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IMMINGHAM EASTERN RO-RO TERMINAL

Applicant's Response to DFDS' Deadline 8 Submissions
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Contents

1 Executive Summary

1.1 This document provides the Applicant's response to the DFDS Deadline 8 submissions. In so doing, they draw upon information submitted by DFDS prior to that deadline. The Applicant's responses are submitted in relation to the following -

- Comments on Deadline 7 Submissions by DFDS (comments on Applicant's Response to ISH5 Action Point 5 (Part 1) **[REP7-031]** and (Part 2) **[REP7-032]**) **[AS-080]**;
- Comments on Deadline 7 Submissions **[REP8-045]**; and
- DFDS' Answers to the Examining Authority's Fourth Written Questions ("ExQ4") **[REP8-046]**.

Applicant's Principal Position

1.2 The Applicant has throughout the examination sought to respond to DFDs objections in an objective manner – despite the diffuse nature of the objections and the fact that many points have been taken which are without foundation.

1.3 The Applicant's position has been made more difficult in this respect, by DFDS's pursuit of points of objection in its representations which (as the Applicant has demonstrated) are (amongst other things) unfounded, or unsustainable or based on incorrect assertion or unprincipled positions. As an example of the latter, there is no principled basis for DFDS seeking to pursue objections questioning the Harbour Master's independence or his proper application of safety principles in the context of the simulations undertaken in relation to the operation of the River Humber with the IERRT facility by another operator when DFDS itself, as a different operator, carries out its own operations using Port facilities subject to the control of the Harbour Master and about which no complaint has ever previously been made.

1.4 The Applicant remains concerned that not only have such objections resulted in detailed examination of issues which are already subject to a regime of control under separate statutory powers and duties (which fall to the relevant navigation authorities where there is simply no basis for questioning that those navigation authorities will continue to fulfil their duties), but such unjustified and unprincipled objections are motivated by commercial considerations which are not a basis for objection. DFDS are concerned that Stena, the potential operator of IERRT, will be present as a commercial competitor to DFDS and subject to the same safety requirements as DFDS. But rather than face that competition – competition which is encouraged by National Ports Policy - DFDS continue to pursue objections which are without foundation or merit in an attempt to prevent Stena from operating at the Port of Immingham – and potentially for that matter, on the Humber.

1.5 Given the diffuse nature of the DFDS submissions, rather than being able to respond on an ordered paragraph by paragraph basis, the Applicant has had to adopt a themed approach – referencing the relevant DFDS submission paragraphs as appropriate.

2 Introduction

2.1 The ExA's attention is drawn to section 2 above which sets some context for these responses.

2.2 This document now provides the Applicant's response to the DFDS Deadline 8 submissions and in addition, refers to representations to submitted by DFDS prior to that deadline. The submissions to which the Applicant is now providing responses are:–

- Comments on Deadline 7 Submissions by DFDS (comments on Applicant's Response to ISH5 Action Point 5 **[REP7-031]** (Part 1) and **[REP7-032]** (Part 2)) **[AS-080]**;
- Comments on Deadline 8 Submissions **[REP8-045]**; and
- DFDS' Answers to the Examining Authority's Fourth Written Questions ("ExQ4") **[REP8-046]**.

3 Comments on Deadline 7 Submissions by DFDS – comments on Applicant's Response to ISH5 Action Point 5 [REP7-031] (Part 1) and [REP7-032] (Part 2) [AS-080]

3.1 ***Action Point 5: Challenging Day –*** The following comments are provided in response to paragraphs 2 to 4 of DFDS' comments.

3.2 The Applicant is surprised by DFDS assertion that the Applicant has not provided information representing the "most challenging" day at Port of Immingham. This is simply incorrect.

3.3 To the contrary, the information provided to the ExA in response to IHS5 Action Point 5 does in fact represent the "most challenging" day at Port of Immingham which is clearly explained in **[REP7-031]** itself. The day selected represents the reasonable worst case because arrivals/departures to and from IERRT coincided with high water thus meaning that passage plan vessels were being scheduled at the same time as IERRT vessel movements. This is explained in the Applicant's response to DFDS at **[REP8-023]** at paragraphs 15.6 to 15.11.

3.1 The explanatory notes provided in **[REP7-031]** and **[REP7-032]** clearly show the other vessel movements occurring at this time, which includes tidally restricted vessel movements as noted below:

(a) Departure of a Passage Plan Vessel (PPV) (tidally restricted) from Immingham Bulk Terminal (around High Water AM);

(b) Tidally restricted changeover at Humber International Terminal (around High Water PM); and

(c) Tidally restricted vessel arriving In Dock (at High Water PM).

3.2 The tide times and a list of all vessel movements are explained in **[REP7-031]** and the graphics in **[REP7-031]** and **[REP7-032]** are presented for every 15-minute time stamp in relation to High Water.

3.3 It is, therefore, disappointing that DFDS are so mischaracterising the information provided to the ExA and it is evident that **[AS-080]** is factually incorrect

4 Comments on DFDS' Responses to Examining Authority's ExQ4 [REP8-046]

4.1 The following comments are provided in response to DFDS' Answers to the ExQ4, in the first column of the table, identified by the ExQ4 'Question reference'.

4.2 ***DCO.4.09 (PPs in favour of DFDS)*: *Unimpeded passage along the River Humber* –** The Applicant is surprised by this request bearing in mind that DFDS, as long-standing tenants of the Port, are very familiar with port operations and scheduled sailing times. Certainly, the information provided by DFDS is a mischaracterisation of what actually happens on a daily basis. Scheduled sailings are co-ordinated by SCNA through VTS. A degree of flexibility will always be required to allow for adverse weather conditions etc, but each company line will provide advance notice of its sailing requirements to the SCNA – and those sailings will then be safely co-ordinated. The Applicant does not foresee any problems in this respect – it is simply normal practice.

4.3 ***Legal conflict* –** Granting priority status on any user of a harbour where not required for specific navigational safety reasons would lead to a conflict with a SHA's obligations under the Harbours Docks and Piers Clauses Act 1847 whereby it has statutory powers of direction (section 52) over vessels in return for operating an 'open' port. Indeed, granting a particular vessel or operating line with a commercial priority would not only be anti-competitive but would also potentially fetter a SHA's ability to safely manage and equitably devise a coherent sailing schedule for the benefit of all users. Having to ensure that one had priority status – irrespective as to when it arrived or in what order – would ultimately mean that more precautionary scheduling decisions may have to be made, which would in turn actively create delays to vessel scheduling. This would affect all users of the estuary, including the party who would ostensibly benefit from such status simply because their vessels could be caught up in any 'backlog.'

4.4 Looking at the request on an equitable basis, if the SHA were to grant commercial priority to one shipping line – the question would arise as to why it did not grant equitable status to others. In addition to the basic point that the Applicant itself does not control vessel movement across the River – that responsibility falls to the SCNA – granting commercial priority to one shipping line is not only unnecessary and anti-competitive but, in light of the legal framework within which the SHA's have to operate, may well lead to legal challenge.

4.5 **NS.4.05 –** The Applicant notes that DFDS have taken it upon themselves to provide a response to NS.405 that was primarily directed to the IOT Operators in respect of the announced closure of the Grangemouth Refinery in Scotland. As a matter of principle, the basic point is that the closure of the Refinery is incapable of having any material effect on the Proposed Development and

the principles of assessment which have been applied as the approach has always been to ensure that the IERRT can and will operate safely in conjunction with the IOT Facility.

4.6 Without prejudice to that point, it is noted that DFDS – unlike the IOT Operators – recognise that the owners of the Grangemouth Refinery have explained that they intend to transition the facility to a fuel imports hub.

4.7 As such, DFDS are raising a theoretical concern about fuel supply generally which is unsubstantiated given that a fuel imports hub will remain. They are making a similarly unfounded submission that the IOT's cargoes will be more significant in terms of the UK's energy security which simply does not follow in circumstances where there will be a fuel imports hub. There has been no evidence whatsoever provided to the examination to demonstrate or to suggest that that the UK fuel industry as a whole would be unable to appropriately address any shortfall in supply brought about by the closure of the Grangemouth Refinery in light of other sources of supply, including that which will be provided through a fuel imports hub. To suggest that might be the case is unjustified and unevidenced and contrary to the fact of a fuel imports hub being provided. There has been no evidence provided to suggest that the Grangemouth fuel hub would be so dependent on a single supplier - bearing in mind the available sources across Europe and the world.

4.8 The closure of the refinery at Grangemouth will undoubtedly simply reflect a decision driven by market forces about where oil is to be refined and that such a facility is no longer required or justified on UK soil, and thus, by extension, may reflect a decreasing trend for refinement to take place. There is no evidenced basis at all for suggesting that has any effect on security of supply of fuel in the UK, let alone for suggesting that it affects the approach to the Proposed Development. This is the sort of unprincipled, unevidenced and unjustified point of objection which underpins the basic concern of the Applicant as to the nature of DFDS's objection.

5 Comments on Deadline 7 Submissions [REP8-045]

5.1 The Applicant's responses to DFDS' Comments on Deadline 7 Submissions are grouped by theme in this document to assist the Examining Authority.

Stakeholder Workshop

5.2 This section provides the Applicant's response to DFDS's comments raised in section (f) - Applicant's summary of ISH5 [REP7-020].

5.3 In response to ***paragraphs 66 – 67*** and ***75 – 76*** regarding the Senior Safety Workshop and Commercial Workshop, the Applicant has fully explained its position in response to ISH5 Action Point 17 **[REP7-020]**.

Transport

5.4 This section provides the Applicant's responses to DFDS's comments raised in the sections identified by the following letters –

- Statement of Common Ground between Associated British Ports and North East Lincolnshire Council (NELC) **[REP7-005]**;

- (e) Transport Assessment Addendum **[REP7-013]**;
- (f) Applicant's summary of ISH5 **[REP7-020]**;
- (h) Applicant's response to the ExQ3 **[REP7-022]**;
- (g) Applicant's summary of ISH6 **[REP7-021**];
- (j) Response to Applicant's Response to DFDS's Deadline 6 Submissions **[REP7-026]**; and
- (l) Response to Operational Freight Management Plan (FMP) **[REP7-036]**.

Position in Respect of Addendum Transport Assessment

5.5 ***Independence of the Highway Authorities –*** In response to various points made by DFDS throughout their response, many of which are repetitive, **[REP8-045]** (*inter alia* paragraphs 2, 3, 4, 6, 48-50, 61, 73 and 87), the DFDS traffic consultant appears to be questioning or challenging the integrity of the relevant highway authorities, NELC, North Lincolnshire Council and National Highways – which in the context of the discussions that have been ongoing with the IPs is again surprising and concerning.

5.6 As the ExA will be aware, the conclusions of the Highway Authorities have been reached by each authority separately, based on their own review of the original application documents and the additional relevant data and information that has been collated and submitted in a clear and transparent way as part of the Examination process. To suggest or imply otherwise is an unjustified attack on the professional integrity of those highway authorities.

5.7 ***TA Addendum –*** DFDS, again at numerous points **[REP8-045]** (paragraphs 43 – 50, 73, 91 and 92) are seeking to criticise the Applicant for the submission of the Addendum Transport Assessment at Deadline 7. For the avoidance of doubt, the need for an Addendum Transport Assessment was identified by the ExA at ISH5 (21 and 22 November 2023) and was taken as an action point directed to the Applicant and which has been actioned. The need for and form of that report was discussed at ISH5 as recorded at **[REP7-020]** (paragraph 85). It is, therefore, simply wrong for DFDS to fail to acknowledge this.

5.8 The submitted Addendum Transport Assessment clearly sets out in 15 pages the principal updates to the assessment. As the Applicant has made very clear, all of the changes are as a result of queries raised by IPs. The changes have been discussed with the IPs in detail by email and formal meetings (as recorded in **[REP6-011]**).

5.9 The bulk of the accompanying documentation (some 900 pages) simply provides a corresponding updated Technical Note 2 (traffic modelling) of which the majority is traffic modelling output files. These were first in circulation and discussion with the IPs (including DFDS) in September 2023 following ISH2 – over 3 months ago.

5.10 The sensitivity test modelling was first issued to the IPs on the 30 November 2023, but DFDS specifically declined to comment at that stage. The Applicant's position on such sensitivity testing has always been made clear, but the Applicant has sought to engage with the IPs in a constructive fashion without prejudice to that position and the absence of any requirement from the highway authorities for such additional sensitivity test modelling. The sensitivity test modelling was then formally submitted at Deadline 7 (11 December 2023). This was the earliest date that it could be provided in its final form given that GHD (acting for DFDS) did not confirm their agreement to input assumptions and modelling details until 22 November 2023.

5.11 Even though there was no request for such additional sensitivity testing to be carried out by any of the Highway Authorities, they were none the less consulted on the tests.

5.12 It is clear that the IPs have had full transparency about the work being undertaken by the Applicant and were well aware of the data provided within the Addendum in good time – particularly as throughout they have been actively involved in discussions and in the review of the data which led to the refinement of the assessments.

5.13 It is clear that there has been, and is, no prejudice to DFDS's position in respect of the appropriateness of the Examination process and the concerns expressed in this regard are completely unjustified.

5.14 ***Junction modelling assessments –*** At paragraph 59, DFDS say they are seeking clarification of the changes that were undertaken to Annex G (Technical Note S) from the previous version at **[REP5-028]**. In fact, as GHD have been made aware, the only changes were to reflect comments received from GHD themselves (on behalf of DFDS) on 21 November 2023 and comments raised at Deadline 6 which related to minor tweaks on the approach to committed development. The change has no material outcome on the conclusions or outputs of the assessment.

5.15 All three Highway Authorities have reviewed the documentation and confirmed their positions as set out above.

Transport Mitigation Policy Requirements – Paragraphs 56 – 58

5.16 It is significant that each Highway Authority has correctly interpreted and applied the policy requirements in considering the impacts of the scheme in a way which is entirely consistent with and aligns with the Applicant's own position in that regard **[REP7-013]** (Annex A).

5.17 It is also relevant to note that National Highways specifically agree with the Applicant that DFDS have in fact been applying the wrong policy position with regard to the C01/2022 in particular **[REP8-037 – Page 5]**. This of itself reinforces the position set out set by the Applicant at **[REP8-023]** (paragraphs 18.33 – 18.44).

5.18 ***Mitigation –*** DFDS continue to make unjustified and therefore entirely inappropriate comments in claiming that there is a need for mitigation throughout their submissions and at **[REP8-045]**, paragraphs 56-59 in

particular. Such claims, which are not supported by any evidence or policy, cannot be given any weight. In this regard, as already noted it is concerning that DFDS continue to pursue such points despite the evidence and are now seeking to criticise the expertise and clear position of each statutory highway authority without any basis for doing so.

5.19 The approach advocated by DFDS has no policy or other technical basis. The suggestion at paragraph 74 that a High Court Judgement has no relevance because the details of the development proposals were different highlights a fundamental misunderstanding of the use of legal precedent which is directed at dealing with points of principle which are of general application, rather than specific to the underlying facts, which is why the decision has been identified.

5.20 **[REP8-045]** provides no justification whatsoever for the approach DFDS are pursuing. The residual point as to the way in which the sensitivity tests have been approached is addressed.

Sensitivity tests

5.21 DFDS now seek to question the input assumptions to the sensitivity tests at numerous points in their response, including at paragraphs 52, 53, 57, 64, 65, 72 and 78.

5.22 As far as the sensitivity tests provided in Annex J of the Addendum TA **[REP7-013]** are concerned, the Applicant agrees with DFDS (paragraph 53) that limited weight need be afforded to the outcomes of that assessment. Notwithstanding this, both NLC and NH have confirmed that, on the basis of those assessments, they consider the impacts acceptable.

5.23 As clearly stated by the Applicant at Section 1 of Annex J the Applicant remains firmly of the view that the conclusions of the Transport Assessment are robust. This robust approach includes the assumptions made in respect of traffic generation (including solo tractor ratio) and assignment of HGVs. As confirmed at paragraph 18.27 of **[REP8-023]**, without prejudice to that position, whilst the sensitivity testing enables the testing of a range of different outcomes, the ExA should note that it does assess what the Applicant considers to be a wholly unrealistic and as a consequence unreasonable assumption as to the level of traffic that would in fact use the A160 corridor.

5.24 Given the robustness of the sensitivity testing (i.e. 60% via West Gate and 36% solo tractor ratio) and the reasons given in Section 6 of **[REP5-027]** it is not considered appropriate to add further levels of unrealistic sensitivity testing on to such robust assumptions (i.e. considering the 60/40 split plus the generic AM profile) and no authority has required this.

5.25 A number of detailed issues are raised about the modelling at paragraph 63. None of these has any bearing on the outcome or conclusions of the assessment but are, for the sake of completeness addressed in any event at **Appendix 1**.

Operational Freight Management Plan

5.26 As discussed above this has been provided as an outline document with full details to be secured by Requirement 13 of the DCO. It follows, therefore, that

matters of detail raised by DFDS in respect of the workings of the FMP will be resolved as part of that submission process to the satisfaction of NELC and National Highways – and it is not appropriate for DFDS to seek to intervene or usurp the functions of the highway authorities.

5.27 The Transport Assessment Addendum **[REP7-013]** has robustly considered the transport effects and the further sensitivity testing of different distributions and solo tractor ratios more than robustly.

5.28 All three Highway Authorities agree that the sensitivity analysis undertaken does not raise the need for mitigation. As a consequence, there is no need nor justification for the FMP to provide for more onerous controls (or indeed penalties as now being suggested without an evidential basis) as opposed to identifying measures to encourage an efficient operation. This conclusion is both appropriate and robust. No evidence has been produced by DFDS to the contrary.

5.29 In relation to ***Strategic Signage*** (paragraph 126), the position of the Applicant has been confirmed to the Examination as early as Deadline 4 (see **[REP4-008]** – TT2.03). This position has not changed. The provision of off-site highway signage is not required for the proposed IERRT development and is outside the DCO application.

5.30 Contrary to the incorrect suggestion by DFDS at paragraph 129, the FMP will not in itself control the daily throughput limit. As DFDS must be aware, daily throughput is controlled by the provisions of by Article 21 of the dDCO.

East Gate Improvement Scheme

5.31 In response to DFDS comments at Paragraph 71 **[REP8-045]** the East Gate scheme is shown on the general arrangement plans **[AS-049]**.

Terminal Capacity

5.32 ***PIANC –*** At paragraphs 93 to 99 of **[REP8-045]**, DFDS "assumes" – as it is incorrectly - that the Applicant has used PIANC Working Report No 167 to define the capacity of the terminal.

5.33 Before responding to the specific points raised, the Applicant would emphasise that as far as the conclusion reached by DFDS on this matter is concerned, as set out in paragraph 99, the Applicant has undertaken a project specific assessment of the operation of the IERRT terminal that takes account of the way in which the operator intends to run the terminal. This assessment – which is contained within **[REP5-032]** and **[REP8-027]** – clearly demonstrates at an entirely appropriate level of detail, that the facility will be able to handle the level of throughput that has been indicated.

5.34 In addition to this overriding fundamental point, the Applicant highlights that:

(a) It has never suggested that the PIANC Working Group Report No 167 – extracts of which have been submitted by the Applicant to the Examination **[AS-079]**, but in response to an entirely different point – has been used to define the terminal capacity. Rather, specific appropriate expert advice has been used by the Applicant having regard

to the specific circumstances of the site, the proposed detail of the terminal and the way in which Stena Line wish to operate the facility. DFDS's assumptions in this regard are, therefore, incorrect and it would have been helpful if DFDS had raised this with the Applicant before proceeding with such a mistaken assumption.

(b) The PIANC report itself makes it clear within the scope/disclaimer provided at the outset that conformity with the report is not obligatory and that engineering judgement should be used in its application. The report makes it clear that it is not intended to be presented as 'an official standard' (see **[AS-079]** and page three of the extract provided). These aspects of the report are, unfortunately, not specifically acknowledged by DFDS in their submissions which has compounded led to the consequent mischaracterisation of the position.

5.35 ***Terminal capacity*** – At paragraphs 100 to 108, DFDS again raise and repeat points that they have already made in earlier submissions with regard to the ability of the IERRT terminal to handle the level of activity that the Applicant has indicated. The Applicant notes that in drafting this part of the submission, DFDS's consultants will not have read the Applicant's updated terminal capacity statement submitted at Deadline 8 **[REP8-027]**.

5.36 That statement identifies that, whilst the approach taken to the consideration of this subject by DFDS and the Applicant are different, there does not actually appear to be conflict between the outcomes of the two approaches. The DFDS assessment supports the conclusions reached by the Applicant, namely that the IERRT facility will be able to handle the level of activity which has been indicated by the Applicant.

Terminal Management

5.37 The DFDS comments on terminal management (provided in paragraphs 141 to 146 of **[REP8-045]**) relate to information submitted to the examination by Stena Line. The Applicant provides the following points by way of response so far as it concerns the Applicant.

5.38 The Applicant disagrees with the DFDS contention that the terminal management information provided by Stena Line is too general. Such criticism ignores the fact that the information that has been provided, alongside the various submissions relating to Terminal Capacity Analysis (see for example, **[REP5-032]** and **[REP8-027]**) and Terminal Management (**[REP7-072]** and **[REP8-018]**) submitted by the Applicant. The information is more than sufficient to demonstrate that the IERRT facility will be able to handle the level of activity indicated in an acceptable way.

5.39 ***Terminal management operations and arrangements*** – DFDS must be aware in light of their own stated capacity pressures referred to by DFDS during the familiarisation visit at the commencement of the examination – there is a need to be flexible to respond to situations that might occur. It is clearly impossible to determine with any certainty every specific circumstance or event which the management of the terminal will need to deal with over its lifetime. This is no different to any other Ro-Ro terminal – including DFDS's own operations at Immingham.

5.40 The information provided by Stena Line, however, demonstrates a variety of tried and tested management tools and processes that it has available (both in respect of on-site and off-site matters) to ensure that the terminal can effectively and efficiently operate at the levels which have been indicated. Inevitably details of the precise approach to be taken in this regard by Stena Line are likely to be commercially sensitive and in any event do not need to be revealed in light of the information that already exists. It would be inappropriate to provide yet further detail on such matters for them to then be viewed and considered by commercial competitors of Stena Line.

5.41 It should also be emphasised in this context that issues raised by DFDS as a competitor to Stena Line about Stena's operations in respect of dwell times, the number of marked bays on a plan and the size of the Terminal are not points that should have relevance in the context of this proposal. As DFDS know, the operation of the terminal is intended to be managed by Stena to cater for its operations. Stena are at least as experienced, if not more so, in terminal management.

5.42 Moreover, to suggest that Stena, as the future operator of the proposed IERRT development would actively support a proposal that they could not successfully manage and operate is nonsensical and the Applicant submits that no material weight can be given to such points that have been raised by DFDS in this respect.

5.43 In addition, the Applicant would point out that the Operational Freight Management Plan (FMP) it has submitted **[REP8-018]**, which provides an operational management structure, will – as made clear through Requirement 13 of the draft DCO – be further developed as a final version to be approved by North East Lincolnshire Council and National Highways in advance of the commencement of operations of the authorised development.

5.44 ***Passengers –*** The comment made by DFDS at paragraph 145 – to the effect that "*no allowance has been made for the management of passengers within the terminal for RoPax operations*" is another good example of the type of unsubstantiated "throw away" contentions with which the Applicant has had to deal throughout the examination.

5.45 In fact, no party to the examination has suggested there is any issue with the management of passengers and no party has provided any basis for suggesting that such passengers, including any associated risks for them, would not be managed appropriately in the ordinary way. Indeed, the Health & Safety Executive has confirmed its own lack of objection to the scheme. This sort of last-minute unsubstantiated comment is unjustified and unevidenced and should not be given material weight. Stena will manage passengers effectively and safely in its Terminal as it does for any terminal it operates in respect of which it has considerable experience.

Navigation

Navigation Simulations

5.46 This section provides the Applicant's responses to DFDS's comments raised in sections:

- (c) Supplementary Navigation Information Report **[REP7-030]**; and
- (d) Navigation Simulation Study December 2021 **[REP7-033]** Part 1 **[REP7-034]** Part 2.

5.47 ***Design Vessel: Paragraphs 17 to 20*** – The Applicant has repeatedly explained that the design vessel parameters are necessarily a design "envelope" required so that a comprehensive environmental assessment of the IERRT facility could be undertaken. The fact that the design vessel does not exist – and indeed may never exist in that exact form– is inevitable and not a proper basis for seeking to criticise the navigational simulations which have been properly formulated and carried out by the industry-leading experts for such simulations and where the principles governing the use of the design vessel parameters has been fully explained. Indeed, when DFDS first contemplated using the IOH tidal basin, it would not have dealt with the future use by its 'Jingling' class vessels but rather considered the acceptability of the scheme in terms of parameters, with the ability to address the use of actual vessels which subsequently are designed or become available through the sort of additional simulation process that the same industry-leading expert has performed for them – for example increasing engine power, length, beam etc., as may be required. This is yet another example of unprincipled criticism which is irreconcilable with the way DFDS approaches its own operations at the IOH facilities through the subsequent testing of proposed vessels as and when they become available or proposed for use at such a facility.

5.48 As has been explained, the Applicant has undertaken a comprehensive feasibility study using the 237m Ro-Ro vessel which demonstrates that the berth design is entirely appropriate for a ship of that size.

5.49 As has also been explained by the HMH, the operating limits for any vessel which is intending to operate on a regular schedule at IERRT will need to be properly examined, tested and assessed before routine operations with that vessel can commence. This is normal process and happens with every new vessel introduced – be it to the Inner Dock through the lock, to IOH or, as will be the case, to IERRT. It also underlines that a restriction on the size of a vessel allowed to access the IERRT would be entirely unjustified and run counter to practice already in place. This point will be further underlined at Deadline 10.

5.50 To date, the only vessel which it is known is intended to operate at IERRT is the Stena T Class. As the ExA is aware, it has been satisfactorily demonstrated that this vessel can operate safely at the proposed facility – at all three berths.

5.51 It is certainly unclear why DFDS do not agree that the same process can and indeed will be applied to future operations at IERRT for other vessels and there is simply no basis for questioning the integrity with which such testing and consideration by the navigation authorities, including the HMH, will be undertaken to ensure future safe operations. It is particularly concerning and contradictory that DFDS are questioning that process with which they must be very familiar in terms of ensuring safe operations at Immingham, having participated in the process themselves for the introduction of new vessels at

IOH without having any basis for criticising or questioning the integrity of that process and the approach adopted by persons like HMH. Notably, no criticism of the explanation given at the examination hearing by the HMH was made at the time, nor can it withstand sensible scrutiny.

5.52 ***Navigational simulations –*** At paragraph 18, DFDS simply seek to repeat criticisms of the navigational simulations which have already been addressed omitting basic context which has been repeatedly explained , such as the fact that the simulations have been deliberately undertaken in extreme conditions – weather, current, tide and wind – in order to provide robust information as to the limits of operating conditions for the proposed marine infrastructure and vessel manoeuvrability in the way one would expect. The contention that the that the circumstances set for the navigational simulations were "*simply not representative of a worst-case scenario nor realistic in their design"* is not correct and a gross mischaracterisation of the numerous simulations undertaken.

5.53 DFDS continue to ignore or refuse to accept the logical and repeatedly explained position from the industry-leading provider of such simulation that navigational simulations are not undertaken with the sole purpose of showing how the berths will operate on a day-to-day basis, but also to test and explore any limits to provide an informed picture. To approach the exercise of navigational simulations with that objective would be pointless. On the contrary, and as DFDS are fully aware because they were present at the simulations and many of the runs were undertaken at their behest, the purpose of testing a vessel's approach and departure from any given new marine infrastructure is to see what can be safely achieved and what cannot in terms of any limiting conditions (where such limiting conditions will be a feature of any infrastructure as it is already for the IOT facility and the IOH facility). It is regrettable that this basic point about simulations is not recognised or acknowledged by DFDS in the pursuit of its objections.

5.54 It would be very strange and simply not appropriate if simulations did not seek to test those limits and simply confined its assessment to presenting all the runs that were regarded as successful and did not seek to explore and test 'failures'.

5.55 The Applicant has already commissioned far more simulations than were actually considered necessary, particularly in respect of an examination of this kind - given the ongoing statutory responsibilities that will continue to exist in terms of navigation under other obligations. This was done in the spirit of co-operation to try and resolve any outstanding stated concerns of DFDS and the IOT Operators, and it is again regrettable that this effort to go further in relation to simulations at this stage and the results they show is now being mischaracterised despite the explanations that have been provided.

5.56 ***Paragraph 20*** – the high level of "conservatism" to which DFDS draw attention refers to the environmental conditions within which the simulations were undertaken. It is a serious mischaracterisation for DFDS to attempt to interpretate this as the Applicant suggesting that it can take one set of simulation results and apply them to another vessel. That deliberately ignores the evidence provided during the examination by both the HMH and the

Applicant (see for example the written summary of the Applicant's submissions at ISH5 **[REP7-020]**).

5.57 The Applicant's, and indeed the HMH's, position is very clear. If a vessel larger than the Stena T class or with different operating characteristics is proposed to operate at the IERRT then a similar highly conservative set of trials will be required and undertaken. The Applicant does not understand why this is not recognised or understood given that is exactly the process that occurred for the operation of the DFDS Jingling which had to undergo navigational simulations before it was allowed to access the IOH. Indeed, any future changes for DFDS vessels will also have to be simulated - a topic on which DFDS have been strangely silent.

5.58 Further, as the ExA is aware, there is no requirement to undertake simulations, determine operating limits and then to secure the Secretary of State's approval on them given that this is a matter which relates to the safe operation of the Port and the River which is already subject to separate controls which will continue to exist. The suggestion by DFDS not only usurps those separate functions but would make a mockery of the statutory powers invested in the Harbour Master and the navigation authorities which have both the expertise, experience and more fundamentally the liability and responsibility for such functions as compared with the Secretary of State.

5.59 ***Single tug: paragraphs 21 and 29 –*** As DFDS must be aware having been present at the navigational simulations, notwithstanding the risk assessments that have already been undertaken on a precautionary basis, the Applicant has additionally proposed and simulated that a single tug provides yet further mitigation of any residual risk in the event of an unplanned and extremely unlikely full controls failure of a vessel during an approach to Berth 1 on an ebb tide – as proposed as part of the Enhanced Operational Controls. The suggestion that there is now a need to go further than this and plan for some further even more remote jeopardy in such emergency scenarios of a tug also failing is absurd and it is obvious that DFDS are seeking to apply an approach which bears no relation to their own operations where they have not suggested that simulations for their vessels operating at IOH, whether in respect of operations around the Western Jetty or more generally upstream of IOT, are expected to introduce such levels of contingency to address ever remoter risks. DFDS appear to be suggesting that the arrestor tug needs an emergency arrestor tug but there is no basis for seeking to do this. One is bound to question whether the current arrangements for DFDS vessels accessing IOH should be reviewed in that whilst DFDS are not mandated to use tugs, they do in fact use tugs – and what would be the position if the DFDS vessel and its tug were to fail? This is just another example of the creation of hypothetical unsubstantiated assertions by DFDS.

5.60 Moreover, the situation being addressed is in respect of risks around a Ro-Ro vessel operating in the vicinity of IOT in pilotage mode navigating in strong tide but otherwise under control. DFDS will be familiar with the situation as they undertake a similar manoeuvre approaching IOH and Immingham Dock daily. DFDS when undertaking this operation are exempted, as noted above, from using tugs unless tugs are required, by Standing Notice to Mariners SH

34. So the risks associated with this in terms of the total loss of engine control is not one that is considered to merit the need for a tug.

5.61 It is unclear why DFDS think that their large vessels when approaching IOH would be able to deploy an anchor as a control measure but are then insisting that would not work for the Stena vessels, which as indicated in the information provided at Deadline 7 **[REP7-020]** are in fact far more manoeuvrable and equipped with better safety features, e.g., separate and independent engines, than the Jinling class used by DFDS at IOH. The fact that DFDS are trying to suggest that additional mandatory tugs would also be insufficient is simply illogical and manifests an attempt to level criticisms at the Applicant's proposals unsupported by evidential justification on an unprincipled basis.

5.62 If the DFDS assertions were shown to have substance, then it would logically follow that DFDS would need to review their sailing parameters at all of their ports – and in particular Immingham – to determine when safety tugs will be required with a view to amending SH 34. The proximity of the Western Jetty, and moored tankers would logically suggest that an arrestor tug should be required in this location in certain defined conditions in that an engine failure on an ebb tide would leave a vessel very little opportunity to drop its anchors before being swept on the Western jetty – which following the DFDS logic, would have devastating consequences for DFDS operations.

5.63 The Applicant is, therefore, rightly concerned that DFDS's criticisms lack any principled basis and involve a logically incoherent analysis. That includes DFDS's questioning of the HMH's role and independence in overseeing safe operations when it comes to the IERRT but not for its own facility (which makes no sense), but where the criticisms are influenced by DFDS's commercial considerations. That is in circumstances where safe operations of IERRT will be fully controlled by the relevant authorities that already ensure safe operations for IOT, IOH and the Port of Immingham and which it will continue to secure for the IERRT.

5.64 ***Level of assessment –*** In paragraph 22 the Applicant has set out from the outset of the examination its principal position that the safe operations of the River Humber, the Port of Immingham and the IERRT are already subject to comprehensive controls and that will continue to be the position. The Applicant has already gone far beyond what it would ordinarily be expected to demonstrate, by way of simulation and in terms of risk assessment, how the navigational regulatory authorities will have to be satisfied that such safe operations will be ensured in the future. In addition, safety will continue to be fully and properly addressed throughout the lifetime of the Proposed Development. The Applicant has therefore made it clear that it considers that the level of assessment has already gone far beyond what is reasonable at this stage of infrastructure delivery. The Applicant has shown:

(a) That the specific vessel that it is intended will operate at IERRT (Stena T class) can safely do so;

(b) That the geometry of the facility is appropriate for a much larger vessel (237m RoRo);

(c) That operations will be feasible for such a vessel in extreme enough conditions that a routine schedule will be possible;

(d) How as and when future vessels at IERRT will be tested and brought into service; and has

(e) That larger vessel, such as the Jinling, can be satisfactorily accommodated at IERRT;

(f) The likely enhanced operational controls that would be required to arrest a 50,000t displacement ship based on the G9, noting that there is no intention to operate such a large vessel particularly one with only one shaft; and

(g) Notwithstanding all of that, the Applicant has gone further in proposing Enhanced Operational Controls and assessing the effects of them

5.65 It should be obvious, but it is worth reiterating, that none of the bodies responsible for the safe operation of the River Humber and the Port of Immingham has any interest in allowing operations that would be unsafe, quite apart from their statutory duties and responsibilities in that regard.

5.66 ***Eastern Jetty –*** The DFDS statement at paragraph 27 simply repeats a mischaracterisation of the position. The Applicant does not agree and has not stated that a mandatory tug is required to protect vessels moored on the Eastern Jetty. The Applicant's position is very clear, as stated in its published Enhanced Operational Controls.

5.67 ***Vessel size; paragraph 36 –*** The position regarding the vessels that will be used at the IERRT facility has been explained by the Applicant on various occasions. The Applicant has undertaken numerous simulations and the proposed marine infrastructure has been comprehensively assessed. Feasibility studies have been completed and it will be for the dock master and the SCNA to satisfy themselves as to the acceptability of the vessel type that will commence operation at the IERRT. As has been noted, even the Stena T, will still be subjected to further assessment. DFDS are well aware of the process and the continued mischaracterisation of the actual position is unprincipled and unhelpful

5.68 ***Challenging –*** At paragraph 37 DFDS again return to the use of the word "challenging". Manoeuvring any vessel the size of a modern Ro-Ro is challenging and requires the necessary skill and experience, as will be the case for using the IOH or the lock. The Applicant has been clear throughout the examination that operations at IERRT will be challenging in that respect and will require proper navigation. But that is a feature of navigating ships of this kind into ports and harbours. It is a feature of DFDS's own operations. The pictures, attached as Appendix 2, of a DFDS vessel seeking to enter the IOH, passing the Western Jetty, speak for themselves. The manoeuvres required for the DFDS vessel to be safely positioned are "challenging" – but in no manner, unachievable or considered unsafe or to present intolerable risks. There is no basis for seeking to apply some sort of different principle to the use of IERRT where the proximity to IOT has been fully assessed and the risks associated with the IOT fully considered. The approach in principle

for navigating on the Humber should be viewed in light of all the controls that exist. The Applicant and the SCNA have a robust training and approval process for pilots and PECS. Ensuring that appropriate and sufficient training is provided is an embedded control measure – see NRA **[APP-089]** section 9.5

5.69 ***Initial operating limits: paragraph 38 –*** This sort of comment ignores all of the evidence presented at the examination hearings and is again, fundamentally unprincipled. The HMH has repeatedly outlined the stringent requirements that will be put in place on the commencement of operations. Rather than repeat evidence already provided the ExA's attention is drawn to **[REP7-068].** It should not be necessary to have to repeat evidence already provided on these points.

5.70 ***Wind data –***The position with regard to the wind data has, as with the comment above, already been comprehensive addressed. At the risk of unnecessary reiteration, the wind data obtained from the Immingham Control Tower was used to provide conservative guidance to the simulation team. It was not intended as a climatology. In addition, further work has now been undertaken **[Rep 8-029 para 2.2.1]**. When devising the limiting parameters for a terminal, the SHA will always use 'worst case' wind and tide scenarios so just applying 'normal' wind parameters would simply not test those operational limits.

5.71 ***Vessel type: paragraph 40 –*** It now seems that the Stena T class has become the focus vessel for the IPs continued request for additional details such as initial operating conditions. The Stena T class is the vessel that will initially be brought into service at the IERRT. The Applicant stands by the results achieved using the 237m Ro-Ro vessel which are appropriate to demonstrate the feasibility of the facility and maintains that no restrictions in the DCO on initial operating vessels are required.

5.72 ***HRW Report –*** DFDS, at paragraph 41, are conspicuously taking the evidence from the HRW report out of context and then mischaracterising it. Again, it is concerning that this is being done. The Report clearly states that the issue with Eastern Jetty Run 15 was experienced with 30-35 knots of wind. This is an unusually strong wind – tested deliberately for extreme conditions - and very obviously was only used to provide general confidence in the available space between berths.

5.73 ***Eastern jetty tug barge: paragraph 42 –*** The Tug Barge was not erroneously removed. As has been explained to DFDS, who yet again have failed to acknowledge this, the Tug barge was deliberately removed to understand the manoeuvres that would be required for a vessel to access berth 4 – when the IERRT project contemplated four as opposed to three berths.

5.74 Subsequently the marine infrastructure has been rotated clockwise providing more room and as there is no anticipated change required to the tug berth, it has been reinstated in more recent simulations. By making this incorrect allegation DFDS have rather underlined the comprehensive nature of the navigational simulations that have been undertaken. As noted above, the

principal objective of navigational simulations is to identify any issues in more limiting conditions – not to simulate the obvious ability to conduct operations in less challenging conditions. Moreover, as already noted, the introduction of any specific vessel will be the subject of simulations in any event and the principle will remain subject to the control of the navigation authorities fulfilling their statutory functions.

5.75 ***ISH5 Summary: paragraph 68 –*** DFDS are attempting to oversimplify, significantly, the process of producing hydrodynamically sound ship manoeuvring models. To undertake the work that DFDS have suggested would be a serious error in principle. Any conclusions derived from such an approach would simply not be sound and could not be relied upon.

5.76 Ship handling characteristics are complex to consider, as they are dependent on the specific design of the vessel. Factors including the hull shape, propulsion machinery, control surfaces and the shape and distribution of superstructure need to be fully taken into account. That said, generally, modern Ro-Ro type vessels have similar levels of control, independent of their size, as the effect of their displacement will be compensated with more powerful machinery and more efficient control surfaces. As a consequence, larger displacement Ro-Ro vessels tend to have similar operating limits to smaller ones.

5.77 The ship handling characteristics between ships in the same class, which are superficially similar, can be subtly different, albeit sometimes with a significant effect. These differences would normally be due to differences that are not readily apparent, such as rudder or propellor type, combinator or engine limitations. It would be inappropriate to rely too much on any assessment at this stage in a navigation project, and detailed, ship-specific assessments should properly be carried out at a later design stage – as the Applicant has indicated will be the case.

5.78 It would clearly be inappropriate to base a model of a twin propellor modern Ro-Ro vessel in conjunction with a relatively traditional single propellor ship such as the Delphine G9 operated by CLdN, in any situation where the ship's own handling characteristics were being tested. The 237m Ro-Ro is in fact a perfectly appropriate substitute for use in the feasibility study. When a future vessel has been identified, that will be tested in precisely the same manner as will the Stena T before it can operated for IERRT.

5.79 In this context, it is noted that DFDS have suggested at paragraph 111 that when the future vessel has been constructed, DFDS should be part to any testing. It is unclear why such a request has been made. As it is, the statutory obligations in this respect fall in particular to the dock master and the SCNA, not DFDS.

Navigational Risk

5.80 This section provides the Applicant's responses to DFDS's comments raised in sections:

- (b) Revised NRA (tracked) **[REP7-012]**;

- (c) Supplementary Navigation Information Report **[REP7-030]**;
- (d) Navigation Simulation Study December 2021 **[REP7-033]** Part 1 **[REP7-034]** Part 2; and
- (i) Response to IOTT's D6 submissions **[REP7-024]**; reply to IOT letters **[REP7-025]**.

5.81 ***Updated NRA*** – DFDS in paragraph 7 state that it is not clear how the amendments to the updated NRA submitted at Deadline 7 **[REP7-011]** address the baseline NRA, drawing further comment that the previous NRA sections were merged. The rationale for updating the NRA was to simplify meanings, streamline text and align the assessment with other submitted navigation documentation, at the request of the ExA.

5.82 To provide a simplified document, sections of commentary on Further Applicable Controls was moved to Appendix D **[REP7-011]** of the updated NRA. This has resulted in the merging of the previous NRA Chapters 8 and 9 **[APP-089]**. The assessment factors in the baseline NRA (i.e., the Operational Risk Assessments used by the Port of Immingham) through the inclusion of embedded risk controls into the IERRT assessments as shown in Appendix A, B and C **[REP7-011]** and also as detailed in tabular form through Table 24 to 26 of the updated NRA **[REP7-011]**.

5.83 DFDS comment in paragraph 8 on the inclusion of Table 32 within the updated NRA submitted at Deadline 7 **[REP7-011]**. To reiterate the point made in the previous response, the rationale for updating the NRA was to simplify meanings and streamline text. To this point, Table 32 seeks to clarify the 'Further Applicable Controls' (Table 32, left hand column) with the 'Applied Controls' (Table 32, right hand column). The updated NRA **[REP7-011]** clearly states in paragraph 8.8.5 that: '*Table 32 presents a list of controls, noting if the Further Applicable Control was carried forward if it were considered to provide a cost effective method of reducing risks. Those carried forward are termed 'Applied Controls*'. The term Applied Controls identifies that these controls, will be applied. The Applicant does not, therefore, understand DFDS's confusion on this point.

5.84 DFDS's comments on the matter of factoring in marine incidents (contact, allision, etc) at nearby marine facilities demonstrates what the Applicant considers to be a lack of understanding as to how port safety operations are actually implemented, controlled and reviewed by the appointed authorities, in this case the SHA's for Humber and Immingham.

5.85 The Applicant has been clear that the NRA was completed as a detailed examination of navigational risk of the proposed scheme. The Port of Immingham operates under a mature Marine Safety Management System which includes operational risk assessments, emergency preparedness and response plans, plus its vessel planning and management process required to run a safe and efficient port. This includes the day-to-day running of Ro-Ro services, for vessel operators including Stena Line and DFDS.

5.86 The Applicant has also made clear that once the DCO is approved, the recommendations of the NRA will feed into the operational risk assessment

for port marine operations with subsequent changes made to procedures within the Marine Safety Management System (MSMS). Any controls identified as being required post-DCO will be implemented and incorporated into the MSMS processes to ensure safe and efficient port marine operations, in compliance with the requirements of the PMSC.

5.87 At paragraph 10, DFDS comment on the change in order in which tolerability and ALARP are listed in the updated NRA submitted at Deadline 7 **[REP7-011]**. The Applicant is pleased to note that DFDS welcome and endorse the wording change, and would simply comment that the language has been revised to match the Maritime and Coastguard Agency's (MCA) Guide to Good Practice which states, in Section 13.1.3, that:

> *"The Code relies upon the principle that duties and powers in relation to marine operations in ports should be discharged in accordance with a Safety Management System. That system should be informed by and based upon a formal risk assessment. The aim is to establish a system covering all marine operations in ports which ensures that risks are both tolerable and as low as reasonably practicable".*

5.88 DFDS go on to suggest that this has not been carried through the NRA. This statement is simply incorrect and a mischaracterisation of the process. All risk assessments presented in both the original NRA **[APP-089]** and the updated NRA **[REP7-011]**, have applied the test of tolerability and ALARP to the outcomes. Moreover, both iterations of the Applicant's NRAs have set out the method as is detailed in Section 6.5 where both Tolerability and 'As low as reasonably practicable' (ALARP) are described. The tolerability thresholds are shown in Figure 24 **[REP7-011]** which match those presented in Figures 26 to 29 in **[APP-089]**.

5.89 The MSMS for the SCNA and Port of Immingham includes a section on stakeholder engagement. It states that it is an important part of managing the port marine environment with a specific focus on securing consensus on proposed protocols or procedures that relate to safety of navigation. Additionally, stakeholder engagement is important when producing or reviewing risk assessments where the view or option of third parties needs to be considered. All ports should have some form of stakeholder engagement via a port user group where items related to promoting port marine safety can be discussed. Port user groups should take place at least once a year with the purpose of engaging stakeholders on such items as:

(a) Risk Assessment reviews

(b) New proposals or procedures

(c) Statutory consultation (byelaws General / Harbour directions etc)

(d) Incidents and lesson learnt.

5.90 Humber Estuary Services and the Port of Immingham ensures consultation with port users and stakeholders through regular meetings in accordance with the MSMS.

5.91 The Applicant has also made clear that once the DCO is approved, the recommendations of the NRA will feed into the formal risk assessment (FRA) for port marine operations – which the ExA should note and should be emphasised would be undertaken if consent is granted and is part of the normal process applied by the SCNA and the dock master but which falls outside and follows from the DCO process - with subsequent changes made to procedures within the Marine Safety Management System (MSMS).

5.92 The Port Marine Safety Code (PMSC) and Guide to Good Practice for Port Marine Operations (GtGP) does not mention Navigational Risk Assessment or NRA, nor does it state that an NRA will need to follow the PMSC or GtGP. It does, however, reference the use of Formal Risk Assessment (FRA) and MSMS to manage operation risk.

5.93 Any controls identified as being required post-DCO will be implemented through the application of the results of the port's FRA and its MSMS processes, which as the ExA is aware from evidence provided during the examination, to ensure safe and efficient port marine operations, in compliance with the requirements of the PMSC.

5.94 DFDS continue to comment incorrectly on navigational risk using societal risk for evaluating the potential impacts for up to 100 passengers. In the context of the requirements for an NRA to support the IERRT development, the Applicant has stated that the NRA will feed into the port's Formal Risk Assessment (FRA) for marine operations with subsequent changes made to procedures contained within the Marine Safety Management System (MSMS).

5.95 It should be borne in mind that the safe and efficient operation of port marine operations is the core of ABP's day-to-day business across the Group's 21 ports and harbours. DFDS and their marine consultants NASH are, for whatever reason, fundamentally misunderstanding and/or misinterpreting the actual requirements of the NRA – that confusion being caused in part by their application of methodology which is used in the offshore renewable sector – not the port sector - or for NRA's outside statutory limits where there is no MSMS or SHA regulating or managing the safety of navigation.

5.96 ***Paragraph 23*** - For reasons that are self-evident from the Applicant's responses in this and previous representations, the Applicant does not agree with DFDS's responses.

5.97 In ***paragraph 24***, DFDS state '*one of the fundamental concerns that DFDS continues to have is the lack of consideration the Applicant has given to passengers on board the IERRT vessel*.'

5.98 This is based on an incorrect assertion. As stated in **[REP8-023]**, as part of the assessment methodology, hazard scenarios were assessed against four receptors, one of which is 'people' (human life/personal injury). In this regard, the potential for passengers to use the IERRT facility and vessels has been comprehensively assessed and is reflected in the hazard scenarios.

5.99 The Applicant must, however, again point out that DFDS continue to comment incorrectly on navigational risk using the societal risk for evaluating the

potential impacts for up to 100 passengers. In the context of the requirements of the NRA for use in the application, the Applicant has pointed out that the NRA will feed into the formal risk assessment (FRA) for port marine operations with subsequent changes made to procedures within the Marine Safety Management System (MSMS).

5.100 Again it is worth repeating that the safe operation of port and marine operations is the core of ABP's business and that the management of vessels, cargo and passengers is all part of its day-to-day business across its 21 within the ABP Group. As noted above, but worthy of repetition, DFDS and NASH are either misunderstanding and/or misinterpreting the requirements of the NRA - their confusion being mainly as a result of their attempt to apply methodology used in the offshore renewable sector, or for NRA's outside of statutory limits where there is no MSMS regulating or managing safety of navigation.

5.101 DFDS go on to say that '*The Applicant's direct comparison of the risk profile between its assessment and the separate assessments of the IOT and DFDS are therefore fundamentally flawed and the significance of an incident to the IOT trunkway, IOT finger pier or Eastern Jetty tanker are significantly higher in the IOT and DFDS NRAs than the Applicants*'. This is not actually the case. The differences in outcomes of all NRAs are in reality very limited, as clearly set out in the review of the DFDS NRA **[REP6-030]** and the IOT Operators NRA **[REP6-031]**. It is not clear, therefore, what point DFDS is trying to make and how it impacts on the outcomes of the risk assessment – and should, therefore, be given no weight. The judgments to be made on risk, however, are the responsibility of the Applicant in its capacity as Port of Immingham SHA.

5.102 DFDS state in paragraph 25, with respect to the risk of allision with IOT trunkway / IOT finger pier and the Applicant's case that a number of causal factors would need to be occur at the same time for the risk to materialise, that - '*The rationale for this makes some sense but when you consider the causal factors which the Applicant states are 'very unlikely to occur', they include: adverse weather conditions; restricted visibility; incorrect assessment of tidal flow; human error/fatigue; poor situational awareness - none of which seem to DFDS to be 'very unlikely to occur'. Inevitably, this Report seeks to downplay the risks of operation.'* This analysis is obviously incorrect and the Applicant refutes the comments that the report seeks to downplay the risks of operation. As stated on numerous occasions the NRA will feed into the formal risk assessment (FRA) for port marine operations with subsequent changes made to procedures within the MSMS, this includes training for pilots and PEC holders to alleviate human factor errors, limitation of operation in adverse weather etc. DFDS has taken the worst case as the only outcome, whereas the assessments conducted for IERRT (Appendix A, B, C of the updated NRA submitted at Deadline 7 **[REP7-011]**) present both 'most likely' and 'worst credible' to arrive at a balance and realistic evaluation of risk. This approach is advocated in the Port Marine Safety Code Guide to Good Practice (GtGP), Section 4.3.14 which states - "*One useful approach is to consider both the most likely and the worst credible outcomes (set against likely frequency of the event happening in each case). This approach provides a more realistic*

and thorough assessment of risk, which reflects reality, in that relatively very few incidents result in the worst credible outcome". DFDS state in paragraph 26, that 'if the implication the Applicant is hoping to make is that the risk of allision with the IOT trunkway today is considered tolerable then the introduction of the IERRT as a part barrier to the IOT trunkway can only be a good thing then such rationale is clearly lacking in any credibility'. To the contrary, it is the assertion made by DFDS that lacks credibility. It is obvious that the physical existence of the IERRT marine infrastructure is a relevant consideration that has correctly been taken into account by the NRA as it will become a physical barrier in itself, alongside the other valid considerations expressed by all stakeholders that have informed the most likely and worst-credible scenarios.

5.103 As set out in various examination documents and summarised in the Supplementary Navigation Information Report **[REP7-030]**, the conclusions reached in the NRA are supported by navigational simulations which show that the relevant assessment of the likelihood or otherwise of a risk occurring. The Applicant does not agree with DFDS's logic which is flawed. By definition if a structure is placed in front of another structure, and the fronting structure sustains impact damage, it will clearly have absorbed some of the energy of this impact in sustaining this damage, thereby offering an element of protection to the rearward infrastructure. The Applicant is surprised that this is contentious as it is self-evident. The Applicant further refers to the evidence contained within its Design Basis Report **[**REP7-025] and Concept Design submission [REP8-032] in this respect.

Governance (relationship between EIA /NRA)

5.104 Paragraph 16 – DFDS continue to claim that ABP's Harbour Authority and Safety Board ("HASB") cannot be considered as truly 'independent'. This is not the case as has been very clearly explained by Captain McCartain **[REP4-009]** and it is not the intention of the Applicant to duplicate information already before the examination.

5.105 With respect to ***paragraphs 34-35*** where DFDS question the information considered by the HASB, the Applicant confirms that the IERRT proposal was discussed at three HASB meetings in 2023, in addition to the meeting held in December 2022. At the meeting of the HASB held on 20 November 2023 , members discussed and carefully considered the two alternative IERRT NRAs (prepared by the IOT Operators and DFDS), including the supporting documentation, and included a discussion on the proposed changes to the IERRT DCO. This gave the HASB a forewarning the need to submit a request to make changes.

5.106 Formal approval to submit the proposed changes to the DCO was received during the HASB meeting on 28 November 2023. A further HASB meeting was held on 08 December where the Board reaffirmed the decisions made (in its capacity as Duty Holder) in the previous HASB meetings on 12 December 2022 and 20 November 2023 that:

i) it was satisfied with the approach taken to the marine navigational risk in relation to the future development of the IERRT; and

ii) it agreed with and approved the conclusion that the risks identified were tolerable and as low as reasonably practicable (ALARP).

5.107 The HASB approved the submission of the updated NRA and SNIR as had been requested by the ExA. Throughout these meetings the HASB was provided with extensive and in depth briefing and reference material with regard to the navigational risk assessments undertaken for IERRT.

5.108 Again at paragraph 83 DFDS repeat their questioning of the independence of the Harbour Master Humber ("HMH"), suggesting that he cannot be independent in exercising his functions as he is both an employee of ABP and also reports into individuals whose interest is in promoting a successful application for the IERRT.

5.109 The matter of the independence of the HMH has been comprehensively explained both by the Applicant and the HMH throughout the course of the Examination. DFDS fail to recognise that if the HMH was not "independent" in exercising his different statutory powers he would be in breach of those statutory powers.

5.110 The Applicant would refer DFDS to the Joint Note prepared by the Applicant and the SCNA which more than answers the unsubstantiated points raised – **[REP7–066]**

5.111 The comments raised by DFDS at paragraphs 84 to 86 merely repeat previous comments made by DFDS on numerous occasions and which have already been answered by the Applicant and which present simply as unevidenced assertions. The Applicant has made its position very clear and it is not considered that any further duplication of information in this respect would assist the examination.

5.112 ***Separation of functions –*** DFDS are simply repeating, not for the first time, assertions which they must know have no evidential foundation and are unprincipled, DFDS having been an operator within the Port of Immingham and on the Humber for many years.

5.113 The Applicant refers to what has already been identified in relation to the separation of functions and fully stands by the information provided in the Joint Note **[REP7-066]**.

Cost Benefit Analysis

5.114 This section provides the Applicant's responses to DFDS' comments raised in sections:

- (b) Revised NRA (tracked) **[REP7-012**];
- (c) Supplementary Navigation Information Report [**REP7-030**]; and
- (d) Navigation Simulation Study December 2021 [**REP7-033**] Part 1 [**REP7-034**] Part 2.
- Statement of Common Ground Tracker [**REP7-016**].

5.115 In Paragraph 13, DFDS have incorrectly stated that tolerability was considered after risk controls based on the order of the minutes. DFDS have failed to acknowledge that the running agenda or minutes of a workshop does not equate as evidence of the order of a structured risk assessment process which the Applicant confirms did consider tolerability at the outset.

5.116 In Paragraph 14, DFDS incorrectly state that since the estimated cost of the impact protection measures are not stated, they have not been considered. Similarly in Paragraph 32, DFDS state that "*there has been no assessment of benefits of the reduction or elimination of the costs of the consequences*", referring to the Supplementary Navigational Information report.

5.117 The Applicant has, in fact, provided a consistent explanation of the approach to the Cost Benefit Analysis undertaken as part of the NRA for the IERRT with its evidence contained in the following submissions:

(a) The Applicant's NRA **[REP7-011]**;

(b) A cost benefit analysis workshop summary note (Annex F of **[REP7-011]**);

(c) The Applicant' responses to the Examining Authority's questions including NS.2.06, NS.3.03 **[REP7-022]**;

(d) Submissions made at ISH5 **[REP7-020]**; and

(e) Supplementary Navigation Information Report **[REP7-030]**.

5.118 With respect to ***paragraph 15,*** the benefits associated with the relocation of the finger pier are presented within the Applicant's SNIR [**REP7-030**, paragraph 4.57-4.58], in the context of the embedded and other applied controls already taken forward. Table 4 also provides evidence that the 'costs' were considered from a monetary and environmental impact perspective.

5.119 In Paragraph 30 and 33, DFDS make various unevidenced comments on why the Applicant is not promoting the use of impact protection as a control measure – specifically they declare that it is too expensive. There is no basis to these comments and the Applicant struggles to understand why DFDS believes it is in a position to make this statement. As set out by the Applicant, in response to IOT at Deadline 8 **[REP8-022** Para 3.2.7**]** and **[REP7-025]** it is not the Applicant's case that the provision of adequate protection measures are too expensive, it is that the additional protection measures proposed by IOT Operators are neither reasonable nor practicable, when considered in combination with the operational controls that will be applied. This is supported by the IOT Operator's own shadow NRA which indicates that the cost/benefit of an impact protection structure is marginal for low impact speeds (2 knots). The operational controls proposed to be employed will ensure a minimum of 1 tug is employed during all arrivals to berth 1. The risk of allision is mitigated by the use of tugs, as demonstrated by the navigational simulation undertaken on 15 November 2023 reported at **[AS-071]** and further supported by the simulations undertaken on 13/14 December 2023 **[REP8-029].**

5.120 Paragraph 31 concerns the provision, albeit by way of mischaracterisation, of the impact protection measures. In light of the ExA's Rule 17 Request for information, a comprehensive response will be provided at Deadline 10.

6 Statement of Common Ground Tracker [REP7-016]

6.1 Paragraph 112 – The Applicant is confused by DFDS's statement that "*it does not appear the Applicant has updated Table 1 in relation to DFDS*" in **[REP7-016]**. The Applicant refers DFDS to page 12 of the document, which provides a summary of the DFDS SoCG at Deadlines 6 and 7. **[REP8-015]** provides an update to the position at Deadline 8.

7 Protective Provisions Tracker [REP7-018]

7.1 Paragraph 113 – Again, the Applicant is confused by DFDS's statement that *"it does not appear the Applicant has updated Table 1 in relation to* DFDS" in **[REP7-018]**. The Applicant refers DFDS to page 12 of the document, which provides a summary of the status of the DFDS Protective Provision at Deadlines 6 and 7. **[REP8-017]** provides an update to the position as at Deadline 8.

8 Response to ExA's Proposed Changes to dDCO [REP7-029]

8.1 Paragraphs 119 – 121 (Protective Provisions). For the reasons set out in **[REP7-029]** the Applicant believes that the Protective Provisions sought by DFDS exceed those which are reasonably and proportionately required to protect DFDS's interests. The existing commercial and legal relationship between DFDS and the Applicant should prevail following the construction period. To do anything else would provide substantial betterment to DFDS.

8.2 DFDS claim to be seeking to preserve the *status quo*, but its draft Protective Provisions would in fact fundamentally alter the current relationship between DFDS and the Applicant, as well as DFDS's commercial competitive relationship with the port of Hull. The Applicant believes that HMH's submissions in relation to the CLdN PP in **[REP8-052]** apply equally to DFDS in that it would be undesirable as a matter of principle to put DFDS in a preferential position in comparison with other vessel operators on the Humber by providing protections which survive beyond the construction period. Following the construction period, the Humber will be operating 'as normal' under the control of VTS, and DFDS's operation will (and should) return to its present position (albeit in a new commercial reality which includes operation of the IERRT) without the benefit of protective provisions. The protections which have previously been agreed with (and must therefore be sufficient for) DFDS in its existing commercial, licence and lease arrangements with the Applicant will, of course, continue.

8.3 The Applicant notes that DFDS only offers justifications for its proposed drafting, shown in the left-hand column of **[REP7-029]**, in relation to Articles 122 and 123. The Applicant can only conclude that DFDS accepts the amendments proposed by the Applicant in the other articles of the Protective Provisions.

8.4 In relation to Article 122 specifically, the Applicant does not believe that DFDS's insertions are necessary as the Navigation Risk Assessment and Transport Assessment fall within the Applicant's definition of 'environmental document'.

8.5 In relation to Article 123, DFDS's reference to what "may" interfere with their operation rather than reference to "being likely to" interfere is an attempt to expand the scope of the protective provisions beyond what is reasonably necessary. The environmental assessment has been undertaken by independent experts and provides a wide ranging and robust assessment of the reasonable worst-case scenario – including likely impacts on DFDS. There is no reason to expand the influence of a commercial competitor by using the broader language requested by DFDS, against the judgement of the reasonable worst case made in the expert assessments.

8.6 The Applicant notes that DFDS has not provided any justification for the retention of article 125 (DFDS Scheduled Services and use of DFDS berths) in its latest draft Protective Provisions. The Applicant **[REP7-029]** and HMH **[REP8-050]** have both stated 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. As per **[REP7-029]** and **[REP8-050]** this article should be deleted in line with the Applicant's latest draft of the DFDS Protective Provisions in **[REP7-029]**.

8.7 As such, the Applicant considers that the Protective Provision contained in its Deadline 8 dDCO **[REP8-005]** and **[REP7-029]** remains proportionate, effective and reasonable.

Glossary

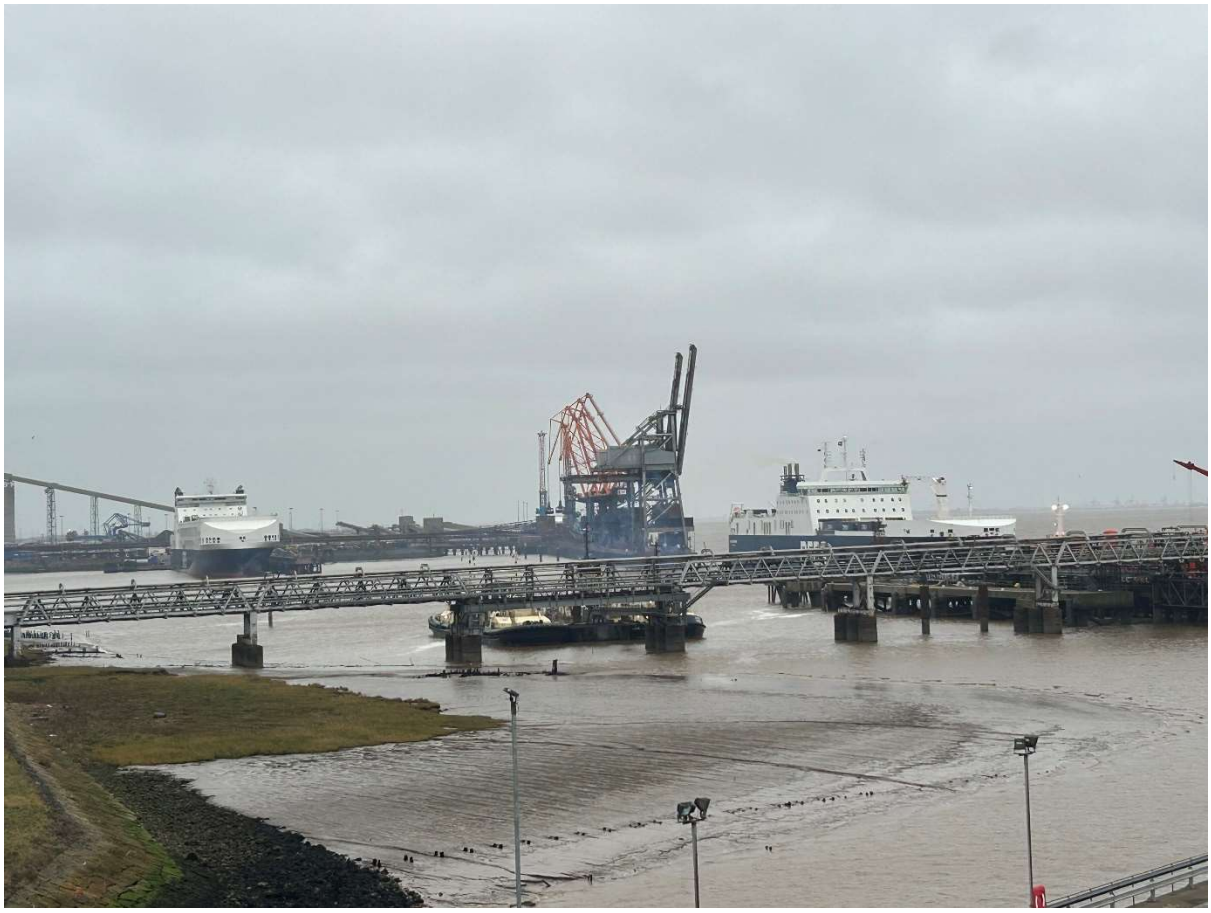
Abbreviation / Acronym	Definition
ABP	Associated British Ports
ALARP	As Low As Reasonably Practicable
DCO	Development Consent Order
dDCO	Draft Development Consent Order
DFDS	DFDS Seaways plc
ExA	Examining Authority
ExQ	Examining Authority's Written Questions
HASB	Harbour and Safety Board
HMH	Harbour Master, Humber
IERRT	Immingham Eastern Ro-Ro Terminal
IOH	Immingham Outer Harbour
ISH	Issue Specific Hearing
MSMS	Marine Safety Management System
NRA	Navigational Risk Assessment
NSIP	Nationally Significant Infrastructure Project
OFMP	Operational Freight Management Plan
PA 2008	Planning Act 2008
PINS	Planning Inspectorate
Ro-Ro	Roll-on/roll-off
SCNA	Statutory Conservancy and Navigation Authority
SoCG	Statement of Common Ground
SoS	Secretary of State for Transport
UK	United Kingdom
VTS	Vessel Traffic Services

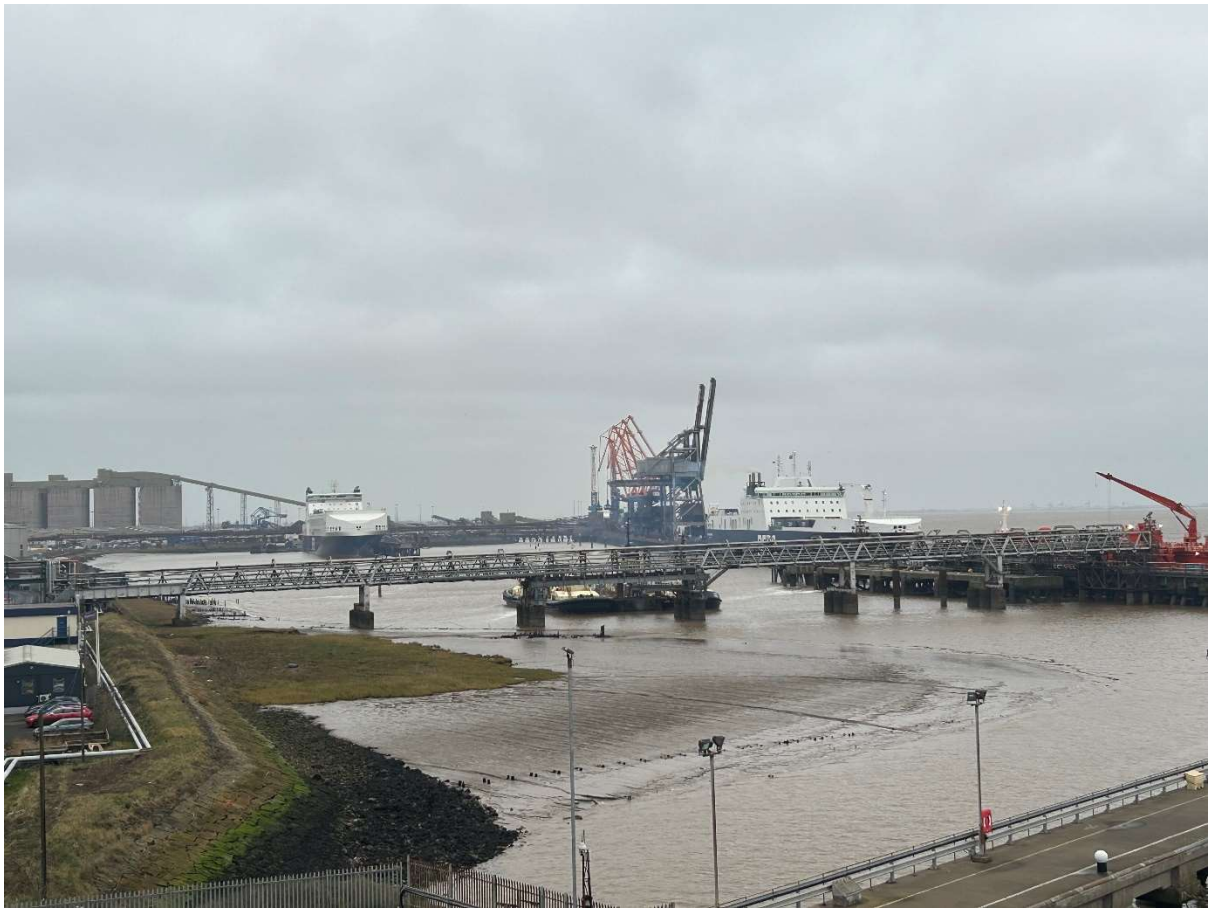
	DFDS Comment	
a	The "TA volumes" presented in Table 1 cannot be related back to volumes in Table 1 of the prior TA [AS-008] as referenced by the Applicant in section 1.10. The Applicant should highlight which relevant tables and volumes they have used to produce Table 1 for the "TA" and "Sensitivity Test" volumes as the numbers between the two reports do not appear to correspond.	Paragraph 5.3.2 of the TA [**AS-008**] summarises the light vehicles used in the base assessment with Table 8 (end-user profile for PM peak) and Table 9 (Port of Immingham profile for AM peak) being the relevant tables for HGV movements. Table 1 of Annex J of the TA Addendum are presented in PCUs.
b	The volumes presented in Table 2 do not align or clearly link with the volumes presented in Table 1, and therefore a relationship between the two tables cannot be drawn. The Applicant must provide evidence by way of traffic flow diagrams to understand how the traffic has been distributed on the road network for both the "TA" volumes and the "Sensitivity Test" volumes. Similarly, calculations must be provided to show how the "Sensitivity Test' profile and traffic distributions have been obtained.	The A160 flows are provided at two separate links and therefore are not directly comparable to those in Table 1, however the 'A160 between Habrough Road and Manby Road' link and the 'A1173' link sum to the numbers shown in Table 1.
c	Evidence for Table 1 and Table 2 should also show the conversion of IERRT traffic volumes into PCU, since the prior Transport Assessment [AS-008] provided traffic volumes as light vehicles and HGVs instead of PCU.	As DFDS are well aware, the light vehicle numbers have remained unchanged through all assessments with the various scenarios only relating to the HGV numbers.
d	The results summarised in Table 3 cannot be reviewed since the input data in the form of traffic flow diagrams or origin-destination volume matrices is not evident in Appendices A to C.	Origin – Destination data is provided within each junction output in Appendix A-C of Annex J of the TA Addendum (REP7-013).
e	In Table 4, DFDS note there have been changes to the Update to Technical Note 2 results since the submission of REP5-028 as illustrated by the differences in RFCs between the TA Addendum and REP5-028. As REP5-028 has been superseded by the Update to Technical Note 2 (provided as Annex G of the TA Addendum), then REP5-028 should not be referenced in Tables 4 to 7 as the addendum seeks to supersede all incorrect information previously submitted.	Whilst the test is labelled as "REP5-028", the data contained within is the table is, as confirmed in the text derived from Annex G of the TA Addendum. In any case, the difference between Annex G and REP5-028 is not material.
f	In Table 4, 5 and 6, the difference between the Sensitivity test and the Update to Technical Note 2 test should be based on the same profile in the AM peak	As clearly described by the applicant at Section 1 of Annex J the applicant considers the Transport Assessment to be robust. This includes the assumptions in

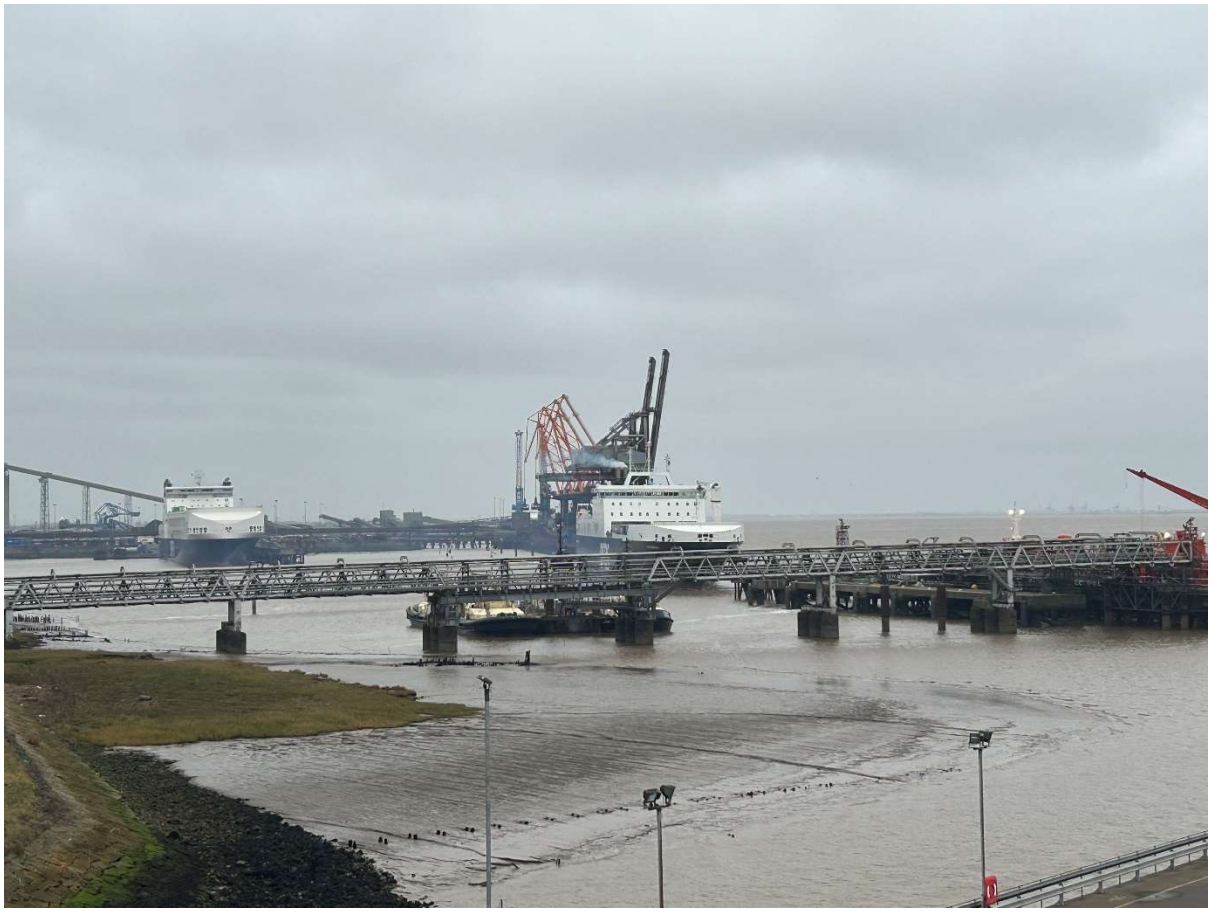
	for comparison purposes. For example, the Manby Road roundabout result take the Port of Immingham results from REP5-028 and compare it to the Stena profile within the sensitivity test, which is misleading.	respect of traffic generation (including solo tractor ratio) and assignment of HGVs. As confirmed at Para 18.27 of REP8-023, whilst the tests provide for a proportionate range of different outcomes to be tested, it assesses what the Applicant already considers to be a wholly unrealistic and therefore unreasonable assumption as to the level of traffic using the A160 corridor. Given the robustness of the test (i.e. 60% via West Gate and 36% solo tractor ratio) and the reasons given in Section 6 of [REP5-027] it is not considered appropriate to layer on further levels of sensitivity (i.e. considering the 60/40 split plus the generic AM profile).
g	Table 4 has a footnote that has not been referenced within the table, which states that '**If the sensitivity test were run with Immingham AM, the worst increase in queueing would not change*". This statement has not been evidenced in the calculations or modelling results. If the Port of Immingham profile was used in the AM peak it would be expected that this would increase the traffic volumes on the network compared to the Stena profile. The Applicant should clarify this statement and provide supporting evidence, similarly for the footnotes provided in Table 5 and Table 6.	Notwithstanding the above, the footnotes to Tables 4-6 in Annex J of the TA Addendum were inserted to demonstrate that adopting the Immingham Profile would still only show a minor increase in queueing at the busiest arm on each junction.
h	Table 8 'Summary of A160/Eastfield Road Signalised Junction Assessment' does not sufficiently summarise all the necessary information to describe the performance of a signalised junction. Typically, the summary results should show the Degree of Saturation (DoS, as a %) instead of PRC, and the Mean Max Queue (in PCU). The appended results are also only a summary output and do not supply the full detailed reports to review the inputs and detailed outputs in the absence of a LinSig model, and therefore could not be properly reviewed.	This is an irrelevant point. Any party interested in and familiar with modelling outputs would clearly understand the implications arising from the assessment outputs. The summary output appended are in line with the level of detail provided by DFDS in their junction assessment and acceptable to allow review of the impacts of the development.
i	From the summary reports for the A160/Eastfield Road Signalised junction, it is evident that the signal staging and phasing in the model do not reflect the actual signal staging and phasing of the junction. Additionally, the cycle time for a	The signal timings have been optimised to accommodate future traffic flows. As has been noted committed development would change the characteristics of movements at the junction and it is wholly appropriate to assume that would be reflect in signal

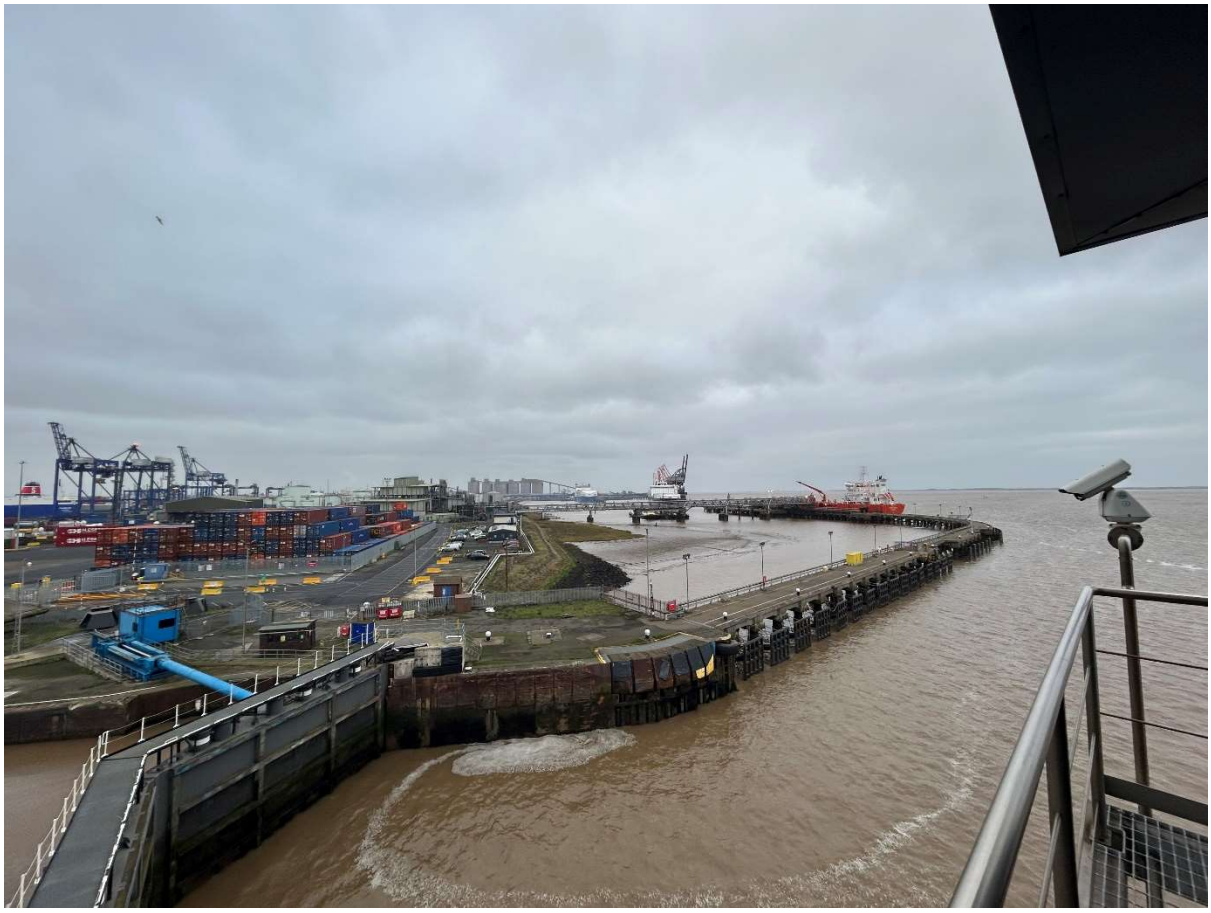
	single cycle four-stage sequence in the model during the PM peak hour exceeds the maximum acceptable cycle time. This should be updated.	timings in the future.
j	The Eastfield Road northern approach has been incorrectly designed in the model with two approach lanes of infinite length. Rather, the left turn lane should be modelled as a short lane diverging from the single ahead lane. Therefore, the results overestimate the capacity of Eastfield Road and may impact the overall capacity reported for the junction across all scenarios modelled.	This is an appropriate assumption given the level of demand and turning proportions.
k	It is unlikely that National Highways has been given the opportunity to review and approve the signalised junction model. Mitigation may be required since the junction is operating above DoS of 90%, which is the typical practical capacity threshold of signalised junctions.	NH have reviewed the submission 9including the sensitivity tests and confirm they agree with the conclusions. This will be reflected in their updated SoCG.
l	Paragraph 3.2 states "as can be seen above" and refers to percentages that are not provided above in Table 8. After reviewing the summary output reports it could be determined that the Applicant was referencing DoS of 92% with development and DoS of 88.2% without development. The Applicant should clarify what figures they are discussing since it is not apparent from Table 8 as key summary details have been omitted.	The PRC is calculated from the maximum DoS and is a measure of how much additional traffic could pass through a junction whilst maintaining a maximum degree of saturation of 90% on all lanes. Therefore, DoS and PRC can be seen as interchangeable (i.e. a PRC of -2% is the same as a DoS of 92%). The figures in Table 8 are PRC and the figures in the paragraph 3.2 are DoS. This is clear to any qualified reader of the assessments.
m	The "2032 Sensitivity" scenario in Table 8 shows that the PM peak is operating with –2.0% PRC, and the Applicant has not discussed the impacts of this. The Applicant should discuss the implications of a negative PRC and consider appropriate mitigation.	A PRC of -2% (equivalent of a DoS of 92%). In line with all other junctions assessed this was compared to the without development scenario of 1.6% (equivalent of a DoS of 88.2%) which is not a 'severe' impact and therefore no mitigation is considered necessary. This conclusion has been agreed with NH and will be reflected in their updated SoCG.

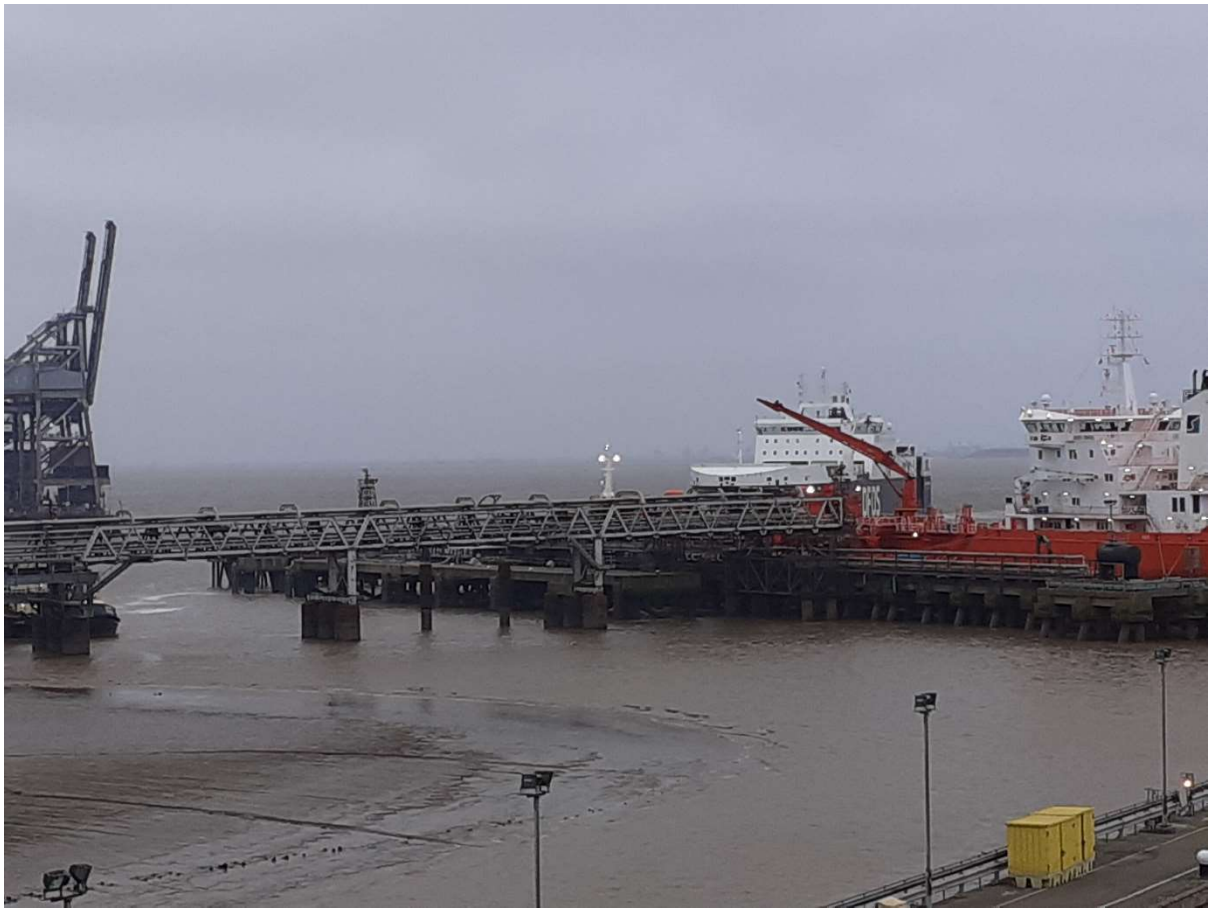
Appendix 2 - Photos of DFDS Vessel Approaching IOH

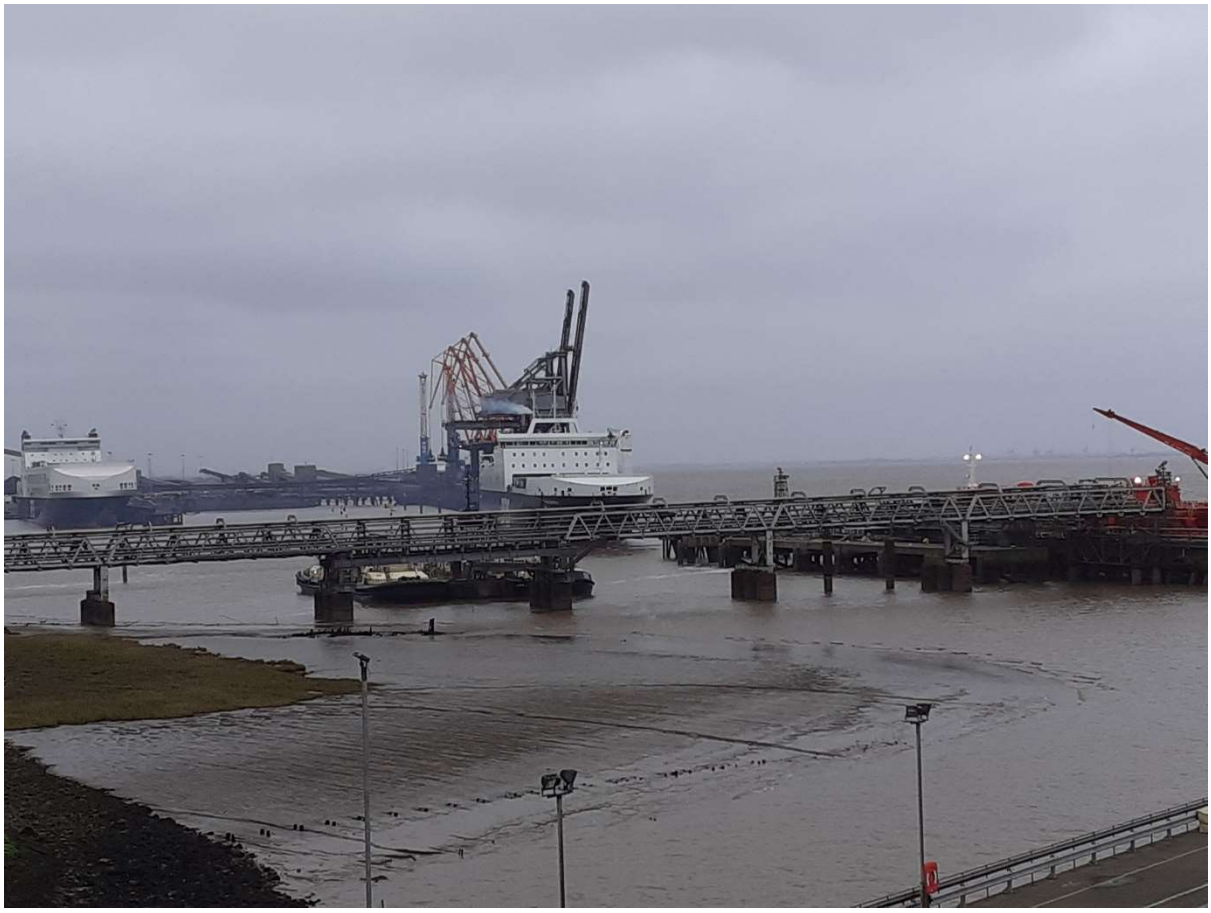


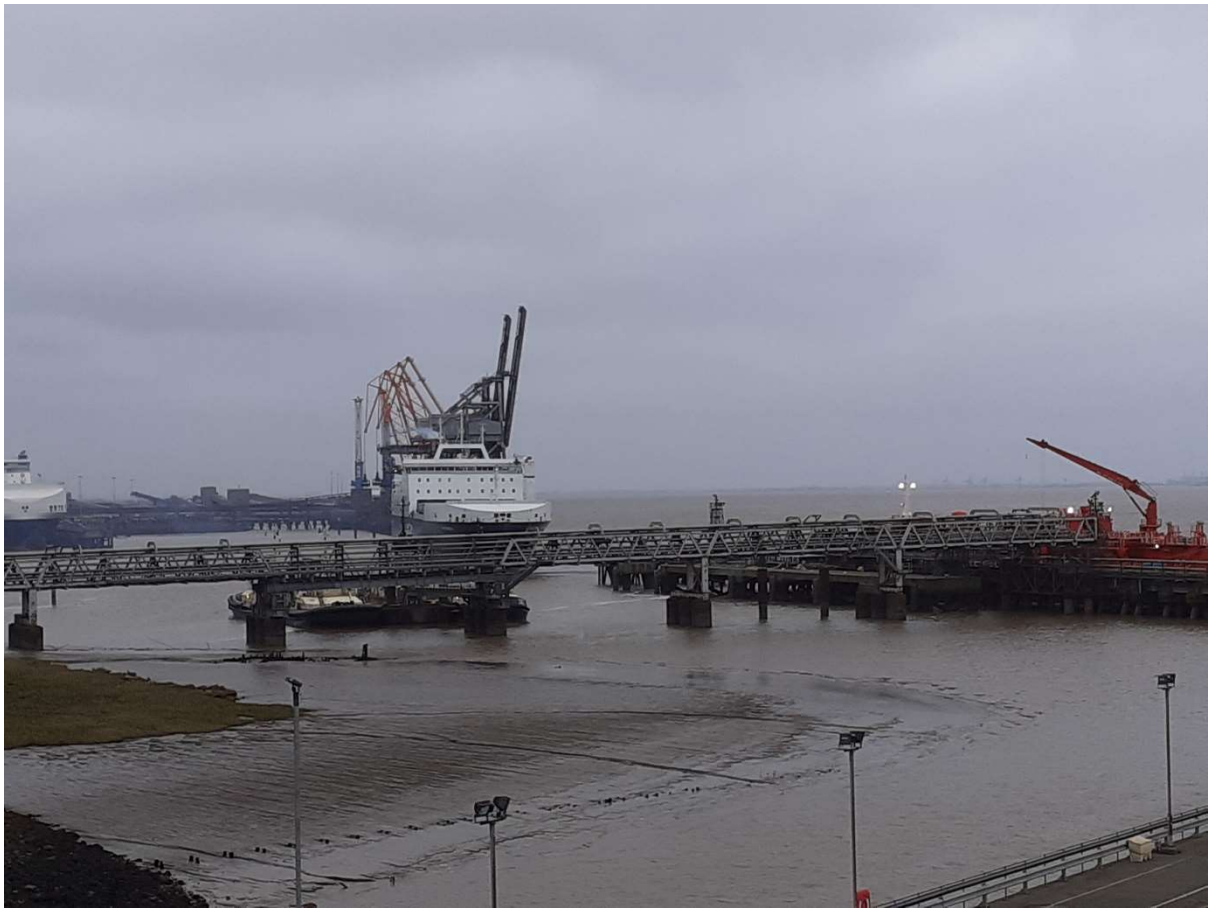










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