



Immingham Green Energy Terminal

TR030008

Volume 7

7.4 Consents and Agreements Position Statement

Planning Act 2008

Regulation 5(2)(q)

Infrastructure Planning (Applications: Prescribed
Forms and Procedure) Regulations 2009 (as
amended)

September 2023

Infrastructure Planning

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The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (as amended)

Immingham Green Energy Terminal Development Consent Order 2023

7.4 Consents and Agreements Position Statement

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Immingham Green Energy Terminal
7.4 Consents and Agreements Position Statement

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Executive Summary

This Consents and Agreements Position Statement relates to an application submitted to the Secretary of State for Transport by Associated British Ports (“ABP”) under the provisions of section 37 of the Planning Act 2008 (“2008 Act”) for a Development Consent Order (“DCO”). ABP is seeking approval by way of the DCO for the construction, operation and maintenance of a multi-user liquid bulk green energy terminal, the Immingham Green Energy Terminal (“IGET”) and an associated hydrogen production facility on the eastern side of the Port of Immingham (collectively, the “Project”).

The DCO is required because the Project is classified as a Nationally Significant Infrastructure Project (“NSIP”) under section 14(1)(j), 24(2) and 24(3)(c) of the 2008 Act.

The purpose and objective of this Consents and Agreements Position Statement is to provide information on the additional consents, permits and licences that are or may be required to construct and operate the Project.

1 Introduction

- 1.1.1 This Consents and Agreements Position Statement (“this Statement”) accompanies an application submitted by Associated British Ports (“ABP”) (“the Applicant”) to the Secretary of State for Transport for a Development Consent Order (“DCO”) for the construction, operation and maintenance of a multi-user liquid bulk green energy terminal, the Immingham Green Energy Terminal (“IGET”) and an associated hydrogen production facility on the eastern side of the Port of Immingham (collectively, the “Project”), under the provisions of section 37 of the Planning Act 2008 (“2008 Act”). The hydrogen production facility will be constructed and operated by Air Products (BR) Limited (“Air Products”).
- 1.1.2 The DCO is required because the Project is classified as a Nationally Significant Infrastructure Project (“NSIP”) under section 14(1)(j), 24(2) and 24(3)(c) of the 2008 Act.
- 1.1.3 This Statement has been prepared in accordance with regulation 5(2)(q) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 (“the 2009 Regulations”) as a document which ABP considers necessary to support the application.
- ### 1.2 Purpose of this Statement
- 1.2.1 The purpose of this Statement is to provide information on the additional consents, licences and agreements that are or may be required to construct and operate the Project.

2 Consents and Agreements

2.1 The Development Consent Order

- 2.1.1 Section 33 of the 2008 Act sets out the effect of development consent on other regimes setting out that *“To the extent that development consent is required for development, none of the following is required to be obtained for the development or given in relation to it—”*. Section 33(1)(a) then provides the consents and approvals that apply, which include planning permission, pipe-line construction and listed building consent. Essentially this means that where a DCO is required to authorise a project, there is no requirement for a number of other consents to be obtained.
- 2.1.2 Section 120 of the 2008 Act sets out what can be including within an DCO. Section 120(3) and (4) relate to ancillary matters set out in Part 1, Schedule 5 of the 2008 Act. This includes *“Deeming a marine licence under Part 4 of the Marine and Coastal Access Act 2009 to have been given by the Secretary of State for activities specified in the order and subject to such conditions as may be specified in the order.”* Further, section 120(5) states that an order granting development consent may:
- “(a) apply, modify or exclude a statutory provision which relates to any matter for which provision may be made in the order;*
 - (b) make such amendments, repeals or revocations of statutory provisions of local application as appear to the [Secretary of State] to be necessary or expedient in consequence of a provision of the order or in connection with the order;*
 - (c) include any provision that appears to the [Secretary of State] to be necessary or expedient for giving full effect to any other provision of the order;*
 - (d) include incidental, consequential, supplementary, transitional or transitory provisions and savings”.*
- 2.1.3 Section 150 of the 2008 Act sets out that an order granting development consent may include provision to remove a requirement for a prescribed consent or authorisation to be granted if the relevant consenting body agrees to the inclusion of the provision. The relevant list of consents and authorisations is set out in the Infrastructure Planning (Miscellaneous Prescribed Provisions) Regulations 2010. This includes a consent under the Land Drainage Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016. This means that the requirement to obtain certain prescribed consents can be removed from the DCO if the relevant consenting body agrees to it.
- 2.1.4 The principal consent for the Project will be the DCO which provides consent for the works and includes powers for compulsory land acquisition and temporary possession, along with other consents and powers. As such, the **draft DCO [TR030008/APP/2.1]** that has been submitted as part of the application incorporates:

- a. The core approval for the development itself, including a deemed marine licence under section 120(4) of the 2008 Act, at Schedule 3 of the **draft DCO [TR030008/APP/2.1]**;
- b. Provisions for the disapplication of relevant consenting requirements under section 150 of the 2008 Act. The consents to which section 150 applies are as follows:
 - i. Land Drainage Consent from the North East Lindsey Drainage Board under section 23 of the Land Drainage Act 1991.
 - ii. Byelaws for Drainage Consent from the Environment Agency under Paragraph 5 of Schedule 25 of the Water Resources Act 1991 and under the Land Drainage Act 1991.
 - iii. Flood Risk Activity Permit from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016.
- c. The inclusion of draft protective provisions for the following bodies:
 - i. The Humber Conservancy Commissioners
 - ii. Environment Agency
 - iii. Northern PowerGrid
 - iv. Anglian Water
 - v. Network Rail
 - vi. North East Lincolnshire Council (as Lead Local Flood Authority)
 - vii. Cadent Gas Limited
 - viii. Operators of electronic communications code networks

2.1.5 In addition to the above, the DCO is supplemented by other consents required to construct and operate the Project. A summary of the additional consents or licences required or likely to be required is set out in **Table 1**.

2.1.6 Discussions are ongoing as to disapplication (including with the Environment Agency and North East Lindsey Drainage Board) and whether further consenting requirements will be disapplied in addition to those listed at the second bullet point above under **paragraph 2.1.4**. As a result, some consents listed in Table 1 may ultimately be disapplied. This Statement will be updated by the Applicant during the examination, as necessary.

2.2 Agreements

2.2.1 It is recognised that as part of the consenting process, agreements with third parties may be entered into in parallel with and during the course of the NSIP examination and these agreements may take a variety of forms.

- 2.2.2 A fundamental part of the DCO process is the preparation and agreement of Statements of Common Ground (“SoCG”) with third parties. These SoCGs are in effect the vehicle for reporting the agreed position on the subject matter of this Statement. The SoCGs will set out the agreed position and identify any remaining matters of difference or in dispute between the Applicant and the relevant body, so as to narrow the focus for the examination and thereby assist the Examining Authority. The SoCGs will be progressed by the Applicant during the pre-examination stage.
- 2.2.3 The **Utilities Statement [TR030008/APP/7.7]** sets out the current status of agreements with utility providers for gas, electricity, water and sewers, surface water, and telecommunications.
- 2.2.4 **Table 1** sets out what other consents, licences, or agreements are or may be required, the relevant consenting body or, in the case of agreements, the relevant party with whom the agreement is to be made, and the current progress made by the Applicant (or Air Products as applicable in connection with the hydrogen production facility) in securing that consent, licence or agreement.

Table 1: Other Consents, Licences and Agreements

No.	Consent/Licence	Relevant Legislation	Relevant Body/Consenting Authority	Requirement for Consent/Licence	Status/Comment	Anticipated submission date/timescales for obtaining consent/licence
1	Hazardous Substances Consent	The Planning (Hazardous Substances) Regulations 2015	North East Lincolnshire Council (“NELC”) (in consultation with the Health and Safety Executive (“HSE”))	The Project will involve the presence of hazardous substances on, over or under land at or above set threshold quantities (Controlled Quantities) will therefore require a Hazardous Substances Consent.	It is anticipated that the HSE, as statutory consultee, will “advise against” the grant of consent due to the existing residential properties on Queen’s Road. Air Products are therefore undertaking negotiations with affected landowners with a view to acquiring their properties by agreement. The draft DCO includes compulsory acquisition powers to be exercised in the event that acquisition by agreement is unsuccessful. It also includes a commitment to acquiring the properties and securing the cessation of residential use ahead of the hydrogen production	An application for hazardous substances consent was submitted by Air Products and was validated by NELC on 5 April 2023 (ref: DM/0088/23/HS) and is pending determination. HSE notified Air Products on 24 November 2023 that an assessor for the application would be allocated no earlier than 22 February 2024. The typical timescale for a decision is 12-18 months from submission of the application and approximately six months from

No.	Consent/Licence	Relevant Legislation	Relevant Body/Consenting Authority	Requirement for Consent/Licence	Status/Comment	Anticipated submission date/ timescales for obtaining consent/licence
					<p>facility becoming operational.</p> <p>Once the properties are no longer in residential use it is anticipated that the HSE will withdraw its “advise against” and NELC will be able to issue the consent. Subject to the acquisition of the residential properties and cessation of their residential use (see the Statement of Reasons [TR030008/APP/3.2] for further information in this regard), Air Products do not consider there will be any further impediment to obtaining this consent.</p>	<p>appointment of assessor.</p> <p>NELC has not provided any indicative timescales for a decision, however, in the current circumstances, a decision is anticipated sometime between June – October 2024. It is possible therefore that a decision will be made after the close of Examination.</p>
2	Environmental Permit – groundwater activity (pumping/dewatering)	Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	During construction, dewatering of excavations will be required and depending on the volumes may require a separate abstraction	No application has been made yet. It is anticipated that the main contractor undertaking the works on behalf of Air Products will secure	It is anticipated that an application would be made three to six months in advance of construction commencing, however, this will be a

No.	Consent/Licence	Relevant Legislation	Relevant Body/Consenting Authority	Requirement for Consent/Licence	Status/Comment	Anticipated submission date/timescales for obtaining consent/licence
				permit from the Environment Agency.	the required consent(s) prior to construction. The Applicant does not consider there will be any impediment to obtaining this consent.	matter for the contractor. The typical timescale for a decision is 3 months from submission of the application.
3	Environmental Permit – Flood Risk Activity	The Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	A permit will be required for any works within 16m of the tidal flood defences or 8m of fluvial defences and works located in Flood Zone 3. This will relate to works within the distances stated in Temporary Construction Area 9.	The Applicant is in discussion with the Environment Agency about disapplication of the flood risk activity permit. If disapplication is agreed, this will be secured by Article 3 of the draft DCO [TR0300008/APP/2.1] .	
4	Environmental Permit - Site/installation	The Environmental Permitting (England and Wales) Regulations 2016	Environment Agency	An Environmental Permit is required by Air Products as a Schedule 1 activity (the production of inorganic chemicals under Schedule 1, Part 2, Section 4.2, Part A(1)(a)(i) of the	Initial discussions were held with the Environment Agency during the consultation period. Between November 2023 and January 2024, three pre-application meetings were held with the	Air Products intend to submit the permit application by 31 March 2024 (i.e. just after Deadline 2). The typical timescale for a decision is 12-15 months following submission of the

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				<p>Environmental Permitting (England and Wales) Regulations 2016) will be taking place at the hydrogen production facility.</p>	<p>Environment Agency to agree the scope of the Environmental Permit application including the applicable Best Available Techniques to be included in the application.</p> <p>The Applicant does not consider there will be any impediment to obtaining this consent.</p> <p>As set out more particularly in the Schedule of Mitigation and Monitoring [APP-234], the Environment Agency will only grant the permit once it is confident that:</p> <ul style="list-style-type: none"> • Safe systems, and safe storage and containment are adequately demonstrated, (EMB-AQ2 to AQ3, SRD- 	<p>application. On the basis of the above timescales, a decision on the Environmental Permit is likely to be after the close of the Examination.</p>

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					<p>WQ3, EMB-MAD2 to MAD4, SRD-MAD5 in the Schedule of Mitigation and Monitoring)</p> <ul style="list-style-type: none"> • Adequate dispersion from the operational stacks is appropriately demonstrated (EMB-AQ4 in the Schedule of Mitigation and Monitoring); • An Odour Management Plan is in place (SRD-AQ4 in the Schedule of Mitigation and Monitoring); • The plant has been designed in accordance with Best Available 	

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					<p>Techniques (BAT) (EMB-NV2 to NV3 & SRD-NV5, EMB-CC1, EMB-MAD5 in the Schedule of Mitigation and Monitoring);</p> <ul style="list-style-type: none"> • Appropriate flood risk measures are adequately demonstrated in the final design (EMB-CC2 in the Schedule of Mitigation and Monitoring); • Appropriate surfaces and bunding are included (EMB-GC1 in the Schedule of Mitigation and Monitoring); 	

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					<ul style="list-style-type: none"> Appropriate ground gas and ground condition protective measures are adequately demonstrated (EMB-GC1 in the Schedule of Mitigation and Monitoring); <p>The Environmental Permit may include further conditions relating to any of the above mitigation as the Environment Agency considers appropriate.</p>	
5	Natural England European Protected Species Mitigation (“EPSM”) Licence [Bats]	The Conservation of Habitats and Species Regulations 2017 (“the Habitat Regulations”).	Natural England	<p>The results of further studies undertaken between July to September 2023 confirm that there is no requirement for a EPSM Licence.</p> <p>Tree 32 will be felled under the supervision</p>	<p>The results of the bat emergence and re-entry surveys completed between July and September 2023 found no evidence of bats roosting within 19 woodland trees which had been previously</p>	<p>Class Licence approach does not require formal application to Natural England.</p>

No.	Consent/Licence	Relevant Legislation	Relevant Body/Consenting Authority	Requirement for Consent/Licence	Status/Comment	Anticipated submission date/ timescales for obtaining consent/licence
				<p>of an ecologist with a Natural England Class Licence due to the presence of low numbers of common species of bats</p>	<p>identified as having moderate-high suitability for roosting bats. Likewise, no evidence of bat foraging was identified within the proximity of the 19 surveyed trees, including one tree which had previously been found to support a bat roost.</p> <p>A small, transient, local population of common pipistrelle, the only bat observed foraging, was recorded in that part of the Long Strip woodland which will not be impacted by the Project.</p> <p>The Applicant does not consider there will be any impediment to obtaining this licence.</p>	
6	Natural England Licence [Water Voles]	The Wildlife and Countryside Act 1981 (as amended)	Natural England	Construction works to the drainage ditch at the base of the flood embankment will be undertaken under	The Applicant does not consider there will be any impediment to obtaining this licence.	Class Licence approach does not require formal

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				<p>Natural England Licence.</p> <p>Given the limited extent of the works (<50m of ditch bank affected), it is considered that the activities would fall within the remit of undertaking works under the supervision of an ecologist with a Natural England Class Licence.</p>		application to Natural England.
7	Control of Major Accidents and Hazards (“COMAH”): pre-construction notification	Regulation 6 of The Control of Major Accident Hazardous Regulations 2015	HSE and Environment Agency (jointly, the Competent Authority)	<p>For information only. This Regulation requires a pre-construction notification to be made. No consents or approvals are required in relation to this notification.</p> <p>The COMAH Regulations require that within a “reasonable time period prior to the</p>	Air Products made its pre-construction notification to the HSE on 5 April 2023.	N/A

No.	Consent/Licence	Relevant Legislation	Relevant Body/Consenting Authority	Requirement for Consent/Licence	Status/Comment	Anticipated submission date/ timescales for obtaining consent/licence
				start of construction” of a new establishment, the operator must send the Competent Authority a notification, including the name of operator, address of the establishment, details of dangerous substances and category of substances involved or likely to be involved, proposed activities at the installation, and description of the immediate environment of the establishment.		
8	COMAH: pre-operation notification	Regulation 6 of The Control of Major Accident Hazardous Regulations 2015	HSE and Environment Agency (jointly, the Competent Authority)	For information only. This Regulation requires a pre-operation notification to be made to the Competent Authority by Air Products. No	Such notification has not yet been made; there is no impediment to the making of such notification at the appropriate time.	Typically this notification is made to the Competent Authority four months prior to

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				<p>consents or approvals are required in relation to this notification.</p> <p>The COMAH Regulations require that within “a reasonable period of time prior to the start of operation” of a new establishment, the operator must send to the Competent Authority a notification, including any information included in a previous notification if still valid.</p>		<p>commencement of operation.</p>
9	COMAH Safety Reports	Regulation 8 and 9 of The Control of Major Accident Hazardous Regulations 2015	HSE and Environment Agency (jointly, the Competent Authority)	Air Products as operator of the hydrogen production facility must send a safety report to the Competent Authority, as the establishment is a new establishment, within	The COMAH Regulations do not require that an operator first obtain approval of the safety report before commencing construction / operation, as the case may be, however, the Applicant has been engaged in	As agreed at a meeting on 29 January 2024 with the Competent Authority, Air Products will submit a draft pre-construction safety report in April 2024. The Competent Authority aims to

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				<p>a reasonable period of time prior to:</p> <ul style="list-style-type: none"> The start of construction of the establishment. The start of operation of the establishment. <p>No consents or licences are required, however, the Competent Authority is required to communicate the conclusions of its examination of the safety reports to Air Products within a “reasonable period of time”.</p>	<p>ongoing dialogue with the Competent Authority regarding the contents of and timescales for delivering its safety report.</p> <p>The Applicant does not consider there will be any impediment to submitting safety reports in accordance with the COMAH Regulations.</p> <p>As set out more particularly in the Schedule of Mitigation and Monitoring [APP-234], the Competent Authority will only approve the safety report once it is confident that:</p> <ul style="list-style-type: none"> Any required safety systems are in place (EMB-AQ2 to AQ3, SRD-WQ3, SRD-CC3, SRD-GC7, 	<p>provide any comments on that draft within three months of receipt and those comments are to be taken into account in the final safety report submitted by Air Products.</p>

No.	Consent/Licence	Relevant Legislation	Relevant Body/Consenting Authority	Requirement for Consent/Licence	Status/Comment	Anticipated submission date/timescales for obtaining consent/licence
					EMB-MAD1 to MAD4, SRD-MAD2, SRD-MAD4 to MAD5, ADD-MAD1, EMB-SE3 in the Schedule of Mitigation and Monitoring)	
10	Pipelines: pre-construction notification	Pipelines Safety Regulations 1996	HSE	For information only. The legislation requires a pre-operation notification to be made. No consents or approvals are required in relation to this notification	Air Products made its pre-construction notification to the HSE on 24 July 2023.	N/A
11	Prior consent to carry out noise generating activities during construction/ Construction Noise Consent	Section 61 of the Control of Pollution Act 1974	NELC (as local planning authority)	Section 61 consent would offer protection from any subsequent action by the Local Authority under Section 60 of the Control of Pollution Act 1974 or under Section 80 of the Environmental	If required, this will follow the DCO being made by the Secretary of State and would be applied for prior to specific construction activities outside of the standard construction hours. Construction works for the Project can	N/A

No.	Consent/Licence	Relevant Legislation	Relevant Body/Consenting Authority	Requirement for Consent/Licence	Status/Comment	Anticipated submission date/timescales for obtaining consent/licence
				Protection Act 1990 to impose further controls on noise from the site.	start prior to this consent being granted. The Applicant does not consider there will be an impediment to obtaining such consent.	
12	Transport of Abnormal Loads Permit	The Road Vehicles (Authorisation of Special Types) (General) Order 2003; The Road Traffic Act 1988	NELC (as local highway authority)		If required, this permit will be applied for by the contractor in the normal way following the DCO being made and prior to transport of any relevant abnormal loads. The Applicant does not consider there will be an impediment to obtaining such consent.	Typically, up to 1 to 2 months in advance of the abnormal load movement
13	Building Regulations Approval	The Building Regulations 2010 (as amended)	NELC (as local planning authority)	Required in respect of buildings forming part of the Project.	Buildings Regulations Approval would be sought prior to and during the construction phase of the Project. The Applicant does not consider there will be an impediment to obtaining such consent.	Prior to and during the construction phase of the Project.

No.	Consent/Licence	Relevant Legislation	Relevant Body/Consenting Authority	Requirement for Consent/Licence	Status/Comment	Anticipated submission date/timescales for obtaining consent/licence
14	Discharge of trade effluent consent	Water Industry Act 1991	Anglian Water (as statutory undertaker)	Required in respect of discharge of cooling water to the waste water treatment works.	Subject to ongoing discussion with Anglian Water (refer to Table 5-1 of the Utilities Statement [TR030008/APP/7.7]) The Applicant does not consider there will be an impediment to obtaining such consent.	It is anticipated that consent will be obtained post submission of the DCO Application.
15	Land drainage consent	Land Drainage Act 1991	North East Lindsey Drainage Board	Required in relation to certain works to ordinary watercourses	The Applicant is in discussion with the North East Lindsey Drainage Board about disapplication of land drainage consent. If disapplication is agreed, this will be secured by Article 3 of the draft DCO [TR0300008/APP/2.1] .	
16	Section 135 Crown Consent	Planning Act 2008	The Crown Estate	Required under section 135(2) of the Planning Act 2008 in respect of all provisions (excluding compulsory	The Applicant has obtained consent from the Crown Estate under its lease for the works proposed by the DCO. The Crown Estate has	The Applicant has requested consent under section 135. The Crown Estate has not provided an

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				<p>acquisition powers) of a development consent order applying in relation to Crown land, or rights benefiting the Crown</p>	<p>confirmed that section 135 consents are dealt with separately to consents under its leases.</p> <p>The Crown Estate has confirmed that it is dealing with a large number of requests for section 135 consent which is causing minor delays.</p> <p>Discussions are ongoing as to the formal section 135 consent; however, the Applicant does not consider there will be an impediment to obtaining the consent.</p>	<p>anticipated timescale for a section 135 consent.</p>