Immingham Green Energy Terminal

9.3 Applicant’s Responses to the Examining Authority’s First Written Questions

(Responses to “Q1.18. Development Consent Order”)

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1 Introduction

Overview

1.1 This document has been prepared to accompany an application made to the Secretary of State for Transport (the "Application") under section 37 of the Planning Act 2008 ("PA 2008") for a development consent order ("DCO") to authorise the construction and operation of the proposed Immingham Green Energy Terminal ("the Project").

1.2 The Application is submitted by Associated British Ports ("the Applicant"). The Applicant was established in 1981 following the privatisation of the British Transport Docks Board. **The Funding Statement [APP-010]** provides further information.

1.3 The Project as proposed by the Applicant falls within the definition of a Nationally Significant Infrastructure Project ("NSIP") as set out in Sections 14(1)(j), 24(2) and 24(3)(b) of the PA 2008.

The Project

1.4 The Applicant is seeking to construct, operate and maintain the Immingham Green Energy Terminal, comprising a new multi-user liquid bulk green energy terminal located on the eastern side of the Port of Immingham (the "Port").

1.5 The Project includes the construction and operation of a green hydrogen production facility, which would be delivered and operated by Air Products (BR) Limited ("Air Products"). Air Products will be the first customer of the new terminal, whereby green ammonia will be imported via the jetty and converted on-site into green hydrogen, making a positive contribution to the UK's net zero agenda by helping to decarbonise the United Kingdom's (UK) industrial activities and in particular the heavy transport sector.

1.6 A detailed description of the Project is included in **Chapter 2: The Project** of the Environmental Statement ("ES") **[APP-044]**.

Purpose and Structure of this Document

1.7 This document contains the Applicant's responses to those of the Examining Authority's Written Questions 1 **[PD-008]** grouped under the theme "Q1.18. Development Consent Order". It represents one of a collection of eighteen such documents, each of which addresses a different theme.

1.8 Responses are ordered ascendingly by reference number, replicating the structure of the Examining Authority's Written Questions 1.

1.9 Responses are provided in a table. The text of the question appears on the lefthand side, with the Applicant's answer to its right.

1.10 Further materials pertinent to the Applicant's response are included at the end of the document as appendices where necessary.

2 Applicant's Responses to the Examining Authority's First Round of Written Questions

Q1.18. Development Consent Order	
Q1.18.1 General	
Q1.18.1.1	
Question	**Response**
Template and best practice guidance a) Confirm that the submitted dDCO has been drafted using the Statutory Instrument template. b) Confirm that the submitted dDCO and EM follows best practice drafting guidance from the Planning Inspectorate set out in Advice Note 15, providing in tabular format, brief explanation of how each aspect of Advice Note 15 has been addressed.	a) The submitted dDCO has been drafted using the Statutory Instrument template. b) The submitted dDCO and EM follows best practice drafting guidance from the Planning Inspectorate set out in Advice Note 15. Appended in tabular format (**Appendix 1**) is a brief explanation of how each aspect of Advice Note 15 has been addressed.
Q1.18.1.2	
Question	**Response**

Discharging Requirements and Conditions a) All discharging authorities to check the Schedules in the dDCO for accuracy and provide the ExA with suggested corrections and amendments. b) Applicant, where you are seeking to discharge requirements, or seeking approvals, these should be sought "written approvals". Either make relevant drafting edits, or explain your reasons for not doing so. c) Discharging Authorities may also present a view with reference to any provision that are relevant to them.	b) All approvals under the draft **Development Consent Order ("dDCO") [PDA-004]** must be in writing. This is provided for clearly in the existing Article 63 (Procedure regarding certain approvals, etc.), which states in terms: "*Where an application is made to or request is made of any authority, body or person pursuant to any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.*" The Applicant does not consider that any further action is required.
Q1.18.1.3	
Question	**Response**
Authorities and Statutory Undertakers a) Provide a list or table of specifically named authorities and undertakers that are relevant in the dDCO for each and every reference to the following: • highway authority • lead local flood authority • local planning authority • street authority • traffic authority • local authority	(see table below)

Authority/Statutory Undertaker referred to in draft Development Consent Order ("dDCO")	Named authority
Highway authority	North East Lincolnshire Council
Lead local flood authority	North East Lincolnshire Council
Local planning authority (term not used; "relevant planning authority" used)	North East Lincolnshire Council

<table>
<tr>
<td>• public authority
• acquiring authority
• internal drainage board
• sewerage undertaker
• statutory undertaker
• crown authority

b) Provide a list or table of all relevant discharging authorities for all requirements and conditions.</td>
<td>
<table>
<tr><td>Street authority</td><td>For streets which are publicly maintainable highway: the highway authority, i.e. North East Lincolnshire Council.

For streets not publicly maintainable highway, the "street managers", i.e. within the Order limits so far as there are such streets, being only ABP except in respect of the unnamed private access road within Plots 5/18 and 6/18 shown on Sheets 5 and 6 of the Land Plans [APP-015] where it is Elba Securities Limited which is the freeholder responsible for maintenance.</td></tr>
<tr><td>Traffic authority</td><td>North East Lincolnshire Council</td></tr>
<tr><td>Local authority</td><td>North East Lincolnshire Council</td></tr>
<tr><td>Public authority</td><td>This term is used only once in the dDCO, at Article 29(3), which amends how the Compulsory Purchase (Vesting Declarations) Act 1981 (relating to compulsory purchase procedure) is to be read so that it applies to the dDCO as if it were a compulsory purchase order. It does so by substituting one of the Act's sections, in the</td></tr>
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		usual manner in made DCOs, to state the Act applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order. The entity of relevance being captured here is ABP, as "any other body or person authorised to acquire land by means of a compulsory purchase order", i.e. the **dDCO**. So no "public authority" is relevant to the **dDCO**.
	Acquiring authority	This term is used in reference to incorporation and/or application of the Compulsory Purchase Act 1965 and Land Compensation Act 1961, in the usual manner, which relate to compulsory purchase procedure and compensation. The **dDCO** provisions in respect of these Acts mean that ABP will be treated as the acquiring authority for their purposes where it exercises its powers for compulsory purchase under the **dDCO**.
	Internal drainage board	North East Lindsey Internal Drainage Board

Sewerage undertaker	Anglian Water
Statutory undertaker	This term in the **dDCO** is, in the usual manner of made DCOs, intentionally defined broadly and non-exclusively by reference to section 127(8) (statutory undertakers' land) of the Planning Act 2008 so as to ensure any bodies falling within that definition benefit from the protection conferred. However, ABP has identified the following bodies as most likely being relevant statutory undertakers to which the **dDCO** relates: Anglian Water Services Limited, Cadent Gas Limited, BT Limited, Network Rail Infrastructure Limited, Northern Powergrid Limited, and Virgin Media Limited.
Crown authority	The Crown Estate

The discharging authority for the Requirements (**Schedule 2** of the **dDCO**) is North East Lincolnshire Council. The discharging authority for the Deemed Marine Licence conditions (**Schedule 3** of the **dDCO**) is the Marine Management Organisation.

Q1.18.1.4	
Question	**Response**
Precedents and Novel Drafting a) Notwithstanding drafting precedent that may have been set by previous made DCOs or similar orders, full justification should be provided for each power/ provision taking account of the facts of this particular Proposed Development. Applicant, revise the EM on this basis, where necessary, and highlight for the ExA where changes on these grounds have been required. b) Where drafting precedents in previous made DCOs have been relied on, these should be checked to identify whether they have been subsequently refined or developed in the most recent made DCOs so that the proposed dDCO provisions reflect the SoS's current policy preferences. Applicant, revise the dDCO drafting and the EM on this basis, where necessary, and highlight for the ExA where changes on these grounds have been required. c) Check if you have explained the purpose of and necessity for any provision which uses novel drafting in the EM, and identify the PA2008 powers on which any such provision is based. The drafting should be unambiguous, precise, achieve what you want it to achieve, be consistent with any definitions or expressions in other provisions of the dDCO and follow	a) Drafting precedent (where it exists) and full justification for each provision of **the dDCO [PDA-004]** has been provided in the existing **Explanatory Memorandum [PDA-006]**. b) This exercise was undertaken prior to submission of the dDCO. The ExA will note that the drafting precedent cited in the **Explanatory Memorandum** derives overwhelmingly from DCOs made between 2020 and 2023. Exceptionally, slightly older drafting precedent is cited where the provision is necessary but precedent for that type of provision is not more recently available and/or relates to harbour development. c) All drafting in the **Explanatory Memorandum** has been justified, including with reference to made DCOs or relevant Planning Act 2008 powers. At Issue Specific Hearing 2 the Applicant set out what can reasonably be regarded as "novel" drafting in DCOs made pursuant to the Planning Act 2008, drawing a distinction between (i) wording which falls within the ambit of the Act itself and similar wording in made DCOs but which has by necessity been tailored to match the circumstances of the authorised project in question and (ii) completely unique wording which is innovative in creating new legal structures and approaches which depart wholesale from the ambit of the Act or other relevant Acts and made DCOs. The example was given of certain historical DCOs starting to enable section 106 agreements to be capable of being entered into under that section by persons without an interest in the Order land, contrary to the provision of section 106 itself, such as at paragraph 9(3) of Schedule 19 (Miscellaneous controls) of The Thames Water

guidance and best practice for SI drafting referred to above. Applicant, revise the dDCO drafting and the EM on this basis, where necessary, and highlight for the ExA where changes on these grounds have been required.	Utilities Limited (Thames Tideway Tunnel) Order 2014. It is submitted that it would be inappropriate and disproportionate to require similar levels of justification in both cases. The Applicant does not consider that there is any "novel" drafting in this sense in the dDCO. However, where the Examining Authority has requested further explanation and justification in these written questions or at issue specific hearings, this has been provided and the Explanatory Memorandum submitted at Deadline 1 updated where needed.
Q1.18.1.5	
Question	**Response**
Consolidated track changes Further to the Procedural Decisions issued in the Rule 6 letter [PD-005, Annex F], the ExA requests that, whenever changes are made to the drafting in the dDCO, the Applicant provides the following three versions of the dDCO, in addition to the tabulated schedule of changes setting out what the changes are and the reasons underpinning them: a) Clean version of the dDCO; b) Tracked changes from the previous version of the dDCO; c) Composite track changes with all changes colour coded for each subsequent version of the dDCO. The composite track changes document is expected at D1, D3, D5 and D7.	These have been provided with submissions at Deadline 1.
Q1.18.2 Definitions	
Q1.18.2.1	
Question	**Response**

Phasing The ExA has seen your description of project phasing in the ES [APP-044] [APP-075], as well as in the EM and R5 in the dDCO. a) While it is clear from your phasing plan what you intend to do when, provide further explanation of the rationale for the proposed phasing plan. Here the ExA is looking for reasoning behind each step of your phasing plan for the construction and operation of the Proposed Development? b) Corelate that rationale (set out in response to the previous question) in relation to the provisions of R3 and R5. c) Should definition for "phasing" and "phase" be included in the Article 1? Provide suitable wording. d) Is there any relevance of the proposed phasing plan to the dDML?	a) Phase 1 of the Project necessarily includes the nationally significant infrastructure project ("**NSIP**") (the entire jetty structure) and the jetty access road connecting the jetty to the public highway (Laporte Road). In terms of the hydrogen production facility, Phase 1 also includes the necessary facilities to make the hydrogen production facility operational, including: • The ammonia storage tank on Work No. 3 • Two hydrogen production units and one liquefier at Work No. 7 • Connecting pipelines and utilities (including Work No. 4 and Work No. 6) • Hydrogen storage and distribution facilities including loading bays at Work No. 7 The hydrogen production infrastructure is therefore concentrated on Work No. 7 for Phase 1 for the purposes of efficiency and cost of construction. Accordingly, at the end of Phase 1, the terminal and the hydrogen production facility will be operational. Phases 2 to 6 facilitate the expansion of the hydrogen production facility as market demand is anticipated to grow. Splitting the build-out into phases creates a feasible execution plan and allows site personnel and traffic levels to be managed. Phase 2 provides a hydrogen production, liquefier and hydrogen refuelling station and compressor on Work No. 7. In Phase 3, permanent works start on Work No. 5, with the construction of the first hydrogen production unit on the East Site, and a liquefier is added on Work No. 7. The final liquefier

	on Work No. 7 comprises Phase 4 (completing Work No. 7). Phases 5 and 6 both add hydrogen production units on Work No. 5, to complete that Work No. The build out therefore concentrates on the West Site first, with hydrogen production units added on the East Site when demand requires. The hydrogen will be transported from the facility in either liquid form to vehicle hydrogen refuelling stations or gaseous form to industrial users. Each hydrogen production unit is capable of generating 35 metric tonnes per day (Te/day) of gaseous hydrogen and each liquefier unit is capable of converting 35Te/day of gaseous hydrogen into liquid hydrogen. It is anticipated that more hydrogen will be transported from the facility in gaseous form than liquid form and therefore, once fully constructed, the facility will accommodate six hydrogen production units and four liquefiers. In Phase 1, the temporary construction sites will be required comprising Work No. 8 (for Air Products' and contractors' car parking and temporary offices) and Work No. 9 (for car parking, material storage and laydown). The parts of the West Site and East Site not under development will also be used for temporary construction purposes to minimise the use of additional land. After Phase 1, all construction activity will be confined to the West Site and East Site. b) **Requirement 3** of the **draft Development Consent Order ("dDCO") [PDA-004]** requires any application to discharge a requirement to include a plan showing the part to which the application relates, the parts (if any) in respect of which any such application has previously been approved by North East Lincolnshire Council ("**NELC**") and the parts (if any) in respect of which the requirement is yet to be discharged. There is flexibility as to how the requirements are discharged (i.e. an application may relate to any part as defined in that application) and **Requirement 3** secures transparency for NELC as to overall progress on the discharge of the relevant requirement. The discharge of each requirement may align to the

	above phasing, or an application could relate to more than one phase or parts of a phase. For example, the hydrogen production units within the East Site (Work No. 5) do not come forward until Phases 3, 5 and 6 and therefore certain requirements relating to Work No. 5 (e.g. approval of a remediation strategy before below ground works) may not be discharged until that point in time. **Requirement 5(1)** provides that the ammonia storage tank within Work No. 3a and the hydrogen production units within Work No. 5 and Work No. 7 must not be brought into operational use until the jetty forming part of Work No. 1 is available for use. The hydrogen production facility is to be used to process imported ammonia and the aim of this requirement is to secure demonstrably that the hydrogen production facility will not be constructed and used in isolation from the jetty. **Requirement 5(2)** prevents construction of more than two hydrogen production units and one liquefier (i.e. those units and liquefiers contained in Phase 1), until a plan setting out the phase of works relating to the additional hydrogen production unit or liquefier has been approved by NELC. This ensures that NELC are aware of the phasing of the Project as it comes forward and can consider the implications as applications are submitted to discharge requirements. For example, the traffic and transport implications of the Project have been assessed on the basis that the peak traffic will occur in Phase 1 due to the associated construction activity. NELC would have oversight of the construction phases after Phase 1 through **Requirement 5(2)** and, for example, would be able to reject any proposals for phasing that result in adverse effects arising from phasing that have not been assessed in the **Environmental Statement**. c) The term "phase" is included only in one instance: **Requirement 5(2)** in **Schedule 2**. It is contrary to the principles of statutory drafting to define a term used only once where the meaning is clear from the provision in which

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<tr><td></td><td>it occurs. In this case, it is for the details submitted pursuant to that requirement to define what constitutes a "phase" and NELC will have the ability to approve or reject any phasing plan. A definition is therefore not considered necessary or appropriate.

d) As noted in part a) to the response to this question above, the NSIP is being constructed during Phase 1 of the Project. Therefore, there is no requirement for provision as to phasing to be captured within the draft Deemed Marine Licence.</td></tr>
<tr><td colspan="2">Q1.18.2.2</td></tr>
<tr><td>Question</td><td>Response</td></tr>
<tr><td>Air Products

What is meant by "or such other person as the Secretary of State agrees"?</td><td>The definition of Air Products in Article 2 (Interpretation) of the draft Development Consent Order ("DCO") [PDA-004] refers to Air Products (BR) Limited "or such other person as the Secretary of State agrees".

Air Products has the direct benefit of certain provisions (see limb (b) of the definition of "undertaker" in Article 2 and Articles 46(3) and (4)) in relation to defined plots.

Air Products (BR) Limited intend to construct and operate the Associated Development subject to the DCO being granted. However, the definition gives flexibility for any party to apply to the Secretary of State for agreement that another party should benefit from those provisions. It would allow flexibility if, for example, a different Air Products subsidiary company wished to pursue construction and operation of the hydrogen production facility for an unforeseen reason. The requirement for Secretary of State approval ensures that use of those powers is appropriately justified and controlled in the usual manner established in made DCOs.</td></tr>
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Q1.18.2.3	
Question	**Response**
Apparatus The definition of "apparatus" appears to be too broad, and includes a wide range of equipment and apparatus. Explain why the broader definition is needed for this particular Proposed Development, with justification with reference to each equipment and apparatus included in the definition.	The starting point for the definition of "apparatus" in made DCOs, and in the Transport and Works Act orders which preceded them, is that established in Section 105, Part 3 of the New Roads and Street Works Act 1991 ("**1991 Act**"), i.e. "*'apparatus' includes any structure for the lodging therein of apparatus or for gaining access to apparatus*". The wording after "includes" is additional information, the core definition simply being the plain English understanding of the term "apparatus" which will be intentionally broad. It is established in made DCOs that projects will wish, in the context of that broad starting definition, to ensure that apparatus key to their specific works is specified, as beyond doubt, as being included in that plain English definition. It is considered entirely appropriate for the definition of "apparatus" in the dDCO to be as broad as the starting statutory position envisages, including the specified list of items for the avoidance of doubt as it does, given the wide range of equipment and apparatus that may be found in a complex engineering structure such as a hydrogen production facility. No purpose is served in this case by acting contrary to the existing legislative framework and precedent by constraining what constitutes "apparatus" and it would, indeed, conflict with the imperative of delivering this nationally significant infrastructure project. None of the items can reasonably be described as falling outside of the ambit of a plain English definition of "apparatus". Each element of the clarifying list added to the 1991 Act definition for the purposes of the authorised project is addressed below: • Pipelines – the Project includes multiple pipelines including those

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comprised in Work No. 1, Work No. 2, Work No. 4 and Work No. 6, as well as pipelines within individual Work Nos. These carry ammonia and other substances between storage and processing facilities.

Aerial markers – these are likely to be necessary to mark the route of the underground pipelines, for example at Work No. 6.
Cathodic protection test posts – cathodic protection is required against saline corrosion for the underground pipeline in Work No. 6. The test posts allow for above-ground monitoring.
Field boundary markers – these would be used to demarcate the boundary between ownerships during construction to ensure that fence lines can be re-erected after completion of works. This is particularly relevant to Work No. 9, which will be returned to two different owners.
Transformer rectifier kiosks, electricity cables and electricity cabinets – electricity cables will be installed to connect the various sites. The kiosks and cabinets are required to connect to Northern Powergrid infrastructure.
Telecommunications equipment (including masts and cables) – telecommunications apparatus will be installed to connect the various sites to telecommunications networks.
Pipe sleeves, ducts and culverts – this ensures that the structures for lodging apparatus referred to in the 1991 Act includes these specific items. For example, Work No. 4 comprises a culvert under Laporte Road and may include a pipe sleeve, and pipe sleeves will be required as part of Work No. 6. Ducts will be provided to hold the electricity cables including in Work No. 4 and Work No. 6.

The list is therefore not considered to be too broad in the context of the authorised project.
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Q1.18.2.4	
Question	**Response**
Area of jurisdiction No explanation is given in the EM for the precise limit (186m). What is the rationale for this?	A detailed rationale was provided in the **Explanatory Memorandum ("EM")** submitted with the application as follows: "*Section 2 of the Harbours, Docks and Piers Clauses Act 1847 anticipates the "special Act", i.e. in this case the Order, specifying the limits within which the powers of the dock master may be exercised by reference to the distance measured from the "harbour, dock, or pier", i.e. in this case the authorised project. Section 47 of the Humber Commercial Railway and Dock Act 1904, first authorising the construction of a dock near the village of Immingham, did this by reference to a distance of 200 yards riverwards from every part of the works. The approach was followed in subsequent enactments for extensions to the docks, most recently in the Associated British Ports Act 1983 (section 11), the Associated British Ports Act 1990 (section 10), the Associated British Ports (Immingham Outer Harbour) Harbour Revision Order 2004 (article 15) and the ABP (Immingham Gas Jetty) Harbour Revision Order 2007 (article 9), all further extending the limits "to a distance of 200 metres in every direction" from the works authorised by each of those enactments. Article 42 of the Order simply replicates this approach in respect of the authorised project, clarifying (as its precedents back to the original 1904 Act did) that, so far as relevant to vessels, such powers are limited to vessels going to, moored at or departing from the relevant work. Article 42 therefore fulfils the same function as Article 5 (Limits of harbour) of the model provisions and is equivalent to Articles 4(1) - (3) of the Port of Tilbury (Expansion) Order 2019, i.e. to extend the area of the Dock Master Immingham's jurisdiction to encompass 186 metres around the new built marine infrastructure*

	comprised in the authorised project. The drafting and approach mirror that taken in Orders related to the Port of Immingham since its creation (186 metres reflecting the frontage of the Immingham Oil Terminal which corresponds sensibly with the 200 yards set in previous enactments iteratively extending the jurisdiction of the Port as it expanded)." This paragraph reappears at **Paragraph 10.3** of the most recent **EM [PDA-006]**.
Q1.18.2.5	
Question	**Response**
Commence a) Commence has been defined in Schedule 2, R1. Should this also be defined in Article 1? b) The definition of "commence", excludes several activities, in particular but not only: demolition work, archaeological investigations, remedial work in respect of any contamination or other adverse ground conditions, the receipt and erection of construction plant and equipment, the erection of temporary contractor and site welfare facilities, the diversion, laying and connection of services, the erection of any temporary means of enclosure. These works can have significant effects. How are those activities and their effects monitored and controlled? c) LAs, are you satisfied that the adverse effects of the activities excluded from the definition of "commence" are adequately controlled? d) LAs, for which specific activities excluded from the definition	a) The term "commence" is expressly defined in **Schedule 2 (Paragraph 1)** and that definition applies to the requirements contained in that schedule only. **Schedule 3 (Paragraph 1)** separately defines "commence" for the purposes of the Deemed Marine Licence. Accordingly, the definition should not be defined in **Article 1**. The use of the definition is tailored to the particular schedule in which it is found. The defined term is not used in the main articles of the **draft Development Consent Order ("dDCO") [PDA-004]**. b) The definition of "commence" in **Schedule 2** is used in the following requirements for the purposes stated: • **Requirement 6** – there are restrictions on commencement of works until a construction environmental management plan is approved for those works. • **Requirement 7** – there are restrictions on commencement of works until a construction traffic management plan is approved for those works.

of "commence", would you consider require to be controlled and why? e) Applicant, further to discussion at ISH2 [EV4-008] [EV4-008], explain the cumulative and incombination or overlapping effects of the activities that have been excluded from the definition of commence. f) Applicant, further to discussion at ISH2 [EV4-008] [EV4-008], explain how environmentally significant each of the activities excluded from the definition of commence would be and how the adverse effects would be controlled. g) Applicant, further to f, identify all instances where the activities excluded from the definition of commence, are covered by other provisions in the dDCO.	• **Requirement 12** – there are restrictions on commencement of works until a drainage strategy is approved for those works. In each case, applications to discharge the requirements may be submitted in respect of part or parts of the Order Limits. Accordingly, the intention of the exclusions in the definition of "commence" is to allow works to be undertaken, ahead of approval of the construction environmental management plan, construction traffic management plan and drainage strategy, which do not give rise to adverse impacts and the need for the control of those impacts, as secured through those plans and strategies. Certain changes to the definition of "commence" are proposed, as follows, to better reflect the state of environmental information that has been gathered in respect of the site: ""commence" means beginning to carry out any material operation (as defined in section 155 (when development begins) of the 2008 Act) forming part of the authorised project or the relevant part of it (in each case as specified where the term "commence" is used in this Schedule) other than operations consisting of site clearance (excluding the clearance of trees or other vegetation from Long Strip), demolition work, ~~archaeological investigations,~~ environmental surveys and monitoring, investigations for the purposes of assessing ground and geological conditions, remedial work in respect of any contamination or other adverse ground conditions, the receipt and erection of construction plant and equipment (excluding in relation to Work No. 9), the erection of temporary contractor and site welfare facilities (excluding in relation to Work No. 9), the diversion, laying and connection of services, the erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "commencement" and "commenced" are to be construed

	accordingly;" The reasons for the changes are as follows: • To clarify that, in the context of applications for approval of a construction environmental management plan, construction traffic management plan and drainage strategy on a phased basis, the requirement to obtain their approval before "commencement" applies to each phase of relevant works. • Deletion of "archaeological investigations" – all anticipated archaeological investigations have been completed across the Application site. • The receipt and erection of construction plant and equipment and temporary contractor and site welfare facilities should not apply to Work No. 9, which is subject to provisions in the **Outline Construction Environmental Management Plan [APP-221]** for the protection of that Work No. (limiting the nature of the site setup works). Each of the activities excluded from the term "commence" in **Schedule 2** is set out below with justification for its exclusion: • Site clearance (excluding the clearance of trees or other vegetation from Long Strip) – vegetation clearance does not typically fall within the definition of "development" and can be carried out at any time without needing planning permission and no monitoring or controls are required. No significant environmental effects arise from such works – the works are constrained by statutory requirements, e.g. for nesting birds. Indeed, site clearance will be carried across the Order limits from time to time in the usual way. • Demolition work – it is accepted that demolition work can in practice lead to likely significant environmental effects. However, in this case,

	the only demolition will comprise removal of a small, prefabricated building in Work No. 5 which will require deconstruction, and which will not lead to significant environmental effects that would require control through the above plans and strategies or monitoring. • Environmental surveys and monitoring – environmental surveys and monitoring activities have been undertaken and are ongoing across the Order Limits. For example, there has been ongoing monitoring of groundwater. These activities are not intrusive and can be carried out at any time without needing planning permission. No likely significant environmental effects are considered to arise that would require control through the above plans and strategies or monitoring (the very purpose being to permit investigation and monitoring). • Investigations for the purposes of assessing ground and geological conditions – as confirmed in **Environmental Statement ("ES") Chapter 21: Ground Conditions and Land Quality [APP-063]**, significant ground investigation works have been carried out across the Application Site and additional works are being completed. The works typically involve the creation of boreholes and trial pits. No likely significant environmental effects are considered to arise from the minor works comprised in these activities that would require control through the above plans and strategies or monitoring. • Remedial work in respect of any contamination or other adverse ground conditions – under **Requirement 15**, no below ground works can be carried out without submission and approval of an appropriate remediation strategy to deal with any contamination which is required. This provides appropriate control over the work to be undertaken. It is unlikely that other significant effects could arise that would require control through the above plans and strategies. • Receipt and erection of construction plant and equipment and erection of temporary contractor and site welfare facilities (save Work No.9 (following the amendment referred to above)) – it is not

	envisaged that any significant environmental effects will arise from these limited operations which would facilitate site set up, having excluded Work No. 9. The works are likely to include the delivery and set up of piling rigs in preparation for the start of piling, the delivery and set up of drilling equipment for the pipelines and the delivery of site cabins. Accordingly, no monitoring or controls are proposed. • Diversion, laying and connection of services – this would, for example, allow early installation of temporary power connections and the works are likely to include localised trenches to lay cables and water lines. In the event that this requires below ground works, any such works would be subject to approval of an appropriate remediation strategy under **Requirement 15** (as identified above). No other likely significant environmental effects are considered to arise that would require control through the above plans and strategies or monitoring. • Erection of any temporary means of enclosure – temporary (rather than permanent) fencing may be used on site during construction. The installation of such fencing involves a small amount of local excavation for installation of fence posts and does not give rise to likely significant environmental effects that would require control through the above plans and strategies or monitoring. • Temporary display of site notices or advertisements – the installation of such notices or advertisements would require minimal works which would not be intrusive or give risk to likely significant environmental effects that would require control through the above plans and strategies or monitoring. As such, given the nature of the effects, the Applicant does not consider that any additional monitoring or controls are required.

	e) The activities described above (and which have been excluded from the definition of "commence") have been assessed within the ES as set out in **dDCO Schedule 1** (or would otherwise comprise necessary works which do not give rise to any materially new or materially different significant effects from those assessed as referred to in **dDCO Schedule 1**). However, as indicated above and given their limited scale, none have the potential to lead to significant adverse environmental effects. In light of that, none of these activities (alone or in aggregate) have the potential to lead to significant adverse cumulative effects if considered together with any other relevant developments. Further, none are considered to have the potential to act together to generate significant in-combination effects. f) Please see the answer to b) above. g) Under **Requirement 2**, the authorised project must be begun (which has the meaning given in section 155 (when development begins) of the Planning Act 2008) within five years of the date on which the Order comes into force. Once it is begun (by a material operation), the provisions of the dDCO will apply to any works undertaken pursuant to the dDCO. As identified in the answer to b) above, some works do not meet the threshold of being a "material operation" and do not need planning permission. These would include vegetation clearance, environmental surveys and monitoring and investigations for the purposes of assessing ground and geological conditions. Those works could be carried out (and indeed have been carried out) at any stage. All works undertaken pursuant to the dDCO (once the authorised project has begun) are controlled by the dDCO – this includes the excluded works. They must for example be permitted by **Schedule 1**. As such, their environmental effects will have been assessed in the **ES** (or their effects

	must be no different to those effects as have been assessed). The requirements in **Schedule 2** therefore apply to all the excluded works where applicable on the terms of those requirements – save in three cases as follows. The purpose of the definition of "commence" is to permit the excluded works to be undertaken ahead of approval of the construction environmental management plan (**Requirement 6**), construction traffic management plan (**Requirement 7**) and drainage strategy (**Requirement 12**). The construction hours set out in **Requirement 9** will apply to the excluded works involving works of construction. Importantly, **Requirement 15** will still apply to the works. This provides that no below ground works may be done (outside of the UK marine area) until a written remediation strategy to deal with any contamination of the relevant part of the Application Site which is likely to cause significant harm to persons or pollution of controlled waters or the environment has, following consultation with the Environment Agency on matters related to its function, been submitted to and approved by the relevant planning authority. Accordingly, if any below ground works are engaged by the excluded activities, they would be subject to the provisions of **Requirement 15**.
Q1.18.2.6	
Question	**Response**

Construct The definition of "construct" is too broad. Notwithstanding the prior precedent stated in the EM, provide justification of the need for this broad definition, with reference to each activity included in the definition, for this Proposed Development.	In determining whether the definition of any term is "too" broad it is necessary to consider how it is used. Section 31 (Requirement for Development Consent) of the Planning Act 2008 provides that "***development consent is required for development*** *to the extent that the development is or forms part of a nationally significant infrastructure project*" (emphasis added). **Article 5 (Development consent, etc., granted by the Order)** of the **draft Development Consent Order "(dDCO") [PDA-004]**, following the precedent of made DCOs, therefore simply grants development consent for the authorised development. In other words, neither the Act nor the **dDCO** are required to authorise specifically all of the exact construction activities necessary to carry out the development. It is understood that all the activities necessary will be carried out. Of course, how the activities are carried out will be constrained, as necessary, by the Requirements (**Schedule 2** of the **dDCO**) or conditions imposed on the Deemed Marine Licence (**Schedule 3** of the **dDCO**) for reasons of mitigation, and **Article 5** specifically states that the development consent granted is subject to the provisions of the **dDCO** including the Requirements. The term construct is, in general terms, used across the **dDCO** (a) where construction is being governed by restrictions as to how it is carried out, in which case it should be broad; or (b) where a power is only to be exercised for the purpose of construction of the authorised project, in which case, again, it would not be appropriate to constrain the definition of "construct", especially in circumstances where each power already contains appropriate safeguards as to its use in the usual manner. That important context aside, as stated in the **Explanatory Memorandum [PDA-006]**, "construct" is defined in **Article 2** to "include" execution, placing, altering, replacing, relaying and removal, following the wording at

	Article 2 of the Port of Tilbury (Expansion) Order 2019. The term "construct" is in itself broad, interpreted therefore in legal terms by way of its plain English meaning, and the additional wording is therefore only to clarify what that broad term includes for the avoidance of doubt both to ensure that the appropriate safeguards in the dDCO which apply to construction do indeed apply to its various elements but also that there can be no doubt that those activities are also purposes for which powers can be exercised. In each case the term construct appears with the "authorised development", and so no additional works are being authorised. The need for the clarificatory wording arises as follows: • Execution – this comprises the execution of the works which would have been approved pursuant to the DCO. • Placing – this clarifies that "placing" something in a particular position is included within the works of construction. • Altering, relaying, replacing and removal – not every work of construction is completed correctly in the first instance – there is scope for error. Accordingly, having executed some works or placed some components, it may be necessary to alter or relay or remove and replace that work of construction, in order for it to comply with the requisite design details. It also provides scope to put in temporary works then alter or relay or remove and replace some works to allow permanent works to be constructed (for example, if a temporary road access is installed but later upgraded in whole or part to a permanent road access). The definition is therefore not considered too broad and is considered to be appropriate for this Project.
Q1.18.2.7	

Question	Response
Maintain Why does the definition of maintain not refer to the assessment in the ES? The ExA considers that the definition should include the explanation in the EM which includes the bar that the dDCO would authorise the activities included in the definition of "maintain" provided it does not give rise to materially new or materially different environmental effects.	"Maintain" is defined as "*inspect, repair, adjust, alter, remove or reconstruct*" in **Article 2 (Interpretation)** of the **draft Development Consent Order ("dDCO") [PDA-004]**. **Article 41 (Maintenance of authorised project)** of the **dDCO** provides for the power to "maintain" the authorised project. Its **paragraph (2)** categorically provides this as follows: "*(2) This article does not authorise the carrying out of any works which are likely to give rise to any materially new or materially different effects that have not been assessed in the environmental statement.*" It is therefore unnecessary, and would be contrary to best statutory instrument drafting practice, to duplicate this wording in the definition of "maintain", which in any event has no meaning in the context of the authorised project except when read together with Article 41. It is not considered that any further drafting is required.
Q1.18.2.8	
Question	**Response**
Order land a) The colours referred to in the definition relates to five of the eight colours in the land plans. To avoid confusion, should the definition also include the three colours that are excluded and the reasons for that exclusion? The ExA notes that this explanation is in the EM. b) Also, for avoidance of doubt and in the benefit of accessibility, consider stating in words, the	(a) As discussed in Issue Specific Hearing 2, (i) the **draft Development Consent Order ("dDCO") [PDA-004]** is a statutory instrument to be interpreted in a legal context; and (ii) the principles of statutory drafting, which pervade all legislation such as statutory instruments, require that unnecessary text is not included (unlike for example informal guidance notes issued by government departments). It is therefore not considered necessary for a definition to set out what is not included where this is unambiguous. No legal reading of the existing definition of "Order land" at article 2 (Interpretation) would permit an interpretation that the three

colours in the key in the Land Plans?	colours of land shaded on the **Land Plans [**APP-015**]** and not referred to in the definition are included within the Order land. The existing text within the legend of the **Land Plans** would remove any further doubt: the land shaded brown is referred as "*Adopted highway not included in the book of reference* ***and not part of the Order land***"; the land shown shaded yellow is referred to as "*Land owned by Associated British Ports not included in the book of reference* ***and not part of the Order land***"; and the land shaded orange is referred to as "*Crown land with leasehold ownership of Associated British Ports* ***not part of the Order land***" (emphasis added). The Applicant therefore would submit that no amendment is necessary to the definition. (b) This suggestion has been considered but it would not achieve the accessibility proposed. Whilst the key could be amended to state the colours in words, the colour shading of the **Land Plans** themselves cannot be so labelled. Black and white options for shading the land in different patterns would render them hard to read once overlaid over the ordnance survey map base necessary to identify the location of the land in question.
Q1.18.2.10	
Question	**Response**
Ancillary works The definition of "ancillary works" seems broad, especially with reference to "any other works authorised by the Order". Applicant consider more suitable drafting and provide justification. a) Equally, should "further associated development" from Schedule 1, Part 1 be also defined?	The definition of "ancillary works" is fundamentally not about authorising a broad category of unspecified new works, which it does not, but ensuring that the works already authorised by the **draft Development Consent Order ("dDCO") [**PDA-004**]** do not fail to benefit from the **dDCO** powers they are intended to have by falling foul of the complex and often grey area of what works count as "development" under section 32 of the Planning Act 2008 (mirroring longstanding Town and Country Planning categories of what count as development). This well precedented definition therefore replicates exactly the one provided in the Secretary of State's Model

b) The ExA notes that further associated development includes a list of works (a) to (k) which is not identified by work numbers. Would it be possible to identify these works, some of which appear to be substantial in nature, with work numbers or highlight how many instances of each you expect to encounter. Provide explanation in EM. c) The ancillary works listed in Schedule 1, Part 2 does not tally with the list in the EM, Paragraph 2.21 of the EM. Provide clarification or correct one or the other list.	Provisions, following a long line of Transport and Works Act Orders, which appears also in a number of made DCOs including the significant Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014, namely "*the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by the Order and which are not development within the meaning of section 32 (meaning of development) of the 2008 Act*". The powers of the **dDCO**, following precedents in the usual manner, are specified either (i) to relate to or (ii) to be for the purposes of the "authorised project". That definition covers two limbs. Firstly, it covers works authorised by the **dDCO** which constitute "development" under section 32 of the Planning Act 2008 (i.e. the defined "authorised development"). Secondly, it covers works which are listed in **Part 2** of **Schedule 1** of the **dDCO** (the defined "ancillary works") which are known not to constitute development under section 32 of the Planning Act 2008 but also, as an intentional catchall, any other works which happen already to be authorised by a power of the **dDCO** but where there could be some residual argument as to whether they constitute "development" or not. The definition, as drafted, is clear it relates to works already authorised by the **dDCO**, ensuring there is no doubt the powers of the **dDCO** apply to all works listed in the **dDCO** in one way or another, and so its broad nature should not be a matter of concern. (a) Made DCOs do not, so far as the Applicant is aware, define "further associated development" because (i) it falls within the concept of "authorised development" (and thus within the definition of "authorised project"), rather than being a separate legal concept such as "ancillary works" above, and (ii) the limited bespoke references to it in subsequent schedules of the **dDCO** adequately cross-refer to it by way of its paragraph numbers in **Schedule 1**. (b) **Paragraphs 2.4.4 and 2.4.5** of **Environmental Statement Chapter 2: The Project [APP-044]** set out that all further associated development has

	been taken to "*extend across the full extent of the Site* [i.e. the Order limits]" and that has formed one of the bases of assessment of the authorised project. Listing further associated development in **Paragraphs 11(a) to (k)** of **Part 1** of **Schedule 1** follows the drafting of made DCOs and is a well-precedented means of preventing duplication of each paragraph in each earlier Work No. in the context of a *Rochdale* envelope approach where the further associated development, subject to detailed design, could take place in any Work Nos. It is therefore not appropriate for any of **Paragraphs 11(a) to (k)** to be provided with their own Work No., forming (as they do) part of a range of Work Nos. (c) The list at **Paragraph 2.22** of the **Explanatory Memorandum [TR030008/APP/2.2 (3)]** submitted at Deadline 1 has been corrected to reflect **Part 2 (Ancillary Works)** of the **dDCO [PDA-004]**.
Q1.18.3 Articles	
Q1.18.3.1	
Question	**Response**
Article 3 – Application, disapplication and modification of legislative provisions a) This Article does not appear to be appropriately tiled given the Article only seeks to disapply various statues (or elements of them) and there is no specific "application" or "modification". b) Are there any elements of the disapplication in Article 3(1) that overlap with approvals that you are seeking through Protective Provisions in Schedule 14? Highlight those overlaps. If you were to secure the Protective	a) The heading of the Article has been amended to 'Disapplication of legislative provisions'. b) There is no 'overlap', i.e. no duplication, between the disapplication provisions of Article 3 (Disapplication of legislative provisions) and protective provisions at Schedule 14 of the **draft Development Consent Order ("dDCO") [TR030008/APP/2.1 (3)]** but the two do work hand in glove and will both be necessary as they stand. Articles 3(1)(a) to 3(1)(c) disapply the need for consents from the North East Lindsey Drainage Board ("NELDB") which would otherwise be required in respect of the Land Drainage Act 1991 and byelaws made

Provisions, then do you still need to disapply the relevant elements of the legislation? Provide justification for each case. You can tabulate this information for ease. c) EA and other Statutory Bodies, do you have any concerns regarding the disapplication of consents under Article 3? Explain with reasons. d) Do Affected Persons have any concerns regarding the disapplication of the provisions of the Neighbourhood Planning Act 2017 relating to the temporary possession of land as proposed in Article 3(1)(e)?	under the Water Resources Act 1991 and the Land Drainage Act 1991. However, these disapplication provisions have been included so that they will be superseded by protective provisions in favour of NELDB which include equivalent approvals. The Applicant and NELDB are working constructively towards agreeing the form of such protective provisions and these will be included on the face of the **dDCO** once a final form is achieved. Article 3(1)(d) provides for the disapplication of the consent required in relation to the carrying out of a relevant flood risk activity under the Environmental Permitting (England and Wales) Regulations 2016 ("the Environmental Permitting Regulations") and will be replaced by the protective provisions for the protection of the Environment Agency and NELC as the lead local flood authority in Part 2 and Part 6 of Schedule 14 respectively, which will require certain works which could affect the interests protected by these consents to be approved by the relevant body before they are carried out. Again, the Applicant, the Environment Agency and North East Lincolnshire Council as the lead local flood authority are working constructively towards agreeing the form of such protective provisions for each and the forms currently on the face of the **dDCO** will be updated once any updates are agreed. This is part of the consolidated approach to consenting which goes to the heart of the regime for nationally significant infrastructure under the Planning Act 2008. The established approach of made DCOs is to disapply legislation prominently in the standard provision which does so (i.e. here Article 3) rather than in a particular party's protective provisions towards the end of a DCO but, as DCOs are read as the statutory instruments which they are, by way of legal interpretation, it will be readily understood that Article 3 and the

	protective provisions are to be read together. There are no other interactions between Article 3 and protective provisions at Schedule 14.
Q1.18.3.2	
Question	**Response**
Article 4 – Incorporation of 1847 Act The ExA has seen the overarching explanation given in the EM and prior precedents cited, and seeks justification with respect to the Proposed Development why the Sections of the 1847 Act have specifically been disapplied.	Paragraphs 7.17 to 7.21 of the **Explanatory Memorandum ("EM")** submitted at Deadline A **[PDA-006]**, amended slightly in the version of the EM submitted at Deadline 1 **[TR030008/APP/2.2 (3)]**, set out in further detail the specified provisions of the Harbours, Docks, and Piers Clauses Act 1847 ("the 1847 Act") which have been incorporated into the **draft Development Consent Order ("dDCO") [PDA-004]**, being for the efficient and safe management by the 'dock master' of the 'area of jurisdiction' (each as defined in Article 2 (Interpretation)) in the same manner as other orders for harbour development, both under the Planning Act 2008 and other regimes. Note that the list specified in Article 4 (Incorporation of the 1847 Act) is of what is not being incorporated into the dDCO. This is because the entire Act is being incorporated except for unnecessary/repealed provisions (a 'buffet' approach as anticipated in the Act itself) so it is easier, as per established precedent on this provision, to list what is not being brought over than what is. Nothing is therefore being 'disapplied', as such.
Q1.18.3.3	
Question	**Response**

Article 5 – Development consent, etc., granted by the Order The ExA acknowledges that "Authorised Development" is defined in Article 2 with a cross reference to Schedule 1, Part 1, which in turn gives a description of the NSIP and AD with reference to relevant sections of the PA2008. However, the ExA questions if this leaves room for doubt with respect to Article 5, and if Article 5 should mention Associated Development and further Associated Development?	As discussed in Issue Specific Hearing 2, (i) the **draft Development Consent Order ("dDCO") [PDA-004]** is a statutory instrument to be interpreted in a legal context; and (ii) the principles of statutory drafting, which pervade all legislation such as statutory instruments, require that unnecessary text is not included (unlike for example informal guidance notes issued by government departments). In that context the Examining Authority can have absolute confidence that the term 'authorised development', at Article 5 (Development consent, etc., granted by the Order) and wherever else it occurs in the dDCO, can only be interpreted by way of its definition at Article 2 (Interpretation) which includes all the development described in Part 1 of Schedule 1, which in turn includes all associated development and further associated development set out in that Schedule. The Applicant therefore would submit that no amendment is necessary to Article 5.
Q1.18.3.4	
Question	**Response**
Article 9 – Power to alter layout, etc., of streets The ExA is unclear why such wide powers are required in Article 9(1) to carry out "any works" in the street and in 9(2) "without limitations". a) Should Paragraph (4) seek written consent from the street authority? b) Street Authority, are you satisfied with the provisions in this Article?	Article 9(1) does not confer a wide power. As discussed in Issue Specific Hearing 2, the **draft Development Consent Order ("dDCO") [PDA-004]** is a statutory instrument to be interpreted in a legal context which includes that provisions are to be read as a whole. The "*any works in the street*" which Article 9(1) authorises are limited by the "*manner specified in relation to that street in column 3*" of Schedule 5 (alteration of streets) which sets out the scope of what is permitted, for example at Laporte Road being "*Works for the provision of a permanent means of access, altered layout and revised signage and markings within each of the areas edged purple and marked respectively J, K and L on sheet 4 of the street works and accesses plan*". Thus "*any works*" which fall outside of that description and outside of the locations marked out on the

	specified plans are not permitted. This form of drafting for such a power follows the established conventions and drafting of made DCOs, as more particularly set out in the **Explanatory Memorandum ("EM") [PDA-006]**, and the Applicant has not considered it necessary to depart from those precedents. The term 'without limitation' in Article 9(1) is not creating a power, wide or otherwise. It is a standard legal formulation on the face of statute clarifying that one power is not to be read as conflicting with or limiting another. Article 9(1) provides that the Secretary of State is in the **dDCO** authorising specific temporary and permanent alteration of streets as set out in Schedule 5 (alteration of streets). Articles 9(1) – (4) set out a separate mechanism for the undertaker being able to apply to the street authority for approval for other works for the alteration of streets not currently anticipated and thus not included in the dDCO. The wording in Article 9(2) "*without limitation on the specific powers conferred by paragraph (1)*" is thus a legal formulation saying, in plain English, that though there is a separate mechanism to obtain authority from a street authority for other works at a later stage this does not diminish that at the current stage the Secretary of State has authorised the works specified in Schedule 5. As more particularly set out at **Paragraph 8.14** of the **EM**, this wording is established in made DCOs and the Applicant has not considered it necessary to depart from those precedents. In circumstances where the **dDCO** as a statutory instrument is to be interpreted in a legal context which includes that the **dDCO** is to be read as a whole, the Examining Authority can have confidence that the consent to which Article 9(4) refers must be in writing. This is because Article 63(1) states as follows: "*Where an application is made to or request is made of any authority, body or person pursuant to any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to*

	be validly given, must be given in writing and must not be unreasonably withheld or delayed." (emphasis added). No amendment to the **dDCO** is therefore needed.
Q1.18.3.5	
Question	**Response**
Article 18 – Discharge of water You concede in the EM, Paragraph 8.33 that Article 18(8) is novel, however, no real rationale has been given for this provision. Additionally, the explanation in the EM is unclear. Provide justification with respect to the Proposed Development here, and additionally, clarify the drafting in the EM.	Article 18(3) of the **draft Development Consent Order ("DCO") [PDA-004]** provides that the undertaker may not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs. That consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld. Article 18(4) provides that the undertaker must not make any opening into any public sewer or drain in connection with the Project except (a) in accordance with plans approved by the person to whom the sewer or drain belongs but such approval must not be unreasonably withheld; and (b) where that person has been given the opportunity to supervise the making of the opening. In summary, therefore, the owner of the relevant watercourse, public sewer or drain has the right of approval over any discharge into any watercourse, public sewer or drain and any openings to any public sewer or drain. Article 18(8) clarifies that any such owner may not refuse any such application (or make any consent or approval subject to any term or

	conditions) on grounds which are inconsistent with approved drainage strategies. The outline drainage strategy which was submitted as part of the DCO application is to become a certified document. That outline drainage strategy identifies which key watercourses and drains are proposed to receive discharges from the Project. A number of drains are in the ownership of Associated British Ports and there will be discharges into Anglian Water drains which will require consent from Anglian Water. However, the West Site will drain into a ditch which passes through multiple ownerships (Plots 5/18 and 6/18 – Elba Securities Limited; Plot 6/6 – Integrated Waste Management Limited; Plot 6/16 – Unknown ownership). Water from the West Site already discharges into this ditch. Under the provisions of the outline drainage strategy, the discharges will be limited to appropriate run off rates, equivalent to greenfield rates for the West Site. The final drainage strategies will be approved by North East Lincolnshire Council ("NELC") pursuant to Requirement 12(1) following consultation with the Environment Agency and North East Lindsey Drainage Board. Those strategies must comply with the certified outline drainage strategy. Any final drainage strategy will therefore have been considered by three bodies, all of whom have relevant statutory functions and specialist knowledge in terms of drainage. Given the importance of the right to drain to the operation of the West Site, the fact that the drain serving the West Site is in multiple ownerships and the Application Site already drains into it, the availability of the outline drainage strategy for consideration during the Examination (with which the final drainage strategy must accord) and the fact that three consultees will have considered the final drainage strategy, it would be disproportionate to permit the individual multiple owners of the relevant drain to object on grounds that would be inconsistent with the agreed drainage strategy and

	could cause unnecessary delay. Paragraph 8.33 of the **Explanatory Memorandum [PDA-006]** (as proposed to be amended in underlined text) is set out below. The changes in tracked changes are included in the version of the EM submitted at Deadline 1: "*Article 18(8) provides that a person who owns a watercourse or public sewer or drain may not refuse the undertaker consent or approval to discharge water into it, or of the proposed plans as to how to do so, or impose a condition on that consent or approval, where the ground for refusal or the condition to be imposed is inconsistent with a relevant drainage strategy approved by the relevant planning authority pursuant to paragraph 12 (surface water drainage) of Schedule 2 (Requirements). The drainage strategies will, as required by that paragraph, be approved by NELC in consultation with the Environment Agency and North-East Lindsey Drainage Board and must accord with the outline drainage strategy. The outline drainage strategy is contained in appendix 18.B of the environmental statement, which is available for consideration during the Examination and will thus become a certified document under Schedule 15 (documents and plans to be certified) of the dDCO. ABP is not aware of precedent for this exact provision. Its intent, however, is well precedented across a range of provisions in made DCOs in reaching an appropriate balance between enabling nationally significant infrastructure projects to proceed expeditiously, without reaching an impasse and unnecessarily requiring use of the dispute resolution mechanism at Article 18(2), whilst adequately protecting the interests of persons affected in the context of prior strategic consideration of the matter by the relevant planning authority. It would be in conflict with the imperative of delivery of a nationally significant infrastructure project to allow individual owners to refuse to consent to or approve the discharge of water on grounds that*

	would be inconsistent with drainage strategies agreed or approved by all the relevant bodies responsible for drainage matters, which in turn are in line with an outline drainage strategy examined pursuant to the Planning Act 2008 This is because it would cause the Project unnecessary uncertainty and delay."
Q1.18.3.6	
Question	**Response**
Article 19 – Authority to survey and investigate the land a) The authority to enter "any land which is adjacent to but outside the Order limits or which may be affected by the authorised project", appears to be broad and undefined. The ExA is particularly concerned with any provision relating to land outside the Order Limits. Provide justification. b) Is 14 days' notice sufficient given the scale of work that might be allowed under this Article? Provide justification and explain the implications on the construction programme and viability, if any, of providing longer notice period of say, 28 days. c) The EM states in Paragraph 8.38 that this Article would be subject to Article 63; where in the drafting of Article 19 is this expressly stated?	a) The Applicant has included within the Order limits all land that it considers is necessary to deliver the Project. However, the Applicant considers that it would be imprudent in the context of the urgent imperative of nationally significant infrastructure projects not to provide for circumstances where it would be necessary to carry out surveys outside the Order limits to facilitate the delivery of the Project. Such surveys or investigations could for example include surveys of ecological receptors in land adjacent to the Order limits where construction activities are taking place within the Order limits. Similarly, it may reasonably be necessary to survey groundwater levels at locations outside of the Order limits or to monitor noise at appropriate receptors. The Applicant is not at this time able to identify exhaustively the land adjacent to, but outside the Order limits where surveys or investigations under this article may be required. The power to enter any land beyond the Order limits is limited (a) to land which is adjacent to land within the Order limits and (b) to circumstances in which it is 'reasonably necessary'. In order for something to be 'reasonably necessary' it must be connected to the authorised development and it must also fall within one of the activities listed in Article 19(1) of the **draft Development Consent Order ("dDCO") [PDA-004]**. Compensation is payable under the compulsory purchase

	order ("CPO") Compensation Code in the usual manner. This ability to survey, monitor or investigate beyond the Order limits, restricted on its terms, has always been key to delivering nationally significant infrastructure schemes. It is considered more measured than taking permanent rights. That is why the Article has precedent dating back to the Model Provisions (in turn derived from Transport and Works Act orders) but also in many made DCOs including Article 20 of the Port of Tilbury (Expansion) Order 2019 and Article 23 of the Wansford to Sutton Development Consent Order 2023. Nor is the provision peculiar to DCOs. There is similar provision in the Housing and Planning Act 2016 to Article 19 in respect of surveys of land beyond that which it is proposed to compulsorily acquire. Section 172 (Right to enter and survey land) of that Act empowers a person authorised in writing by an acquiring authority (which means a person who could be authorised to acquire compulsorily the land to which the proposal relates (regardless of whether the proposal is to acquire an interest in or a right over the land or to take temporary possession of it)) to enter and survey or value land in connection with a proposal to acquire an interest in or a right over land. The power under section 172 may relate to the land which is the subject of the proposal or to other land (i.e. to land outside of the proposal). Examining Authorities and the Secretary of State have therefore historically not considered this power to be broad or undefined but accepted it in the context of its necessity, its inbuilt safeguards and limitations, and the payment of compensation. b) The Applicant needs to ensure that the Project can be carried out efficiently and speedily following the making of the Order. It is anticipated that ammonia will be available in Europe in 2027 and, given the urgent imperative of delivering this nationally significant infrastructure project in that context, Air Products must consider all appropriate ways of maintaining

	an expeditious construction programme to ensure that the hydrogen production facility could be operational as soon as possible in 2027. Extending the notice period set out in Article 19(3) is not a matter to be considered in isolation. It would cause delay to the construction programme on its own and in the context of the cumulative impact taken together with other notices, consents and discharges required under the **dDCO**, which could be significant. In any event, a longer notice period is not considered to be necessary given the limited nature of the works and that compensation is payable for any loss or damage caused in the usual manner. The 14 day period is well-established and has been included in the Model Provisions and numerous other granted development consent orders including the A428 Black Cat to Caxton Gibbet Development Consent Order 2022 and is considered reasonable. c) **Paragraph 8.38** of the **Explanatory Memorandum [PDA-006]** states that "*Where consent is required from a highway or street authority, if relevant, the provisions of Article 63 (procedure in relation to certain approvals etc.) apply, being consent not to be unreasonably withheld or delayed and the application of Schedule 17 (procedure for discharge).*" Article 63(1) states on its face that "*Where an application is made to or request is made of any authority, body or person pursuant to any of the provisions of this Order for any consent, agreement or approval required or contemplated by any of the provisions of the Order, such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.*" The application of Article 63 is therefore not limited to any particular Article; it applies to the entirety of the **dDCO** on its terms, including Article 19 because the consent specified as being required from a highway or street authority in Article 19 is a consent required by a provision of the **dDCO**. As discussed at Issue Specific Hearing 2, the **dDCO** is to be a statutory instrument, a piece of legislation to be interpreted according to legal principles, which includes

	that legislation is to be read as a whole and not with each provision on an isolated basis.
Q1.18.3.7	
Question	**Response**
Article 20 – Protective works a) The authority to carry out protective works to "any land, building, structure, apparatus or equipment, lying within the Order limits or which may be affected by the construction or operation of the authorised project outside of the Order limits", appears to be broad and undefined. The ExA is particularly concerned with any provision relating to land outside the Order Limits. Provide justification. b) Is 14 days' notice sufficient given the scale of work that might be allowed under this Article? Provide justification and explain the implications on the construction programme and viability, if any, of providing longer notice period of say, 28 days. c) The ExA is not satisfied with the explanation in the EM, Paragraph 8.42. d) What is the justification for the (additional) 5 year window in Article 20(1) (b)?	a) The provision is intentionally broad as the purpose, which should be borne in mind throughout consideration of justification for the power, is to permit the Applicant to prevent or remedy damage or other harm for the benefit of third parties or other land. However, the power is not unlimited and subject to the standard safeguards for such provisions in made DCOs. First, the period is limited – protective works can only be carried out until five years after the part of the authorised project in the vicinity was first brought into operational use. Second, any desired works must be "necessary or expedient", which is preferable to setting an arbitrary geographical limit. Third, not only must the undertaker serve notice on the owners and occupiers (**Article 20(5)** of the **draft DCO [PDA-004]**), but where protective works are proposed, those owners and occupiers have the right to serve a counter-notice which would trigger arbitration. In those circumstances, an arbitrator would determine whether the undertaker's assessment of "necessary or expedient" is appropriate. Fourth, compensation is payable for any loss or damage caused. The Applicant would thus not embark on such a process lightly. There is land and there are buildings within, and in close proximity to, the Order limits in respect of which it would be imprudent to exclude any possibility that protective works might be required as a result of the authorised project. Such provision is anticipated by the Planning Act 2008. Section 120(4)

	(What may be included in order granting development consent) and Paragraph 10, Schedule 5 (Provision relating to, or to matters ancillary to, development) provide that a DCO may make particular provision for or relating to the protection of the property or interests of any person. The Applicant therefore does not consider that setting any kind of arbitrary geographical limit or limitation on the nature of the works is necessary or appropriate. b) The Applicant needs to ensure that the Project can be carried out efficiently and speedily following the making of the Order. It is anticipated that ammonia will be available in Europe in 2027 and, given the urgent imperative of delivering this nationally significant infrastructure project in that context, Air Products must consider all appropriate ways of maintaining an expeditious construction programme to ensure that the hydrogen production facility could be operational as soon as possible in 2027. Extending the notice period is not a matter to be considered in isolation. It would cause delay to the construction programme on its own and in the context of the cumulative impact taken together with other notices, consents and discharges required under the dDCO, which could be significant. The 14-day period is well-established and has been included in the Model Provisions and numerous other granted development consent orders including The A428 Black Cat to Caxton Gibbet Development Consent Order 2022 and is considered reasonable, particularly given that the process also provides for service of a counter-notice and a potential arbitration procedure. c) The paragraphs of the **Explanatory Memorandum [PDA-006]** relevant to **Article 20** have been supplemented with matters set out in these answers. d) The wording at Article 20(2)(b) is standard in made DCOs with this

	provision. Protective works may feasibly prove necessary during the construction phase (Article 20(2)(a)). The five-year period at Article 20(2)(b) provides a reasonable and appropriate period for unforeseeable issues arising from the construction but which only come to light following the start of operation of the Project. It is reasonable for these to be addressed under Article 20(2)(b), in light of the protective purpose of the article and the in-built safeguards it contains as described above.
Q1.18.3.8	
Question	**Response**
Article 22 – Compulsory acquisition of land There appears to be a possible ambiguity in Article 22(1) (b) which may authorise CA of any land within the Order limits, but not limited to the land shaded pink on the Land Plans. Provide an explanation with reference to specific sections of drafting.	As discussed in Issue Specific Hearing 2, the **draft Development Consent Order ("dDCO") [PDA-004]** is a statutory instrument to be interpreted in a legal context which includes that wording is to be read together with other wording to which it refers. Article 22(1)(b) provides that the undertaker may use any land 'so acquired' for the purposes authorised by the **dDCO**. 'So acquired' can only be interpreted as meaning the land which Article 22(1)(a) provides may be acquired compulsorily as shown on the land shaded pink on the **Land Plans [APP-015]** and described in the **Book of Reference [APP-008]**. There is no interpretation which would allow for other land being compulsorily acquired outside of the land shaded pink. As set out in **Paragraph 9.1** of the **Explanatory Memorandum [PDA-006]**, this Article is based on Article 18 of the General Model Provisions but appears recently in this form at Article 28 of the Sizewell C (Nuclear Generating Station) Order 2022, which for ease states as follows: *"28.—(1) The undertaker may—* *(a) acquire compulsorily so much of the land within the permanent limits as*

	is required for the construction, operation or maintenance of the authorised development or to facilitate it, or as is incidental to it; and *(b) use any land* ***so acquired*** *for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the undertaking.*" (emphasis added) The Applicant does not consider it necessary to depart from this precedent.
Q1.18.3.9	
Question	**Response**
Article 23 – Time limit for exercise of powers to acquire land compulsorily or to possess land temporarily a) Article 23(2)(a) enables you to remain in TP for ten years. These plots are front gardens and car park areas. What assessment have you made of the adverse effects on the owners, residents and users of these properties? b) Not much is available in terms of the responses from the relevant Affected Persons in the SoR [APP-009, Appendix 1, Table 1 to 3]. Provide an update. c) Relevant APs, how would you be affected by the powers of TP proposed by the Applicant? d) Article 23(2)(b) would allow the undertaker to remain in TP indefinitely providing TP rights were exercised within the 5-year window permitted. This is a novel provision	a) Temporary possession of the relevant plots on Kings Road is required to facilitate the passing of abnormal loads from the Port down Kings Road to the Application site. The works intended to be done within these plots will comprise the modification of overhead lines (understood to be telecommunications lines). It is not proposed that temporary possession is taken for a prolonged period. Possession will only be necessary to achieve the modification to overhead lines as and when an abnormal load passes down Kings Road. The works may for example require raising or lowering of the lines temporarily overnight whilst the load passes and access to the land will be required temporarily to facilitate those works. These works are therefore anticipated to have minimal impact on the relevant land and the owners and occupiers of that land. b) The engagement with affected landowners along Kings Road to date has included the provision of land interest questionnaires, in-person conversations with each of the affected owners and correspondence with

and the ExA is not satisfied with the justification in the EM, Paragraph 9.2. Provide justification.	each of the affected owners confirming the nature of the works. The landowners have not raised any concerns regarding the proposals to Gateley Hamer save for seeking clarification that access to their properties would be maintained – as confirmed by Gateley Hamer, access will be maintained during the works. Gateley Hamer has confirmed to the landowners that they will be kept updated as the development progresses. At this stage, the precise dates for abnormal loads passing along Kings Road during the construction period are not known – this would be confirmed once the detailed construction programme is finalised and the necessary procedures for abnormal loads are complied with (as set out in the **Consents and Agreements Position Statement**, the updated version of which is submitted at Deadline 1 **[TR030008/APP/7.4 (2)]**). d) Article 23(2)(b) of the **draft Development Consent Order [PDA-004]** simply clarifies that even though the deadline for starting to exercise powers under Article 31 expires within the periods specified, the undertaker can remain in possession of land where temporary possession was taken before the relevant periods specified in Article 23(2) expire. This, however, does not amount to a power to remain in possession forever – Article 31(4) restricts the use of this power such that possession cannot be indefinite. Where possession is taken of land of which only temporary possession may be taken (including the plots on Kings Road – Article 31(1)(a)(i)), the undertaker may not, without the agreement of the owners of the land, remain in possession of any such land after the end of a one-year period from the date of completion of the associated part of the Project (Article 31(4)(a)). For the Kings Road plots, as explained above, possession is only required intermittently during construction for the purposes of Work No. 10 to facilitate modification of services. Where possession is taken of other defined land within the Order land

	(generally ahead of permanent powers of acquisition being taken – Article 31(1)(a)(ii)), the undertaker may not, without the agreement of the owners of the land, remain in possession of any such land after the end of a one-year period beginning with the date of completion of the works, use of facilities or other purpose for which temporary possession of the land was taken, unless the undertaker has, by the end of that period, served a notice of entry or made a general vesting declaration (in order to acquire the land permanently). It is not the case that the undertaker can stay in temporary possession indefinitely, therefore. These are commonly found provisions. Compensation is payable to any affected party who suffers loss through the exercise of temporary use powers and therefore it is not in the undertaker's interest to unnecessarily prolong the use of these powers.
Q1.18.3.10	
Question	**Response**
Article 28 – Rights over streets Noting that this is a fairly standard Article which appears in many DCOs; however, it still needs to be justified for the Proposed Development, in the EM Paragraph 9.12.	Article 28 of the **draft Development Consent Order [PDA-004]** contains the right for the undertaker to enter on, appropriate and use so much of the subsoil of, or airspace over, any street within the Order Limits as may be required for the purposes of the authorised project or for any other purpose ancillary to the authorised project subject to the qualification in Article 28(2) and (3) and the requirement to pay compensation where applicable. **Paragraph 9.14** of the **Explanatory Memorandum ("EM") [PDA-006]** (the former paragraph 9.12) states "*This Article mirrors Article 27 of the General Model Provisions which has been included in the majority of made DCOs to date. It enables the undertaker to enter on and appropriate and use land above or below streets within the Order limits where required for the purpose of the authorised project without having to acquire that land. It*

	therefore reduces the amount of land that needs to be compulsorily acquired for the purposes of the authorised project. The exercise of the power conferred by this Article is prohibited in the circumstances set out in paragraph (3). Paragraphs (4) and (5) provide for the payment of compensation in relevant circumstances." The construction of the Project will include works under and over streets. Examples include: • The construction of a culvert under Laporte Road which will involve construction works affecting land below Laporte Road • Modification to apparatus over Kings Road during construction works, using the airspace above Kings Road • Works to create permanent and temporary accesses to Work Nos. 3, 5 and 7, which will involve use of the airspace above the adjacent streets Save for the strips of highway land along Laporte Road to be stopped up, all of the above and other construction works affecting streets are consistent with the permanent retention of the affected streets. It would be unfair and disproportionate to the owners of the subsoil below or airspace over those streets to be permanently deprived of their ownership when the requirements of the Project extend only to the temporary use of subsoil and airspace. The paragraph in the EM has been updated accordingly.
Q1.18.3.11	
Question	**Response**

Article 31 – Temporary use of land for constructing the authorised project Whilst noting that Article 31(1)(b) to (g) aims to provide a definitive list of the purpose for which TP powers can be exercised, Article 31(1)(f) provides to "construct any works on the land" is a broad power. Could this result in permanent rather than temporary possession? Explain with reasons.	Article 31(1)(a)(ii) of the **draft Development Consent Order ("dDCO") [PDA-004]** provides for temporary possession of Order land shown shaded pink, blue or shown shaded and hatched blue on the **Land Plans [APP-015]** where the procedure to acquire it permanently has not yet been started (by service of general vesting declarations or notices to treat/notices of entry), i.e. it is possible for such land to be temporarily possessed, construction carried out on it and then (under Article 22 (Compulsory acquisition of land) or Article 24 (Compulsory acquisition of rights) of the **dDCO**) to be permanently acquired or have rights over it permanently acquired. This is a standard approach in DCOs because it enables working areas to be occupied temporarily but lesser areas to be acquired once the location of works is certain, minimising land take from persons whose land falls within compulsory purchase. Article 31(1)(f) should therefore provide, as it does, that any works comprised in the authorised project (i.e. in Schedule 1) can be constructed on such pink, blue or hatched blue land referred to in Article 31(1)(a)(ii). However, in contradistinction, there is no scope under the **dDCO**, as drafted, for land shaded green on the order plans, referred to in Article 31(1)(a)(i) and listed in Schedule 13 (land of which only temporary possession may be taken) of the **dDCO** being permanently acquired. That is because such green land is not mentioned in Article 22 (Compulsory acquisition of land) or Article 24 (Compulsory acquisition of rights) of the **dDCO**. Schedule 13 (land of which only temporary possession may be taken) specifies temporary works which may be carried out on the green land. As the Applicant would not be able to acquire permanently the green land, irrespective of what Article 31(1)(f) provides, the Applicant would not carry out any permanent works as it would have to remove them in the absence of having any powers of permanent acquisition. The Applicant agrees, therefore, that for even further clarity it would make sense to revise Article 31(1)(f) so that it cross refers only to the land shown shaded pink, blue or shown shaded and hatched blue (which is referred to in Article

	31(1)(a)(ii)) and not the land in all of Article 31(1)(a), i.e. omit reference to the green land in Article 31(1)(a)(i). This amendment has been made in the **dDCO** submitted at Deadline 1 **[TR030008/APP/2.1 (3)]**.
Q1.18.3.12	
Question	**Response**
Article 40 – Authorisation of operation and use This Article confers broad powers, particularly the inclusion of the words "and any other persons authorised by the undertaker", verging on a novel provision and should be justified in the EM.	At Issue Specific Hearing 2 the Applicant set out what can reasonably be regarded as 'novel' drafting in DCOs made pursuant to the Planning Act 2008, drawing a distinction between (i) wording which falls within the ambit of the Act itself and made DCOs but which has by necessity been tailored to match the specific nature of the authorised project in question; and (ii) wording which is innovative in creating new legal structures which depart from the ambit of the Act or other relevant Acts (with the example given of certain historical DCOs starting to enable section 106 agreements to be capable of being entered into under that section by persons without an interest in land). In that context, Article 40 (Authorisation of operation and use) of the **draft DCO [PDA-004]** is not considered novel, nor indeed broad. Schedule 5 of the Planning Act 2008, which is a non-exclusive list, provides that a DCO can make provision for the operation of certain development, such as for example a generating station (Paragraph 5). Made DCOs involving development which will be operated or used therefore contain provision such as Article 40 so it is clear that the undertaker may operate and use the authorised project for which development consent is granted. A recent example is Article 7(1) of the Sizewell C (Nuclear Generating Station) Order 2022. Article 40 clarifies that any persons authorised by the undertaker may also operate and use the authorised project to reflect that whilst ABP and Air

	Products will retain control of the use and operation of the authorised development they may, in the usual manner, engage contractors in doing so, who themselves are not an 'undertaker' for the purposes of the **draft DCO**. There is no issue in terms of DCO-compliance. Any person, including any contractor, commits an offence if without reasonable excuse they fail to comply with the terms of a DCO, as set out in section 161 of the Planning Act 2008, and all relevant other regulatory regimes will apply in the usual manner. The Applicant is aware that the equivalent provision in The West Midlands Rail Freight Interchange Order 2020, Article 5 (Authorisation of use), also makes reference to "*the undertaker and any persons authorised by the undertaker*". The **Explanatory Memorandum [TR030008/APP/2.2 (3)]** has been updated accordingly.
Q1.18.3.13	
Question	**Response**
Article 41 – Maintenance of authorised project What agreements are envisaged in 41(1)?	The standard form wording at Article 41(1) from made DCOs provides that the undertaker may at any time maintain the authorised project, except to the extent that an agreement made under the **draft DCO [PDA-004]** provides otherwise. The exception specifically refers to agreements made under the draft DCO as a piece of legislation (in the same way for example that highways agreements are made under section 278 of the Highways Act 1980 or planning agreements under section 106 of the Town and Country Planning Act 1990). It does not mean any agreement otherwise. Provisions of the **draft DCO** that, in the usual manner, include scope for the making of an agreement under them include any agreements with street authorities (see Article 16), which for example, might provide that a street is to be dedicated as public highway maintainable by North East Lincolnshire Council as highway authority and not to be maintained any

	more by the undertaker. The Article could also include agreements to transfer the benefit of the **draft DCO** pursuant to Article 46(10), which might provide that maintenance of certain works is to be carried out by one undertaker rather than another. Such agreements are subject to the standard form safeguard in Article 46(15) that where the undertaker has transferred any benefit the exercise by a person of it is subject to the same restrictions, liabilities and obligations under the **draft DCO** as would apply if the benefit were exercised by the transferor, i.e. such agreements are not a means of evading responsibility of any obligations in the **draft DCO**, in respect of maintenance or otherwise.
Q1.18.3.14	
Question	**Response**
Article 44 – Power to appropriate The words "regardless of anything in s.33 of the 1847 Act" suggests a possible conflict with that Act. Should this section also be disapplied in Art 4?	Section 33 of the Harbours, Docks and Piers Clauses Act 1847 ("the 1847 Act") is incorporated into the **draft Development Consent Order ("dDCO") [PDA-004]** – note that it is not on the list of sections of that Act which are excluded from the incorporation at Article 4(1) (Incorporation of the 1847 Act). Note that in terms of statutory drafting, following the Model Provisions in respect of the 1847 Act and all DCOs subsequently made with such provision, as brevity is required it is easier to exclude what is not incorporated than list everything which is incorporated. Fundamentally Article 4(1) is about incorporating provisions of the 1847 Act except what has been repealed, would be duplicated by other dDCO provisions or is not necessary. As set out more particularly at **Paragraphs 7.20(d)(vii)** and **10.6** of the **Explanatory Memorandum [PDA-006]**: • Section 33 embodies the 'open port' duty effectively providing a general right to all persons, subject to the 'payment of rates' to use

	the harbour. • However, the purpose of the wording identified in written question Q1.18.3.14 in Article 44 (Power to appropriate) is specifically to prevent any person trying to argue that section 33 means that ABP as the dock master cannot set apart and appropriate any part of the area of jurisdiction (defined in Article 2 (Interpretation)) for the exclusive or preferential use and accommodation of any trade, person, vessel or goods. I.e. the wording identified in written question Q1.18.3.14 is standard form wording which achieves that there is no conflict between the 'open port' principle and appropriating any part of the area of jurisdiction as described. There is, accordingly, no conflict and the Applicant does not consider that further drafting is necessary.
Q1.18.3.15	
Question	**Response**
Article 45 – powers to dredge Confirm if any of the river bed/ foreshore are Crown Land and whether this power is permissible.	The power is permissible. Article 45(1) provides that the Company, i.e. ABP, may dredge, deepen, scour, cleanse, alter and improve the river bed and foreshore within any part of the Order Limits situated within the River Humber as may be required for the purpose of constructing, maintaining and operating the authorised project. The land shaded orange on the Land Plans [APP-015] is Crown land falling within the Crown lease dated 1 January 1869. It includes river bed and foreshore. Section 135(2) (Orders: Crown land) of the Planning Act 2008 provides that an order granting development consent may include provision applying in relation to Crown land if the appropriate Crown authority consents to the inclusion of the provision.

	As set out in part h) of Q1.17.3.1 (Leasehold interest over Crown land) ABP is informed by the Crown Estate's agent that the Crown Estate deals with such consents separately to consents under its leases, and that it is dealing with a large number of Section 135 requests from a range of DCO schemes at the moment. ABP will continue liaising with the Crown Estate in respect of a Section 135 consent but does not envisage any particular impediment in obtaining this, particularly in circumstances where the Crown Estate has provided consent for the Project pursuant to the Lease (see part e) of the answer to that question) and a Section 135 consent must be, in that context, largely a formality.
Q1.18.3.16	
Question	**Response**
Article 46 a) Noting the exclusions in Article 46(2)(a) to (e), Article 46(2) allows Air Products the rights for TP in Article 31 and 32. How would compensation payments work in that regard? b) Also of the plots listed in the EM, Paragraph 11.1 (b), list the ones, if any, that would eventually be subject to permanently CA, and what the process would be for those landowners with respect to the TP process and compensation payment with Air Products and the CA process and compensation payment with the Applicant. c) Explain fully what is meant by "(where applicable on the terms of those provisions) land outside the Order Limits except (in each aforementioned case) in respect of any	(a) Article 46(3), not Article 46(2) of the **draft Development Consent Order ("dDCO") [**PDA-004**]**, confers on Air Products the benefit of Article 31 (temporary use of land for constructing the authorised project) and Article 32 (temporary use of land for maintaining the authorised project). The definition of undertaker in the **dDCO** is subject to clarification in Article 46(19) that no person is liable for breach of a term of the Order except where they are the person who (as applicable) has carried out, or caused to be carried out, that part of the authorised project to which the breach relates or has exercised, or caused to be exercised, the provision of the **dDCO** to which the breach relates. This clarification reflects the wording and principle in section 161 of the Planning Act 2008 that it is only the actual person who has failed to comply with the terms of a DCO who can be held liable for committing an offence. Articles 31(7) and 32(6) make provision for the 'undertaker' paying compensation under those articles. Read together with Articles 46(3) and

interests of the Company" in Paragraph (4). The ExA is particularly concerned with any provision relating to "land outside the Order Limits", in Article 46(4) and the definition of "undertaker", and seeks robust justification. d) What would be the circumstances under Paragraphs (5) and (6) where SoS consents to the transfer of benefit of the power? And in that regard who would SoS consent to transfer the benefit to? e) Drafting of both Paragraphs (5) and (6) is unclear in that it does not clarify why, how and when the Applicant would seek this transfer of benefit from the SoS; clarify both dDCO drafting and EM explanation. f) For the Proposed Development, who would the Statutory Undertakers be for the provision in Paragraphs (7) (8) and (9). g) Paragraph (11) suggest transfer or land related powers; would this include the responsibility of compensation payments? Where is the evidence to satisfy the ExA that the parties would have the ability to pay compensation. h) The EM, Paragraphs 11.1 (e) states that SoS approval would be needed for the transfer or grant of the land-related powers listed in Paragraph (11), but the ExA is unclear that the drafting in the dDCO specifies that i) Who would ultimately oversee the management of the terms of the agreement between multiple undertakers mentioned in Paragraph (16)?	46(19), it is legally clear that where Air Products exercises powers pursuant to Articles 31 and 32, it is responsible for the payment of compensation. Otherwise Air Products will have failed to comply with the terms of a DCO and be capable of being held liable for committing an offence. (b) **Paragraph 11.1** of the **Explanatory Memorandum ("EM") [PDA-006]** lists plots 3/2, 4/5, 4/7, 4/8, 4/9, 4/16, 4/17, 4/18, 4/19, 4/20, 4/21, 4/22, 4/23, 4/26, 4/28, 4/29, 4/30, 4/32, 5/3, 5/4, 5/7, 5/8, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/18, 5/20, 5/22, 5/23, 5/24, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/33, 5/36, 5/37, 5/38, 5/39, 6/6, 6/14, 6/15, 6/16, 6/18, 7/1, 7/2, 7/3, 7/4, 7/5, 7/6, 7/7, 7/7, 7/8, 7/9, 7/10, 7/11, 7/12, 7/15, 7/16, 7/17, 7/18, 7/20, 7/21, 7/22 and 7/23 as plots in respect of which Air Products has powers to temporarily possess, survey and investigate and carry out protective works to land (as set out in Article 46(4) of the **dDCO**). Plots 3/2, 4/26, 4/28, 4/29, 4/30, 4/32, 7/1, 7/2, 7,3, 7/4, 7/5, 7/6, 7/7, 7/8, 7/9, 7/10, 7/11 are shown green on the **Land Plans [APP-015]**, listed in Schedule 13 (Land of which only temporary possession may be taken) of the **dDCO** and subject to temporary possession powers under Article 31(1)(a)(i) (Temporary use of land for constructing the authorised project). These cannot be subject to powers of compulsory acquisition of land or rights permanently. The remaining plots are either capable of being temporarily possessed and then permanently acquired under Article 22 (Compulsory acquisition of land), being plots 4/5, 4/7, 4/9, 4/16, 4/18, 4/19, 4/20, 4/21, 5/3, 5/4, 5/36, 5/39, 7/15, 7/16, 7/17, 7/18, 7/20, 7/21, 7/22 and 7/23 shaded pink on the **Land Plans**, or being subject to the compulsory acquisition of permanent new rights and restrictive covenants under Article 24 (Compulsory acquisition of rights), being plots 4/8, 4/17, 4/22, 4/23, 5/7, 5/8, 5/10, 5/11, 5/12, 5/13, 5/14, 5/15, 5/18, 5/20, 5/22, 5/23, 5/24, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/33, 5/37, 5/38, 6/6, 6/14, 6/15, 6/16, 6/18, 7/12 shaded blue or shaded and hatched blue on the **Land Plans**.

j) MMO, identify specifically the parts of the Article that could restrict your operations? k) Applicant, would MMO's proposed drafting resolve its concerns?	For completeness, we note that in addition to the plots listed above, plots 4/6, 4/10, 5/1, and 7/19 are also capable of being temporarily possessed and then permanently acquired under Article 22 (Compulsory acquisition of land), except that such power may only be exercised by ABP. Similarly, plot 5/34 is capable of being temporarily possessed and then subject to the compulsory acquisition of permanent new rights and restrictive covenants under Article 24 (Compulsory acquisition of rights) but, again, such power is only exercisable by ABP. The process in respect of compensation where Air Products exercises any powers of temporary possession is straightforward. Under Article 31(7) (Temporary use of land for constructing the authorised project), read together with Article 46(19) (Benefit of Order) noted above, Air Products would be required to pay compensation to the owners and occupiers of land of which temporary possession is taken for any loss or damage arising from that occupation. Given the wording of that article, the owners and occupiers would be entitled to set out any loss or damage which they suffer during that occupation on an ongoing basis. If Air Products and the owners and occupiers were not able to reach agreement, Article 31(8) engages Part 1 (determination of questions of disputed compensation) of the Land Compensation Act 1961, whereby either party can refer any question of disputed compensation to the Upper Tribunal of the Lands Chamber to be determined in the same way as a dispute as to compulsory acquisition compensation under the Compensation Code. The process in respect of compensation where ABP exercises any powers under Article 22 (Compulsory acquisition of land) and Article 24 (Compulsory acquisition of rights) is set out in the Compulsory Purchase Act 1965 and the Compulsory Purchase (Vesting Declarations) Act 1981, and works seamlessly with that for temporary possession above. ABP would serve a notice on those with an interest in the land specifying a date (which must be at least three months away) when title to the land or

	interests in land will vest in ABP. This date is the vesting date. The vesting date is the point at which the land or the interest in the land will be valued for the purposes of compensation and is the earliest point at which a claim for compensation can be made. After the vesting date, no further loss or damage arising from temporary possession will accrue because entitlement will switch to compensation under the standard heads of claim for permanent compulsory acquisition. Part 1 (determination of questions of disputed compensation) of the Land Compensation Act 1961 allows either party to refer any question of disputed compulsory acquisition compensation to the Upper Tribunal of the Lands Chamber. (c) Article 19 (Authority to survey and investigate the land), where reasonably necessary, enables entry on any land adjacent to but outside the Order Limits or which may be affected by the authorised project and survey, monitor or investigate the land, including for the purpose of investigating the potential effects of the authorised project on that land or buildings on that land or for enabling the construction, use and maintenance of the authorised project. Fourteen days' notice must be served on every owner and occupier of the land. Compensation is payable to the owners and occupiers of the land for any loss or damage sustained by them under the compulsory purchase order ("CPO") Compensation Code. Disputes are to be resolved by the Upper Tribunal Lands Chambers in the usual manner. The ability to survey, monitor or investigate beyond the Order Limits, restricted by having to be reasonably necessary, has always been key to delivering nationally significant infrastructure schemes. It is considered more measured than taking permanent rights. That is why the Article has precedent dating back to the Model Provisions and in many made DCOs including Article 20 of the Port of Tilbury (Expansion) Order 2019 and Article 23 of the 47 Wansford to Sutton Development Consent Order 2023. There is similar provision in other legislation beyond DCOs in respect of surveys of land beyond that which it is proposed to compulsorily acquire. Section 172 (Right to enter and survey land) of the Housing and

	Planning Act 2016, for example, empowers a person authorised in writing by an acquiring authority (which means a person who could be authorised to acquire compulsorily the land to which the proposal relates (regardless of whether the proposal is to acquire an interest in or a right over the land or to take temporary possession of it)) to enter and survey or value land in connection with a proposal to acquire an interest in or a right over land. The power under section 172 may relate to the land which is the subject of the proposal or to other land (i.e. to land outside of the proposal). Article 20 (Protective works) enables the carrying out of such protective works to any land, building, structure, apparatus or equipment which may be affected by the construction or operation of the authorised project outside of the Order Limits, as the undertaker considers necessary or expedient. The period is not unlimited. Protective works can only be carried out until five years after the part of the authorised project in the vicinity was first brought into operational use. Fourteen days' notice is required, specifying the protective works proposed to be carried out. The standard safeguard which has evolved in made DCOs is included, whereby the owner or occupier of the land, building, structure, apparatus or equipment can serve a counter-notice within 10 days triggering Secretary of State arbitration under Article 62 (arbitration) of the **dDCO** on the question of whether it is actually necessary or expedient to carry out the protective works. It is not therefore a step that the undertaker would take lightly. Compensation is payable to the owners and occupiers of the land for any loss or damage sustained by them under the CPO Compensation Code. Disputes are to be resolved by the Upper Tribunal Lands Chambers in the usual manner. It is not considered likely that there will be land or buildings within, or in close proximity to, the Order Limits that will require protective works as a result of the authorised project. Even so, it would be imprudent to dismiss the possibility of this occurring and Air Products or ABP being left without the powers to protect the land or buildings in question. That is why the Article has precedent in many made DCOs including Article 19 of

	the Port of Tilbury (Expansion) Order 2019 and Article 22 of the 47 Wansford to Sutton Development Consent Order 2023. Section 120(4) (What may be included in order granting development consent) and Paragraph 10, Schedule 5 (Provision relating to, or to matters ancillary to, development) of the Planning Act 2008 provide that a DCO may make particular provision for or relating to the protection of the property or interests of any person. Articles 19 and 20, as described above, are the only two powers listed in Articles 46(3) and (4) to which the wording “*(where applicable on the terms of those provisions) land outside the Order Limits*” applies. The words “*where applicable on the terms of those provisions*” make clear that the benefit of Articles 19 and 20 includes any safeguards and limitations within them. The words “*except (in each aforementioned case) in respect of any interests of the Company*” are included to make clear that Air Products may not exercise the powers in Article 19 (authority to survey and investigate the land), Article 20 (protective works), Article 31 (temporary use of land for constructing the authorised project) or Article 32 (temporary use of land for maintaining the authorised project) over ABP interests. This is because the contractual arrangements between Air Products and ABP already govern such matters by way of private treaty. d) No particular circumstances under Articles 46(5) and (6) are envisaged at this time for the powers to which they refer to be transferred but it would be imprudent to make any power in the **dDCO** personal to a particular entity with no scope for transfer. These powers most naturally sit with ABP and it is unlikely it would transfer them, unless for example if ABP’s statutory functions were transferred in a manner which did not transfer all of its powers under various enactments wholesale. As any transfer requires Secretary of State consent there is no reason why the precautionary

	provision set out in Articles 46(5) and (6) should not be made. e) It is not necessary or appropriate for Articles 46(5) and (6) to set out when an application may be made for the transfer of the benefit of provisions to which the Articles relate, or why such an application may be made. An application can be made at any time and there is no reason why this should not be the case. The reasons why the application is made would be a matter for the Applicant to set out at the time. It would be wholly a matter for the Secretary of State to determine whether they found the reasons acceptable or not. The Articles need not set out how an application is to be made. In the absence of any specified provision a simple letter, with any supporting information, would suffice and a letter from the Secretary of State agreeing to the transfer, if issued, would be sufficient for the transfer to have effect pursuant to the Articles in question. The wording is a standard formulation and well precedented in made DCOs, the Secretary of State determining if further information or consultation (if any) is required and the application and decision letter publicised on the original DCO application's project page on the Planning Inspectorate's infrastructure planning website. It is not considered appropriate to fetter the discretion of the Secretary of State in this regard. The Applicant considers, in that context, that no further drafting is required. (f) Anglian Water Services Limited, Cadent Gas Limited, Northern Powergrid Limited, Virgin Media Limited and BT Limited. (g) Articles 46(10) and (11), which must be read together as they require on their face, make provision for any **dDCO** power (except, critically, the land-related powers (Articles 19, 20, 22, 24, 25, 31, 32, 33(1)(a) and (b), and 35)) being capable of being transferred or temporarily granted to any person, without the approval of the Secretary of State. It would therefore not be necessary to provide evidence to satisfy the ExA that any parties would have the ability to pay compensation as the provision specifically

	excludes the **dDCO's** land-related powers. (h) **Paragraph 11.1(e)** of the **EM** sets out as follows: "*Paragraphs 7, 8 and 9 specify that an undertaker can transfer or temporarily grant the benefit of a provision of the Order to a statutory undertaker where it is required for it to install apparatus comprised in the authorised project or to divert, replace or protect apparatus. This is necessary because such statutory undertakers may not constitute an "undertaker" because they are not for the time being interested in the land in question.* ***Secretary of State approval is only needed for the transfer or grant of the land-related powers listed in paragraph 11, except where it is to the list of licence-holding statutory undertakers in paragraph 9****.*" (emphasis added). This is correct. Article 46(9) is where it states that "*the consent of the Secretary of State is required for the purposes of paragraph (8)* [i.e. any transfer to a statutory undertaker] *where the provision to be transferred or granted to the statutory undertaker is listed in paragraph (11)* [i.e. the list of land-related powers] *except where the transfer or grant is to* [statutory undertakers within certain categories]". In other words, Secretary of State consent is needed to transfer land-related powers to a statutory undertaker, except those of certain categories where no consent is needed because they benefit from powers of that magnitude and have a high degree of covenant strength in any case. (i) This is currently Article 46(18). The undertakers would need to agree the terms on which they would exercise the powers at the same time and, if there were any disputes, Article 62 (Arbitration) would apply. It is prudent to make provision of this nature for statutory powers exercisable by more than one undertaker on the face of the **dDCO** but, in practice, there are likely to be only two undertakers with the survey, protective works and temporary possession powers mentioned in Article 46(18), namely ABP and Air Products (the persons on whom such powers are currently conferred on the face of the **dDCO**). The contractual arrangements between them

	regulate such activities, there is unlikely to be disagreement between them of what amounts to construction programming for an integrated scheme and, if there were, this would be resolved under those contractual arrangements rather than Secretary of State arbitration. (k) The Marine Management Organisation's ("MMO's") Relevant Representation **[RR-016]** states that it does not accept that the deemed marine licence at Schedule 3 (Deemed marine licence) of the **dDCO** may be transferred along with the remainder of the **dDCO** of which the deemed marine licence is a part. The MMO asserts that such transfer should only take place by way of section 72(7)(a) of the Marine and Coastal Access Act 2009 as if the MMO had granted the deemed marine licence (which is not the case – the Secretary of State is deeming the grant of the deemed marine licence). The MMO has requested the following addition: "*(8) For the avoidance of doubt sections 72(7) and (8) of the 2009 Act shall continue to apply to all parts of the deemed marine licence*". It is well established in DCOs made pursuant to the Planning Act 2008, where there is to be transfer of a marine licence deemed to be granted by the Secretary of State pursuant to such an order, that approval is needed from the Secretary of State, who deemed the grant, with the MMO often specified as a consultee on the matter. This approach has evolved because of the imperative for limiting the number of duplicated regimes engaged in the context of nationally significant infrastructure projects. It may also be because, it appears to ABP, that there is no scope for appealing an MMO decision not to issue a notice under section 72(7) of the Marine and Coastal Access Act 2009 to transfer a marine licence (as no notice will have been issued to appeal to the First-tier Tribunal, and in any event the Secretary of State is the more appropriate arbiter of such matters having determined the original application for development consent). The Applicant has therefore instead replicated Paragraphs 3 and 5 of

	Article 6 (Benefit of the Order) of the Norfolk Vanguard Offshore Wind Farm Order 2020 in Article 46(12) of the dDCO, which provide for Secretary of State approval of transfers of the benefit of the deemed marine licence, following consultation with the MMO. To reflect the MMO's comment, the Applicant has also included clarification in Article 46(13) of the dDCO that the deemed marine licence may also, as an alternative, be transferred pursuant to a variation notice under section 72(7) of the Marine and Coastal Access Act 2009.
Q1.18.3.17	
Question	**Response**
Article 56 – Traffic regulation measures The specific need for this and its detailed provisions should be justified in the EM Paragraph 11.22.	**Paragraphs 11.23** and **11.24** of the **Explanatory Memorandum [PDA-006]** are proposed to be amended accordingly: "*The purpose of this Article is to provide the undertaker with powers to make deemed traffic regulation orders, so that it can implement traffic management measures (e.g. restrictions on the use of roads) in connection with the construction or operation of the authorised project. It includes a number of specific traffic regulation measures set out in Schedule 10 (which is brought into effect by paragraph (1)), as well as more general powers by virtue of paragraph (4).* *The specific powers include the following as set out in Schedule 10.* *(a) The imposition of a permanent 30 miles per hour speed limit on a defined part of Laporte Road – the speed limit along this road is part national speed limit and part 40 miles per hour. The reduction in speed limits has been proposed to facilitate the introduction of new entrances to the Project. This measure was expressly consulted upon and is understood to have the support of NELC in its capacity as local highway authority following a meeting with officers.*

	(b) The power to temporarily prohibit parking on defined parts of Laporte Road, Queens Road and Kings Road. These powers are required to facilitate the movement of abnormal loads from the Port to the Application Site along those roads in association with the temporary closure power below. *(c) The power to temporarily close roads between 11pm and 6am to all traffic save as directed by the undertaker on defined parts of Laporte Road, Queens Road and Kings Road. This power is required to facilitate the movement of abnormal loads as identified above. It is restricted to limited nighttime hours to minimise disruption of traffic around the Port.* *(d) The power to regulate the priority of vehicular traffic by temporary traffic lights at the direction of the undertaker on a defined part of Laporte Road. This power is required to facilitate the movement of construction traffic between the two parts of East Site across Laporte Road.* *(e) The power is also included to revoke, amend or suspend in whole or in part any order made, or having effect under the 1984 Act in so far as it is inconsistent with the above. This ensures that any incompatibility with existing traffic regulation orders in place (for example securing current speed limits) can be addressed.* *Implementation in certain circumstances is subject to the prior approval of the traffic authority in whose area the roads are situated and consultation with the relevant chief officer of police.* *Article 56(3) permits the temporary placing of traffic signs and signals in connection with the authorised works, but only as permitted by the traffic authority to ensure that authority has appropriate oversight.* *The broader powers in Article 56(4) only apply with the consent of the traffic*

	authority. These allow the undertaker to, so far as expedient or necessary, (a) revoke, amend or suspend any orders made under the 1984 Act; (b) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; (c) authorise the use as a parking place of any road; (d) make provision as to the maximum speed, routes, direction or priority of vehicular traffic on any road; and (e) permit, prohibit or restrict vehicular access or use to or on any road. It is possible that such temporary restrictions on road use may be required in connection with the construction of the Project, but their use will only be as permitted by the traffic authority to ensure that authority has appropriate oversight. *In addition to traffic authority consent to the use of powers where specified above (i.e. save those powers specified in Schedule 10), Article 56(5) contains requirements to give notice in writing of the use of all of the above powers to the chief officer of police and the traffic authority. The undertaker may be required by the traffic authority to advertise the proposed measures – this ensures that users of the Port are adequately notified. Article 56(8) also requires the undertaker to consult such persons as it considers necessary and appropriate and have regard to their representations.* *There are standard measures in Article 56(2) (preventing any speed limit from applying to defined special forces) and Articles 56(6), (7) and (9) (clarifying the relationship of the resulting measures to the 1984 Act and other legislation and ensuring that any such measures may be suspended, varied or revoked in certain circumstances).* *The Article is based on Article 42 of the Port of Tilbury (Expansion) Order 2019."*
Q1.18.3.18	

Question	Response
Article 59 – Protection of interests EM Paragraph 11.30 needs to be updated before the close of the Examination.	Thank you. This is noted and will be done.
Q1.18.5 Requirements	
Q1.18.5.1	
Question	**Response**
Requirement 9 – Construction hours a) LAs, are you satisfied with the exclusion provision in R9(2). b) LAs, are you satisfied that the notification period is after the emergency work has begun? c) Applicant may also provide justification.	**Requirement 9(2)** of the **draft Development Consent Order [PDA-004]** provides that certain works comprised in Work No. 2, Work. No. 3, Work No. 4, Work No. 5, Work No. 6 or Work No. 7 are permitted outside the hours stated in sub-paragraph (1) provided such works do not give rise to any materially new or materially different effects than those assessed in the environmental statement. a) The works set out in **Requirement 9(2)** are listed below, with justification as to why each is required. (a) Works that cannot be interrupted, including concrete pours, or that need to be conducted outside of normal work hours for safety reasons, including radiographic testing – The pouring of concrete for foundations has to be done continuously to ensure a consistent strength and composition across the entirety of the foundation. The time required for a concrete pour can extend beyond the usual working day or, for unforeseen reasons, may on occasion need to do so. Further, the welding of plates to create the ammonia tank inner wall, floor and roof is a substantial task that requires pre-heating of

	the plates and cannot easily be stopped once started. (b) Emergency works – This is self-explanatory. If an emergency occurs, there may need to be out-of-hours working to ensure that the site is safe or that no adverse effects on the environment occur. For example, if a crane being used on site mid-lift (due to a failure of the hydraulic system), works would be required to fix the crane and complete the lift rather than leaving a load in the air. (c) Works that are carried out with the prior approval of the relevant planning authority – This provides appropriate flexibility for works to be agreed with North East Lincolnshire Council to ensure an efficient construction programme. As is noted above, any such works cannot give rise to materially new or different environmental effects than those assessed. (d) Works that do not exceed maximum permitted levels of noise at each agreed monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed with the relevant planning authority for specific construction activities – This enables certain "quiet" work to be done which would not cause any adverse impacts on amenity. For example, this could include wiring and the performance of other checks. Again, this helps facilitate a smooth and efficient construction programme. (e) Works necessary to support the construction of Work No. 1. – This is required by the main contractor for non-disruptive activities throughout the maritime works. Non-disruptive works include moving of jack-up and crane barges, resupply of construction and consumable materials, welding and grouting operations, crew transfer and emergency response. This is required for the following

	reasons: • **Tidal constraints**: For safety and operational reasons, barge movements are only permitted at high slack water in proximity to the Immingham Oil Terminal. • **Logistics**: The port of Immingham is the UK's busiest port by tonnage and therefore loc and pilotage bookings are tightly scheduled. The ability to schedule construction vessel movements outside of core working hours is essential. • **Health, safety and welfare**: Construction workers will require transferring from/to the working barges at the beginning/end of shifts. If this cannot be completed safely within core hours, and 24-hour working is not permitted, then workers will be stranded on the working barges until the next core hour period. • **Weather**: Maritime construction is heavily dependent on favourable weather to progress safely. These weather windows for non-disruptive activities may occur outside of core working hours. • **Production and schedule**: Activities such as welding and grouting are slow and time consuming to complete. The ability to continue these activities outside of core hours is beneficial. • **Interface with third parties**: The port of Immingham functions 24 hours a day. The ability for non-disruptive works to be integrated with third parties is beneficial. • **Making safe of the works**: If during the core working hours there is equipment breakdown, inclement weather, etc., that prevents the contractor making the works safe. It is essential that this 'making safe' is allowed to continue.

	In all cases, the works cannot give rise to materially new or different effects than those assessed in the Environmental Statement.
Q1.18.5.2	
Question	**Response**
Requirement 14 - Queens Road residential properties a) Should there be a discharging Authority for R14? b) Explain if there is a role for HSE in the process of discharging R14, or before the discharge of that Requirement. c) If so, would that necessitate changes to drafting within the dDCO. d) Consider whether further explanation in the EM is necessary. R14 provides for the CA of the Queens Road residential properties and the illustrative layouts [APP-013, Sheets 6 and 7`] show no proposed use or purpose for these properties within the Proposed Development. e) Provide details of the proposed use of these properties post acquisition (should consent be granted). f) Provide details of how these properties will be made safe and maintained during the full operational period of Work No. 7. g) NELC, what is your expectation for properties that have no residential use if they are to be left empty for long period.	(a) – Requirement 14 is not considered to require discharge by NELC or any other discharging authority. The first part of Requirement 14 prevents the operational use of Work No. 7 (part of the hydrogen production facility) until certain steps are fulfilled in respect of defined residential and part residential properties on Queens Road. Compulsory acquisition powers are sought in respect of those properties, as their continued residential use is considered by Air Products following specialist advice to be incompatible with the hydrogen production facility and an impediment to the grant of the hazardous substances consent that is necessary for the operation of that facility. Three steps are required before operational use of Work No. 7 commences. First, the undertaker must have taken possession of all those properties following compulsory acquisition or acquisition by agreement. Second, the use of those properties for residential purposes must have permanently ceased. Third, notice of such possession and cessation of use must have been served on the planning authority. The second part of Requirement 14 then secures that, from the date of notice being served, no part of the relevant properties may be used for residential purposes whilst Work No. 7 is in operational use. Requirement 14 therefore provides a mechanism for formal notification to the planning authority of the cessation of permanent residential use. In

	turn, that gives certainty to NELC as the party responsible for granting and enforcing the hazardous substances consent that the residential use of the properties has or will be secured before operational use of Work No. 7. Requirement 14 is still enforceable however and this is the critical issue. It would be a criminal offence for Air Products, without reasonable excuse, to operate Work No 7 without securing possession of the relevant properties and cessation of their residential use. It would also be a criminal offence for Air Products to subsequently reinstate such a use. This is a robust mechanism for securing compliance. Any additional requirement, such as an obligation to obtain the planning authority's approval of possession or cessation of use, would add an unnecessary administrative burden. Those matters are a question of fact and there is nothing of substance in respect of which the planning authority needs to exercise its judgement. b) In light of the above, it is not considered that there is a role for HSE in the process of discharging Requirement 14 or before the discharge of that Requirement. Requirement 14 is limited to the administration of securing the permanent cessation of use of the defined Queens Road properties and that administrative matter is not something that the Applicant anticipates HSE would wish to be involved in. Separately, HSE is considering its advice to NELC in relation to the hazardous substances consent application. As explained in the response to Q1.12.1.2, it is anticipated that HSE will advise against the grant of hazardous substances consent whilst the defined Queens Road properties remain in residential use. The discharge of Requirement 14 provides certainty to HSE and NELC in the context of that hazardous substances consent application that the hydrogen production facility cannot operate on Work No. 7 until the permanent cessation of residential use of the defined

	Queens Road properties has been secured, and will therefore facilitate the grant of that consent. (c) & (d) Given the response to part (b) above, no changes to the drafting of the dDCO or EM are proposed. (e) – In terms of short term uses, Air Products has submitted a planning application to NELC to use 31 Queens Road temporarily in connection with the Project (for example as a site office and storage). There are currently no other immediate plans for alternative temporary uses of the remaining Queens Road residential properties, given their proximity to a potential construction site. Some of the properties are not in good condition. For example, both 1 Queens Road and 2 Queens Road are in a poor state of repair, with 1 Queens Road appearing to have suffered substantial subsidence (there are large cracks in the wall and the windows do not close). In terms of any future use of the Queens Road residential properties, this depends on the intentions and requirements of the owners of the neighbouring properties, on whether the DCO is granted and on NELC as the local planning authority with responsibility for determining planning applications. An agreement to acquire the properties at 6-15, 16-17, 18, 18A and the land at the rear of 1-19 Queens Road completed on 8 March 2024. Air Products anticipates that potential future uses of the relevant land at Queens Road would likely involve replacement of the existing buildings and could include redevelopment for compatible industrial or commercial uses such as warehouses and storage, offices, or depending on future demand and assuming the DCO is granted, a hydrogen refuelling station. Any future use will be subject to a separate consenting process (including the need for planning permission) and any necessary assessments.

	(f) Immediately following acquisition of any of the Queens Road residential properties, Air Products is ensuring that they are boarded up where required to deter any antisocial behaviour. Air Products has retained a security company which currently undertakes patrols of the properties acquired at Queens Road daily. This enables any issues regarding the safety or maintenance of the properties to be identified and addressed. Maintenance will take place as necessary to avoid the properties falling into or further into disrepair.
Q1.18.5.3	
Question	**Response**
Requirement 18 – Decommissioning environmental management plan The ExA notes that a number of the ES chapters have adopted a 25-year period as the basis for their assessment of the AD, which is based on the intended operation period for the storage and production facilities. However, neither the interpretation of "decommissioning" in Schedule 2, nor R18 make any reference to this time period. a) Explain and justify why not. b) To ensure consistency with the ES and the identified operational period of the AD, provide suitable wording to include a time period by which decommissioning must be undertaken. See related questions in the Decommissioning section.	(a) As explained in the response to Q1.15.1.5, the 25-year period for operation of the hydrogen production facility was adopted as the basis of the assessment of certain environmental effects, as some of the major items of equipment and plant comprised in the hydrogen production facility have a nominal design life of around 25 years, at which point these items of equipment and plant may need refurbishing or replacing (and are therefore considered at the end of their technical and economic life). However, it is likely that operation of the hydrogen production facility will continue beyond 25 years. The Applicant is not seeking consent for the Associated Development on a time-limited basis. Please see the response to Q1.15.1.1 which addresses the environmental effects of the operation of the hydrogen production facility beyond 25 years. **Requirement 18** ensures that, at the point at which the hydrogen production facility is to be decommissioned, it is done in accordance with an approved Decommissioning Environmental Management Plan (in addition to any requirements of the Environmental Permit relating to site

	closure). (b) For the reasons set out above, it is not necessary for **Requirement 18** to secure the decommissioning of the hydrogen production facility at the end of the 25-year period identified. The absence of a maximum operational period is not inconsistent with the conclusions of the **Environmental Statement**.
Q1.18.6 Schedule 1 – Authorised Project	
Q1.18.6.1	
Question	**Response**
Schedule 1 Part 1 – Authorise Development	a) It is not possible at this stage, or indeed necessary overall, to include a maximum number of buildings and structures within each Work No. within the **draft Development Consent Order ("dDCO") [PDA-004]**. For example, the hydrogen production facility comprises a complex series of structures, buildings, equipment and apparatus, as required to import, store and move ammonia, produce hydrogen and release nitrogen, liquify, store and transfer hydrogen. In addition to the main structures (such as production units and liquefiers), associated equipment includes compressors, cooling equipment and control equipment. Some of that equipment may be housed in shelters. It is not possible at this stage to precisely specify which piece of construction comprises a "building" and/or a "structure" and which does not. The approach to **Schedule 1** has been to identify the main buildings and structures within the Project. Of necessity, **Schedule 1** also includes "associated buildings, plant and infrastructure" for Work Nos. 2, 3, 5 and 7. Those works must be "associated" with the main buildings and infrastructure identified in each Work No. For example, for Work No. 2, any

	additional buildings, plant and infrastructure must be associated with the identified "jetty access road, pipe-racks, pipelines, pipes". This appropriate flexibility is also required to allow the detailed design to be finalised and for that design to be agreed (as necessary) with the Environment Agency (under the application for an Environmental Permit), and the Health and Safety Executive ("HSE") and the Environment Agency (in the context of the Control of Major Accident Hazards Regulations 2015 ("COMAH Regulations 2015") and the associated requirements for approval of Safety Reports). The detailed design may mean, for example, that certain equipment needs to be housed in a shelter which could take it within the definition of a building. It is also not necessary to put limits on the number of buildings and structures in order to control environmental effects. All of the works must be located within the spatial area of the relevant Work No. as shown on the **Works Plans [AS-002]** and comply with the maximum and minimum parameters controlled through **Requirement 4**. The assessment contained in the **ES** has been undertaken on that basis, taking account of the identified range of buildings and structures in **Schedule 1**. b) In terms of the marine elements of the authorised project comprised in the **dDCO**, piling will be required in Work No. 1a. The parameters for the marine piles are captured within **Table 1** of the **Outline Construction Environmental Management Plan [APP-221]** and provide the upper limit on numbers for the purposes of assessment. These parameters are controlled within the **dDCO** by **Condition 8 (Construction environmental management plan)** in **Schedule 3 (Deemed marine licence)**. In terms of the terrestrial elements of the authorised project comprised in the **dDCO**, piling will be required on Work Nos. 1, 2, 3, 5 and 7. The final number of piles will depend on the detailed design of the hydrogen

	production facility and jetty approach ramp. It is not considered that the precise number of piles will be determinative of any likely significant environmental effects identified in the **Environmental Statement**, and therefore it is not considered that the number of piles needs to be controlled.

3 Appendices to the Applicant’s Responses to the Examining Authority’s First Round of Written Questions

Appendix 1 - Template and Best Practice Guidance

ADVICE NOTE FIFTEEN: DRAFTING DEVELOPMENT CONSENT ORDERS

This document is provided as part of the Applicant's response to Q1.18.1.1(b) and provides a brief explanation of how each aspect of Advice Note 15 has been addressed.

All references to the Explanatory Memorandum and draft DCO are to the latest revisions submitted at Deadline 1 with references [TR030008/EXAM/9.3] and [TR030008/EXAM/2.1] respectively.

Paragraph ref:	Paragraph content	Applicant Response
Justifying the approach		
1. Explanatory Memorandum		
1.1	The Explanatory Memorandum is an aid to the Examining Authority (ExA), to Interested Parties and to the Secretary of State as decision-maker to help understand what is proposed in the draft Development Consent Order (DCO), why particular provisions have been included and from where the wording has been derived. The Explanatory Memorandum explains why draft DCO provisions have been tailored to meet the specific needs of a particular Nationally Significant Infrastructure Project (NSIP) (and may be required to address novel issues). It should also explain why the provisions are required, having regard to the scope and breadth of powers contained in the Planning Act 2008 (PA2008).	The Applicant submitted as part of its application to the Planning Inspectorate an Explanatory Memorandum which explains why the provisions are required and has regard to the scope and breadth of powers contained in the Planning Act 2008.
1.2	A thorough justification should be provided in the Explanatory Memorandum for every Article and Requirement, explaining why the inclusion of the power is appropriate in the specific case. The extent of justification should be proportionate to the degree of novelty and/ or controversy in relation to the inclusion of that particular power.	The Explanatory Memorandum explains why the inclusion of each power is appropriate in the proportionate manner described, and has been supplemented at Deadline 1 with regard to particular matters raised by First Round Written Questions issued by the Examining Authority.
1.3	There is no longer a requirement to submit a tracked changed version of the draft DCO which compares the wording against The Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.	This is noted.
1.4	A well-developed Explanatory Memorandum can potentially reduce the number of examination questions an ExA may need to ask about the draft provisions comprising the	The Explanatory Memorandum provides the necessary certainty in respect of these matters.

Paragraph ref:	Paragraph content	Applicant Response
	draft DCO. For each provision, the ExA is likely to want to be satisfied about certain matters, such as: • The source of the provision (whether it be a previous made DCO or Transport and Works Act Order, or a novel provision). • The section/ Schedule of the PA2008 under which it is made. • Why it is relevant to the Proposed Development. • Why the Applicant considers it to be important/ essential to the delivery of the Proposed Development.	
1.5	If a draft DCO includes wording derived from other made DCOs, this should be explained in the Explanatory Memorandum. The Explanatory Memorandum should explain why that particular wording is relevant to the proposed draft DCO, for example detailing what is factually similar for both the relevant consented NSIP and the Proposed Development. It is not sufficient for an Explanatory Memorandum to simply state that a particular provision has found favour with the Secretary of State previously; the ExA and Secretary of State will need to understand why it is appropriate for the scheme applied for. Any divergence in wording from the consented DCO drafting should also be explained. Note, though, that policy can change and develop.	The Explanatory Memorandum explains, where wording is derived from other made DCOs, why that particular wording is relevant to the proposed draft DCO in a proportionate manner advised by paragraph 1.2 of this Advice Note. The Explanatory Memorandum has been supplemented at Deadline 1 with regard to particular matters raised by First Round Written Questions issued by the Examining Authority in the event this would be helpful to its readers as well.
1.6	Where applicants are seeking to include specific wording or apply a particular approach from a different statutory regime in a draft DCO, the reasons for doing so and the relevance of this to the application should also be made clear in the Explanatory Memorandum. For example, where an applicant has used wording from an Order made under the Transport and Works Act 1992, the particular Order in question should be clearly identified and the reason for including this wording in the draft DCO explained. Applicants will again need to consider whether such a provision is within the powers of the PA2008 and include comments on this point in the Explanatory Memorandum.	The draft DCO does not seek to apply specific wording or apply particular approaches from any other statutory regime. As discussed more particularly in Issue Specific Hearing 2, the draft DCO does not contain “novel” drafting in this sense and its provisions are firmly grounded in what is envisaged and empowered by the Planning Act 2008, replicating and adapting as required for the authorised project well-worn provisions from the Model

Paragraph ref:	Paragraph content	Applicant Response
		Provisions and DCOs made pursuant to that Act.
DCO form and language – general approach		
2. Statutory Instrument template		
2.1	A DCO must be made in the form of a validated Statutory Instrument (SI) if, as is usually the case, it includes 'legislative provisions' that for example apply, amend or exclude other statutory provisions (see section 117(4) and section 120(5) of the PA2008). SIs need to conform to a template which is publicly available on the UK Legislation Publishing website (National Archives). The template contains essential formatting for SIs.	The draft DCO is submitted in the form of a validated Statutory Instrument.
2.2	Applicants will need to obtain access to the online SI template and associated validation system which assesses whether the drafting in an instrument agrees with the rules for drafting within the template. The Planning Inspectorate's Case Manager will fill in the relevant application form on behalf of the Applicant and submit it to the National Archives. Please contact the Planning Inspectorate in case of any difficulty obtaining access to the template.	The draft DCO is submitted in the form of a validated Statutory Instrument using the online SI template and the associated validation system.
2.3	The SI template may be updated periodically. Applicants should contact the Planning Inspectorate's Case Manager to ensure they are using the latest template.	The draft DCO uses the latest template as at the date of submission of the application. The Applicant intends to clear the final draft DCO submitted at the end of the Examination through the validation process, and a validation report will be submitted at the end of the Examination.
2.4	All copies of the draft DCO submitted to the Planning Inspectorate (including the Applicant's final draft DCO submitted towards the end of the Examination) must have been cleared through the validation process and be accompanied by a copy of the Validation Success email which evidences that the draft DCO is error free and on the correct version of SI template. Should draft DCOs be submitted with errors or without a successful validation email, applicants will be asked to resolve the errors and resubmit with a Validation Success email.	Each version of the draft DCO has been and will continue to be drafted in accordance with the drafting conventions for statutory instruments generally and made DCOs in particular. Taking a proportionate approach, the Applicant will clear the version of the draft DCO submitted at the end of the Examination through the validation process and

Paragraph ref:	Paragraph content	Applicant Response
		submit a clean validation report at that time.
3. Drafting conventions		
3.1	As mentioned above, it is common for applicants to seek out and adopt drafting conventions from previously made DCOs. It may also assist applicants to consider the drafting conventions of made DCOs published by the same department as would authorise their DCO, which may help to identify that department's drafting preferences. However, applicants should note that policy does change and develop.	The Applicant has considered, when drafting the draft DCO, the drafting conventions of made DCOs, including those published by same department as would authorise the draft DCO.
3.2	Where Deemed Marine Licences or other deemed consents or licences are included within a draft DCO, they must also follow the statutory drafting conventions for SIs. However, note that they are also self-contained licences and need to not be dependent on definitions in the body of the draft DCO.	The Deemed Marine Licence within the draft DCO follows the statutory drafting conventions for statutory instruments. The Deemed Marine Licence's definitions have been carefully checked to ensure that the licence can, in the usual manner, be read independently of the remainder of the draft DCO.
3.3	Guidance is publicly available from the National Archives website and should be followed by applicants. In particular applicants should: • provide footnotes in relation to statutory provisions referred to in the SI to provide the user of the SI with information about relevant amendments or extensions to, or applications of, enactments mentioned in the instrument; • use gender-neutral drafting (for example avoiding the use of 'he' or 'she' to refer to the Secretary of State or other persons, unless referring to a particular living individual); • provide an adequate preamble with recitation of powers; • avoid use of the words 'shall' or 'will' (because of ambiguity over whether they are an imperative or a statement of future intention); • avoid the word 'may' (to avoid ambiguity over whether it is permissive or stating that it is uncertain whether something is to occur);	The Applicant's solicitors were cognisant of this Advice Note and the Guidance in preparing the draft DCO. Their principles have been adhered to such that all established conventions of modern statutory instrument drafting have been followed and all provisions of the draft DCO are clear, precise and unambiguous.

Paragraph ref:	Paragraph content	Applicant Response
	• avoid archaisms (for example 'therewith', 'aforesaid'); • not use obliques in operative text (because of ambiguity whether they signify 'and' or 'or'); • spell out 'metres', 'millimetres' etc throughout (and not use 'm', 'mm' etc); and • if a paragraph is included in the Interpretation Article saying that distances, directions, lengths, areas etc are approximate, make sure that in the rest of the order the word 'approximately' in conjunction with any of these dimensions does not appear.	
3.4	Before an application is made to the Planning Inspectorate, the draft DCO should be thoroughly checked to remove typographical errors and to ensure consistency across the whole document. These checks should also be undertaken during the Examination, whenever changes are made that affect the draft DCO.	Prior to submission of the draft DCO, it was checked to remove typographical errors. These reviews will continue to be undertaken prior to each re-submission of the draft DCO.
Other drafting considerations		
4. Protective Provisions		
4.1	Applicants are encouraged to agree Protective Provisions with the protected party(ies) prior to submitting the application for development consent. Where agreement on Protective Provisions has not been reached during the Preapplication stage, applicants should, as a minimum, submit with their application the standard Protective Provisions for all relevant protected parties with any amendments that the Applicant is seeking annotated with full justification included within the Explanatory Memorandum.	Though ABP and Air Products had been in discussion with those parties in whose favour protective provisions are included on the face of the draft DCO at Schedule 13 (Protective provisions) in respect of the authorised development, the only set of provisions provided in advance of submission and considered between the parties were from the Statutory Conservancy and Navigation Authority for the Humber (see Part 1 of the Schedule), which are now in agreed form. In those circumstances it was considered sensible to include the sets of protective provisions agreed with other relevant parties from the Immingham Eastern Ro-Ro Terminal DCO application

Paragraph ref:	Paragraph content	Applicant Response
		(TR030007) as a starting point, and constructive discussions continue with the parties in question to reach agreement in respect of the authorised project. This is the case in relation to the Environment Agency (Part 2), Northern Powergrid (Part 3), Anglian Water (Part 4), Network Rail (Part 5) and North East Lincolnshire Council (As Lead Local Flood Authority) (Part 6) and Cadent Gas Limited As Gas Undertaker (Part 7). The status of discussions with each statutory undertaker is set out more particularly in the Land Rights Tracker [TR030008/EXAM/9.4]. The appropriateness and necessity of protective provisions in favour of North East Lindsey Internal Drainage Board in addition to existing provision in the draft DCO is being considered and it will be updated as necessary as productive discussions with the Board progress.
4.2	Where the Applicant is not proposing to include draft Protective Provisions for a Statutory Undertaker that has been identified as such by the Inspectorate (under Regulation 11 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017), the Applicant needs to ensure that the Consultation Report explains why Protective Provisions for that Statutory Undertaker are not sought or required. Ideally this information will be provided as a table listing all of the Statutory Undertakers identified by the Inspectorate with either: • a link to the proposed draft Protective Provisions; or • a brief explanation why the Statutory Undertaker is not affected by the application and/ or why Protective Provisions are not required.	The Applicant is engaging on the terms of appropriate bespoke protective provisions with those statutory undertakers identified with assets within the boundaries of the Order limits, i.e. Anglian Water, Northern Power, Cadent Gas and Network Rail (see the response to paragraph 4.1 above). The draft DCO also includes standard protective provisions for operators of electronic communications code networks (see its Part 8, Schedule 14), which will apply to OpenReach and VirginMedia who have been identified as having apparatus within the Order limits.

Paragraph ref:	Paragraph content	Applicant Response
4.3	Submitting blank Protective Provisions Schedules is not acceptable and is likely to pose a serious risk to the acceptance of an application under s55 of the PA2008.	The Applicant did not submit blank protective provisions schedules when submitting the draft DCO as part of the Application. See the response in respect of paragraph 4.1 above.
4.4	It is common for Protective Provisions to be drafted in unison with the protected party(ies) or by them first hand. Applicants should ensure that any Protective Provisions drafted by others appropriately align with the terminology and style of the draft DCO and are suitably drafted for use in an SI. If Protective Provisions for more than one protected party are included in a single Schedule, SI drafting requires the numbering of the paragraphs to follow sequentially throughout the Schedule and not re-start at '1' with each part (as with all textual Schedules in several parts). This approach should be adopted in the draft DCO submitted with the application and in each amended draft submitted during the Examination where Protective Provisions are changed.	The Applicant has ensured, and continues to ensure, that the drafting of the protective provisions aligns with the terminology and style of the draft DCO. The protective provisions for each protected party are provided in a single Schedule, with the numbering of the paragraphs following sequentially throughout the Schedule.
4.5	If, for good reason, an applicant prefers to provide a separate Schedule for each protected party, the paragraph numbering can re-start at paragraph 1 for each Schedule.	The Applicant has not provided a separate Schedule for each protected party.
5. References		
5.1	References to Articles in the draft DCO or sections of Acts should include the heading of the provision (or other concise, explanatory wording) on the first occasion that the reference appears in each Article or each paragraph of a Schedule.	As stipulated, references to Articles in the draft DCO or sections of Acts include the heading of the provision on the first occasion that the reference appears in each relevant provision.
5.2	Applicants should take care to ensure that the efficacy of any cross-references used in the draft DCO are maintained and checked. These checks are particularly important if and when the draft DCO is revised during the Examination.	The Applicant has, and continues to, check the efficacy of the cross-references used in the draft DCO.
6. Definitions		
6.1	Definitions should be applied consistently throughout the draft DCO and should be in lower case. Applicants should note that:	The Applicant has complied with this guidance when drafting the definitions contained within the draft

Paragraph ref:	Paragraph content	Applicant Response
	• terms defined in the parent legislation (ie the PA2008) or in the Interpretation Act 1978 do not need to be re-defined in the DCO; • they should define, either in the relevant Article or paragraph (if only used once) or in a general definitions Article (if used more frequently), all terms not defined in the PA2008 or the Interpretation Act 1978, or where the term uses its ordinary meaning; • the use of different definitions for the same term within different parts of the draft DCO should be avoided wherever possible (for example setting out two different meanings of 'apparatus'). If this is unavoidable, then the definition in the Interpretation Article should make clear that it is subject to another definition elsewhere in the draft DCO; • generally, a definition for 'The Secretary of State' should not be provided (government departments ask for a general Secretary of State to be assumed to allow for future changes to government machinery); • care should be taken to ensure that the definitions provided in draft DCOs do not conflict with any of the definitions provided in s235 of the PA2008 (where there is conflict, applicants should explain and provide justification in the Explanatory Memorandum); and • definitions should not be used to try to make substantive provision about what can and cannot be done under a DCO, nor to try to give effect to or introduce Schedules.	DCO. No definitions conflict with any of the definitions provided in s235 of the PA2008.
6.2	Where there is more than one relevant planning authority (or other authority), this should be made clear in the definitions.	The only relevant planning authority in the draft DCO is North East Lincolnshire Council.
7. Footnotes		
7.1	There should be clear footnotes provided for all Acts, SIs, European Union or other international legislation, or external documents referenced in a draft DCO, which must conform to the guidance on footnotes in SI practice (for legislation, the footnote should identify relevant amendments to	The draft DCO includes clear footnotes for all Acts, Sis, European Union or other international legislation, or external documents referenced within the document. These footnotes

Paragraph ref:	Paragraph content	Applicant Response
	specific provisions). This practice should apply throughout the draft DCO and its Schedules. This includes any draft Deemed Marine Licence because these also form part of an SI and must therefore meet SI standards, as mentioned above.	conform to the guidance on footnotes in SI practice.
7.2	Applicants must ensure that all footnotes in their final draft DCO submitted to an Examination are still up to date (ie legislation referred to has not been amended or repealed), and reflect the preferred practice in the relevant decision making department.	The Applicant will check it remains in compliance with this upon submission of the final draft DCO at the end of the examination.
8. Schedules		
8.1	Schedules in DCOs must be given effect by an operative Article in the main body of the DCO. This may be by an express provision that the Schedule is to have effect or by clear implication (such as where the Article which grants development consent does so by reference to the Schedule which describes the Authorised Development). The Schedule should also include a shoulder reference to that operative Article, and such references should either be the first Article that mentions the Schedule, or all the Articles that mention the Schedule. A consistent approach should be adopted throughout the DCO.	Each of the Schedules included in the draft DCO are given effect by an operative Article in the main body of the DCO.
8.2	To assist the reader in navigating the draft DCO, Schedules should be numbered according to the order they are mentioned in the substantive Articles in the draft DCO.	The Applicant has complied with this when numbering the Schedules within the draft DCO.
9. Paragraphs		
9.1	Paragraphs in the draft DCO should usually consist of a single sentence and applicants should avoid the use of long sentences.	The Applicant has complied with this in the draft DCO.
10. Numbering		
10.1	Numbering within Articles and Schedules should follow the guidance at National Archives. Please see advice above (paragraph 4.4) in relation to the numbering of Protective Provisions where included in draft DCO multi-part Schedules. This practice applies to all textual Schedules in several parts.	The Applicant follows the guidance at National Archives for numbering within Articles and Schedules.
10.2	Applicants should avoid the use of very long lists where the contents need to be numbered with roman numerals or lettered (for example, sub-divisions of a single numbered Work in Schedule 1, where a	The Applicant makes use of lists numbered with roman numerals and letters, but these are not very long and

Paragraph ref:	Paragraph content	Applicant Response
	recent example extended to '(ttt)'). The SI template is unable to cope well with the formatting of such long numbering/ lettering.	accord with the advice provided in the Advice Note.
10.3	In the font mandated by the template for SIs, the character for the numeral 'one' and the lower case equivalent of the letter 'L' are indistinguishable from one another visually. When determining a numbering/ lettering scheme (for example, for individual land plots) which also needs to be referred to in the draft DCO, applicants should use a scheme that does not run the risk of ambiguity between these two characters.	There are no cases of such ambiguity in the draft DCO.
11. Certification Articles		
11.1	In a draft DCO certification Article, applicants should avoid referring to 'any other plans or documents referred to in this Order' since this is insufficiently clear and lacks precision.	The wording 'any other plans or documents referred to in this Order' is not used and all documents and plans referred to in the draft DCO certification article within the draft DCO (Article 64 – Certification of documents, public register, etc.) are listed within Schedule 15 for clarity and precision.
11.2	Plans and other documents which are required to be certified such as the Land Plans and Works Plans should be specifically listed in the relevant Article. Applicants should set out the titles and numbers of such documents, either in the certification Article or, if there are a large number of documents, in a separate Schedule or Schedules to the DCO.	The plans and documents required to be certified are listed in Schedule 15 with their titles, document reference numbers, revision numbers and dates set out in tabular format.
11.3	It is common for the Environmental Statement (ES) to be certified, not least because adherence with the assessment findings may be relevant when a discharging authority is considering whether or not to discharge Requirements. However, during the course of an Examination, applicants may also provide 'environmental information' which affects the findings of the ES and which may be relied upon for the purposes of the Examination required by Regulation 21 of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017. If during the course of an Examination 'environmental information' is provided which affects the findings in the ES then applicants should consider if this information should also form part of the certification of the ES since it	No 'environmental information' has been submitted to date but, if it is in the course of the examination and it affects the findings of the ES, the Applicant will consider if it should form part of the certified ES.

Paragraph ref:	Paragraph content	Applicant Response
	may have been relied upon by the decision maker and incorporated into the Requirements as mitigation measures.	
12. Preambles and explanatory notes		
12.1	Draft DCOs must include a preamble, briefly setting out details of the submission, examination and determination of the application, citing relevant statutory provisions.	The draft DCO includes such a preamble after the table of contents.
12.2	Draft DCOs must also, after the Schedules, include a brief explanatory note, explaining the purpose of the DCO, and what it would permit the Applicant to do if consented. This must also set out where copies of the plans and other documents, to be certified under the DCO, may be inspected and when. The agreement reached with the document host/ venue should be confirmed to the Examination.	An explanatory note to this effect is included on the last page of the draft DCO. The note provides that a copy of the certified plans and book of reference may be inspected at the registered office of Associated British Ports, being 25 Bedford Street, London WC2E 9ES, i.e. at the offices of the Applicant, so no agreement from a third party is required in this respect. In the manner of very recently made DCOs, Article 64(4) (Certification of documents, public register, etc.) provides that the undertaker must, as soon as practicable following the making of the DCO, establish and, for the lifetime of the authorised project pursuant the DCO, maintain in an electronic form suitable for inspection by members of the public a copy of each certified document listed in Schedule 15 (documents and plans to be certified).
Tracking changes in the draft DCO throughout the Examination		
13. DCO revisions		
13.1	Changes to the draft DCO may well be put forward by the Applicant and others during the course of the Examination. This may be for several reasons as follows: • responding to questions raised by the ExA; • responding to representations made by Interested Parties; or	No response is needed to this paragraph.

Paragraph ref:	Paragraph content	Applicant Response
	• responding to agreements reached with other Interested Parties, for example in relation to Protective Provisions or revisions to Requirements.	
13.2	The Examination Timetable will make provision for revised version(s) of the draft DCO to be submitted by the Applicant. Where this is not expressly required in the timetable, applicants may choose to submit revised drafts at other times during the Examination; for example to meet timetabled deadlines for the submission of Written Representations. It is important that there is a clear audit trail to identify both changes to the draft DCO made during the Examination and the reasons why those changes have been made. This will greatly assist the Secretary of State in understanding how the form of any draft DCO that is recommended by the ExA has come about.	The Applicant has produced a schedule of changes to the draft DCO which will be updated and submitted with each new version draft DCO.
14. Providing a DCO audit trail		
14.1	It is important to maintain a clear audit trail of changes made to the draft DCO. To achieve this, applicants should ensure that each revised draft DCO is accompanied by: • a track changed version of the draft DCO highlighting any changes made from the previous version (and identified by a suitable filename) or a version using suitable comparite software which similarly identifies the changes; • a track changed draft DCO version highlighting all of the changes made from the version of the draft DCO originally submitted with the application (and identified by a suitable filename) or a version using suitable comparite software which similarly identifies the changes must be submitted at the end of the examination and, depending on the number of versions, at points during the examination; and • a supporting explanatory document, such as drafting notes or table of proposed changes. This should explain any amendments in a proportionate and concise way and be appropriately updated during the Examination. This is so that Interested Parties and the ExA are sufficiently aware of the purpose	The Applicant has submitted, and will continue to submit, tracked changed versions of the draft DCO each time it is updated and re-submitted into the examination. As agreed at Issue Specific Hearing 2, the Applicant will also submit a composite tracked change version at Deadlines 1, 3, 5, and 7. The Applicant also has produced a schedule of changes to the draft DCO which will be updated and submitted with each new version draft DCO.

Paragraph ref:	Paragraph content	Applicant Response
	and effect of any proposed revisions to draft DCO provisions.	
14.2	A fully updated Explanatory Memorandum must be submitted with the final version of the Applicant's draft DCO submitted towards the end of the Examination. It will therefore be necessary for applicants to keep a detailed and comprehensive audit of changes made to the draft DCO during the course of the Examination to inform the final version of the Explanatory Memorandum. It would therefore seem in the best interests of applicants to update the Explanatory Memorandum in conjunction with each update to the draft DCO during the course of the Examination. If an updated Explanatory Memorandum could be submitted with each update to the draft DCO this would seem to help everyone involved in the examination of the application. The increased clarity provided by regular updates to the Explanatory Memorandum may also reduce the number of questions posed to the Applicant and/ or challenges raised in response to suggested changes	The Applicant will update the Explanatory Memorandum and submit this with each new version of the draft DCO.
14.3	Where Interested Parties other than the Applicant have suggested amended or new draft DCO provisions during the course of the Examination, they should also provide a reasoned explanation in support of the proposed amendment or new provision.	No response is needed to this paragraph from the Applicant.
Key issues for DCO drafting		
15. Requirements – general considerations		
15.1	Section 120 of the PA2008 provides that a DCO may impose Requirements in connection with the development for which consent is granted. Such Requirements may correspond with conditions which could have been imposed on the grant of any permission, consent or authorisation (for example planning permission under the Town and Country Planning Act 1990 (the TCPA1990)) which would have been required for the development if it had been consented through a different regime.	No response is needed to this paragraph.
15.2	The law and policy relating to planning conditions (in particular, in England, relevant paragraphs of the National Planning Policy Framework and associated Planning Practice Guidance), imposed on planning permissions under the TCPA1990, will generally apply	The requirements within the draft DCO are precise, enforceable, necessary, relevant to the development, relevant to

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	when considering Requirements to be imposed in a DCO in relation to the terrestrial elements of a proposed NSIP. Requirements should therefore be precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects.	planning and reasonable in all other respects.
16. Securing mitigation		
16.1	An application may have significant adverse environmental effects that require mitigation; such effects will be identified in the accompanying ES and/ or relevant environmental information. Any mitigation measures relied upon in the ES must be robustly secured and this will generally be achieved through Requirements in the draft DCO. Mitigation that is identified in the ES as being required must also be clearly capable of being delivered.	The Applicant secures mitigation measures relied upon in the ES in the draft DCO. Please see the Schedule of Mitigation and Monitoring [APP-234] detailing how such measures are secured.
16.2	Mitigation may include adherence with control measures established through relevant management plans. Requirements can be used to secure the preparation and specification of details for such plans. The plans can be applicable to various stages in the life-cycle of the Proposed Development but may typically include: a Code of Construction Practice, a Construction Environmental Management Plan and a Site Waste Management Plan.	Schedule 2 (Requirements) and Schedule (Deemed marine licence) contain Requirements and conditions, respectively, related to relevant management plans, and the Applicant will keep these updated during the course of the examination.
16.3	A 'Table of Mitigation' should be provided, usually as part of the ES, setting out precisely how and where mitigation measures relied upon in the ES are secured in the draft DCO.	The Applicant submitted a Schedule of Mitigation and Monitoring [APP-234] as part of its application. This will be updated and re-submitted as necessary.
17. Providing flexibility – approving and varying final details		
17.1	When preparing the draft DCO, applicants should consider carefully the aspects of the Proposed Development that require flexibility, particularly where later stage approval by a relevant discharging authority is required. Any provisions in the draft DCO that allow for flexibility must be thoroughly justified within the Explanatory Memorandum, and assessed within the ES. (The general approach to flexibility can be set out in other application documents and cross-referenced to the Explanatory Memorandum, where appropriate.)	Paragraph 4 (Parameters of the Order) the Explanatory Memorandum sets out the approach in the draft DCO to flexibility.

Paragraph ref:	Paragraph content	Applicant Response
17.2	Paragraph 82 of the government's Planning Act 2008: guidance on the pre-application process advises that a Requirement may be proposed which allows details of 'particular finalised aspects' of a development to be submitted later to the relevant discharging authority.	No response is needed to this paragraph.
Good practice point 1	If a Requirement imposes an obligation on the Applicant to seek approval of final details in a scheme, the Requirement should not be drafted in a way which allows the discharging authority to dispense with the need for a scheme altogether. Neither should it enable the discharging authority to vary the scheme in writing such that the scheme then departs from the principles fixed by the application. Applicants should, in the Explanatory Memorandum submitted with the application, provide justification for any flexibility which allows details to be approved after the grant of development consent. Any relevant case law should be cited where it is relied upon. The updated Explanatory Memorandum which accompanies the Applicant's final draft DCO submitted towards the end of the Examination must include any further justification necessary for maintaining such flexibility in the light of the examination of the draft DCO and its Requirements, the views of the relevant local authorities and Interested Parties and the rationale for imposing the Requirement. Paragraph 82 of the government's Planning Act 2008: guidance on the pre-application process advises that a Requirement may be proposed which allows details of 'particular finalised aspects' of a development to be submitted later to the relevant discharging authority.	The draft DCO includes a number of requirements that impose an obligation on the Applicant to seek approval of final details in the Project but, as more particularly set out in the response to question 1.4.1.2 of First Round Written Questions, the design of the Project is largely determined by functional, operational, regulatory and safety requirements which have to be satisfied. Furthermore, in relation to the hydrogen production facility, the detailed design must comply with other regulatory regimes, such as under the COMAH Regulations, and in seeking an environmental permit, which are both separate to the planning process. There is no scope to enable NELC as the discharging authority to dispense with any stipulated approval of final details in the Project in the wording of any given Requirement. Article 6(2) (Procedure regarding certain approvals, etc.) would prohibit NELC from issuing an approval pursuant to any Requirement which departs from the principles fixed by the application.

Paragraph ref:	Paragraph content	Applicant Response
17.3	Applicants should be aware that details fixed by the terms of the DCO can only be changed if authorised, and following adherence with the prescribed approach explained in section 153 of and Schedule 6 to the PA2008. Furthermore, it is not acceptable to circumvent the prescribed process in Schedule 6 by seeking to provide another route to approving such changes or variations, by a person other than the Secretary of State who made the DCO, for example by applying the provisions of section 73 and/ or section 96A of the TCPA1990.	The draft DCO does not seek to make provision for changes to the authorised project by any means other than in section 153 of and Schedule 6 to the PA2008.
17.4	Therefore, adding a tailpiece (a tailpiece is a mechanism inserted into a condition (or by analogy a Requirement) providing for its own variation) such as the one below would not be acceptable because it might allow the discharging authority to approve a change to the scope of the Authorised Development applied for and examined, thus circumventing the statutory process: "The authorised development must be carried out in accordance with the principles set out in application document [x] [within the Order limits] unless otherwise approved in writing"	No tailpieces related to the scope of the authorised project are included within the draft DCO.
17.5	On the other hand, a Requirement might make the development consent conditional on the discharging authority approving detailed aspects of the development in advance (for example, the relevant planning authority approving details of a landscaping scheme). Where the discharging authority is given power to approve such details it will be acceptable to allow that body to approve a change to details that they had already approved. However, this process should not allow the discharging authority to approve details which are outside the parameters authorised within any granted DCO.	Where there are such Requirements, e.g. Requirements 4(1) and (2) or 8)1), the draft DCO does not allow for any discharging authority to approve details which are outside the parameters authorised by the draft DCO (see Articles 63(2) and (3) (Procedure regarding certain approvals, etc.)).
17.6	There is limited scope for allowing corrections to a granted DCO. Corrections are not an opportunity to include something which was accidentally omitted by the relevant parties	Noted.
18. Complying with Environmental Impact Assessment requirements		
18.1	A DCO should only authorise Environmental Impact Assessment (EIA) development which has been assessed in accordance with the EIA Regulations.	The Proposed Development has been assessed in accordance with the EIA Regulations.
18.2	Particular care should also be taken when drafting a power to 'maintain' so that it does	The definition of "maintain" and the scope of activities

Paragraph ref:	Paragraph content	Applicant Response
	not authorise development which may result in significant environmental effects not already assessed. Neither should the power to maintain permit the construction of what is effectively a different project from that consented or its removal (although the removal and replacement of part(s) only of an Authorised Development may in certain circumstances be appropriate). Applicants are encouraged to engage in sufficiently early consultation with the appropriate bodies to seek to agree a definition of maintain and the wording of the corresponding maintenance Article.	this includes complies with this advice, as described in detail in paragraph 7.4.4 of the Explanatory Memorandum.
Good practice point 2	Applicants should take care to ensure that the definition of maintain (if included in the draft DCO) does not seek to authorise activities which may generate significant effects beyond those assessed in relevant environmental information, notably the ES.	
19. Discharging Requirements		
19.1	Section 120(2)(b) of the PA2008 allows for Requirements to include the obtaining of approvals from the Secretary of State 'or any other person'. In many cases, the relevant planning authority for the area(s) within which the development is situated, is likely to be the relevant 'person' from which to obtain such approvals. For clarity, such Requirements should generally be drafted to identify the relevant planning authority or authorities by name. This could be made clear in the definitions, for example when defining the 'relevant planning authority'.	This is done in each applicable Requirement by reference to the definition of the 'relevant planning authority' in Article 2 (Interpretation) of the draft DCO.
19.2	Applicants should engage with the discharging authorities and other key stakeholders at the earliest opportunity (at the Pre-application stage) about the Requirements proposed to be included in the draft DCO and to agree the best approach to discharging the Requirements, for example to agree a proportionate timescale for discharge depending on the extent or complexity of detail reserved for subsequent approval.	The Applicant has engaged and continues to engage with the discharging authorities and other key stakeholders on these matters.
	Good practice point 3 It is recommended that a mechanism for dealing with any disagreement between the Applicant and the discharging authority is defined and incorporated in a draft DCO Schedule. For example, including arrangements for when the discharging authority refuse an application made	Schedule 17 (Procedure regarding certain approvals, etc.) contains the procedures for the discharge of the marine licence conditions and Requirements, which the Applicant summarised and

Paragraph ref:	Paragraph content	Applicant Response
	pursuant to a DCO Requirement, or approve it subject to conditions or fail to issue a decision within a prescribed period. The mechanism could also address the fees payable for discharging the Requirements. The Planning Inspectorate has produced standard drafting for a DCO mechanism to deal with the resolution of such disagreements. The standard wording is provided at Appendix 1 to this Advice Note. Where an applicant seeks for any amendment(s) to be made to the drafting of this standard wording, it should be justified in full in the Explanatory Memorandum. Applicants are also encouraged to confirm in the Explanatory Memorandum that the discharging authority has been consulted about and is willing to assume a discharging role. The same applies to any arbitrator named in arbitration provisions.	discussed with the Examining Authority at Issue Specific Hearing 2. These procedures mirror that of a number of recently made DCOs but particularly Schedule 12 of the Riverside Energy Park Order 2020. North East Lincolnshire Council ("NELC") is willing to assume a discharging role in relation to the Requirements and this will be noted in the Explanatory Memorandum. No arbitrator is named in arbitration provisions – this will be a matter for the parties to agree or the Secretary of State to determine pursuant to Article 62 (Arbitration).
19.3	If an applicant proposes that the approval of matters be required from a discharging authority other than the relevant planning authority, the Applicant should consult with that discharging authority ahead of submitting the application and consider whether it has the required resources and expertise to perform that function.	No Requirements, or indeed other matters, are to be approved by a body other than NELC as relevant planning authority, except the MMO in respect of the deemed marine licence at Schedule 3 and any approvals pursuant to protective provisions from the relevant body in whose favour they are given.
20. Environmental information for subsequent applications		
20.1	Applicants should note that the procedures under The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (the 2017 EIA Regulations) must be followed for any subsequent application (to a discharging authority) for approval of matters in pursuance of a Requirement before all or part of the development may be started. (Note The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009 continue to apply for projects falling under Regulation 37 of the 2017 EIA Regulations.) The 2017 EIA Regulations include transitional provisions which (where relevant) maintain the applicability of The Infrastructure Planning (Environmental Impact Assessment) Regulations 2009. When submitting an application to the discharging authority the	No response is needed to this paragraph.

Paragraph ref:	Paragraph content	Applicant Response
	Applicant should therefore consider whether the transitional provisions apply. Where transitional provisions do not apply applicants should consider if the 2017 EIA Regulations require them to provide an updated ES or to request a Screening Opinion from the discharging authority responsible for determining the subsequent application (usually the relevant planning authority) together with a Scoping Opinion.	
20.2	If an applicant intends to provide an updated ES with the subsequent application it must notify the discharging authority and this will trigger the Applicant's publicity requirements. The discharging authority will also need to consider any obligations (for example under Regulation 11(1)(a)) it has to notify prescribed consultation bodies.	No response is needed to this paragraph.
	Good practice point 4 Requirements may trigger the need for a subsequent application (under the 2017 EIA Regulations). The procedure for considering the environmental effects of such applications is set out in the 2017 EIA Regulations and therefore applicants do not need to prescribe the way in which the discharging authority should take account of environmental effects. (For example, by confining the scope of what may be approved in a subsequent application to matters which were the subject of the original ES.) Applicants should however ensure, when applying (under section 120 of the PA2008) any Orders, Rules or Regulations made under other legislation in relation to a consent, agreement or approval of a discharging authority under a Requirement (or when a bespoke procedure is created for discharging Requirements – see section 21), that the Article could not be construed as circumventing the provisions of the 2017 EIA Regulations. This could be achieved for example by inserting wording in relation to the applied provisions such as "insofar as those provisions are not inconsistent with the 2017 EIA Regulations and any orders, rules or regulations made under the PA2008".	The draft DCO does not apply any legislation which could be construed as circumventing the provisions of the 2017 EIA Regulations.
20.3	If the relevant authority considers that the environmental information previously provided in the ES is adequate to assess the 'environmental effects of the development' (Regulation 22(2)) this must be taken into consideration when deciding the application	No response is needed to this paragraph.

Paragraph ref:	Paragraph content	Applicant Response
	for approval. Alternatively, if the relevant authority considers that the environmental information is not adequate it must adhere with the requirements of the EIA Regulations including giving reasons. Relevant authorities are advised to take their own legal advice on this point.	
20.4	Whether or not an updated ES is required to meet the obligations under the 2017 EIA Regulations does not detract from the fact that the Applicant must still provide all of the information sought by the Requirement for approval before any part of the Authorised Development can commence.	No response is needed to this paragraph.
21. Defining 'commencement' – advance works and environmental protection		
21.1	In some decisions the Secretary of State has removed definitions of 'commence' and/ or 'preliminary works' which could have allowed for a range of site preparation works (such as demolition or de-vegetation) to take place before the relevant planning authority had approved details of measures to protect the environment under the Requirements.	The definition of "commence" included within Schedule 2 (Requirements) of the draft DCO is explained in detail at paragraphs 12.4.1 to 12.4.4 of the Explanatory Memorandum. This term, as noted in the Explanatory Memorandum, is not used elsewhere in the draft DCO and the activities allowed before approval by the relevant planning authority of a specified, limited number of measures does not have the potential to lead to significant adverse environmental effects.
	Good practice point 5 If applicants consider that such an approach is appropriate in the particular circumstances of their proposed NSIP, they should provide reasons in the Explanatory Memorandum.	
21.2	The definitions were removed because the Secretary of State considered them to be inappropriate, particularly where such advance works were themselves likely to have significant environmental effects, for example, in terms of noise or impacts on protected species or archaeological remains.	
22. Hedgerows and trees		
22.1	Applicants may wish to include an Article within the draft DCO to allow the removal of hedgerows (if necessary) for the purposes of carrying out the Authorised Development. The draft DCO can include an Article with powers which remove the obligation on the Undertaker to first secure consent under The Hedgerows Regulations 1997. (In Wales, such a power can only be included with the consent of Natural Resources Wales.) It is recommended that DCO Articles of this kind are made relevant to the specific hedgerows intended for removal. To support the ExA, the Article should include a Schedule and a	Article 53 (Felling or lopping of trees and removal of hedgerows) of the draft DCO complies with this advice. The hedgerows to be removed pursuant to consent given by that Article are only those within the area edged and shaded purple on the plan of potentially affected hedgerows and trees subject to preservation orders [AS-013]. Outside of this shaded

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	plan to specifically identify the hedgerows to be removed (whether in whole or in part). This will allow the question of their removal to be examined in detail. Alternatively, the Article within the DCO could be drafted to include powers for general removal of hedgerows (if they cannot be specifically identified) but this must be subject to the later consent of the local authority.	area, hedgerows may only be removed with the consent of NELC.
	Good practice point 6 Hedgerows affected by the Proposed Development should be identified in a Schedule to and on a plan accompanying the draft DCO. The Schedule and plan could also helpfully identify those hedgerows that are 'important' hedgerows (see Regulation 4 and Schedule 1 of The Hedgerows Regulations 1997 and section 97 of the Environment Act 1995). This would enable parties such as the relevant planning authority to make submissions on the appropriateness of including such provisions, and the ExA to consider these. The draft DCO should also include a relevant Schedule and plan identifying the trees likely to be affected that are protected by TPOs and/ or are otherwise protected.	The draft DCO is accompanied by a plan of potentially affected hedgerows and trees subject to preservation orders [AS-013]. The ES Appendix 8.B: Preliminary Ecological Appraisal Report [APP-181] describes the assessment of hedges across the scheme. The outcome of this assessment is that the hedgerows are unmanaged and "insufficiently species-rich and lack supporting features that would result in them being potentially classified as 'Important' hedgerows, as defined by The Hedgerows Regulations 1997" (see Section 2.3.10).
22.2	Applicants may also wish to include powers allowing them to fell, lop or cut back roots of trees subject to a Tree Preservation Order (TPO). This power can extend to trees which are otherwise protected by virtue of being situated in a conservation area. To support the ExA inclusion of this power should be accompanied by a Schedule and plan to specifically identify the affected trees.	The draft DCO is accompanied by a plan of potentially affected hedgerows and trees subject to preservation orders [AS-013]. This specifically identifies affected trees which may be subject to being felled, lopped, pruned or their roots being cut back pursuant to Article 54(a) (Trees subject to tree preservation orders).
22.3	Trees subject to TPO and/ or are otherwise protected (and likely to be affected) should be specifically identified. It is not appropriate for this power to be included on a precautionary basis. Proper identification of affected trees will enable the ExA to give full consideration to the particular characteristics that gave rise to their designation and the desirability of continuing such protection.	
23. Extinguishment of private rights over land		
23.1	Sub-sections 120(3) and (4) of and paragraph 2 of Schedule 5 to the PA2008	

Paragraph ref:	Paragraph content	Applicant Response
	allow a DCO to make provision for the extinguishment of rights over land.	No response is needed to these paragraphs.
23.2	An applicant may wish to extinguish private rights over land when it is acquiring land by the use of a Compulsory Acquisition power in the draft DCO or by agreement with the landowner. An applicant may also wish to extinguish private rights over land it already owns or land which is otherwise required for the NSIP.	
23.3	The Land Plan accompanying the application must identify any land over which it is proposed to exercise powers of Compulsory Acquisition including any land in relation to which it is proposed to extinguish private rights (Regulation 5 of The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009).	The Land Plans [APP-015] identify the land over which the Applicant proposes to exercise powers of compulsory acquisition, including any land in relation to which it is proposed to extinguish private rights.
23.4	Where an applicant is seeking powers in the DCO to acquire land compulsorily, the drafting of the Article containing the powers should make it clear whether or not the Applicant is also seeking a power to clear the title of the land of all private rights. The Applicant should consider whether the Article should be subject to a power under a separate Article which would allow the Applicant to exclude a particular private right from the blanket extinguishment power.	One of the principles of statutory interpretation is that the piece of legislation in question is to be read as as a whole, as a matter of legal interpretation, and Article 26 (Private rights) is clear in providing that private rights and restrictive covenants over land subject to compulsory acquisition under the draft DCO are extinguished or suspended and the terms on which this is the case. It would be unnecessary, and contrary to the principles of statutory drafting and existing wording in recently made DCOs also to add extra wording cross referencing to this in Article 22 (Compulsory acquisition of land). Articles 26(8) and (9) allow the Applicant to exclude a particular private right from the blanket extinguishment power.
23.5	Section 14A(6) of the Transport and Works Act 1992 and section 134(6A) of the PA2008 (both inserted in the respective Acts by SI 2017/16) each provide that a confirmation notice should be sent to the Chief Land Registrar and that it shall be a local land charge. Where land in an order is situated in	The Applicant notes this requirement, which applies after a DCO is made, and will comply at that time.

Paragraph ref:	Paragraph content	Applicant Response
	an area for which the local authority remains the registering authority for local land charges (ie where the changes made by Parts 1 and 3 of Schedule 5 to the Infrastructure Act 2015 have not yet taken effect in that local authority area), the acquiring authority should comply with the steps required by section 5 of the Local Land Charges Act 1975 (prior to it being amended by the Infrastructure Act 2015) to ensure that the charge is registered by the local authority as the registering authority.	
	Good practice point 7 It is suggested that a procedure is set out in the relevant Article such as the giving of notice or reaching agreement with the person who benefits from the right. This would ensure that only those rights which it is essential to extinguish are dealt with in this way. Any private rights, not just private rights of way, could be dealt with in this way. This Article could also give the Applicant a power to extinguish all private rights over land it already owns and which is required for the purposes of the development. Again, this power could be subject to the giving of notice or agreement.	Articles 26(8) and (9) (Private rights) make provision for notices and agreements in respect of all private rights and restrictive covenants so as to ensure that only those which it is essential are excluded. As well as being a proportionate approach, the Applicant is incentivised to issue such notices or reach such agreement because of the standard requirement to pay compensation under Article 26(6).
	Good practice point 8 The changes made to Compulsory Acquisition legislation by the Housing and Planning Act 2016 has necessitated amendments to the Compulsory Acquisition provisions in DCOs. The Silvertown Tunnel Order 2018 provides an example of updated drafting which takes account of these changes, however applicants should be aware that these could be subject to further refinements and may vary depending on a department's drafting preferences.	The draft DCO takes account of the changes made to Compulsory Acquisition legislation by the Housing and Planning Act 2016, and relevant provisions are based on precedents such as The Silvertown Tunnel Order 2018 as well as more recent ones (as more particularly set out in the Explanatory Memorandum).
24. Restrictive Covenants		
24.1	It may be appropriate to include a power to impose Restrictive Covenants over part of the land which is subject to Compulsory Acquisition or use under the DCO. Before deciding whether or not the power is justified the Secretary of State will need to consider issues such as proportionality, the risk that the use of land above or below a structure could be sterilised if it has to be acquired outright in the absence of a power to impose	Where restrictive covenants are to be imposed, pursuant to article 24 of the draft DCO, these are set out in the relevant rows of its Schedule 12 (Land in which only new rights and restrictive covenants, etc. may be acquired). The restrictive covenants are to

Paragraph ref:	Paragraph content	Applicant Response
	Restrictive Covenants or whether there is for example a policy of establishing a continuous protection zone for the infrastructure network which could be secured more efficiently with the benefit of this power (this was the case in the Docklands Light Railway Orders). By way of background, the inclusion of such powers has been accepted in the case of a few orders made under the Transport and Works Act 1992 where this has been considered justified in the particular circumstances of each case; for example in the circumstances where the proposed railways were to be located on a viaduct or in a tunnel and there was no compelling need to acquire outright the surface of the land above or below the structure but still likely to be an ongoing need for measures to protect the structure and to obtain access to it.	prevent damage to and development above pipelines, as more particularly set out in paragraphs 3.21, 3.30 and 4.38 - 4.40 of the Statement of Reasons [AS-008]. A continuous protection zone is not an appropriate alternative in relation to pipelines because it must be clear that they cannot be damaged or interfered with or access to them impaired by altering levels of the land or (without consent of the undertaker, such consent not to be unreasonably withheld or delayed) placing buildings or structures or planting trees above them.
	Good practice point 9 Applicants should provide justification which is specific to each of the areas of land over which the power is being sought, rather than generic reasons and include a clear indication of the sorts of restrictions which would be imposed and wherever possible the power should extend only to the particular type of Restrictive Covenant required.	The Statement of Reasons [AS-008] provides detailed justification for including powers in respect of restrictive covenants in the draft DCO and, as set out in Schedule 12 (Land in which only new rights and restrictive covenants, etc. may be acquired), the terms of each restrictive covenant are very specific.
24.2	The power to impose Restrictive Covenants over land above a buried cable or pipe, or where a slope contains artificial reinforcement, has been granted in DCOs (Article 22 of the Silvertown Tunnel Order (2018)).	Noted. Restrictive covenants over land above buried cables or pipes is well established in made DCOs.
24.3	In order to enable the Secretary of State to consider whether the imposition of Restrictive Covenants is necessary for the purposes of implementing a DCO, and appropriate in human rights terms, applicants should be prepared to fully explain and justify the need for including such powers in the Statement of Reasons. DCO provisions seeking to impose Restrictive Covenants should not be broadly drafted and should identify the land to which they relate and the nature of the Restrictive Covenant.	The Statement of Reasons [AS-008] provides justification for including the powers in respect of restrictive covenants in the draft DCO (see particularly paragraphs 3.21, 3.30 and 4.38 - 4.40)

Paragraph ref:	Paragraph content	Applicant Response
25. Application, modification or exclusion of statutory provisions		
25.1	Under section 120(5)(a) of the PA2008 DCOs may apply, modify or exclude an existing statutory provision which relates to any matter for which provision may be made in the DCO.	No response is needed to this paragraph.
25.2	The power to apply, modify or exclude an existing statutory provision should be set out in an Article in the main body of the draft DCO. Those provisions that are proposed to be applied, modified or excluded by a DCO should be clearly identified, and, if extensive, identified in a Schedule or Schedules.	The extent of modifications is not such that a separate Schedule is required. As such, the modifications to existing statutory provisions are clearly identified when the application of such provision is set out on the face of the draft DCO.
	Good practice point 10 Applicants should provide in the Explanatory Memorandum a clear justification for the inclusion of such provisions in the particular circumstances. Where such a modification is novel or unprecedented, particularly where it relates to the proposed modification of public general legislation, applicants should seek the views of any relevant authority or government department which has responsibility for the provisions that would be modified before including them in a draft DCO. Where the consent or authorisation is prescribed, the draft DCO cannot be made unless the relevant regulator consents.	Paragraphs 7.13 – 7.18 of the Explanatory Memorandum provide a clear justification for the modification and disapplication of existing statutory provision in the draft DCO, none of which is novel or unprecedented. The draft DCO does not seek to modify or disapply public general legislation, i.e. Acts that deal with matters of general public interest.
25.3	In this context, applicants should also be aware of the opportunities and restrictions (see The Infrastructure Planning (Interested Parties and Miscellaneous Prescribed Provisions) Regulations 2015) under section 150 of the PA2008 on removing consent requirements.	This is noted.
DCOs and Deemed Marine Licences		
26. Geographical scope		
26.1	A DCO may 'deem' consent for a Marine Licence under Part 4 of the Marine and Coastal Access Act 2009 (MCAA2009), subject to specified conditions (sub-section 120(4), paragraph 30A of Schedule 5 and section 149A of the PA2008).	Article 47 (Deemed marine licence) of the draft DCO deem the grant of the marine licence so far as required for the authorised project at its Schedule 3 (Deemed marine licence), and is discussed at paragraphs 12.5 – 12.12 of
26.2	This power only applies where the activity is to be carried out wholly in one or more of the following: in England; in waters adjacent to England up to the seaward limits of the	

Paragraph ref:	Paragraph content	Applicant Response
	territorial sea (twelve miles offshore); in a Renewable Energy Zone; and/ or in an area designated under section 1(7) of the Continental Shelf Act 1964, except where the Scottish Ministers have functions.	the Explanatory Memorandum.
26.3	If, for example, a Deemed Marine Licence is required for activities in Welsh inshore or internal waters (out to 12NM from the baseline) then it could not be deemed by a DCO and consent would have to be sought separately from Natural Resources Wales, to whom this function has been delegated by the Welsh Ministers.	
27. Multiple Deemed Marine Licences		
27.1	It is considered that there is nothing in the relevant legislation which would prevent a DCO deeming more than one Deemed Marine Licence. This could be advantageous in particular developments, where there may be severable elements to the overall development project.	The draft DCO need only include one deemed marine licence. Articles 46(12) and (13) make provision for transfer of the deemed marine licence as part of the draft DCO or alternatively, as it is an independent licence under the Marine and Coastal Access Act 2009, alone under that Act. That optionality is not inconsistent.
27.2	If an applicant proposes that a draft DCO should include more than one Deemed Marine Licence, then they will need to give careful consideration as to how the respective elements of the proposed NSIP are allocated between the draft licences, for example applicable conditions. This is so as to ensure all elements of the NSIP in the marine environment for which development consent is sought are included in one or other of the draft licences, the split between those elements is clearly described in the licences and they are consistent with the authorised NSIP as set out in the DCO. If possible the approach taken should be agreed sufficiently early with the Marine Management Organisation.	
	Good practice point 11 Applicants should give careful consideration to the terms of the transfer Article they include in their draft DCO so as to ensure that it reflects how they envisage the NSIP being operated post-consent and, if possible, avoid potential inconsistencies between how DCO and Deemed Marine Licence transfer arrangements would operate.	
28. Transfer provisions		
28.1	Section 156 of the PA2008 provides that a DCO has effect for the benefit of the land	No response is needed to this paragraph.

Paragraph ref:	Paragraph content	Applicant Response
	and all persons for the time being interested in the land; although this is subject to any contrary provision made in a DCO.	
28.2	DCOs usually include an Article setting out who enjoys the benefit of the DCO and terms for the transfer of the benefit of any or all of the provisions of the DCO, including any consent that may be required.	Article 46 (Benefit of Order) in the draft DCO sets out who has the benefit of provisions of the draft DCO and the terms of the transfer or grant of its provisions.
28.3	Sub-section 72(7) of the MCAA2009 provides that, on application by the licensee, the licensing authority which granted (or is deemed to have granted) a Deemed Marine Licence may transfer it from the licensee to another person. Whilst this provision does not expressly allow only part of a Deemed Marine Licence to be transferred, sub-section 120(5) (a) of the PA2008 provides that a DCO may apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in a DCO, which would include this provision. It is therefore considered that there is no legal reason to prevent a DCO from allowing part of a Deemed Marine Licence to be transferred, although there may be operational difficulties with such an approach including monitoring compliance and taking enforcement action.	The Applicant has not considered it necessary to transfer only the benefit of part of the deemed marine licence at Schedule 3 of the draft DCO.
29. Conditions		
29.1	Sub-section 71(1)(b) of the MCAA2009 allows a Deemed Marine Licence to be granted subject to such Conditions as the licensing authority thinks fit. These may, under sub-section 71(2), relate to the activities authorised by the licence and precautions to be taken or works to be carried out (whether before, during or after the carrying out of the authorised activities) in connection with or in consequence of those activities. Sub-section 71(3) sets out six matters that may in particular be dealt with by conditions.	No response is needed to this paragraph.
29.2	Whilst the law and policy relating to planning conditions does not necessarily apply to DCO Requirements relating to the offshore elements of an NSIP or to Deemed Marine Licence conditions, it is considered that similar principles should apply when drafting these (see paragraph 15.2).	The conditions within the draft DCO are precise, enforceable, necessary, relevant to the development, relevant to planning and reasonable in all other respects.

Paragraph ref:	Paragraph content	Applicant Response
	Good practice point 12 Applicants should give careful consideration to which matters should be dealt with in DCO Requirements and Deemed Marine Licence Conditions respectively, and avoid duplication of the same matters in both Requirements and Conditions. If post-decision changes are required to such Requirements/ Conditions, both instruments would need to be altered. Deemed Marine Licences become self-contained documents and therefore should not be reliant on definitions in or cross references to other elements of the main DCO. In addition, the Secretary of State is unable to amend a Deemed Marine Licence post-consent. Applicants should engage sufficiently early at the Preapplication stage with key relevant consultees so as to seek to agree the wording of draft Requirements and Conditions as much as possible prior to submission of the application for development consent.	There is no duplication of the same matters in the Requirements and Conditions. Eight of the deemed marine licence's definitions do cross-refer to definitions in the main DCO in the interests of brevity or not duplicating a certified document procedure. This does not detract from the deemed marine licence being, in legal terms, an independent document (which can be varied or transferred independently of the draft DCO) and it is common for legal documents, including deemed marine licences, to cross refer to extrinsic documents in this way.
	Good practice point 13 If, by the end of the Examination, applicants have failed to reach agreement with certain parties on any matter regarding the drafting of the draft DCO, they should continue to seek such agreement following the Examination, and notify the Planning Inspectorate of any progress (prior to the decision on the DCO application being issued).	The Applicant aims to reach agreements with all relevant parties by the end of the Examination. Should this not be possible, the Applicant will continue to seek any such agreement and keep PINS notified of progress.