

Date: 3 January 2024
Our ref: JGOO/3004864.3
Your ref: TR030008
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By email only to imminhamget@planninginspectorate.gov.uk

Dear Mr Johansson

Planning Act (2008) as amended
Application by Associated British Ports ('ABP') for an Order Granting Development Consent for the Immingham Green Energy Terminal ('IGET')
Applicant's Response to Section 51 Planning Act 2008 letter and Section 55 Acceptance of Applications Checklist
Application Reference: TR030008

As you know we act on behalf of Associated British Ports ("the Applicant") in relation to the application for development consent (the "Application") for the IGET (the "Project") being made to the Secretary of State for Transport (the "Secretary of State") pursuant to the Planning Act 2008 (the "PA 2008").

The Secretary of State accepted the Application for examination on 19 October 2023. Also on 19 October, you sent to us a letter in accordance with Section 51 of the PA 2008 giving "*advice following issue of decision to accept the application for examination*" [PD-003] (the "S51 Letter").

This letter is sent in response to the advice set out in the S51 Letter and also the minor errors and omissions identified in Box 30 of the Section 55 Acceptance of Applications Checklist [PD-001] (the "S55 Checklist"). This letter also follows on from our email dated 1 November addressing certain of the points in the S51 Letter and S55 Checklist, and your response dated 9 November to that email requesting an updated Guide to the Application (Doc 1.3)/[APP-004] showing any new submissions as part of our response to the S51 Letter and S55 Checklist.

1 **Advice in the S51 Letter [PD-003]**

1.1 **Outline Woodland Compensation Strategy (Doc 6.8)/[APP-225]**

1.1.1 The Outline Woodland Compensation Strategy (the "Strategy") describes an area of land within the Applicant's ownership that the Applicant proposes be used for appropriate compensation for the proposed tree loss associated with the construction of the Project.

To: Planning Inspectorate
Date: 3 January 2024
Page: 2

- 1.1.2 The S51 Letter requests that the Applicant provide "*evidence that it has sufficient control over the land to implement the proposed scheme*" for off-site replacement woodland.
- 1.1.3 The land proposed to be used is, as described in the Strategy, a large, narrow band of unused land between Manby Road and the freight rail line on the south side of the Port (the "**woodland compensation land**"). The woodland compensation land is within ABP's ownership, and forms part of the land registered with title number HS340602. Please see attached at Appendix 1A to this letter an official copy of the register of title and at Appendix 1B and 1C, the relevant title plan and supplementary plan, respectively.
- 1.1.4 As shown on the official register and title plans, ABP has sufficient interest in the relevant portion of the woodland compensation land in order to carry out the proposed woodland compensation measures set out in the Strategy.
- 1.2 **Consents and Agreement Position Statement (Doc 7.4)/[APP-237]**
- 1.2.1 The S51 Letter refers to a number of Environmental Permits ("**EPs**") and protected species licences that the Consents and Agreement Position Statement (the "**Consents Statement**") discusses as required or potentially required for the construction and operation of the Project. The S51 Letter makes specific reference to:
- (a) EPs for "*groundwater and flood activities and the installation of the hydrogen production facility*";
 - (b) a European Protected Species Management ("**EPSM**") licence potentially required for bats; and
 - (c) a Natural England licence for water voles.
- 1.2.2 The S51 Letter advises the Applicant to progress matters relating to the EP and protected species licence applications "*as soon as possible*", and that the "*Applicant is advised to....expect to provide updates early in the examination period*".
- 1.2.3 Meetings with the Environment Agency in respect of the EP required for the installation of the hydrogen production facility are ongoing, and the Applicant will be able to provide updates as requested.
- 1.2.4 In relation to the protected species licences:
- (a) Further survey work undertaken in summer 2023 in Long Strip Wood (being the only part of the Project site in which trees with potential to support roosting bats were identified), which is proposed to be affected by tree loss in relation to the Project confirmed the presence of one bat roost in a tree to be removed. As this is a transient/summer roost supporting a small number of common species of bats, its removal will proceed under a Natural England Bat Low Impact Class Licence. This licence is held by a suitably qualified ecologist, who is authorised to supervise the lawful removal of such 'low conservation value' bat roosts, and no formal application to Natural England from the Applicant for a project-specific EPSM will be required. A report is being prepared to present the results of the additional bat surveys, the conclusions of which will be provided to the Planning Inspectorate

To: Planning Inspectorate
Date: 3 January 2024
Page: 3

("PINS") in due course. The Applicant can confirm that there are no changes to the outcome of the ecological impact assessment in respect of roosting bats; and

- (b) Works which may affect water voles will proceed under a Natural England Water Vole Class Licence. Rather than requiring a formal application from the Applicant to Natural England for a project-specific licence, the Class Licence is held by a suitably qualified ecologist, who is authorised by this licence to supervise the lawful displacement of water voles from short sections (<50m) of impacted bankside habitat. The seasonal restrictions embedded within the Water Vole Class Licence will be adhered to.

1.2.5 The S51 Letter also refers to the Consents Statement as including a reference that the draft DCO (**Doc 2.1**)/[**APP-006**] "*may be amended to disapply the need for the flood risk activity EP*". Discussions with the Environment Agency about the relevant disapplication are ongoing, and the Applicant will be able to provide updates as requested during the examination Period. If the disapplication of the requirement for a flood risk activity EP is agreed, this will be secured by Article 3(1)(d) of the draft DCO (as per the current draft DCO) as set out in the headed "Status/Comment" at Row 3 of Table 1 of the Consents Statement.

1.3 **Minor errors and omissions**

1.3.1 The S51 Letter refers to "*minor errors and omissions*" identified in the Application documents which are listed in Box 30 of the S55 Checklist. We have responded to some of these in detail by email dated 1 November 2023 (i.e. the Traffic Regulation Measures Plan (**Doc 4.8**)/[**APP-018**] discussed at paragraph 2.5 below and a table of contents to the Environmental Statement discussed at paragraph 2.6 below), and address the other points below.

2 **Box 30 of the S55 Checklist [PD-001]**

2.1 **Draft DCO**

2.1.1 As identified in Box 30 of the S55 Checklist, the Applicant will provide an updated draft DCO amending:

- (a) the cross-reference at Condition 8 of the Deemed Marine Licence (at Schedule 3, Part 2, paragraph 8 of the draft DCO) to refer to the correct reference for the Outline Construction Environmental Management Plan (as defined in Schedule 3, Part 1, paragraph 1) (i.e. **Doc 6.5**)/[**APP-222**]; and
- (b) the cross-reference at requirement 18 of the draft DCO (Schedule 2, paragraph 18) to refer to the correct reference for the Outline Decommissioning Environmental Management Plan (**i.e. Doc 6.6**)/[**APP-223**].

2.1.2 Please see attached at Appendix 2 of this letter excerpts from the updated draft DCO showing the above amendments.

2.1.3 Appendix 2 also contains further excerpts of the updated draft DCO showing amendments to Article 6 (Extent of Certain Works) and paragraph 1(b) of Schedule 1 (Authorised Project), Part 1 (Authorised Development). These amendments have been made in order to

To: Planning Inspectorate
Date: 3 January 2024
Page: 4

provide further clarification regarding the location of the dredged pocket, now shown indicatively in the Works Plans **(Doc 4.2)/[APP-012]** (see paragraphs 2.4.3 – 2.4.5 below). One further excerpt at Appendix 2 shows a further clarification made to Paragraph 4 (Licence to dredge and deposit) of Schedule 3 (Deemed Marine Licence), Part 1 (General).

2.1.4 For the avoidance of doubt, the Applicant intends to submit a new version of the draft DCO incorporating these and other changes that may become necessary in light of further communications with stakeholders and the public at the appropriate time in the Examination programme as set by the Examining Authority.

2.2 **Statement of Reasons (Doc 3.2)/[APP-009]**

2.2.1 Box 30 of the S55 Checklist states that the Statement of Reasons *"does not include a table setting out the need for compulsory acquisition powers (CA) on a plot by plot basis. The need for CA is set out in Section 3 by reference to Work Nos. However, there is no plan showing both the Work Nos and the Plot Nos. This makes it difficult to easily ascertain the justification for [compulsory acquisition powers] should be set out on a plot-by-plot basis, preferably in table form"*.

2.2.2 In light of this, a review of the Statement of Reasons has been undertaken. Please see attached at Appendices 3A and 3B of this letter a revised Statement of Reasons (a clean copy attached at Appendix 3A and a comparison version at Appendix 3B) which has been amended as follows:

- (a) Inclusion of a new Appendix 2, which sets out a plot-by-plot justification for compulsory acquisition powers and specifies the Work No. applying to each plot alongside the justifications for powers sought in relation to that plot. The plots are listed in ascending numerical order in the table and, as explained in Appendix 2, the table excludes plots identified as Crown Land on the Land Plans as compulsory acquisition powers are not sought over those plots;
- (b) Consequential amendments to the Table of Contents and paragraphs 1.16.10 and 1.18 to refer to the new Appendix 2;
- (c) Although not identified in the comments in Box 30 of the S55 Checklist, an additional amendment has been made at paragraph 3.20 to include reference to plot 5/12 which otherwise had not been referred to in the body of the Statement of Reasons; and
- (d) Amendment to paragraph 3.41.1 to remove a reference to Plot 4/27, which is discussed further below at paragraph 2.3.2.

2.2.3 For avoidance of doubt we confirm the Schedule of Negotiations at Appendix 1 of the Statement of Reasons is unchanged from the version submitted with the Application. However an updated schedule will be provided during the course of the Examination to ensure the Examining Authority has the most up-to-date position as regards discussions with the affected parties, which are ongoing.

2.3 **Land Plans (Doc 4.5)/[APP-015]**

To: Planning Inspectorate
Date: 3 January 2024
Page: 5

2.3.1 Box 30 of the S55 Checklist refers to paragraph 3.41.1 of the Statement of Reasons, which describes Plot 4/27 on the Land Plans as being hatched blue but it is shown shaded purple on Sheet 4 of the Land Plans.

2.3.2 The reference to Plot 4/27 in paragraph 3.41.1 of the Statement of Reasons was an error – as noted in the Box 30 reference, Plot 4/27 is not shown hatched blue on the Land Plans. In the updated Statement of Reasons that the Applicant is submitting (referred to at paragraph 2.2.2) the reference to Plot 4/27 is removed at paragraph 3.41.1.

2.3.3 For completeness, we note that the correct reference to Plot 4/27 is at paragraph 3.13 of the Statement of Reasons, where it is noted that this land is owned by the Applicant, and therefore shaded purple on the Land Plans, which aligns with the detail set out in the Book of Reference in relation to Plot 4/27. On that basis, no amendment to Sheet 4 of the Land Plans is required.

2.4 **Works Plans**

2.4.1 Box 30 of the S55 Checklist refers to the arrows annotated 'A', 'B', and 'C' on Sheets 1, 2 and 3 of the Works Plans, and states that "*the purpose of the annotated arrows should be explained on the Works Plans*".

2.4.2 Please see attached at Appendix 4 of this letter amended Works Plans explaining the purpose of the annotated arrows, clarifying that the points identified by the arrows are indicative locations on the approach jetty, as shown in the Works Plans on Sheets 1, 2, 3 and 4 of the Works Plans.

2.4.3 Box 30 also states that "*the extent of Work No 1b (dredged berthing pocket) should be shown on the Works Plans*".

2.4.4 The amended Works Plans show the indicative dredged pocket, as described more precisely in Article 6(2), and specified further in paragraph 1(b) of the Schedule 1 of the draft DCO and paragraph 5(2) of the deemed marine licence at Schedule 3 of the draft.

2.4.5 For the avoidance of doubt where other applications plans, whether for approval or illustrated, show Work Nos, Work No. 1b has not been added, with a view to limiting the number of plans and documents that will have to be re-uploaded to the PINS website. Work No. 1b, however, has been shown on the Works Plans as per PINS' request, but please be mindful of Note 4, which clarifies that Work No. 1b as shown on the Works Plans is indicative, and is described in detail in Article 6(2), and specified further in paragraph 1(b) of Schedule 1 of the draft DCO and in paragraph 5(2) of the Deemed Marine Licence at Schedule 3 of the draft DCO.

2.5 **Traffic Regulation Measures Plan (Doc 4.8)/[APP-018]**

2.5.1 Box 30 of the S55 Checklist **[PD-001]** identifies that the Plan of Potentially Affected Hedgerows and Trees Subject to Preservation Orders Key Plan (the "**Hedgerows and Trees Plan**") **(Doc 4.9)/[APP-019]** was attached at the back of the Traffic Regulation Measures Plan (the "**TRMP**").

2.5.2 A separate Hedgerows and Trees Plan and an updated TRMP with the Hedgerows and Trees Plan removed from the back of the document was provided by email dated 1

To: Planning Inspectorate
Date: 3 January 2024
Page: 6

November 2023 to PINS for upload to the IGET Application webpage of the National Infrastructure Planning Website.

2.5.3 Please find attached to this letter at Appendix 5 a version of the TRMP marked Revision 2. For the avoidance of doubt, Revision 2 of the TRMP is identical to Revision 1 of the TRMP submitted on 21 September 2023 with the other documents forming part of the Application, save for the Hedgerows and Trees Plan is no longer attached to the back of the TRMP. Revision 2 has been provided in response to an email from PINS on 10 November 2023 advising that PINS do not update application documents and requesting that an updated document 4.8 be referred to in an updated Guide to the Application (referred to further at paragraph 3 below and covering all documents updated in response to the S51 Letter and S55 Checklist). This has been done in the updated Guide to the Application appended to this letter at Appendix 6.

2.6 **Environmental Statement (Doc 6.2, 6.3, and 6.4)/[APP-042 – APP-221]**

2.6.1 Box 30 of the S55 Checklist identifies that there "*should be a contents table for the Environmental Statement (ES), including the names of all chapters, figures and appendices*".

2.6.2 The Applicant provided to PINS by email dated 1 November 2023 a table of contents (which we have referred to as Doc 6.0) for the Environmental Statement containing the information set out in Box 30.

2.7 **Outline Woodland Compensation Strategy and Consents and Agreement Position Statement**

2.7.1 Box 30 of the S55 Checklist incorporated the same points in relation to the Strategy and the Consents Statement that were included in the S51 Letter, and are addressed at paragraphs 1.1 – 1.2 above.

3 **Updated Guide to the Application**

3.1 You requested by email dated 9 November an updated Guide to the Application covering all updated documents submitted in response to the S51 Letter and S55 Checklist, in addition to this covering letter addressing these submissions.

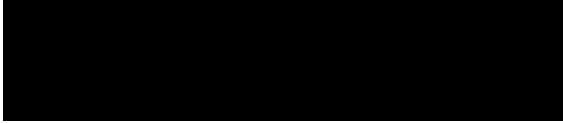
3.2 Please find attached to this letter at Appendix 6A an updated Guide (Appendix 6A contains a clean version of the updated Guide, and Appendix 6B is a comparison version) to the showing the submissions made in response to the S51 Letter and S55 Checklist.

The Applicant would be pleased to answer any queries which you may have on the matters addressed herein.

We are copying this letter to Charles Russell Speechlys LLP, who act for Air Products (BR) Limited.

To: Planning Inspectorate
Date: 3 January 2024
Page: 7

Yours faithfully,



Bryan Cave Leighton Paisner

Enc.

Appendix 1A – Official copy of register of title for title number HS340602

Appendix 1B – Official copy of title plan for title number HS340602

Appendix 1C – Supplementary plan for title number HS340602

Appendix 2 – Excerpts from Updated Draft DCO

Appendix 3A – Updated Statement of Reasons (clean)

Appendix 3B – Updated Statement of Reasons (comparison)

Appendix 4 – Updated Works Plans

Appendix 5 – Traffic Regulations Measures Plan (Revision 2)

Appendix 6A – Updated Guide to the Application (clean)

Appendix 6B – Updated Guide to the Application (comparison)