

**THE PROPOSED ASSOCIATED BRITISH PORTS (EASTERN RO-RO TERMINAL)  
DEVELOPMENT CONSENT ORDER**

**DEADLINE 8**

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Response on behalf of the Harbour Master, Humber  
to Deadline 7 submissions from DFDS

PINS Reference Number	TR030007
Interested Party Reference Number	IMRO-OP001
Document Ref.	HMH 36
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Date	8 January 2024

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**1. Introduction**

1.1. In this document Harbour Master, Humber (**HMH**) responds to the submissions made at Deadline 7 by DFDS Seaways Plc. (**DFDS**).

1.2. The documents addressed in this submission are:

- 1.2.1. **REP7-045** - Comments on Deadline 6 Submissions;
- 1.2.2. **REP7-046** - Comments on the ExA's Recommended changes to the DCO; and
- 1.2.3. **REP7-053** - Protective Provisions.

1.3. The fact that HMH has not responded to any particular point does not mean that he agrees with it or accepts that it is correct. HMH has limited his responses to matters that are directly relevant to his areas of responsibility and where he thinks he can assist the Examining Authority.

**2. Table of responses:**

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<p><b>REP7-045</b></p> <p>Comments on Deadline 6 Submissions</p>	<p>Para 6 - page 2 – re submission by applicant</p> <p><i>Paragraphs 4.7-4.9 - DFDS note that notwithstanding the response by the Applicant that tidal flow direction data is all very difficult and hard to pin down, presumably to explain why it has consistently contested and ignored the position asserted by DFDS, the Harbour Master Humber has now formally accepted at the ISH5 hearing that the tidal flow direction north of IOT is indeed as DFDS has stated and maintained throughout this process.</i></p>	<p>HMH refers the Examining Authority to paragraph 13 of his written summary of his oral submissions at ISH5:</p> <p><i>“To the north of the area, the simulator did not seem to reflect real life experience. This concerns HMH less in relation to the validity of the simulations, but he shared DFDS’ observations in that he would expect it to be further round and slightly stronger. This was dealt with at the last set of simulations. HMH does not consider that this discredits the previous runs. He added that the tide on the Humber is where it is, and no one is trying to suggest that it is not.”</i></p> <p>DFDS has adduced no evidence to suggest that the results of the simulations insofar as concerns the operability of the proposed IERRT development would be materially different (and less successful) had the tidal direction to the north of the area in the simulations been as HMH and DFDS would have expected it in real life.</p> <p>HMH has addressed this point on a number of occasions in the course of</p>

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		<p>this examination, including his original written submissions [REP2-054] and his opinion that the tidal direction to the north had no effect on the validity of the simulations was evidenced at the further simulations that took place in November at which the changes were explained to those present, including DFDS.</p>
<p><b>Ditto</b></p>	<p>Para 8 – page 2 – re submissions by applicant</p> <p><i>Paragraph 4.14 – the Applicant’s response seeks to avoid answering the point which DFDS was making. If the Applicant has tested the design limits of IERRT then, contrary to its assertion that it is not possible to prescribe limits for use of IERRT as a result of the simulations undertaken, DFDS believes it should absolutely be possible for the Applicant, in conjunction with the HMM, to say what limits it has established such as, the vessel size, type and manoeuvring capabilities it is comfortable it can consistently and safely berth, in what maximum tidal and wind conditions and what additional assistance from tugs is needed. DFDS assume that reaching a clear view on these factors will be key to informing any operational restrictions which the Applicant / HMM may seek to place on operations at IERRT in order to try to ensure the safety of vessel movements.</i></p>	<p>HMH responded to this point at ISH5. He then further addressed DFDS’s concerns in considerable detail on pages 9 to 11 of REP7-064.</p> <p><i>“If a larger vessel were to be introduced, the operator would have to apply for a set of controls to be examined and at that point conditions would be imposed. HMM confirmed that Stena would be expected to bring the vessel to HES at the design stage, and he would expect Stena to design a vessel capable of moving in most conditions at this berth. HES would apply whatever controls were necessary for the specific vessel at the particular berth.</i></p> <p><i>HMM gave an example of this process at Green Port Hull where wind turbine blades are loaded onto vessels. There is currently a proposal for much wider ships which are not yet built but in a month’s time he will be going to the simulator to check that the new vessel, as designed, would be capable of manoeuvring into the port.</i></p> <p><i>HMM would expect the design vessel would be designed, fitted with correct propulsion and be capable of manoeuvring out of that berth. He notes that a smaller vessel that is underpowered can be as dangerous as a larger vessel. Any vessel has to be fit for purpose and the SHA would always check before allowing it to operate. In practice, and usually at the design stage, any operator who wishes to</i></p>

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		<p><i>introduce a larger vessel comes to HMM with a set of proposed control measures to be examined. HMM then considers the testing that is needed, (whether simulation or real world), to determine whether the set of controls proposed are sufficient. This process ensures that HMM is satisfied that the set of controls and conditions of operation are sufficient, before any new vessel is introduced."</i></p> <p>Thus, for a Stena T Class vessel it would be possible to state what limits have been established as DFDS suggests, but it is difficult to do so for a vessel that is not yet built.</p>
<p><b>Ditto</b></p>	<p>Para 29 – page 7 – re submissions by applicant</p> <p><i>Paragraph 12.3 - the Applicant states the berthing criteria additional risk control would be done by the SHA when implementing the findings of the risk assessment into the MSMS. However, in this situation, there are already various other tidally restricted operations in an existing highly utilised navigational space (which has the potential, and indeed the Applicant's intention, to have even higher future utilisation). Whilst applying tidally restrictive berthing criteria for the IERRT vessel would reduce the specific risk assessed for the IERRT development, this could lead to an additionally constricted operational tidal window in which more vessels are then required to complete their movements. This could ultimately result in congestion and delays which will impact other waterway users and stakeholders, including DFDS,</i></p>	<p>HMM would like to make clear that the applicability of berthing criteria to Ro-Ro vessels would be very unlikely to align with berthing criteria for larger less manoeuvrable vessels. However at some times during the fortnightly tidal cycle, there may be occasions when the scheduled berthing of a Ro-Ro vessel coincides with a more restricted vessel and it is on these occasions that the more restricted vessel may be given priority and managed in the usual way.</p>

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	<p><i>and potentially affect the operational capacity of the IERRT terminal itself. Because of this, any intention to introduce berthing criteria needs to be properly assessed at an early stage (to ensure no undue adverse effects would result) and this assessment cannot be made without an indication on what the berthing criteria may look like.</i></p>	
<p><b>REP7-046</b></p> <p>Comments on the ExA's Recommended changes to the DCO</p>	<p><i>Para 16</i></p> <p><i>Requirement 18A (this would normally be put after Requirement 18):</i></p> <p><i>DFDS is concerned about some aspects of this drafting:</i></p> <p><i>a. Judicial review would only be available for challenging an error of law rather than that the controls were unduly light, for example. Instead, the appeal process available to the Applicant under requirement 22 could be extended to other parties (for this particular provision), which would provide some independent scrutiny of what was being proposed.</i></p> <p><i>b. Interested parties such as DFDS and IOTT should be consulted upon the first set of proposed controls and their responses taken into account. Subsequent controls can follow the standard process.</i></p> <p><i>c. Paragraph (2) does not really add anything as this could happen anyway. DFDS would prefer that operational</i></p>	<p>It is submitted on behalf of HMM that DFDS is wrong, as a matter of law, to state that judicial review would only be available for challenging an error of law. Judicial review would be available for challenging any behaviour or decision that is Wednesbury unreasonable. A partisan decision with an unfair outcome or a decision to impose conditions that were unreasonably light would clearly fall within the scope of matters susceptible to judicial review.</p> <p>HMM has already given his opinion on the proposed new Requirement 18A in REP7-061 and explained why he considers it would not be appropriate for SCNA to be a discharging authority for the purposes of appeal under paragraph 22 of Schedule 2 to the draft DCO.</p>

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	<p><i>trials were required to be conducted.</i></p> <p><i>d. The suggestion in the accompanying text that the facility could later be used by larger vessels is concerning as that would effectively be a 'tailpiece' to what had been assessed in the Environmental Statement. DFDS considers that the vessel size should be limited to what has been assessed and modelled and the DCO should have to be amended to increase it.</i></p>	
Ditto	<p>Para 17</p> <p><i>Requirement 18: DFDS still wish to see the impact protection implemented before the main works are constructed, or if the ExA is of the view that the risk of allision from construction vessels is sufficiently lower than during operation, before the main works are brought into operation, rather than being at the discretion of either the Applicant, the Harbour Master or Dock Master. This is not novel, it is already proposed in relation to the East Gate works. DFDS would wish to be consulted on the detailed design of the works and their comments taken into account.</i></p>	<p>HMH has set out his position on Requirement 18 in REP7-061 and also refers to his responses to EXQ4 submitted (HMH38) at Deadline 8.</p>
<p><b>REP7-053</b></p> <p>Protective Provisions</p>	<p>DFDS PPs</p> <p>New text from DFDS on 8 Dec:</p> <p><b><i>125. DFDS Scheduled Services and use of DFDS berths</i></b></p> <p><i>(1) In relation to the construction and operational</i></p>	<p>HMH submits that paragraph 125 of the protective provisions proposed by DFDS should be deleted. First, it would be ineffective in practice, as it would not bind the SCNA or HMH. Further, it is the statutory responsibility of the SCNA and HMH to regulate vessel movements on the Humber for the benefit of all users of the river and, even if the provision could be amended</p>

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	<p><i>phases of the authorised development the undertaker will use all reasonable endeavours to ensure— (a) vessels operating to and from the authorised development do not cause interference with vessels operated by DFDS and other scheduled services using DFDS berths in the Port of Immingham; and</i></p> <p><i>(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</i></p>	<p>as DFDS suggests, it would be entirely inappropriate for legislation to confer priority for one operator on the Humber over another.</p> <p>Finally, this would clearly be an interference with the powers of the Port of Immingham SHA, requiring its consent under section 145 of the Planning Act 2008.</p>

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