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Our ref: GOOD/3004864.3
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Dear Sir,

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

As you know we act on behalf of the Applicant in relation to the application for a development consent order (the "**Application**") for the construction, operation and maintenance of the IGET and its Associated Development (the "**Project**").

The Application was based on the engineering design of the Project at the date of submission. On 26 March 2024 we submitted notice of a request for proposed minor changes ("**First Changes**") to the Application [**REP2-027**] ("**First Change Notification**") and the application for the First Changes was made on 3 May 2024.

It has since emerged that there is a need for some further limited changes to the Application to reflect the outcome of ongoing engagement with stakeholders and statutory consultees and design developments that have become apparent, following discussion with the local highway authority in particular ("**Further Changes**").

The Applicant noted in its cover letter at Deadline 2 [**REP2-001**] that, as set out in the Applicant's response to the draft Local Impact Report [**REP1-070**] and the written representations of North East Lincolnshire Council ("**NELC**") [**REP1-071**], the Applicant had been engaging with the NELC highways team in relation to its representations relating to highways and, once those discussions had completed, the Applicant envisaged submitting at Deadline 3 revised versions of the relevant highways plans showing the minor adjustments that have been requested by NELC. Counsel for the Applicant confirmed at ISH6 (see ISH6 transcript (Part 2) at 50:18-52:59 and the Applicant's Written Summaries of the Applicant's Oral Case at ISH6 with Appendices [**REP3-072**] in response to Agenda Item 7(iii) (Traffic and Transport) [**EV9-001**]) that, as those adjustments (whilst minor) strictly constituted a change to the Application, the Applicant proposed to formally apply for a change to the Application.

Two further minor matters have been identified which are also proposed to be dealt with as part of the change request as explained below. In addition, alongside the change request, the Applicant

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wishes to consult on certain updates to the information contained in the Environmental Statement, which will lead to two minor adjustments to the proposed mitigation, in order to ensure that relevant stakeholders and statutory consultees have an appropriate opportunity to consider the information and to respond. The Applicant proposes that all such matters, as explained in more detail below, are addressed in a formal change notification ("**Further Change Notification**") and subsequent change application.

For the avoidance of doubt, this letter does not comprise a formal change notification. The purpose of this letter is to make the ExA aware that a further change notification is to be submitted and to confirm to the ExA the consultation that the Applicant intends to undertake on the Further Changes prior to the formal application for them. This is proposed to follow the same consultation procedure undertaken in relation to the First Change Notification, which the ExA considered sound (as confirmed in its Rule 9 and Rule 17 Letter dated 18 March 2024 [**PD-011**]).

This letter first summarises the Further Changes and provides a high-level explanation of their necessity, then sets out the Applicant's proposals for consultation on those Further Changes. The letter then sets out the Applicant's anticipated timeline for making the Further Change Notification requesting the Further Changes and comments on the effect the Further Change Notification / Application may have on the Examination timetable.

The Applicant has had regard to the Planning Inspectorate's Advice Note 16: Requests to change applications after they have been accepted for examination (March 2023) ("**AN16**").

1 **Summary of Further Changes**

- 1.1 In summary, the proposed Further Changes will comprise a set of minor adjustments to the highway and associated drawings following a request by NELC highways (Change 5), a new small area of stopping up on Kings Road (Change 6) and a beneficial reduction in the area of Work No. 9 and therefore the Order limits (Change 7). The two minor adjustments to the mitigation for environmental effects arise from changes to the proposed ground protection methodology in Work No. 9 (Change 8) and the assumptions underpinning the noise assessment (Change 9). As explained below, whilst the Applicant does not consider that Changes 8 and 9 are strictly changes to the Application, the Applicant considers it appropriate to consult on them in the same way. The drawing titled "Illustrative Further Proposed Changes 5-9 Location Plan" appended to this letter illustrates the broad location of the Further Changes.
- 1.2 The minor nature and scale of the Further Changes means that they are not so substantial as to constitute a materially different project.
- 1.3 The Further Changes are each set out in more detail below and are numbered so as to follow on from the First Changes (numbered 1 to 4) for ease of reference during the Examination.
 - 1.3.1 Changes 5(a) to (c) arise as a result of requests from and engagement with NELC highways.
 - 1.3.2 **Change 5(a)**: a minor adjustment is proposed to the accesses shown on the Street Works and Accesses Plan [**APP-016**] from the A1173 to Work No. 7 (Access AB and Access AC). Please see the drawings titled "Further Illustrative Details of Proposed Change 5A – Permanent Access AB" and "Further Illustrative Details of Proposed Change 5A –

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Temporary Access AC" appended to this letter which illustrate the likely scale of the proposed changes (which are being finalised through further discussions with NELC). The need for those minor adjustments results from engagement with the local highway authority and the adjustment of the accesses to respond to NELC's requirements for incorporating the existing cycleway alongside the A1173 into the design and controlling right turning traffic from the A1173.

- 1.3.3 **Change 5(b):** a minor (beneficial) reduction is proposed in the area to be stopped up (and associated minor reduction in Work No. 3) to the south of Laporte Road (shown on the Stopping Up and Restriction of Use of Streets and Public Rights of Way Plan [APP-017]). Please see sheet 1 of the drawing titled "Further Illustrative Details of Proposed Changes 5b, 5c, 6 And 7" appended to this letter which illustrates the likely scale of the proposed change (which is being finalised through further discussions with NELC). The need for this change results from engagement with the local highway authority on the detailed design of the retained verges and visibility splays.
- 1.3.4 **Change 5(c):** adjustments are proposed to the way that the speed limit change agreed with NELC (shown on the Traffic Regulations Measures Plan [APP-018]) is to take effect along Laporte Road. The Traffic Regulations Measures Plan currently shows a length of Laporte Road where the permanent speed limit is proposed to be reduced to 30mph. The NELC highways team has requested that the limits be consolidated to better reflect existing controls and remove what would be a short section of 60mph limit. It is therefore proposed that the 30mph limit will apply to Laporte Road between the junction with Queens Road junction and the eastern extent of Access P. Thereafter a limit of 40mph will be proposed which will extend east for a distance of around 600m to the point where the existing limit on Laporte Road reduces to 40mph. This will require a short extension (around 280m) of the Order limits along the public highway of Laporte Road so as to fully encompass the new 40mph section. These proposed adjustments and the associated proposed short extension to the Order limits are illustrated on the drawing titled "Proposed Speed Limit Changes along Laporte Road" appended to this letter.
- 1.4 **Change 6:** a new area of permanent stopping up is proposed to be introduced in the vicinity of an existing entrance from Kings Road to Work No. 7 (Access AA on the Street Works and Accesses Plan [APP-016]). The need for this stopping up arises as the land is not currently shown as public highway on NELC's adopted highway drawings, but it has recently come to light that the land was actually dedicated and adopted as highway maintainable at public expense in 2017. The change is therefore required as part of the area of public highway sits within Work No. 7 (it is already in the ownership of the Applicant). NELC highways has agreed in principle to this change. Sheet 2 of the drawing titled "Further Illustrative Details of Proposed Changes 5b, 5c, 6 And 7" appended to this letter illustrates the maximum extent of stopping up (the detailed stopping up boundary is being finalised with NELC highways).
- 1.5 **Change 7:** a reduction is proposed in the area of Work No. 9 which is proposed to be used for temporary construction purposes and for which temporary possession powers during construction are sought (as illustrated by green hatching on the drawing titled "Illustrative Further Proposed Changes 5-9 Location Plan" appended to this letter). As identified by the ExA, Appendix 6 of the Applicant's Responses to the ExA's First Written Questions "Q1.4 Design" [REP1-025] shows only part of Work No. 9 as being used for temporary construction purposes. During engagement with the Environment Agency, the Environment Agency indicated that there is a small area of Work No. 9 close to the North Beck Drain

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which is liable to flood and so should not be used for construction purposes. Further, during engagement with the owner of part of Work No. 9 on the terms of an agreement for lease of that land, the owner expressed a desire to retain possession of a particular part of the land for its own purposes. Air Products (BR) Limited ("**Air Products**") has further reviewed the land required for construction purposes based on latest information and has concluded that Work No. 9 can be reduced to remove the areas liable to flood and to accommodate the owner's requirements. The proposed change is therefore beneficial as it would reduce the area within the Order limits and reduce the area subject to powers of temporary possession in connection with the Project.

- 1.6 In addition, as a result of further engagement with statutory consultees alongside detailed information obtained from contractors engaged on the Project, two updates to information contained within the Environmental Statement are proposed which would lead to an adjustment to the mitigation described in the Outline Construction Environmental Management Plan [**REP2-004**]. Whilst these updates and adjustments may not typically be viewed as formal changes to the Application, the Applicant proposes to undertake targeted consultation on the proposals on a precautionary basis as part of the consultation on the above proposed changes and therefore to ensure that relevant stakeholders and statutory consultees have the opportunity to comment. These proposals are described below:
- 1.6.1 **Change 8:** the Applicant proposes a change to the ground protection methodology in Work No. 9. Instead of the installation of ground matting, the installation of a geotextile layer and a layer of compacted fill material is proposed in order to provide better protection to the soil, following a review of ground conditions following recent heavy rains. This would lead to minor changes to the proposed mitigation in the Outline Construction Environmental Management Plan [**REP3-026**]. Additional information will be provided on the environmental implications (including an update on the information relating to HGV trips contained in the Outline Construction Traffic Management Plan (and addressing an error in that Plan) [**R EP3-028**] and referred to in the ES Chapter 11 (Traffic & Transport) [**APP-053**] and an update on the impacts on the use of materials). There would be no change to the conclusion regarding the likely significant environmental effects arising from the works.
- 1.6.2 **Change 9:** following detailed consideration of the likely terrestrial piling methodology, it is considered that there may be advantages in using driven piling in Work Nos 3, 5 and 7 in terms of the duration of the piling works, the potential reduction in overall material quantities and for ease of construction in light of groundwater conditions. The relevant receptors are the noise sensitive receptors on Queens Road i.e. the 10 residential and mixed residential / commercial properties identified in the application. Seven of those properties have now been acquired by Air Products and their residential use has ceased; contracts have exchanged for acquisition of the eighth and terms agreed for acquisition of the ninth and tenth. It is therefore considered unlikely that those properties will be in residential use during construction. The use of driven piling would lead to an adjustment to the proposed mitigation set out in the Outline Construction Environmental Management Plan [**REP3-026**] which would ensure that there would be no change to the likely significant environmental effects (even if any noise sensitive receptors remained in place). Additional information will be provided on the environmental implications (including an updated noise assessment).
- 1.7 In summary, none of the Further Changes are understood to give rise to any new or different likely significant environmental effects, and the Applicant believes that none of the

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Further Changes, either alone or in combination, will change the conclusions given in the Environmental Impact Assessment as originally submitted with the Application ([**APP-042**] – [**APP-225**]), and as such, no additional mitigatory measures will need to be proposed although there will be adjustments to the mitigation in respect of Changes 8 and 9.

1.8 The Applicant will submit with its Further Change Notification environmental information to confirm the position in relation to each Further Change individually and collectively as described above.

2 **Notification of proposed consultation on Further Changes**

2.1 **Applicant's approach to submission of Further Change Notification and Application**

2.1.1 The Applicant intends to undertake consultation on the proposed Further Changes prior to submitting its formal application (the "**Further Change Application**") to enable relevant interested parties to understand and comment on the proposed changes, and for the Applicant to be able to fully consider any representations received in finalising the Further Change Application. In order to do so, the Applicant intends to carry out consultation on the proposed changes at the same time as the Applicant submits its Further Change Notification to the Planning Inspectorate. As a result, the Applicant is informing the ExA in advance of its proposed consultation by way of this letter and includes a list of the proposed consultees to enable the ExA to comment should it wish to do so.

2.1.2 As with the First Change Notification, the Applicant acknowledges that the provision of this letter, and any subsequent advice from the ExA, represents an adaptation of the series of steps in the making of a Change Application given at Figure 1 of AN16, which envisages the ExA's provision of consultation advice as Step 2 in the process following the Applicant's formal change notification. The Applicant believes, however, that carrying out consultation at the earliest possible stage would be beneficial to the Examination as it maximises the opportunity for parties to comment on the proposed changes, thereby better serving the interests of those potentially impacted by them. It also minimises any effect the Further Change Application may have on the statutory Examination timetable and is intended to enable all potentially affected parties to fully understand the proposed Further Changes ahead of the hearings potentially scheduled for the week commencing 1 July.

2.1.3 The Applicant notes that the ExA raised no objection to this process (or its proposed consultation) in regard to the First Change Notification, and that paragraph 3.4 of AN16 refers to the fact that "*consultation about the proposed change may be done voluntarily by an applicant in advance of seeking procedural advice from the ExA in order to potentially save time*". However, the Applicant recognises that the ExA retains the ability to request additional consultation to be carried out, as set out in para 3.5 of AN16.

2.2 **Application of the CA Regulations**

2.2.1 The Applicant has considered whether the CA Regulations would be engaged by the proposed changes and is of the view that the CA Regulations are not engaged as set out below.

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- 2.2.2 Regulation 4 of the CA Regulations sets out two conditions that must be satisfied in order for the CA Regulations to be triggered in relation to proposed changes to a DCO application, being where:
- (a) *it is proposed to include in an order granting development consent a provision authorising the compulsory acquisition of that additional land; and*
 - (b) *a person with an interest in the additional land does not consent to the inclusion of the provision.*
- 2.2.3 'Additional land' in the CA Regulations is defined in Regulation 2 as "*land which it is proposed shall be subject to compulsory acquisition and which was not identified in the book of reference submitted with the application as land*", and 'land' is defined by reference to S159 of the Planning Act 2008 as including any interest in or right over land.
- 2.2.4 In order for the CA Regulations to apply, the changes must therefore engage the compulsory acquisition of additional land which is not identified in the Book of Reference. So far as relevant to this issue:
- (a) Change 5(c) anticipates an extension of the Order limits (such that a new plot of land will be incorporated into the Book of Reference), but this encompasses public highway (and associated subsoil ownership), it is required only for the purposes of traffic measures and no powers of compulsory acquisition are sought over it.
 - (b) Change 6 proposes an additional area of permanent stopping up, but that land is already in the ownership of the Applicant (such that no powers of compulsory acquisition are required over it) and was identified in the Book of Reference on submission of the Application [APP-008] as Plot 7/13.
 - (c) Finally, Change 7 proposes a reduction in the Order limits.
- 2.2.5 As such, none of the Further Changes require powers of compulsory acquisition and the CA Regulations do not apply.
- 2.3 **Applicant's proposals for consultation**
- 2.3.1 In preparing its proposals for the consultation to be carried out on the proposed Further Changes, the Applicant has had careful regard to AN16, which advises that "*before an applicant requests a change to its application, it should carefully consider how, if it is accepted by the ExA, it will impact upon the other Interested Parties and the Examination Timetable*" (para 1.3). AN16 also advises at paragraph 3.3 that "*as a starting point the Inspectorate recommends that applicants should consult all those persons prescribed in the PA2008 under section 42 (a) to (d) **who would be affected by the proposed change***" (emphasis added) and that "*if a targeted approach to the identification of those affected by the request to the change application is adopted then detailed justification should be provided why it is deemed unnecessary to consult all of the prescribed persons*".
- 2.3.2 The Applicant's proposals for the scope of consultation are consistent with the approach to pre-application consultation undertaken on the Project as explained in the Consultation Report [APP-022], the second Statement of Community Consultation ("**SoCC**") [APP-024] and the First Change Application. Although S47 of the Planning Act 2008 and the

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SoCC strictly apply in relation to the pre-application phase Statutory Consultation, the Applicant has chosen to follow the approach set out in the SoCC (and followed in respect of the First Change Application). This ensures a coherent and thorough approach to all consultation undertaken in relation to the Application. In particular, the second SoCC states at paragraph 1.31 *"the approach outlined in this second SoCC will also apply to any subsequent rounds of consultation"*, and goes on at paragraph 1.34 to state that:

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

- 2.3.3 Having regard to the minor scale of the proposed Further Changes and additional information, and as undertaken for the First Changes, the Applicant proposes that a targeted consultation on the Further Changes be carried out, alongside the voluntary publication of notices in the local and national press and placing of notices at sites in the vicinity of the Application site. The targeted consultation would consist of notices of the Further Changes, containing links to where the documents accompanying the Further Change Notification can be viewed (both electronically and in hard copy), being sent to those prescribed consultees, local authorities and persons with an interest in land who the Applicant believes will or may be affected by the proposed changes identified in the Table at Appendix 1 to this letter. The local and national press notices will be published in the same national and local news outlets that the notices of the first and second Statutory Consultations, and First Change Notification were published (and as with the notices of consultation on the First Changes only one round of notices will be published in each of the news outlets). The physical notices will also be displayed in the same prominent locations that were used for the first and second periods of Statutory Consultation and for the First Change Notification (which consultations took place from 9 January 2023 until 20 February 2023 and from 24 May 2023 until 20 July 2023 for the Statutory Consultations, and from 26 March 2024 to 24 April 2024 for the First Change Notification).
- 2.3.4 In accordance with the SoCC, the Applicant is also liaising with the local planning authority (i.e. North East Lincolnshire Council) and in addition, Immingham Town Council, regarding a suitable location to deposit hard copies of consultation materials and to confirm that, given the minor scale of the changes and that targeted consultation will notify parties likely to be affected by the changes, no in-person consultation events are necessary.
- 2.3.5 In compliance with paragraph 3.3 of AN16, the Applicant provides with this letter *"detailed justification...why it is deemed unnecessary to consult all of the prescribed persons"* at the Table at Appendix 1. The Table considers all parties that fall within section 42 (a) to (d) of the Planning Act 2008 and identifies any additional parties that may be affected (and not previously consulted) and describes whether and why the Applicant considers these parties should be consulted in relation to the proposed Further Changes. A number of additional utilities are proposed to be consulted as it has not been possible to obtain confirmation to date that they do not have utilities within the proposed area of extension to the Order limits.
- 2.3.6 For the avoidance of doubt, the Applicant intends to consult with relevant prescribed consultees, local authorities and persons with an interest in land who the Applicant believes

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will or may be affected by the Further Changes, as advised in AN16, as although the Applicant is not required to do so under statutory requirements, the Applicant's publication of notices in local and national news sources, posting of physical notices and deposit of hard copy documents relating to the Further Change Notification will allow for those in the wider community who, although they may not be affected by the proposed changes, may still wish to comment on them to do so.

- 2.3.7 In accordance with its commitment at paragraph 2.8 of the SoCC, the Applicant intends to consult for a period of 30 days, which exceeds the 28-day minimum period recommended in AN16 as the "starting point" for number of days from receipt of information for responses (see paragraph 3.3 of AN16).
- 2.3.8 The above consultation approach mirrors that undertaken in respect of the First Changes and which was accepted by the ExA to be sound [PD-011]. The ExA is invited to comment on the proposals, noting that it is proposed to commence consultation on 21 May 2024.

3 **Timeline implications**

- 3.1 The Applicant anticipates submitting the Further Change Notification on 21 May 2024. The Further Change Notification will be accompanied by all information set out in Figure 2a of AN16.
- 3.2 The Applicant intends to commence targeted consultation simultaneously with its submission of the Further Change Notification (i.e. on 21 May 2024), so that all information accompanying the Further Change Notification is available for consultees to review and comment on during the consultation period. On the same day the Applicant submits its Further Change Notification, the Applicant will also publish notices to those consultees indicated at Appendix 1. Notification of the Further Changes will also be published in the local and national press and posted in the vicinity of the Project.
- 3.3 The Applicant intends the consultation period to remain open for a period of 30 days, which would mean the period closes at 23:59 on 19 June 2024. The Applicant will then consider all responses received and prepare all relevant information required to submit its formal Further Change Application, as listed in Figure 2b of AN16, including a Consultation Report (see point 7 of Figure 2.b).
- 3.4 In order for the Applicant to properly consider the impacts of any comments received during the consultation period on the proposed changes and reflect these accordingly in the Further Change Application while also ensuring sufficient time to accommodate examination of the changes in the Examination timetable, the Applicant anticipates that it will be able to submit the formal Further Change Application on 26 June 2024.
- 3.5 This would enable the proposed Further Changes to be understood by relevant interested parties in advance of any hearings as may be scheduled during the week commencing 1 July 2024. It would also allow questions to be raised in the Third Written Questions, should the ExA wish to do so. The Applicant proposes to confirm the above dates on submission of the Further Change Notification.

The Applicant would be pleased to answer any queries which you may have on the matters addressed herein.

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

Yours sincerely



Bryan Cave Leighton Paisner

Enclosure

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