

Date: 26 March 2024  
Our ref: GOOD/3004864.3  
Your ref: TR030008  
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Adrian Hunter  
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National Infrastructure Planning  
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Dear Sir,

**Planning Act 2008 (as amended) ("PA 2008"), the Infrastructure Planning (Examination Procedure) Rules 2010  
Application by Associated British Ports ("the Applicant") for an Order Granting Development Consent for the Immingham Green Energy Terminal ("IGET")  
Deadline 2 Cover Letter  
Application Reference: TR030008**

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

This letter has been prepared to accompany the Applicant's submissions to the Examining Authority ("**ExA**") at Deadline 2 (26 March 2024) of the Examination. These submissions are made in accordance with the Examination Timetable set out at Annex A of the Rule 8 Letter dated 28 February 2024 [**PD-007**].

In accordance with the ExA's Rule 8 letter, this letter also confirms the Applicant's intent to attend and speak at the upcoming Issue Specific Hearings 4 – 7, Compulsory Acquisition Hearing and Accompanied Site Inspection referred to in the ExA's Rule 13(6) and Rue 16 Letter (Notification of Hearings and Accompanied Site Inspection) published 18 March 2023 [**PD-010**] (the "**Hearing Notice**").

**1 Overview of Deadline 2 Submissions**

- 1.1 Submissions made at Deadline 2 comprise the documents requested in the Rule 8 Letter, as well as other information, documents or updated documents either requested by the ExA or which the Applicant wishes to be submitted as part of the Examination.
- 1.2 Any updated documents supersede the documents previously submitted by the Applicant. The Guide to the Application submitted at Deadline 1 ("**D1**") has been updated to reflect all of the submissions and updates at Deadline 2.
- 1.3 The table below lists the documents submitted by the Applicant at Deadline 2.

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Document Title	Doc Ref	Version
Guide to the DCO Application (Clean)	1.3	5
Guide to the DCO Application (Tracked)	1.3	5
Outline Construction Environmental Management Plan (Clean)	6.5	2
Outline Construction Environmental Management Plan (Tracked)	6.5	2
Schedule of Mitigation and Monitoring (Clean)	7.2	2
Schedule of Mitigation and Monitoring (Tracked)	7.2	2
Draft Statement of Common Ground (" <b>SoCG</b> ") between Associated British Ports and the Harbour Master, Humber	9.19	1
Applicant's comments on Deadline 1 Submissions from the IOT Operators [ <b>REP1-108</b> ] – [ <b>REP1-109</b> ]	9.37	1
Applicant's Comments on D1 Submissions from Cadent Gas [ <b>REP1-088</b> ]	9.38	1
Applicant's comments on D1 Submissions from Northern Powergrid [ <b>REP1-103</b> ]	9.39	1
Applicant's comments on D1 Submissions from Marine Management Organisation [ <b>REP1-077</b> ] – [ <b>REP1-081</b> ]	9.40	1
Applicant's comments on D1 Submissions from Natural England [ <b>REP1-086</b> ] – [ <b>REP1-087</b> ]	9.41	1
Applicant's comments on D1 Submissions from PD Port Services Limited [ <b>REP1-105</b> ]	9.42	1
Applicant's comments on D1 Submissions from North East Lincolnshire Council [ <b>REP1-070</b> ] – [ <b>REP1-071</b> ]	9.43	1
Applicant's comments on D1 Submissions from Polynt Composites [ <b>REP1-106</b> ]	9.44	1
Applicant's Comments on D1 Submissions from National Highways [ <b>REP1-082</b> ] and [ <b>REP1-085</b> ]	9.45	1
Applicant's comments on D1 Submissions from Network Rail Infrastructure Limited [ <b>REP1-102</b> ]	9.46	1
Applicant's comments on D1 Submissions from the Elvans family [ <b>REP1-094</b> ]	9.47	1
Applicant's comments on D1 Submissions from Maritime and Coastguard Agency [ <b>REP1-076</b> ]	9.48	1
Applicant's comments on D1 Submissions from CLdN Ports Killingholme Limited [ <b>REP1-090</b> ]	9.49	1
Applicant's Response to the ExA's Rule 9 and Rule 17 Letter – Examining Authority's Procedural Decisions and request for further information [ <b>PD-011</b> ]	9.50	1
Letter from Applicant to ExA - Cover Letter to D2 Submissions	9.51	1
Applicant's proposed Accompanied Site Inspection (ASI) Itinerary	9.52	1

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2 **Applicant's response to the request for a Compulsory Acquisition Hearing ("CAH") [REP1-093] made by Holmes and Hills solicitors on behalf of the Elvans family**

2.1 The Applicant notes the request for a CAH to be held for the Examining Authority to consider the Written Representation submitted on behalf of the Elvans family at Deadline 1 [REP1-094]. As noted in the Applicant's response to the written representations of the Elvans family, an offer to acquire the property has been accepted and is due to be referred to solicitors to progress.

3 **Applicant's response to the written representation submitted by Ewa Grzybowska for Air Liquide [REP1-095]**

3.1 The Applicant notes that written representations have been submitted by Ewa Grzybowska for Air Liquide [REP1-095]. Air Liquide is an industrial gas supplier and a direct commercial competitor of Air Products. Neither Ewa Grzybowska nor Air Liquide is an Interested Party as defined in section 102(1) of the Planning Act 2008 (PA 2008) and the Infrastructure Planning (Examination Procedure) Rules 2010 (the "EPR").

3.2 As noted by the ExA at the Preliminary Meeting, Rule 6 of the EPR refers to the ExA being able to invite "any other person" to the preliminary meeting and under Rule 8 of the EPR, subsequently send such "other person" that was invited to the preliminary meeting, the timetable for the examination. This concept of an "other person" is not defined and does not reoccur in the EPR. The EPR contemplate the involvement of "interested parties" (as defined above) and "affected persons" (being a person who has been served a notice under section 59 PA 2008 (notice of persons interested in land to which compulsory acquisition request relates)) in the examination process. In particular:

- (a) Rule 9 of the EPR requires the ExA to notify all "interested parties" of any procedural decisions; and
- (b) Rule 13 of the EPR requires the ExA to notify all "interested parties" of any open floor or issue specific hearings and "affected parties" are to be notified of any compulsory acquisition hearings. Sections 91-93 of the PA 2008 confer on (a) "interested parties" the right to make oral representations at an issue specific or open-floor hearings and (b) "affected persons" the right to make oral representations at a compulsory acquisition hearing.

3.3 However, Rule 10 of the EPR empowers the Examining Authority to "permit a written representation to be made by any person who is not an interested party". There is no guidance as to the circumstances that would militate toward accepting written representations under Rule 10. The Applicant respectfully submits that such decisions must be taken with the overarching objective of the Examination in mind: to assess the Project against the relevant tests in the PA 2008 and national policy to enable the ExA to make a recommendation to the Secretary of State to grant or refuse consent on that basis. This position aligns with the statements made by the ExA at the Preliminary Meeting and again at Issue Specific Hearing 1 ("ISH1") that Air Liquide would need to set out how its participation in the IGET Examination aligns with the examination objectives which the ExA specified as being "closely aligned" to the National Policy Statement for Ports ("NPSfP"), the balance of benefits and impacts, and the impacts of the development on Air Liquide.

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3.4 Air Liquide has not made any representations in respect of the former two points relating to the NPSfP and the balance of benefits and impacts. In respect of the latter point regarding any impacts of the development, Ms Grzybowska confirmed at the Preliminary Meeting that the Project does not have any impact on Air Liquide (see transcript for Preliminary Meeting at 10:27 [EV-002]).

3.5 As noted by Counsel for the Applicant at ISH1, Air Liquide is a commercial competitor of Air Products. The questions raised in the written representation are transparently concerned with seeking to obtain further details of Air Products' commercially sensitive technology and processes, not any assessment of the planning merits of the Project as against the relevant policy and legislation. The representation also seeks to encourage the ExA to engage in inappropriate duplication of the separate legislative regime which regulates the health and safety of the proposed processes. It is not appropriate for Air Liquide to seek to use the examination process to gain any kind of potential commercial advantage through the request to disclose highly confidential and sensitive information. The Air Liquide written representation does not raise any genuine new and relevant issues that would be of assistance to the ExA in carrying out its task under the PA 2008 in reporting to the Secretary of State on the application.

3.6 To the extent that potentially relevant questions may be inferred from Air Liquide's written representation, the Applicant notes that these have already been addressed as follows:

- (a) Carbon intensity and greenhouse gas emissions have been addressed by the Applicant in Environmental Statement ("ES") Chapter 19: Climate Change [APP-062] and its comprehensive responses to the ExA's WQ1.3 [REP1-024] submitted at Deadline 1 dealing with this issue.
- (b) The approach to the landside development including optimisation of layout and site constraints has been addressed by the Applicant in the Planning Statement [APP-226], ES Chapter 3: Need & Alternatives [APP-045], the Statement of Reasons [AS-008], and the response to WQ1.17.5.1 submitted at Deadline 1 [REP1-038].
- (c) Matters relating to safety and major accidents and disasters have been addressed by the Applicant in ES Chapter 22: Major Accidents and Disasters [APP-064], the summary of oral submissions of Fiona Kirkham as witness for the Applicant at ISH2 [REP1-065], and responses to WQ1.12 submitted at Deadline 1 [REP1-033].

3.7 On this basis, the Applicant does not propose to respond substantively to the Air Liquide written representation. The Applicant respectfully requests that the ExA makes a procedural decision confirming that it will not exercise its discretion under Rule 10 of the EPR to accept the Air Liquide written representation.

#### 4 **Applicant's Attendance at upcoming Issue Specific Hearings ("ISH") 4 – 7, CAH and Accompanied Site Inspection ("ASI1")**

4.1 In accordance with the ExA's Rule 8 Letter requiring confirmation by Deadline 2 of a party's "wish to attend and speak at the Hearings being held in weeks commencing 8 April 2024 and 15 April 2024, including topics of discussion", the Applicant confirms it intends to attend all those hearings listed in the ExA's Hearing Notice.

4.2 Specifically, the Applicant intends to be present and speak at:

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- (a) ISH 4, to be held at 10:00am on Tuesday, 9 April 2024 concerning "Marine Side Issues, including HRA matters and draft Development Consent Order";
- (b) ISH 5, to be held at 10:00am on Wednesday, 10 April 2024 concerning "Landside Issues, including draft Development Consent Order";
- (c) CAH 1, to be held at 10:00am on Thursday, 11 April 2024 at 10:00am;
- (d) ISH 6, to be held at 10:00am on Tuesday, 16 April 2024 concerning "Landside and strategic matters, including draft Development Consent Order"; and
- (e) ISH 7, to be held at 10:00am on Thursday 18 April 2024, concerning "Marine side, including navigation and safety issues and draft Development Consent Order".

4.3 The Hearing Notice has requested that by 3 April 2024, to attend and participate at the above Hearings, a party must provide the information requested at Item 2 of the Hearing Notice and complete an Event Participation Form. This information includes whether attendance is intended to be in person or virtual, the specific Hearings a party wishes to attend, the agenda items on which a party may wish to speak and the documents to which the party intends to refer.

4.4 Once the detailed Hearing agendas have been published, the Applicant confirms it will provide the information requested in the Hearing Notice.

4.5 The Hearing Notice also requests that by the same date (3 April 2024) if a party wishes to attend the ASI1 it should provide all relevant information included in an Event Participation Form. The Applicant is submitting the proposed agenda and map of the proposed route for the ASI1 with its other submissions at Deadline 2. The Applicant confirms that it wishes to attend the ASI1 and that it will provide the information requested in order to participate alongside the information regarding Hearing attendance.

4.6 The Applicant confirms that lunch will be provided for all attendees at ASI1. Personal protective equipment ("PPE") will also be provided for attendees as needed.

**5 Amendments to Street Works and Accesses Plan [APP-016], Stopping Up and Restriction of Use of Streets and Public Rights of Way Plan [APP-017] and Traffic Regulations Measures Plan [APP-018]**

5.1 As set out in the Applicant's response to the draft Local Impact Report [REP1-070] and the written representations of NELC [REP1-071], the Applicant is engaging with the NELC highways team in relation to its various representations on the Application relating to highways. As a result, once those discussions are completed, the Applicant envisages that it will submit at Deadline 3 revised versions of the above plans showing the minor adjustments that have been requested by NELC.

**6 Applicant's submission of Draft SoCG between the Applicant and the Harbour Master, Humber**

6.1 The Applicant is re-submitting the draft SoCG between Associated British Ports and the Harbour Master, Humber as the version provided at D1 [REP1-054] was an incorrect

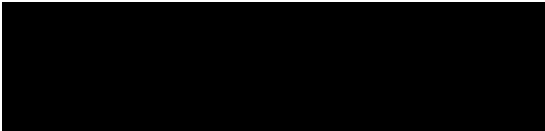
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version of the document. This updated version is provided to assist the ExA and ensure they are fully aware of progress on this SoCG.

The Applicant would be pleased to answer any queries which you may have on this letter.

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

Yours sincerely



**Bryan Cave Leighton Paisner**

Enclosure

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