



Immingham Green Energy Terminal

9.60 Summary of Issue Specific Hearing 5 (ISH5)

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Immingham Green Energy Terminal

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1 ABOUT THIS DOCUMENT

1.1 Introduction

1.1.1 This document summarises the case put by Associated British Ports (the "Applicant"), at the Issue Specific Hearing 5 on 10 April 2024 for the Immingham Green Energy Terminal project on landside issues and draft Development Consent Order (referred to as the "Project").

1.1.2 The hearing opened at 10:00 and closed at 15:05 on 10 April 2024. The agenda for the hearing [\[EV7-001\]](#) was published on the Planning Inspectorate's website on 3 April 2024.

1.1.3 In what follows, the Applicant's submissions on the points raised broadly follow the items set out in the Examining Authority's agenda.

1.2 Attendees on behalf of the Applicant

1.2.1 Hereward Phillpot KC, Counsel instructed jointly by Bryan Cave Leighton Paisner LLP (BCLP) on behalf of Associated British Ports, the Applicant and Charles Russell Speechlys (CRS) on behalf of Air Products (BR) Limited. Also appearing on behalf of the Applicant were Alan Lewis, Environmental Impact Assessment Lead at AECOM, Timon Robson, Project Director at Air Products, James Riley, Ecology Technical Director at AECOM and Simon Tucker, Director at DTA Transport Planning Consultants.

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2 APPLICANT'S SUMMARY OF CASE ON ITEM 3: TERRESTRIAL ECOLOGY AND HABITATS REGULATION ASSESSMENT

2.1 Item 3 (Terrestrial Ecology and Habitats Regulation Assessment)

Issue Discussed	Summary Of Oral Case
<p>The ExA asked questions about matters still denoted as amber on the SoCG between the Applicant and NELC [REP1-047]</p>	<p>The draft Woodland Compensation Plan (relevant to NC2 and NC3 of the NELC SoCG) was submitted at Deadline 1 which has been commented on by NELC and the Applicant is now actioning the comments. An updated version of the draft Woodland Compensation Plan has been provided at Deadline 3.</p> <p>The comments received from NELC have been modest in relation to planting mixes but in broad terms there has been a positive response. NELC's tree officer raised no objections in principle to the long strip proposals and the proposals at Manby Road.</p> <p>In relation to discussions with NELC about retaining the grassland present at the Manby Road site, the Applicant has a proposal which does retain an element of the grassland as a woodland glade and optimises the planting. The planting extent is 0.63 hectares which broadly equates to the 0.64 hectares lost from the long strip. Figure 3 of the woodland compensation plan explains the extent of planting that is suitable for the woodland.</p> <p>The Applicant is currently in discussions with NELC in relation to the exact quantum of woodland compensation provision at this site. There are also discussions relating to a financial contribution towards NELC's tree planting scheme at the Battery road Site. A financial contribution towards this planting scheme would be suitably secured in a s.106 agreement. Quantum of a contribution is still being discussed between the parties.</p> <p>The Applicant took an action to provide the plans which were previously included in the draft woodland compensation plan in a separate submission as the plans embedded within the document are hard to view. These plans are provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [TR30008/EXAM/9.54].</p>
<p>The ExA asked questions about matters still denoted as amber in the SoCG between the Applicant and Natural England [REP1-052]</p>	<p>In relation to airborne noise and visual disturbance during construction and decommissioning on qualifying species of coastal waterbirds, the Applicant has provided Natural England with all the additional information they have requested. This has been in relation to the presentation of baseline data so that they have the full suite of information in a format that they requested.</p> <p>The Applicant has provided additional evidence in relation to the effects and as to why there will be no adverse effect on integrity as a result of those particular pathways. That includes some additional noise</p>

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	<p>monitoring that has been undertaken to confirm background noise levels within that location and further evidence in relation to the effectiveness of the proposed mitigation measures.</p> <p>In relation to air quality, the Applicant has sent further information back to Natural England in relation to three key points to which a response is awaited. The first is in relation to the appropriate zone for impact assessment of construction vessels where a 3km zone has been used to ensure that no sensitive receptors are within this distance of the construction vessel areas. Natural England have acknowledged the absence of formal guidance on a zone for shipping but noted that the Environment Agency's guidance is 10km. However, the Applicant is of the opinion that such a distance is for development such as power stations where there are big emissions that push pollution over a very large area so in this case it would not be appropriate to follow the guidance.</p> <p>DEFRA have produced guidance for their local air quality management areas for local authorities which has a 1km zone for large shipping. As such the Applicant is confident that the 3km zone proposed is already a precautionary approach.</p> <p>The second point was Natural England's request for the Applicant to confirm, through survey data or similar, that it is appropriate to use a higher critical load for saltwater for areas OE1 and OE2, being two areas affected by the development. The Applicant's position is that if the 20kg nitrogen per hectare per year is used then the total margin deposition is below the threshold so there is no issue. The Applicant provided survey data to confirm that the habitat in the area is appropriate in the response to Natural England's relevant representation.</p> <p>The third point is in relation to Hatfield Ditches SSSI where Natural England have requested the consideration of in-combination effects. This is in relation to the M180 which sits within 200m of the SSSI. The Applicant has not assessed the impact on the SSSI as the traffic movements due to the proposed development are much smaller than IERRT which was looked at as part of the in-combination assessment. The traffic flows due to IGET will be too small to show in any modelling.</p>
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3 APPLICANT'S SUMMARY OF CASE ON ITEM 5: LANDSCAPE & VISUAL AND DESIGN

3.1 Item 5 (Landscape & Visual and Design)

Issue Discussed	Summary Of Oral Case
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<p>Discussion on additional viewpoints and photomontages requested to be considered and assessed.</p>	<p>The Applicant confirmed that the additional photomontages and viewpoints from viewpoints 3, 4 and 11 will be provided at Deadline 3. In relation to whether these are worst case scenarios, the Applicant confirmed that as they have been taken in Spring, they are not worst case so the Applicant will extrapolate on the basis of the photograph taken to provide comparisons.</p> <p>Post hearing note: The photomontages (i.e. the additional viewpoints and photomontages for Viewpoints 3, 4 and 11 requested by the ExA as Action Point 2 from Issue Specific Hearing 5 [EV7-010]) will not be available for submission at Deadline 3. Modelling and rendering of the elements shown within the viewpoints has taken more time than anticipated therefore the photomontages will be provided at Deadline 4 or, should they be completed earlier, in advance of Deadline 4.</p>
<p>Clarification and discussion on plans provided in Responses to WQ1– Design [REP1-025]</p>	<p>The Applicant took an action to provide a note in relation to the statement made in the Planning Statement at paragraph 2.4.1 [APP-230]. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [TR30008/EXAM/9.54].</p>
<p>Discussion on design in relation to West Site.</p>	<p>Further detail to the response provided to WQ1.4.1.2(d) at Deadline 1 in relation to the West Site was sought by the ExA. The Applicant reiterated the importance of the site context in relation to the existing and potential future surrounding industrial uses. The surrounding area is industrial in nature and the proposed location is, in principle, suitable for industrial facilities such as this. The appearance of the facility is inevitably driven by function (as set out in the Applicant's responses to the first written questions) which is reflective of large scale industrial facilities which dominate the area. While there are some residential properties close to the West Site at this stage, these would no longer be in residential use if development went ahead. Importantly, the location is not a residential area: it is an area identified for further industrial development in the Development Plan which is relevant to the extent required to justify in principle the location and effects.</p> <p>In terms of the site context, the Applicant noted there are existing facilities of a considerable size and function: the Knauf plant immediately adjacent is higher than two storeys and some of the existing facilities and those with extant planning consent are of considerable status with stack heights comparable or greater than what is proposed for the West Site. Notwithstanding that, acknowledging the scale of what is proposed, the Applicant has taken steps to ameliorate those effects as far as possible.</p> <p>The Applicant took an action away to provide an analysis of the designs associated with extant planning permissions around the site to understand how the Proposed Development relates in terms of scale and massing. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [TR30008/EXAM/9.54].</p>

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The Applicant noted it has considered how it can integrate landscape into the design; which is set out in the Outline LEMP including landscaping within the facility and some low level planting around the exterior. The Applicant noted that it is limited, to a certain extent, by the security requirements for the West Site which limit high level planting. The Applicant confirmed that there are various Air Products' internal security procedures and guidelines (required for all Air Products facilities globally) that must be followed to ensure the facility is properly protected. Those requirements include both the specification of the fence as well as the prohibition on any high level growth within 2m of the fence. Such planting compromises the fence itself, obscures views and allows potential routes to scale the fence. The Applicant notes that the Outline LEMP [APP-225] indicates some low level hedging 2m from fence would be acceptable.

In response to further questions, the Applicant confirmed that while the facility and particularly the inner areas are driven by operational and safety requirements, those around the periphery (e.g. buildings) are less so. In relation to the buildings proposed to be located adjacent to Kings Road on the West Site, while these are sited there for functional / technical reasons (requiring them to be outside the influence of the process facilities) and the building design is driven by project requirements e.g. capacity, space, and materials (such as insulation requirements, air tightness, blast proofing), measures can be taken to soften the actual appearance. Such measures will include ensuring that all buildings adjacent to Kings Road will be a single storey and, as far as it is possible, the external appearance (such as colour) will be approved by NELC as set out in Requirement 8.

In relation to questions about the impact on the Queens Road frontage, the Applicant reiterated the importance of the design process undertaken to reach the current proposed layout of the whole facility which determines the immediate view or frontage for the surrounding areas. That process set out the facility layout based on engineering or other code requirements which dictate, for example, the spacing between certain facilities and access routes including emergency access. The largest process facilities are unavoidably viewable and they are not immediately adjacent to Queens Road. The lower level facilities are closest to Queens Road. As set out in earlier responses, the layout of the facility, the security fence and restrictions on high level growth to a certain degree dictates the views from Queens Road.

In response to further questions relating to the future of Queens Road properties, it was agreed that the Applicant would seek to discuss potential future uses of Queens Road with NELC and provide an update at D3. That update is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [TR30008/EXAM/9.54].

The Applicant reiterated that the NPS requirements relating to good aesthetics must be understood in the context of where they sit in the overall explanation of design. It is clear that functionality and fitness

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	<p>for purpose are just as important as aesthetic considerations. The reference to demonstrating good aesthetics is qualified by "as far as possible". Accordingly, there is a role for aesthetics but it is constrained by questions of function which are equally important. Once a developer has demonstrated constraints that functionality impose on the degree to which aesthetics can be determined, the overall shape and appearance of the development is understood. In this vein, the Applicant noted NELC's response to written questions seeking greater control over design but that it has not set out how that should manifest in the dDCO; it has not been confirmed what, beyond those matters already identified in Requirements, that could be added and the reasons why. The Applicant confirmed it will continue to engage with NELC on this point. The Applicant took an action to provide a note to clarify how commitments in relation to the design of the hydrogen production facility are secured. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [TR30008/EXAM/9.54].</p> <p>The Applicant also took an action point to provide the plans at REP1-025 as separate documents so they may be viewed more easily. These are provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [TR30008/EXAM/9.54] along with a small cover note to explain the identified discrepancy between Work Area No. 9.</p>
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4 APPLICANT'S SUMMARY OF CASE ON ITEM 5: CONSTRUCTION EFFECTS

4.1 Item 5 (Construction Effects)

Issue Discussed	Summary Of Oral Case
<p>In relation to Work Number 9, the ExA raised questions as to why this location was chosen, what are the benefits in using this land and why no alternatives were considered.</p>	<p>The Applicant confirmed that Work No. 9 is intended for two main purposes. First, the temporary laydown of equipment and materials prior to installation in the finished project and second for carparking for construction workers.</p> <p>In terms of temporary laydown, if materials are delivered to the construction site prior to it being ready to receive such materials (for example, reels of cable) these would be taken to the laydown area and temporarily stored before being installed. The Applicant confirmed that Work No. 9 will be used to support immediate adjacent Work Nos. 1, 2, 3, 4 and 5 during phase 1 of construction phase. Importantly, Work No. 9 is not being used to support laydown for Work No. 7. Work No. 7 will use land</p>

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within that work area for its own temporary laydown requirements / to support construction of those elements.

The Applicant confirmed the primary factor for this Work area to be used as the laydown area is due to its proximity to the other work areas:

- Having laydown area further away from the final construction areas increases HGV and worker traffic movements between the two areas including across roads.
- Having a laydown area further away from the construction area also affects construction productivity where time is lost in installation work waiting for materials to arrive at site. This also leads to further environmental impacts, for example, increases construction duration and traffic.
- This is noted in the Statement of Reasons ([AS-008] paragraph 4.46.1), which states "The need for temporary possession of this land arises given its proximity to both the jetty and the East Site".

The second factor supporting this Work area as the laydown area is the ability to position and move items easily and safely. The laydown area needs to be flat, with enough space and reasonable road access with no major crossings so the journey between the laydown and construction area is limited.

The third factor is that the land must be available to lease / not in any current use that makes it unavailable for temporary laydown.

By way of summary, the Applicant confirmed that to minimise the environmental impact of the temporary laydown area it must be close to the construction area, large and flat with minimal road interfaces between the two areas. Considering Work No. 9 with regard to those factors, it scores very well as it is:

- Immediately adjacent to works 1,2,3,4 and 5;
- Separated from construction areas by only a very short section of Laporte Road;
- Flat and large allowing easier transportation and lifting of materials; and

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	<ul style="list-style-type: none"> • Available to lease through private agreement and not in a current use that prevents use for this purpose. <p>As to the benefits of using this land (compared to any other area) these come down to suitability and are:</p> <ul style="list-style-type: none"> • Reduced traffic and double handling of materials due to proximity; • Minimised risk to construction workers involved in using the area (lifting and handling of materials as well as carparking) – due to size; • Minimised disruption to other road users – due to short road distance; and • Minimised productivity losses – due to proximity. <p>As to alternative sites, when looking at the overall development layout with an emphasis on proximity in the selection criteria, it is apparent that there isn't an area closer to the construction work areas than Work No. 9. Other sites, if available, would inevitably be further away and therefore have:</p> <ul style="list-style-type: none"> • greater environmental impact (increased traffic, increased road user disruption); • greater potential safety impacts as risk of accidents is increased through increased use of roads for transportation; and • greater cost/ schedule impact – due to lowered construction productivity
<p>In relation to Work Number 9, the ExA raised questions in relation to the traffic impact from its use, focusing on its relationship with surrounding land use and businesses.</p>	<p>Table 11-24 in Chapter 11 of the ES sets out the baseline traffic flows on Laporte Road, and then the construction forecast. The table shows that 319 vehicles per day (with no HGVs) are forecasted on the section of Laporte Road where Work Number 9 is accessed. This is because to the OCTMP [APP1-006] secured the routing of all HGVs via Queens Road and Laporte Road. On that basis, there will be no HGVs traffic turning left out of the Area 9 access. This section of Laporte Road passes PD Ports accesses and the only other local users will be car traffic. The 319 forecasted vehicles are assessed to not be of material significance in the ES.</p> <p>In terms of peak hours, the forecast numbers are much lower (at a70 vehicles per hour) using that section of road, which will have no material impact in terms of the individual junction operation of those adjacent uses.</p>

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	<p>The access to Work No. 9 is located opposite to the access to PD Ports services so there will be interaction between vehicles turning in and out of both side roads. However, Work No 9 access will generate less than 6 HGVs per hour and will not have any capacity or operational implications in that respect.</p> <p>Work No. 4 is likely to involve the temporary closure of Laporte Road which the Applicant has assessed to be around 4 weeks. The Applicant is currently programming when this will take place but during this time, it will not be possible to access Work No. 9 by HGV from Laporte Road so they will need to enter via Queens Road. All road users, including PD Ports, will be temporarily diverted though Kiln Lane industrial estate. This diversion is included in the CTMP [REP1-006] which secures measures to inform stakeholders of road works and temporary requirements for traffic management. There are measures [REP1-006 Section 6] included for consultation, advanced warning or road works including signage and setting out of diversion routes so all road users are aware in advance of the duration of the closure and the alternative arrangements in place. The Applicant has noted through discussions with NELC's highway team that they have no objection in principle to the proposed temporary road closure subject to the appropriate traffic management being in place.</p>
<p>In relation to Work Number 9, the ExA raised questions in relation to the proposed mitigation measures from any environmental effects arising from its use and how these measures would be secured, along with measures for re-instatement of land once construction work has been completed.</p>	<p>The OCEMP [REP2-004], and the final CEMP that will be produced, are secured under draft requirement 6 of the draft DCO. These documents are applicable to Work No. 9.</p> <p>In additional, the oCEMP includes a front piece with a large number of generic controls which will be relevant to Work No. 9. The oCEMP also has a series of tables which denotes either all works or specific Work No.s (i.e. Work No. 9) that are subject to protection. The following measures are included specifically in relation to Work No. 9:</p> <ul style="list-style-type: none"> - In relation to water voles, in order to avoid damage / loss of habitat supporting water vole which are present in the ditch adjacent to the sea wall, a demarked buffer zone (minimum 10m) would be established between temporary construction compound. - The ground within Temporary Construction Area (Work No. 9) will be covered with breathable heavy duty ground mat protection to prevent any undue environmental impact. - Bridleway 36 will be rerouted around the perimeter of Work No. 9, on the North Beck side. The bridleway diversion shall be fenced on both sides to prevent any access to either Work No. 9 or to the North Beck flood defence. The route of the bridleway shall be more than 1m away from the landward toe of the flood defence.

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	<ul style="list-style-type: none"> - In relation to the impact on soils, the Applicant uses similar wording in relation to the ground map protection. However, it is also provided that following the completion of construction activities, agricultural land taken on a temporary basis will be restored and returned to the landowner for agricultural use. This is secured by Article 31 of the dDCO.
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5 APPLICANT'S SUMMARY OF CASE ON ITEM 6: CUMULATIVE EFFECTS

5.1 Item 6 (Cumulative Effects)

Issue Discussed	Summary Of Oral Case
<p>The ExA raised questions in relation to cumulative transport effect with IERRT and VCCS and clarification on the Applicants submitted assessment at Deadline 1.</p>	<p>The ES submitted with the Application included IERRT as a cumulative development which was assessed as part of the traffic assessment in Chapter 11 [APP-053]. The update to the ES submitted at Deadline 1 [REP1-043] included Viking CCS traffic into that assessment which is set out in Annex A. On page 19 of Table A1 the same links as set out in the environmental assessment are included and split up into Viking CCS, IERRT and IGET construction traffic flows. In this table, it can be noted that the Viking CCS scheme as a whole does not generate any material level of additional of traffic on the road network within the IGET assessment, predominantly the A1173. The reason for this is that it is a geographically lengthy scheme and has various points where material and staff will go to work along the routes. All of the HGV access to the Viking scheme is either via the A180 or via the A160 to the West so there is no HGV traffic forecast on the A1173. As such, the level of impact from Viking CCS in isolation or cumulatively is very small compared to the overall impacts as assessed in the ES.</p> <p>The Applicant took an action to produce a plan showing the accesses on Queen Road to the construction compounds which have different levels of traffic arriving at them for construction purposes, as well as different sensitivity receptors. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [TR30008/EXAM/9.54].</p> <p>In response to the ExA's query as to how the updated ES assessment is more robust, the Applicant explained that they took the 2026 baseline and added cumulative developments from all of the short list and the long list into the baseline. After this, it was shown that the 2026 flows are actually lower than those in the baseline assumed in the environmental statement because it excludes those other developments and therefore the percentage increase arising from those developments will be higher.</p>

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	Therefore, it is a more robust process because if those were retained in the percentage then increase would have been lower.
The ExA raised questions in relation to cumulative socio-economic effects with IERRT and VCCS, to include employment and housing-related issues.	The major beneficial effect in the original assessment is not changed by adding in the Viking and IERRT schemes separately. In relation to whether IERRT is embedded within the Viking assessment in relation to employment and housing issues, this was taken away to be confirmed the Applicant's technical team and is summarised in the note provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [TR30008/EXAM/9.54] .

6 APPLICANT'S SUMMARY OF CASE ON ITEM 7: DRAFT DEVELOPMENT CONSENT ORDER

6.1 Item 7 (Draft Development Consent Order)

Issue Discussed	Summary Of Oral Case
The Applicant will be asked to provide a brief overview of the recent changes to the dDCO and the EM.	<p>The reasons for the changes made to the dDCO and the EM are, as usual for this stage of an Examination, a combination of clarifications and tidying up following the Applicant's own review, the ExA's questions and points raised in the last set of hearings and comments from various interested parties.</p> <p>A number of amendments have been made at the request of the Harbour Master Humber and Trinity House, which are:</p> <ul style="list-style-type: none"> • definitions related to their functions. • protective provisions for the Statutory Conservancy and Navigation Authority which are now in agreed form. • Articles 49-51 where applicable to Trinity House directions, and removal from the DCO's arbitration provisions.

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	<p>Changes have been made in relation to the incorporation by Article 4 of the dDCO of various provisions of the Harbours, Docks and Piers Clauses Act 1847. Ongoing review of which provisions to be incorporated has led to some removals and additional incorporations.</p> <p>Article 6 now secures the lateral parameters of the dredged pocket on the works plans, and that shelters can be incorporated as part of topside infrastructure.</p> <p>The Requirements at Schedule 2 have been amended to rationalise the use of the word 'commence', reducing its use in favour of 'beginning of construction'. 'Beginning of construction' does not bring with it the exceptions to works that can be carried out before discharge of certain Requirements (as discussed in first round of hearings).</p> <p>The final substantive changes relate to amendments to the DML made at the request of the MMO. These amendments do not touch on the items of controversy discussed in ISH4 (transfer of the DML and timescales and an appeal for the discharge of DML conditions) and are agreed between all parties.</p> <p>As far as the Explanatory Memorandum is concerned, there are broadly three categories of change. The first reflects the minor changes made to the dDCO, for example, two definitions in Schedule 2 to the Requirements. The second category is to provide more detail, clarification and explanation of existing provisions within the dDCO following the discussions in the first round of hearings. The third category is the correction of minor points and tidying up of drafting, these being spotted on an ongoing basis as part of the usual process.</p>
<p>The ExA raised questions in relation to Articles and Schedules of the dDCO, including:</p> <ul style="list-style-type: none"> Article 3 – Update on discussions with NELC, Environment Agency and Harbour Master. Article 9 – Justification of need for article and exploration of NELC concerns. 	<p><u>Article 3</u></p> <p>Regulation 12 of the Environmental Permitting England and Wales Regulations 2016, a requirement for an environmental permit in respect of a flood activity only, is proposed to be disapplied and, instead, there are to be protective provisions for both the Environment Agency and NELC (as the lead local flood authority) at Schedule 14 of the dDCO.</p> <p>The Applicant had recently received from the Environment Agency its most recent preferred protective provisions and, accordingly, reviewed and revised the existing set provided with the dDCO submitted with the DCO application (which had been based on those in made DCOs). A copy of the revised protective provisions had been sent to the Environment Agency on the morning of ISH 5, and the dDCO will be updated once they have been agreed.</p> <p>The protective provisions in favour of NELC as the lead local flood authority were based on the equivalent set that were ultimately contained in the draft IERRT DCO. Those were sent to NELC on 8</p>

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<ul style="list-style-type: none">• Article 19 – Justification as to whether the 14 day period is sufficient.• Article 21 – Need for Article, especially given its exclusion from a number of recently made DCOs.• Article 30 – Removal of repetition.	<p>April 2024 for its review, following discussions between it and the Applicant as to what those protective provisions ought to contain. The Applicant expected that once NELC had had a chance to review them, they would come back with any comments (and the Applicant notes that these have been subsequently agreed with NELC, as set out in the statement of common ground with it submitted at Deadline 3).</p> <p><u>Article 9</u></p> <p>As set out in the Applicant's response to WQ 1.18.3.4 [REP1-039], there are two parts to Article 9. The first is the provision authorising the works and locations specified in Schedule 5 (Art. 9(1)). These are the works that are known about and therefore explained and assessed as part of the scheme before the examination. For example:</p> <ul style="list-style-type: none">• Permanent accesses shown on street works and access plans• Works to alter layout of roads and revised signage/markings to implement proposed permanent speed limit change• Temporary alterations to allow for temporary accesses shown on street works and access plans to facilitate construction• Works to enable abnormal indivisible loads ("AILs") to pass along Kings Road <p>Discussions are ongoing with NELC as to the level of post-consent approval appropriate for those works, but the acceptability in principle of the works in Schedule 5 is for determination now rather than being reserved for later consideration.</p> <p>The second is the general provision that allows for further works if required, but only if NELC consents in its role as street authority (Article 9(2)). It is standard to include this. It reflects that some other works may become necessary but, as these will not have been identified and assessed at this stage, it is necessary for both the principle and the details to require consent from NELC.</p> <p>The Order limits have been prepared to encompass all known street works. It is foreseeable, however, that could change post-consent. For example, if some new street furniture is installed which affects the Applicant's ability to transport AILs to the development site. Article 9(2) therefore provides a clear, comprehensive, streamlined and easy to understand process within the DCO, controlled by all of its provisions.</p>
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Requirement 8 (Highway works) includes the need for the Applicant to obtain certain NELC approvals of design layout for the accesses authorised by the dDCO. The Deadline 3 version of the dDCO will amend Requirement 8 to add that before construction of the underground culvert forming part of Work No. 4 begins, details of its design and construction methodology have to be submitted to and approved by the NELC as local authority, following consultation with it as highway authority.

Article 19

The Applicant's response to WQ 1.18.3.6(b) explains why 14 days is considered reasonable notice of entry to survey and investigate land, having regard to the limited nature and effect of these activities, the obligation to pay compensation for any loss arising and the public interest importance of not generating any unnecessary delay to implementation of this urgently needed project. This provision, in the usual manner, caters for any unexpected need to investigate or survey land arising throughout construction. Should such a need arise, there will be an urgency to do it.

The Applicant's response also explains that this period is reflected both in the Model Provisions and numerous made DCOs. So its inclusion is entirely consistent with established practice, and there is nothing on the facts that would support a change from this approach in this instance.

It is also hard to see that there is either an evidential or logical basis for extending the period by any particular number of days. The key question is what might a landowner need to do in response to a notice that would be possible within three weeks that would not also be possible within two. The Applicant has not identified anything in relation to this.

By contrast, delay to the construction programme is contrary to the public interest in expeditiously completing construction and bringing this project into operation. The effect of adding, for example, an extra week every time a notice is served under this Article, with no reason why this is needed, is undesirable in the public interest and would cause undue delay.

The Applicant took an action to provide a note on Article 19 to consider whether a new provision is necessary to cover making good the land in addition to compensation provisions. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [**TR30008/EXAM/9.54**].

Article 21

The Explanatory Memorandum [REP1-005] at page 56, paragraph 8.48 explains that in the absence of a provision such as at Article 21 it would be necessary for the Applicant to meet the requirements of a

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	<p>number of disparate other regimes regulating the removal of human remains, in the event that any are found during the works.</p> <p>The EIA and land referencing processes undertaken for the project have not flagged up any particular likelihood of human remains. Even so, human remains sometimes do turn up where they have not been expected. For example, at Chambers Wharf during the Thames Tideway Tunnel development, the remains of a man were unearthed on the banks of the Thames. The body was not expected. However, given that the Thames has been the site of human occupation and inhabitation for hundreds of years, it is not a surprise that this could happen from time to time. The Applicant provides a newspaper article in relation to the human remains discovery at Chambers Wharf at Appendix 1.</p> <p>Such situations can be characterised as low probability but high impact events for the purposes of construction, and thus a risk. Once a body is discovered, the statutory processes must be followed to deal with it. Those processes can give rise to delay. So Article 21 is in place to allow for a clear, consolidated, efficient and acceptable process for handling the removal of remains should that prove necessary.</p> <p>In the unlikely event that human remains are found, the Article 21 process is an acceptable way of dealing with them. There has been no suggestion either in this examination or in any others the Applicant has looked at that it has any obvious shortcomings. If no human remains are found, the process will simply not be used.</p> <p>Like many provisions in DCOs Article 21's inclusion is intended to guard against unnecessary delay, difficulty and obstruction to implementation in the event that something occurs that may not be expected at the time the DCO is made but, nevertheless, remains a realistic possibility. There is therefore potentially significant public interest benefit from its inclusion, and no public interest harm. No person will benefit if it is removed and no public interest benefit will be realised by its removal.</p> <p>The Applicant has identified two recent Secretary of State decision letters where provision akin to Article 21 was removed (Hynet Carbon Dioxide Pipeline Order 2024 and National Grid (Yorkshire Green Energy Enablement Project) DCO 2024). The Applicant, however, considers that those two decision letters do not provide any real assistance for the purposes of this examination and are of very limited utility as precedents.</p> <p>In neither case was this matter considered in the Examiner's Report. That appears to reflect the fact that the need for inclusion of the provision was not explored or debated during the examination or subject to consideration by the ExA in either case. The Applicant has not identified any attempt to solicit</p>
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	<p>the views and representations of the Applicants or Interested Parties as to whether the provision ought to be retained during the post-examination stage for both projects either.</p> <p>The reasoning in both Secretary of State decision letters is extremely brief. It does not engage with the points that the Applicant has made here in ISH5 as to why Article 21 should be included. It may well be that if the Applicants in those two cases had been given the opportunity to explain why they wanted their equivalent Articles to be included they would have raised similar arguments, but it seems they were not given that chance.</p> <p><u>Article 30</u></p> <p>There is no duplication in Article 30 of the dDCO. Article 30(5)(b) is standard drafting which operates to insert the text in quotation marks below it as a new paragraph 30 into Schedule 2A of the Compulsory Purchase Act 1965. It is a fair point to raise but it is mere happenstance in this dDCO that the Article enacting this insertion of a new paragraph 30 also happens to be numbered 30.</p>
<p>The ExA raised questions in relation to Schedule 2, in particular:</p> <ul style="list-style-type: none"> • Interpretations – Discussion and justification for changes to term ‘commence’. • R5 – Explanation of changes and is there a need to define ‘begin’. • R9 – Discussion around proposed working hours and justification for 72 hours notification period and whether this should be reduced. • Clarification whether tailpiece drafting convention is consistent with guidance in Nationally Significant Infrastructure Projects - 	<p><u>Interpretations</u></p> <p>The Applicant explained the changes made to the definition of ‘commence’ in Schedule 2 (Requirements) of the dDCO. The first change to the text is to identify that in some places this relates to part of the authorised project rather than all of it. The second change is to remove archaeological investigations, which (as indicated in the first week of hearings) was a change that was forthcoming on the basis that those had already been carried out. The third change is to remove certain exclusions from applying to Work No. 9 for reasons set out in the first week of hearings. The changes are relatively modest in the sense that they are either to make it consistent with the way that the Requirements work or there to deal with matters that the Applicant has flagged before.</p> <p><u>Requirement 5</u></p> <p>There is no need to define ‘begin’ in its context in this Requirement, and in others, of beginning construction. Where the word ‘begin’ is used, it is used in its ordinary English sense and does not need to be further defined. It is a word with a well-understood meaning that is apt to cover its use in this context, for example, to start to happen, or to do the first part of an action.</p> <p>Use of the term ‘beginning construction’ is entirely appropriate and enforceable: if the local planning authority is seeking to check whether or not there has been any infringement of this part of the Requirement, it will be able to determine whether construction of additional units has begun by simply inspecting the site. It will see whether there are construction works. If there are construction works, then construction will have begun in that non-technical sense.</p>

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Advice Note Fifteen: Drafting
Development Consent Orders 2018.

It is also relevant to note that the necessary construction environmental management plan, construction traffic management plan and drainage strategies for those later phases (in relation to Work Nos. 5 and 7) would need to have been approved beforehand. This provides further comfort that it would be clear whether or not something had been done which was contrary to this phasing requirement just by inspecting the site.

Requirement 9

The Applicant has already accepted amendment of 72 hours to 24 hours at D2 (see [REP2-015]) and it appears in the dDCO at Deadline 3.

Use of tailpieces

Paragraphs 17.1 – 17.5 of Advice Note 15 offer advice on the use of tailpieces in DCOs. The use of tailpieces in the dDCO is consistent with that advice. This is because what the dDCO's tailpieces do is allow for the amendment of details and mitigation measures approved after the DCO has been granted but not the amendment of the parameters of matters approved under the DCO itself.

Fundamentally, Advice Note 15 recognises as follows:

- Tailpieces are not unacceptable in principle but should not be used to circumvent the statutory arrangements to make a change to an authorised development.
- Tailpieces must not be used to approve something which has not been assessed.

The Applicant has only included tailpieces where it allows amendment of details and mitigation measures approved after the DCO is made but none of those tailpieces allow the development that is approved under the DCO to be changed. Article 63(2) is key in this regard, operating to constrain the lawful scope of any approval under any Requirement so that it cannot be taken outside the scope of that which has been assessed.

The Applicant noted precedent for using provisions akin to Art. 63(2)(b) to secure that use of tailpieces is appropriate in the context of the matters identified by Advice Note 15, and referenced that this was considered in the Sizewell C Project's Examiner's Report at paragraphs 9.1.17 to 9.1.23. The relevant extracts of this are provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 5 [TR30008/EXAM/9.54].

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<p>Update on progress regarding the bespoke Protective Provisions set out in Schedule 14, an explanation of any important differences of view and a timescale for resolution.</p>	<p>The Applicant provided the following updates:</p> <ul style="list-style-type: none"> • Northern PowerGrid: A mark-up of proposed Asset Protection Agreement and Protective Provisions was sent to solicitors for Northern PowerGrid on 3 April 2024. • Anglian Water: Awaiting comments from Anglian Water on amended proposed form of Protective Provisions provided on 9 February 2024. • Network Rail: Awaiting proposed form of easement for running of pipeline. Mark ups of the form of framework agreement and the form of protective provisions were provided to solicitors for Network Rail on 9 February 2024. Network Rail also require an asset protection agreement in their standard form. • NELC as local lead flood authority: Awaiting comments on Protective Provisions submitted on 8 April (albeit note that these are now agreed - see Deadline 3 statement of common ground). • Cadent gas: Amended Protective Provisions were provided to the solicitors for Cadent on 22 March 2024. • Virgin Media Limited / BT Limited: The dDCO includes Protective Provisions for Electronic Communications Code Networks (Part 8, Sch 14). To date, the Applicant has had no engagement from either telecoms company. <p>In relation to all of the above, the Applicant confirmed that it considers it likely that all outstanding issues in relation to the protective provisions for all parties will be resolved before the close of the Examination.</p>
<p>The Applicant and IPs will be asked to provide an update on new Protective Provisions in relation to:</p> <ul style="list-style-type: none"> • CLdN Killingholme • North East Lindsey Drainage Board 	<p>The Applicant provided the following updates:</p> <ul style="list-style-type: none"> • CLdN Killingholme: CLdN offered to provide draft protective provisions shortly after the first round of hearings. These were received on Monday afternoon (8 April) so the Applicant could not provide a further update as there had not yet been sufficient time to review these. • North East Lindsey Drainage Board: Draft Protective Provisions were in progress and due to be provided to NELDB by the end of the week (by 12 April).

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7 **APPENDIX 1**

7.1 **Press Article for Human Remains at Chambers Wharf**



(<https://molaheadland.com/the-medieval-mystery-of-the-booted-man-in-the-mud/>)

The medieval mystery of the booted man in the mud

03 DEC

(<https://molaheadland.com/the-medieval-mystery-of-the-booted-man-in-the-mud/>)

Written by **MOLA Headland** (<https://molaheadland.com/author/mola/>)

Categorised **Blog** (<https://molaheadland.com/category/blog/>), **News**

(<https://molaheadland.com/category/news/>), **Tideway** (<https://molaheadland.com/category/tideway/>)

A mysterious male skeleton, lying face-down deep in the Thames mud, with a pair of in-situ thigh-high leather boots has been discovered by our archaeologists working on one of the sites being used to build London's **super sewer** (<https://www.tideway.london/the-tunnel/>) in Bermondsey.

The skeleton was discovered at **Tideway** (<https://www.tideway.london/>)'s Chambers Wharf site in Bermondsey, where work is currently underway to build the Thames Tideway Tunnel to stop sewage pollution in the River Thames.

Jack Russell, Archaeology Lead for Tideway, said:

“The Tideway archaeology programme has allowed us to gather really interesting new evidence for how Londoners have used the river throughout history. As we work towards our goal of cleaning up the Thames and reconnecting London with it, it’s really important to acknowledge the lessons we can learn from significant discoveries like this.”

The river was a hazardous place even in the late 15th century, so perhaps his occupation was the cause of his death and the reason he came to be discovered. Could he have been a fisherman, a mudlark or perhaps a sailor? Was he climbing the Bermondsey Wall when he fell into the water? Did he become trapped in the mud and drown? The discovery has sparked an investigation by a team of our archaeological and osteological experts who are unravelling the mystery of the booted man in the mud. So what does the evidence tell us?

The boots

Our finds specialists studying the boots believe they date to the late 15th or early 16th century. Leather was expensive and often re-used at this time and experts believe it is unlikely that someone would have been buried wearing such a highly-prized item. The boots would have reached thigh height when fully extended therefore would have been ideal for walking out into the river and through the sticky Thames mud, so were perhaps waders. They were built to last: our conservators revealed that they were reinforced with extra soles and stuffed with an unidentified material (possibly moss) perhaps to make them warmer or improve the fit. This research suggests the person wasn’t buried deliberately and the clues also indicate the owner may have made his living from the river, which could well have led to his untimely demise.



Beth Richardson, Finds Specialist at MOLA Headland, said:

“By studying the boots we’ve been able to gain a fascinating glimpse into the daily life of a man who lived as many as 500 years ago. They have helped us to better understand how he may have made his living in hazardous and difficult conditions, but also how he may have died. It has been a privilege to be able to study something so rare and so personal.”

The bones



It's not unusual to find burials on the foreshore, but the booted man's position was unusual: face-down, with one arm above his head with the other bent back on itself to the side. These clues could suggest that he fell or drowned and was covered quickly by the ground as it moved with the tide. Our osteological experts have not identified evidence of any injuries at the time of death or a cause of death. However, they have uncovered some clues about how he might have made his living, evidence of the damage to his physical health from the extreme physical demands of his work on his body, and why he might have ended up in the silty deposits of the River Thames where he lay undisturbed for more than 500 years. Our osteologists think it's possible he was under the age of 35 at the time of death, by then he had already led an active life which left its mark on his skeleton. His daily life wouldn't have been comfortable – he would have felt pain and discomfort from osteoarthritis. Possibly the biggest clues about his life, are deep grooves found on his teeth. They were caused by a repetitive action like passing rope between his teeth as a fisherman might – which may also suggest that he made his

living from the river.

Niamh Carty, Human Osteologist at MOLA Headland, said:

“Studying a human skeleton provides incredible insights that allow us to create osteo-biographies of a person’s life. With the booted man, examining his teeth has given clues about his childhood and marks on his skeleton have allowed us to proffer ideas about the aches and pains he may have suffered from on a daily basis, the toll his job took on his body and even a little about what he might have looked like.”

The discovery location

It may be that his discovery location – at a bend in the river downstream from the Tower of London at Chambers Wharf close to where the medieval Bermondsey Wall stood – is a natural confluence where materials accumulate in the river. The skeleton was uncovered during the construction of a shaft at Chambers Wharf, where one of the main tunnel boring machines digging the super sewer is due to start tunneling later next year. We may never know the answer to exactly how the booted man came to rest in the river, but his untimely death has offered an incredible opportunity to learn from



him: to explore the relationships between the people of London in the past and the river Thames and how this dangerous and powerful natural resource was used by so many as a means of making a living.