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Menaka Sahai
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Dear Madame,

**Planning Act 2008 and the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 ("CA Regulations")
Application by Associated British Ports ("the Applicant") for an Order Granting Development Consent for the Immingham Green Energy Terminal ("IGET") and Associated Development ("AD")
Applicant's request for advice on consultation relating to proposed Change Request
Application Reference: TR030008**

As you know we act on behalf of the Applicant in relation to the application for a development consent order (the "**Application**") for the construction, operation and maintenance of the IGET and its Associated Development (the "**Project**"). The Application was originally submitted on 21 September 2023 and accepted for Examination on 19 October 2023, which has since commenced on 20 February 2024.

The Application was based on the engineering design of the Project at the date of submission. It has since emerged that there is a need for some limited changes to the Application to reflect engagement and consultation with stakeholders and design developments that have become apparent following submission. The Applicant indicated its intention to apply for these changes in its letter to the Examining Authority ("**ExA**") dated 6 February 2024 (the "**Rule 6 Response Letter**", [**PDA-001**]) responding to the Planning Inspectorate's ("**PINS**") letter dated 8 January 2024 to the Applicant, all Interested Parties, Statutory Parties and other persons (the "**Rule 6 Letter**", [**PD-005**]) sent under Rule 6 of the Infrastructure Planning (Examination Procedure) Rules 2010 ("**EPR**").

In preparing to notify the ExA of its intent to apply for changes to the Application, the Applicant has had regard to the Planning Inspectorate's Advice Note 16: Requests to change applications after they have been accepted for examination (March 2023) ("**AN16**").

The Applicant's intention to request changes to the Application was discussed at the Preliminary Meeting held on 20 February 2024, at which the ExA requested the Applicant provide high-level comments on the nature of the proposed changes, the timescales for the forthcoming change request, and the implications for the Examination timetable.

Following on from the comments given at the Preliminary Meeting the purpose of this letter is to request the ExA's advice on the proposed changes consultation that the Applicant intends to undertake as part of the change application process.

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This letter first summarises the proposed changes and provides a high-level explanation of their necessity, then sets out the Applicant's proposals for consultation including the proposed list of consultees provided in the appended Table of Proposed Consultees (Appendix 1). The letter then sets out the Applicant's anticipated timeline for requesting the changes and provides a high-level commentary on the effect the request may have on the Examination timetable, so that the ExA has sufficient information to advise the Applicant in respect of the process. For the avoidance of doubt this letter does not constitute the Applicant's notification of intent to request changes.

1 Summary of changes sought

- 1.1 In summary, the proposed changes will comprise changes to the jetty design, being the portion of the Application that is a Nationally Significant Infrastructure Project ("**NSIP**") under the Planning Act 2008, and to the design of the hydrogen production facility, which forms part of the Associated Development included in the Application. The minor scale of the proposed changes means that they are not so substantial as to constitute a materially different project.
- 1.2 The Applicant notes that the need for Change 4 has arisen recently due to progressing work from the engineering and design teams which has been ongoing since the date of the Preliminary Meeting at which Changes 1 – 3 were discussed. Changes 4, as described below, is also of a minor scale.
- 1.2.1 **Change 1:** change to the number of monopiles forming part of the IGET jetty berth (to be constructed as part of Work No. 1, referred to at paragraph 3, Schedule 3 of the draft Development Consent Order ("**dDCO**") [**PDA-004**]) from 2 monopiles in the original Application to 4 monopiles;
- 1.2.2 **Change 2:** change to the diameter of the piles supporting the jetty from 1.2m to 1.575m (also forming part of Work No.1 in the dDCO) required to support the loading beneath the pipe racks, and flowing from the increased pile diameter, the distance required between the piles increases, and consequently the width of the jetty has slightly increased from 14m to 16m;
- 1.2.3 **Change 3:** change to the likely detailed layout of the Associated Development within Work No. 7 (which is not for approval at this stage). Cadent Gas's high-pressure gas pipeline crosses the Application site within Work No. 7. Following recent engagement with Cadent Gas (as highlighted in its Relevant Representation [**RR-002**]), it was identified to the Applicant that the activities which may take place in proximity to the high-pressure gas pipeline will be more restricted than originally anticipated. As a result, the proposed Development within Work No. 7 will need to move 10-15m. to the north of the gas pipeline. The likely consequences of the shift are:
- (a) that the location of the permanent road access to Work No. 7 labelled "AB" on the Street Works and Accesses Plan [**APP-016**] will need to change by moving approximately 10-15 metres to the north; and
 - (b) that a small area of additional land will be required on a temporary basis during the construction period to accommodate the laydown of the pipeline sleeve ahead of its installation as part of Work No. 6. Although the need for additional temporary possession powers does necessitate a minor extension to the Application site boundary, the Applicant is not seeking any additional powers of compulsory

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acquisition and therefore the Applicant is of the opinion that the CA Regulations are not applicable to its proposed request for Changes (addressed further below at paragraph 2.2); and

- 1.2.4 **Change 4:** addition of detail to Work No. 1a in the Works Plans [**APP-002**] to show the walkways linking the Jetty Head to the Mooring Dolphins. These walkways are already described at paragraph 1(a)(ii), Schedule 1 and at Paragraph 3(2)(a)(ii) of Schedule 3 of the dDCO [**PDA-004**].
- 1.3 Changes 1 and 2 do not affect the size of Work No. 1a therefore Work No. 1a in the Works Plans [**AS-002**] remains as previously submitted, save for the addition of Change 4. The visual addition of the walkways in the Works Plans (referred to as Change 4 above), and the proposed relocation road access "AB" and small area of additional land to be included within the Application site forming Change 3, are shown indicatively in the attached plans at Appendix 2. The first page of Appendix 2 gives an overview of the changes in the context of the Project, and details of Change 4 are shown indicatively on the second page of the plans, and details of Change 3 are shown on the third page of the plans.
- 1.4 For the avoidance of doubt, the proposed changes are not understood to give rise to any new or different likely significant environmental effects, and the Applicant believes that none of the changes, either alone or in combination, will change the conclusions given in the Environmental Impact Assessment as originally submitted with the Application (**[APP-042] – [APP-225]**), and as such, no additional mitigatory measures will need to be proposed. Nevertheless the Applicant will submit with its formal notification of its request to make changes to the Application (the "**Change Notification**") environmental information to demonstrate that there is no new or different likely significant effect in relation to the proposed changes, confirming the position in relation to each individually and collectively.
- 2 Request for advice on consultation on proposed changes**
- 2.1 Applicant's approach to submission of Change Notification and Application**
- 2.1.1 The Applicant intends to undertake consultation on the proposed changes prior to submitting its formal application for changes (the "**Change Application**") to enable relevant Interested Parties to understand and comment on the proposed changes, and for the Applicant to be able to fully consider any representations received in putting together the Change Application. In order to do so, the Applicant intends to carry out consultation on the proposed changes at the same time as the Applicant submits its Change Notification to PINS. As a result, the Applicant respectfully requests the ExA's advice and confirmation on the consultation to be carried out, especially through providing confirmation of the appropriateness of the Applicant's list of proposed consultees appended to this letter.
- 2.1.2 The Applicant acknowledges that the provision of this advice and confirmation before the Applicant's formal Change Notification represents a slight adaptation of the series of steps in the making of a Change Application given at Figure 1 of AN16, which envisages the ExA's provision of consultation advice as Step 2 in the process following on from the Applicant's formal Change Notification. The Applicant believes, however, that the provision of advice at this stage would be beneficial to the Examination as it maximises the opportunity for parties to comment on the proposed changes, thereby better serving the interests of those potentially impacted by the changes, and minimises any effect the Change Application may have on the statutory Examination timetable. The Applicant also recognises that the ExA

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retains the ability to request additional consultation to be carried out, as set out in para 3.5 of AN16, but has decided to seek advice from the Examining Authority at this stage in order to streamline the Change Application process.

2.2 Application of the CA Regulations

- 2.2.1 The Applicant has considered whether the CA Regulations would be engaged by the proposed changes. It is the Applicant's opinion that the CA Regulations would not be engaged, and therefore do not affect the scope of consultation required, for the reasons detailed below at paragraphs 2.2.3 to 2.2.6.
- 2.2.2 However and for the avoidance of doubt, if the ExA does not agree with the Applicant and is of the opinion that the CA Regulations would be engaged by the proposed changes, the Applicant is satisfied that there is sufficient time for a consultation exercise to be carried out which satisfies the statutory notification requirements in the CA Regulations and that this would not prevent examination of the Change Application from being accommodated within the statutory Examination timetable.
- 2.2.3 Regulation 4 of the CA Regulations describes the two conditions that must be satisfied in order for the CA Regulations to be triggered in relation to proposed changes to a DCO Application. The CA Regulations will be triggered where:
- (a) *it is proposed to include in an order granting development consent a provision authorising the compulsory acquisition of that additional land; and*
 - (b) *a person with an interest in the additional land does not consent to the inclusion of the provision.*
- 2.2.4 'Additional land' in the CA Regulations is defined in Regulation 2 as "*land which it is proposed shall be subject to compulsory acquisition and which was not identified in the book of reference submitted with the application as land*", and 'land' is defined by reference to S159 of the Planning Act 2008 as including any interest in or right over land.
- 2.2.5 In order for the CA Regulations to apply, then, under Regulation 4(a), the proposed change must include provisions for compulsory acquisition. While Change 3 does seek additional powers of temporary possession and a consequent minor extension of the Application site boundary, no additional powers of compulsory acquisition are being sought and therefore the CA Regulations do not apply. Temporary possession powers do not authorise compulsory acquisition. They are a separate creature of statute, providing a statutory *power* temporarily to possess the relevant land and do not involve the *acquisition of any interest in or right over* the land. Therefore powers of temporary possession are not covered by the CA Regulations.
- 2.2.6 In addition, the effect of Regulation 4(b) of the CA Regulations is that the CA Regulations will also not apply if persons with interests in the additional land being sought consent to its inclusion. The Applicant is engaging with the owner of the land affected by Change 3 to seek consent to the inclusion of that land.
- 2.2.7 As set out in paragraph 2.2.2, if the ExA consider that the CA Regulations are engaged (and the consent of those with an interest in the additional land is not obtained), then the necessary requirements can be addressed. Otherwise, the Applicant does not consider that

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compliance with the notification requirements in the CA Regulations would be necessary or proportionate in light of the minor changes proposed and considers that the proposals set out in paragraph 2.3 would be appropriate.

2.3 Applicant's proposals for consultation

2.3.1 In preparing its proposals for the scope of consultation to be carried out on the Proposed Changes, the Applicant has had careful regard to AN16, which advises that *"before an applicant requests a change to its application, it should carefully consider how, if it is accepted by the ExA, it will impact upon the other Interested Parties and the Examination Timetable"* (para 1.3). AN16 also advises at paragraph 3.3 that *"as a starting point the Inspectorate recommends that applicants should consult all those persons prescribed in the PA2008 under section 42 (a) to (d) **who would be affected by the proposed change**"* (emphasis added) and that *"if a targeted approach to the identification of those affected by the request to the change application is adopted then detailed justification should be provided why it is deemed unnecessary to consult all of the prescribed persons"*.

2.3.2 The Applicant's proposals for the scope of consultation are consistent with the approach to pre-application consultation undertaken on the Project as explained in the Consultation Report [**APP-022**] and second Statement of Community Consultation ("**SoCC**") [**APP-024**]. S47 of the Planning Act 2008 and the SoCC strictly apply in relation to the pre-application phase Statutory Consultation, however the Applicant has chosen to follow the approach set out in the SoCC. In particular, the second SoCC states at paragraph 1.31 *"the approach outlined in this second SoCC will also apply to any subsequent rounds of consultation"*, and goes on at paragraph 1.34 to state that:

"it may also be necessary in the future to undertake further rounds of Statutory Consultation with specific individuals or sections of the community potentially affected by the Project and if so that consultation may be undertaken on a targeted basis (for example either a geographic or specific stakeholder basis). It is proposed any future targeted consultation on the Project is undertaken in accordance with the principles and methods set out in this second SoCC".

2.3.3 Having regard to the minor scale of the proposed changes, the Applicant proposes that a targeted consultation on the changes be carried out, alongside the voluntary publication of notices in the local and national press and placed at sites in the vicinity of the Application site. The targeted consultation would consist of notices of the proposed changes, containing links to where the documents accompanying the Change Notification can be viewed (both electronically and in hard copy) being sent to those prescribed consultees, local authorities and persons with an interest in land who the Applicant believes will or may be affected by the proposed changes identified in the Table at Appendix 1. The local and national press notices will be published in the same national and local news outlets that the notices of the first and second Statutory Consultations were published (but for the avoidance of doubt only one round of notices will be published in each of the news outlets). The physical notices will also be displayed in the same prominent locations that were used for the first and second periods of Statutory Consultation (which were carried out from 9 January 2023 until 20 February 2023 and from 24 May 2023 to 20 July 2023).

2.3.4 In accordance with the SoCC, the Applicant is also liaising with the local planning authority (i.e. North East Lincolnshire Council) and in addition, Immingham Town Council, regarding a suitable location to deposit hard copies of consultation materials and to confirm that,

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given the minor scale of the changes and that targeted consultation will notify parties likely to be affected by the changes, no in-person consultation events are necessary.

- 2.3.5 In compliance with paragraph 3.3 of AN16, the Applicant provides with this letter "*detailed justification...why it is deemed unnecessary to consult all of the prescribed persons*" at Appendix 1 – "Table of proposed consultees for proposed changes to the IGET DCO Application". The Table of Proposed Consultees considers all parties that fall within section 42 (a) to (d) of the Planning Act 2008 and describes whether and why the Applicant considers these parties should be consulted in relation to the proposed changes to the Application.
- 2.3.6 For avoidance of doubt, the Applicant intends to fully consult with relevant prescribed consultees, local authorities and persons with an interest in land who the Applicant believes will or may be affected by the proposed changes to the Application, as advised in AN16, as although the Applicant is not required to do so under statutory requirements, the Applicant's publication of notices in local and national news sources, posting of physical notices and deposit of hard copy documents relating to the Change Notification will allow for those in the wider community who, although they may not be affected by the proposed changes, may still wish to comment on them to do so. The Applicant is also engaging in pre-consultation engagement with parties with an interest in the additional land affected by the proposed changes.
- 2.3.7 In accordance with its commitment at paragraph 2.8 of the SoCC, the Applicant intends to consult for a period of 30 days, which exceeds the 28-day minimum period recommended in AN16 as the "starting point" for number of days from receipt of information for responses (see paragraph 3.3). The Applicant seeks approval and agreement of the consultation approach detailed above.

3 **Timeline implications**

- 3.1 We note that the ExA indicated at the Preliminary Meeting that in order to accommodate appropriate examination of any changes requested, and to enable parties to digest and comment on any changes applied for, the Examining Authority considers the start of May to be the latest time that the ExA anticipates a Change Application could be accommodated. It is noted that Deadline 3 falls on 3 May 2024.
- 3.2 The Applicant anticipates making the Change Notification on or around 26 March 2024, after the receipt of the ExA's advice on the scale of the consultation to be carried out. The Change Notification will be accompanied by all information set out in Figure 2a of AN16.
- 3.3 The Applicant intends to commence targeted consultation simultaneously with its submission of the Change Notification (i.e. on 26 March 2024), so that all information accompanying the Change Notification is available for consultees to review and comment on during the consultation period. On the same day the Applicant submits its Change Notification, the Applicant will also publish notices to those consultees indicated at Appendix 1. Notification of the proposed changes will also be published in the local and national press and posted in the vicinity of the Project].
- 3.4 The Applicant intends the consultation period to remain open for a period of 30 days, which would mean the period closes at 23:59 on 24 April 2024. The Applicant will then consider all responses received and prepare all relevant information required to submit its formal

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Change Application, as listed in Figure 2b of AN16, including a Consultation Report (see point 7 of Figure 2.b).

- 3.5 In order for the Applicant to properly consider the impacts of any comments received during the consultation period on the proposed changes and reflect these accordingly in the Change Application while also ensuring sufficient time to accommodate examination of the changes in the Examination timetable, the Applicant anticipates that it will be able to submit the formal Change Application in early May noting Deadline 3 of the Examination follows on 3 May 2024.

The Applicant would be pleased to answer any queries which you may have on the matters addressed herein and looks forward to receiving the ExA's advice on the Applicant's proposals for consultation.

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

Yours sincerely



Bryan Cave Leighton Paisner

Enclosure

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