertaker and DFDS, have effect until the commencement of the operation of the authorised development.

Interpretation

123. In this Part of this Schedule—
“authorised work” means any work specified in schedule 1;

“DFDS” means DFDS Seaways plc, company number 01554521 registered at Nordic House, Western Access Road, Immingham Dock, Immingham, DN40 2LZ; and

“environmental document” means the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental information or other document so prepared by way of clarification or amplification of the environmental statement.

Consultation and notification

124. The undertaker must, at least 28 days before the undertaker commences the construction of any authorised work, or any phase of any authorised work, that has been assessed in any environmental document as being likely to interfere with DFDS’ use of the Port of Immingham or the surrounding road network, inform DFDS in writing stating what is proposed and have regard to any response received from DFDS.

Indemnity

125. (1) The undertaker is responsible for and must make good to DFDS all reasonable financial costs or losses not otherwise provided for in this Part of this Schedule which may reasonably be incurred or suffered by DFDS by reason of—

(a) the construction of the authorised works; or;

(b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the authorised works.

(2) DFDS must give the undertaker no less than 28 days' notice in writing, providing a detailed explanation and justification for any such claim, as is referred to in sub-paragraph (1), and no settlement or compromise of any such claim or demand is to be made without the prior consent of the undertaker.

(3) Nothing in sub-paragraph (1) imposes any liability on the Undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of DFDS, its officers, servants, contractors or agents.

Operations

126. Before commencing marine commercial operations the undertaker must provide DFDS with a copy of the Statutory Conservancy and Navigation Authority's approval of the written statement of proposed safe operating procedures for access to and egress from the authorised development, including any approved alteration made from time to time.

Disputes

127. Any dispute arising between the undertaker and DFDS under this Part of this Schedule is to be determined by arbitration as provided in article 35 (arbitration).