Date: 15 January 2024
Our ref: 462460
Your ref: TR030007

The Planning Inspectorate
Major Applications & Plans
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Dear Inspector,

NSIP Reference Name / Code: TR030007

Title: Natural England's comments in respect of the Immingham Eastern Ro-Ro Terminal Project, promoted by Associated British Ports.

Examining authority's submission deadline 15 January 2024 (Deadline 9).

Natural England is a non-departmental public body. Our statutory purpose is to ensure that the natural environment is conserved, enhanced, and managed for the benefit of present and future generations, thereby contributing to sustainable development.

In the Examining Authority's fourth written questions (EXQ4), five questions were addressed to Natural England. Our answers to question references BNE4.01, BNE4.08 and BNE4.09 were provided in our letter dated 08 January 2024. Please find our answers to questions BNE4.05 and BNE4.12 now also included in Appendix 1.

We note that Deadline 9 is the final deadline of the Examination. Therefore, we have provided a summary of our end of Examination position in relation to Designated sites in Appendix 2. We have provided detailed advice on impacts to intertidal habitat in Appendix 3.

For any further advice on this consultation please contact the case officer Laura Tyndall and copy to consultations@naturalengland.org.uk.

Yours faithfully,

Laura Tyndall
Lead Adviser
Yorkshire and Northern Lincolnshire Area Team

Appendix 1: Natural England's response to the Examining Authority's (ExA's) fourth written questions / question reference EXQ4

Table 1: Natural England response to Examiner's fourth written questions			
ExA question ref	**Question addressed to**	**Question**	**Answer**
BNE4.01	Natural England	**In-combination assessment in the Applicant's updated Habitats Regulation Assessment (HRA) report**. Following the changes to Tables 3, 4 and 5 in the HRA Report [REP7-014] to incorporate an in-combination assessment, does NE consider that sufficient information has been provided by the Applicant to conclude no likely significant effects in-combination? If NE considers insufficient information has been provided explain why that is the case.	Following the submission of the amended HRA [REP7-014], to include the in-combination assessment at HRA stage 1 (screening / likely significant effects (LSE) test), Natural England consider that there is insufficient information to conclude no LSE in-combination. Conclusions appear to have been made on the assumption of negligibility, rather than through evidence-based assessment. Our preference would be for columns to be added to tables 3, 4 and 5 for assessment of likely significant effects 'alone' and 'in combination' (separate columns). Assessment of likely significant effects 'in combination' is only required where there is a small effect which is not significant alone but may act in combination with small impacts of other projects resulting in a likely significant effect. However, we do not consider that this would materially impact conclusions of the Stage 2 assessment on adverse effects on integrity.

BNE4.05	Natural England	**Updated in-combination assessment in the Applicant's HRA report** Following the updates to the in-combination assessment (Tables 37, 38, 39) of the HRA Report [REP7-014] is NE content with the Applicant's conclusions of no AEoI for the following impact pathways in combination with other plans and projects: a) direct intertidal habitat loss b) direct subtidal habitat loss c) subtidal habitat change as result of the removal of seabed material during capital dredging?	Please see Appendix 2 and 3.
BNE4.08	Natural England	**Justification for proposed 300 metre disturbance distance in relation to SPA and Ramsar birds** At paragraph 1 of key issue 7 in REP7-038, it is stated that NE is not content with the assessment of noise and visual disturbance effects on SPA and Ramsar birds during construction and it has been suggested that a 200 metre disturbance distance would not sufficient. Instead a precautionary distance of 300 metres from the noise source has be recommended. Given the justification of 200 metres provided by the Applicant in section 4.10 and Table 28 of the HRA Report [REP7-014], NE should provide a rationale as to why 300 metres has specifically been recommended?	Table 28 identifies a number of species with moderate to high and moderate levels of sensitivity to disturbance. Shelduck, curlew and bar-tailed godwit have all been recorded with flight initiation distances (FID) over 200m. It is worth noting that disturbance is likely to occur before flight takes place. Birds can experience increased stress / alertness resulting in less effective foraging. In addition, Natural England has previously provided advice to ABP that 'peak noise levels *approaching* 70dBA and greater are most likely to cause an adverse effect' (referenced in the HRA). Appendix E Waterbird mitigation effectiveness summary Fig E.1 indicates the 200m buffer from the noise source. Immediately outside the 200m buffer the noise levels could be very slightly lower than 70dB (LAmax), which means that birds in this area could be subject to noise levels approaching 70dB (LAmax). For the reasons above Natural England advises use of a disturbance distance over 200m and we advise that 300m

			would be a suitable precautionary distance evidenced by the applicant's own references and Natural England's previous advice.
BNE4.09	Natural England	**Construction-related airborne noise and visual disturbance for birds roosting on structures in the intertidal zone** NE should confirm whether the HRA Report [REP7-014] adequately considers airborne noise and visual disturbance impacts from construction on birds roosting on structures in the intertidal zone? If not, NE should identify any further mitigation measures that would be required to safeguard roosting birds during the construction phase.	The signposting document for bird disturbance issues provided to Natural England by Associated British Ports on 12 June 2023 provided information in relation to SPA bird species that could potentially be roosting on structures in the intertidal zone. This confirmed that the only SPA species found to be roosting on these structures was turnstone, with this species considered tolerant to potential disturbance. We confirmed in [REP2-020] that we were satisfied with this information provided in relation to potential disturbance to roosting SPA birds.
BNE4.12	Natural England	**In-combination air quality effects** NE should confirm whether it agrees to there being no AEoI arising from in-combination air quality effects presented in section 4.14 of the HRA Report [REP7-014]? If NE does not agree to there being no AEoI it should explain why that would be the case.	For the Humber Estuary SAC (H1330. Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*) feature), Natural England does not consider it likely that there will be AEoI on this feature as a result of air quality impacts from the IERRT project in-combination with other consented projects. However, we do not agree that the in-combination assessment for air quality is sufficiently detailed. At this stage, we do not regard that additional information would lead to a material impact on the outcome of the assessment. For completeness we offer further comments in relation to our concerns with the assessment methodology below. <u>Comments on the in-combination assessment at screening stage</u> We do not consider that Stage 1 (screening) of the HRA [REP7-014] adequately assesses in-combination impacts of air quality. In the HRA, a likely significant effect (LSE) is determined for NOx and N Dep due to the Process

			Contributions (PC) being over 1% of the relevant Critical Level (CLe) / Critical Load (CLo), and therefore this is taken through to appropriate assessment, where an in-combination assessment is undertaken. However, wherever no LSE has been determined, there should also be consideration of the potential for a significant effect with other projects which have determined no LSE for that impact pathway. At screening stage, this ensures that the effects of numerous proposals, which alone would not result in a significant effect, are assessed to determine whether their combined effect would be significant enough to require more detailed assessment. For example, in this case, although the PC for NH3 is below 1% for the project alone, an assessment in-combination with other plans or projects would be required at screening stage. However, we do not consider that this would materially impact conclusions of the Stage 2 assessment on adverse effects on integrity. <u>Comments on the in-combination assessment at appropriate assessment</u> The in-combination assessment at appropriate assessment stage (Table 37) does not provide a sufficient assessment of air quality impacts in-combination. Natural England have previously concurred that there will be no adverse effects from air quality on the relevant Humber Estuary SAC feature alone, however, this does not necessarily discount any remaining residual / cumulative impacts of air quality on a designated site as a result of numerous proposals. The "All Projects" row of Table 37 concludes that there is potential for in-combination effects *"…where there are shared receptors and pollutants between the proposed IERRT project and other nearby schemes."* This is also specifically mentioned for the Maintenance dredge disposal at Grimsby, Immingham, Sunk Dredged Channel (MLA/2014/00431); the South Humber Bank Energy Centre; the VPI Immingham B

			OCGT; and the Humber Stallingborough Phase 3 Sea Defence Improvement Scheme. However, in-combination impacts are then ruled out as *"…the scale, location and nature of emission sources associated with the other schemes suggests that they will not affect air quality at shared receptors."* However, details around which receptors this refers to, including locations or the predicted environmental concentration (PEC) in-combination are not provided. An assessment should have been made of the combined PC of the plans or projects scoped in, to calculate a PEC value from all of these in-combination and assess this against the relevant critical loads / levels for the relevant habitat types / features. We also note that we do not consider it appropriate for an assessment of potential in-combination impacts from air quality to conclude that there will be no effects due to other developments using Best Available Techniques (BAT) or mitigation measures. We advise that the impact of in combination effects from projects where mitigation was applied to bring down effect to an acceptable level would still need to be considered, as there may still be a residual effect. Table 37 refers to air quality impacts in combination with Able Marine Energy Park (AMEP), with a justification provided around cumulative traffic data. Please refer to our comment in paragraph 1 of Key Issue 1 of our Relevant Representation [RR-015] for our advice in relation to in-combination traffic assessment.

Appendix 2: Summary of designated sites potentially affected by this application

Natural England advise that a conclusion on adverse effect on integrity (AEoI) should be made at a feature level, i.e. holistically, and should be based on consideration of all potential impacts to that feature. It is possible that an individual pathway might be considered to have insufficient impact to drive a conclusion of AEoI for a given feature when considered in isolation, but an overall conclusion of AEoI could still be reached when it is considered with all other impact pathways. We acknowledge that it is important to understand the scale of impact likely to result from each pathway, but disagree that this should be in the form of individual AEoI conclusions as advised in the RIES.

As Natural England advocate forming an AEoI judgement (both alone and in combination) at the feature level rather than for each individual impact pathway, we have provided Table 2 below to set out our End of Examination position on AEoI for each National Site Network site feature with all impact pathways included.

Table 2: Summary of Natural England's position in relation to National Site Network sites

Site name & Citation	Features for which impacts identified	Impact pathways scoped into the appropriate assessment during construction (C) and operation (O)	Natural England's position on AEoI for the designated site feature
Humber Estuary SAC – UK0030170	H1110 – Sandbanks which are slightly covered by sea water all the time; Subtidal sandbanks	• Direct changes to benthic habitats and species as a result of sediment deposition and seabed removal from capital dredging and dredge disposal (C) • Direct loss of habitat as a result of capital dredging and piles (C) • Indirect loss or change to seabed habitats and species as a result of changes to hydrodynamic and sedimentary processes from marine works (capital dredging, piling and dredge disposal) (C) • Changes in water and sediment quality on benthic habitats and species from capital dredging and dredge disposal. (C) • The potential introduction and spread of non-native species (C &	On the basis of the information supplied throughout the examination, Natural England agrees that AEoI can be excluded both and alone in-combination for this feature.

		O) • Direct changes to benthic habitats and species beneath marine infrastructure due to shading (O)	
	H1140 – Mudflats and sandflats not covered by seawater at low tide; Intertidal mudflats and sandflats H1130 – Estuaries: A2.2 Intertidal Sand and muddy sand; and A2.3 Intertidal mud	• Direct loss of intertidal habitat as a result of capital dredging and the piles (C) • Direct changes to benthic habitats and species as a result of seabed removal and sediment deposition from dredging and disposal (C) • Indirect loss or change to seabed habitats and species as a result of changes to hydrodynamic and sedimentary processes from marine works (capital dredging, piling and dredge disposal) (C) • Changes in water and sediment quality on benthic habitats and species from capital dredging and dredge disposal. (C) • The potential introduction and spread of non-native species (C & O) • Physical change to habitats resulting from the deposition of airborne pollutants (C & O) • Direct changes to benthic habitats and species beneath marine infrastructure due to shading (O) • Changes to intertidal habitats and species as a result of the movement of Ro-Ro vessels during operation (O) • Changes to benthic habitats and species as a result of seabed removal during dredging (O)	In response to Examiner's question BNE4.05, Natural England's overall position is that AEoI cannot be ruled out in-combination with other plans and projects for the 'H1140 - mudflats and sandflats not covered by seawater at low tide' feature and A2.2 and A2.3 sub features of the 'H1130 – Estuaries' feature of the Humber Estuary SAC. Please see Appendix 3 for our detailed comments.

	H1330 – Atlantic salt meadows (*Glauco-Puccinellietalia maritimae*)	• Physical change to habitats resulting from the deposition of airborne pollutants (O)	On the basis of the information supplied throughout the examination, Natural England agrees that AEoI can be excluded both alone and in-combination for this feature. However, please refer to our answer to EXQ4: BNE4.12 in Appendix 1 for our concerns in relation to the in-combination assessment methodology. As noted in our response to BNE4.12, although we do not agree the assessment methodology is sufficiently detailed, we do not believe this would lead to a material impact at this stage.
	S1099 – River lamprey (*Lampetra fluviatilis*) S1095 – Sea lamprey (*Petromyzon marinus*)	• Changes in water and sediment quality from capital dredging and dredge disposal (C) • Underwater noise effects (C & O)	Natural England welcomes the Applicant's confirmation provided in [REP8-024] that the night-time restriction on percussive piling will also be extended to vibro-piling. We request that this commitment is secured in any permission given. On this basis we consider an AEoI can be ruled out for the lamprey features.
	S1364 – Grey seal (*Halichoerus grypus*)	• Underwater noise effects from piling, capital and maintenance dredging and disposal (C & O)	On the basis of the information supplied throughout the examination, Natural England agree that AEoI can be excluded both and alone in-combination for this feature.
Humber Estuary SPA - UK9006111	A048; Common Shelduck (Non-breeding) *Tadorna tadorna* A143: Red Knot (Non-breeding) *Calidris canutus* A157: Bar-tailed Godwit (Non-breeding) *Limosa lapponica*	• Noise and visual disturbance to coastal waterbirds (C) and (O) • Direct loss or change to supporting intertidal habitat (C) • Indirect loss of supporting intertidal habitat as a result of changes to hydrodynamic and sedimentary processes (C) • Direct changes to coastal waterbird foraging and roosting habitat as a result of marine infrastructure (O)	**Noise and visual disturbance to coastal waterbirds (C)** It is Natural England's position that AEOI cannot be ruled out for the effects of construction disturbance on these SPA bird features. We have not been provided with the previously requested evidence to demonstrate that 200m disturbance buffer is sufficient to mitigate impacts of noise and visual disturbance from construction, particularly for the approach jetty, linkspan, innermost pontoon, and inner finger pier. Most recently this issue has been discussed in Appendix 1 of REP6-048, in response to RIES Q32 in REP7-038, and in response to EXQ4 – BNE4.08 (see Appendix 1 of

	A156: Black-tailed Godwit *Limosa limosa islandica* (Non-breeding) A149: Dunlin *Calidris alpina alpina* (Non-breeding) A162: Common Redshank (*Tringa totanus* (Non-breeding) Waterbird Assemblage: the individual species that have been recorded as occurring over 1% of the estuary population include Turnstone *Arenaria interpres* and Ringed plover *Charadrius hiaticula*		this letter). However, these concerns were first raised during Examination in our Relevant Representation [RR-015] under Key Issue 7, alongside through discussions with the Applicant prior to Examination commencing. As raised previously, we consider that the disturbance buffer of 200m from exposed mudflat does not provide sufficient certainty that SPA waterbirds will not be adversely impacted as a result of noise disturbance, particularly during piling which will generate high noise levels. Additionally, the applicant has indicated that they are requesting permission to work throughout the year (including the winter period which is the most sensitive time for non-breeding waterbirds). We advise further certainty is needed in relation to potential impacts and mitigation measures before it is possible to determine our final position on AEOI. We advise that a greater disturbance buffer such as 300m would provide greater certainty that mitigation measures would be effective. We note that in January 2023 the Applicant undertook ground investigation works for the IERRT project. Whilst the works were not directly comparable to the full IERRT construction, we advised that noise monitoring should be undertaken to inform and evidence the 200m buffer being proposed for IERRT. We understand that this monitoring was undertaken, however, the monitoring report has not been provided. We note that the Derogation Report only considers habitat loss, assuming that mitigation for construction disturbance will be effective. In theory if mitigation for construction cannot be agreed, compensation would also be needed for this aspect.

			<u>Other impact pathways scoped into the appropriate assessment for SPA bird features</u> Please note that although we are unable to conclude whether there will be AEoI from the noise and visual disturbance (C) impact pathway as discussed above, we do not consider that there will be adverse effects on the SPA features resulting from the other three impact pathways listed in the column to the left.
Humber Estuary Ramsar	River lamprey (*Lampetra fluviatilis*) Sea lamprey (*Petromyzon marinus*) Grey seal (*Halichoerus grypus*)	As given for Humber Estuary SAC (features S1099, S1095 and S1364)	As given for Humber Estuary SAC (features S1099, S1095 and S1364)
	Bar-tailed godwit, *Limosa lapponica* – Wintering Black-tailed godwit, *Limosa limosa* – Passage & Wintering Dunlin, *Calidris alpina* – Passage & Wintering Knot, *Calidris canutus* – Passage & Wintering Redshank, *Tringa totanus* – Passage & Wintering	As given for Humber Estuary SPA.	As given for Humber Estuary SPA.

	Shelduck, *Tadorna tadorna* – Wintering Waterbird assemblage		
	Habitats as listed for the SAC above, including their functioning as supporting habitat for the designated ornithological features.	As given for Humber Estuary SAC and SPA.	As given for Humber Estuary SAC and SPA.
The Wash and North Norfolk Coast SAC – UK0019838	Harbour Seal (*Phoca vitulina*)	• Underwater noise effects from piling, capital and maintenance dredging and disposal (C & O)	On the basis of the information supplied throughout the examination, Natural England agree that AEoI can be excluded both alone and in-combination.

Appendix 3: Natural England's detailed comments on impacts to intertidal habitat in response to BNE4.05

1. Natural England's position on AEoI in-combination

Natural England's overall position is that AEoI cannot be ruled out in-combination with other plans and projects for the following features and sub-features of the Humber Estuary SAC:

- H1140: Mudflats and sandflats not covered by seawater at low tide (hereafter intertidal habitat)
- H1130: Estuaries
    - A2.2: Intertidal sand and muddy sand
    - A3.3: Intertidal mud

Of the impact pathways identified, direct and indirect habitat loss due to piling and capital dredging are considered to be the most significant permanent impact pathways. The works in-combination with other plans and projects are predicted to result in the combined loss of 0.044ha (~440m^2) of the intertidal habitat feature/sub-features.

Natural England acknowledges that the area of intertidal loss from these projects is a small percentage of the Humber Estuary SAC as a whole. However, it must be reiterated that the intertidal mudflats and sandflats feature and Estuaries sub-features all have a 'restore' conservation objective for habitat extent and distribution, due to existing pressures on the feature. Whilst other potential impacts have the possibility to be avoided or reduced through mitigation measures, mitigation for habitat loss is not possible at the Appropriate Assessment stage. Any appreciable lasting and/or irreparable loss of National Site Network habitat is therefore considered capable of having AEoI unless it can be demonstrated that the loss would be ecologically inconsequential. In this instance, we do not consider that the Applicant has provided sufficient evidence to demonstrate that the area due to be lost is impoverished and/or ecologically inconsequential, thereby satisfying their 'de minimis' argument and enabling AEoI to be ruled out.

We highlight that based on the Applicant's surveys, the wider intertidal within which the area of loss is situated is used by a variety of bird species for foraging. The numbers of birds using the wider mudflat area can be up to the low hundreds of Black-tailed Godwit and Dunlin, 10 to 20 Shelduck and Redshank, several Curlew, and some other species in relatively low numbers (e.g. Oystercatcher). In addition, benthic sampling of the intertidal area revealed a more diverse community than the subtidal area and as stated in [APP-115], many of the species recorded are utilised by coastal birds as a food source. Whilst we agree it is likely that these birds will be able to feed elsewhere, we consider that the presence of birds in these numbers indicates that the area is not of 'negligible' ecological value. It is also important to note that the area being lost comprises habitat in the middle and intertidal/subtidal edge of the mudflat, rather than adjacent to flood defences where it might already be considered ecologically compromised. The evidence therefore suggests that this area has ecological value and is functionally contributing towards the conservation objectives of the site.

Further, whilst the IERRT would only cause loss of, or disturbance to, a small percentage of intertidal habitat, we draw the Examiner's attention to the many anthropogenic pressures already operating or under construction across a considerable proportion of Humber Estuary SAC (e.g. Able Marine Energy Park, Stallingborough 3 flood risk management scheme), in addition to several planned activities (e.g. Immingham Green Energy Terminal, Humber Low Carbon Pipeline), which will further add to the pressures on the interest features of the SAC.

2. Habitats Regulations Assessment Derogation Report [REP8-033]

Where an adverse effect on a National Site Network site cannot be excluded, consent may still be granted through the implementation of the Derogations process under Article 6(4) of the Habitats Directive and Regulation 64 of the Conservation of Habitats and Species Regulations 2017. We note

and welcome that the Applicant has now submitted a without prejudice Derogations report [REP8-033], including compensation proposals detailing mudflat habitat creation at the already consented site at Skeffling.

The Applicant has proposed that were the Secretary of State to conclude that AEoI could not be ruled out for impacts to intertidal habitat, compensatory habitat would be provided at the Outstrays to Skeffling Managed Realignment Scheme (OtSMRS) which is currently under construction. Mudflat habitat would be provided at a ratio of 3:1, requiring an area of 0.381 ha to be created. Due to the difficulties of creating small habitat parcels, the Applicant proposes to create a 1ha area with the remainder to be considered as enhancement.

Natural England does not consider there to be a 'typical' ratio for compensatory habitat provision where there has been loss from marine protected sites, as it is necessary for uncertainties with compensatory measures to be reflected in the scale of compensation delivered. However, in this case we agree that 3:1 is appropriate.

We acknowledge that the compensation would be delivered outwith the IERRT project due to OtSMRS being subject to a separate pre-existing consent. However, we consider it would be appropriate for the Applicant to be required to submit confirmation demonstrating compensation delivery once the habitat has been established.

Should the SoS be minded to grant consent to the IERRT project, Natural England is of the view that the proposed compensation is likely appropriate in terms of its nature, scale and deliverability to address the adverse effects on the intertidal habitat feature of the Humber Estuary SAC. However, we note that there have been challenges with previous attempts to create mudflat habitat and we have had limited opportunity to fully review the proposals. The Secretary of State will need to be assured that the contribution of the compensatory measures has potential to benefit the relevant habitat types.