



Immingham Green Energy Terminal

9.36 Draft Agreed Statement of Common Ground between
Associated British Ports and the Maritime and Coastguard
Agency (Tracked)

Infrastructure Planning (Examination Procedure) Rules 2010
Volume 9

June 2024

Version 2.0

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<u>1.0</u>	<u>13 March 2024</u>	<u>Deadline 1</u>
<u>2.0</u>	<u>4 June 2024</u>	<u>Deadline 4</u>



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Status of the Statement of Common Ground

Associated British Ports and the Maritime and Coastguard Agency agree, that this draft Statement of Common Ground (SoCG) is an accurate description of the matters raised and the current status of each matter.

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On Behalf of Associated British Ports

Name	[REDACTED]
Position	Sustainable Development Manager
Organisation	Associated British Ports
Signature	[REDACTED]

On Behalf of the Maritime and Coastguard Agency

<u>Name</u>	[REDACTED]
<u>Position</u>	<u>Marine Licensing Lead</u>
<u>Organisation</u>	<u>Maritime and Coastguard Agency</u>
<u>Signature</u>	

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Table of contents

Chapter	Pages
1 Introduction	1
Overview	1
The Project	1
Parties to this Statement of Common Ground	1
Purpose and Structure of this Document	1
2 Summary of Engagement	3
Table 2-1: Record of Engagement.....	3
3 Matters Agreed and Matters Not Agreed.....	6
Table 3-1: List of Matters Agreed, Matters Outstanding and Matters Not Agreed.....	7
4 Glossary	12

Deleted: 1 Introduction 1¶
 Overview 1¶
 The Project 1¶
 Parties to this Statement of Common Ground 1¶
 Purpose and Structure of this Document 1¶
 2 Summary of Engagement 3¶
 Table 2-1 – Record of Engagement 3¶
 3 Matters Agreed and Matters Not Agreed 6¶
 Table 3-1 - List of Matters Agreed, Matters Outstanding and Matters Not Agreed 7¶
 4 Glossary 11¶

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1 Introduction

Overview

- 1.1 This Statement of Common Ground (“SoCG”) has been prepared to accompany an application made to the Secretary of State for Transport (the “Application”) under section 37 of the Planning Act 2008 (“PA 2008”) for a development consent order (“DCO”) to authorise the construction and operation of the proposed Immingham Green Energy Terminal (“the Project”).
- 1.2 The Application is submitted by Associated British Ports (“ABP”). ABP was established in 1981 following the privatisation of the British Transport Docks Board. The **Funding Statement [APP-010]** provides further information on ABP as the Applicant.
- 1.3 The Project as proposed by ABP falls within the definition of a Nationally Significant Infrastructure Project (“NSIP”) as set out in Sections 14(1)(j), 24(2) and 24(3)(C) of the PA 2008.

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The Project

- 1.4 ABP is seeking to construct, operate and maintain the Project, comprising a new multi-user liquid bulk green energy terminal located on the eastern side of the Port of Immingham (the “Port”).
- 1.5 The Project includes the construction and operation of a green hydrogen production facility, which would be delivered and operated by Air Products (BR) Limited (“Air Products”). Air Products will be the first customer of the new terminal, whereby green ammonia will be imported via the jetty and converted on-site into green hydrogen, making a positive contribution to the United Kingdom’s (“UK’s”) net zero agenda by helping to decarbonise the UK’s industrial activities and in particular the heavy transport sector.
- 1.6 A detailed description of the Project is included in Environmental Statement (“ES”) Chapter 2: The Project [REP3-022].

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Parties to this Statement of Common Ground

- 1.7 This SoCG has been prepared by (1) ABP (as the Applicant) and (2) the Maritime and Coastguard Agency (“MCA”).
- 1.8 ABP is the promoter of the Project and the owner and operator of the Port of Immingham.
- 1.9 The MCA is an executive agency to the Department for Transport. It provides a 24-hour maritime and coastal search and rescue emergency coordination and response service for the United Kingdom. The MCA also produces legislation and guidance and provides certification to ships and seafarers.
- 1.10 In this SoCG, ABP and the MCA are collectively referred to as “the Parties”.

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Purpose and Structure of this Document

- 1.11 The purpose of this document is to identify and summarise any agreement, disagreement or matters outstanding between the parties on matters relevant to

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the examination so as to assist the Examining Authority in its consideration of the Application.

1.12 In preparing this SoCG, the guidance provided in Planning Act 2008: examination of application for development **consent** (Department for Communities and Local Government (as it then was), March 2015) has been fully taken into account. In addition, this SoCG has had due regard to the Examining Authority's **Rule 6 letter [PD-005]**.

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1.13 Section 1 of this SoCG is designed to act as a general introduction to the Project and to the parties concerned.

1.14 Section 2 of this SoCG sets out a summary of the correspondence and engagement between the parties to date.

1.15 Section 3 of this SoCG sets out the matters which have been agreed or which remain outstanding, together with any matters upon which it has not been possible to reach agreement.

1.16 The Tables in Section 3 use a colour coding system to indicate the status of the matters between the Parties as follows:

(a) Green – matter agreed.

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(b) Orange – matter ongoing.

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(c) Red – matter not agreed.

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2 Summary of Engagement

2.1 A summary of the consultation and engagement between ABP and the MCA up to the date of this SoCG in relation to the Project generally and concerning the matters raised in this SoCG specifically is presented in Table 2-1.

2.2 It is agreed by the Parties to this SoCG that Table 2-1 is an accurate record of the meetings and key correspondence between the Parties.

Table 2-1: Record of Engagement

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Date	Form of Contact	Summary with key outcomes and points of discussion
9 January 2023 to 20 February 2023	First Statutory Consultation	The MCA was consulted as part of the First Statutory Consultation.
20 February 2023	Response to First Statutory Consultation	<p>The MCA provided their response to the First Statutory Consultation. The MCA noted their interest in the works associated with the marine environment, and the potential impact on the safety of navigation, access to ports, harbours and marinas and any impact on their, search and rescue obligations.</p> <p>The main points noted in the consultation related to the need to address the ongoing safe operation of the marine interface during both the construction and operational phases of the project.</p> <p>The MCA noted that the Navigation Risk Assessment ("NRA"), when finalised would be appended to the ES. The MCA welcomed this approach.</p>
24 May 2023 to 20 July 2023	Second Statutory Consultation	The MCA was consulted as part of the Second Statutory Consultation.
28 June 2023	Response to Second Statutory Consultation	<p>The MCA confirmed they had no further comments to make on the Project in light of their previous response to the First Statutory Consultation.</p> <p>The MCA noted the intention of ABP to undertake a NRA for the Project. The MCA confirmed that:</p> <ul style="list-style-type: none"> The NRA should incorporate the final design and should be discussed and agreed with the Statutory Harbour Authority ("SHA"). The project should be carried out in accordance with the Port Marine Safety Code and its Guide to Good Practice. The developers should work with the SHA to update the Marine Safety Management System for the project in accordance with the Code.

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Date	Form of Contact	Summary with key outcomes and points of discussion
31 January 2024	Email correspondence with letter attachment	<p>ABP wrote to the MCA to provide a response to their Relevant Representation.</p> <p>ABP set out the roles and responsibilities for managing the safety of navigation in the Humber Estuary.</p> <p>ABP confirmed the Port Marine Safety Code and its Guide to Good Practice were used to assess the implications of the Project on navigational safety as explained within the NRA.</p> <p>ABP agreed that a robust Safety Management System will need to be developed for the new terminal and confirmed this will involve review, revision and update to the existing document to ensure the navigational risks identified through the NRA process are fully managed.</p> <p>ABP also made reference to the Examining Authority's ("ExA's") Rule 6 letter and request for a SoCG with the MCA and highlighted the specific points the ExA wanted to be addressed. ABP set out its understanding that the MCA would be reluctant to review an NRA as to its fitness for purpose as this would represent an overreach of the MCA's statutory powers. ABP asked the MCA for their guidance and agreement on this matter.</p>
6 February 2024	Email correspondence	<p>The MCA provided a response to ABP's letter. MCA confirmed that it would maintain its regulatory remit with regards to ships and the associated safety functions and agreed that the management of safe navigation and risk within the harbour remains solely with the SHA.</p> <p>The MCA confirmed they would not approve the NRA in any way, or comment on its acceptability as outside their remit. However, the MCA confirmed they may comment on the approach taken/methodology for the NRA, the consultation process and whether the MCA feels the proposals are being carried out in accordance with the Port Marine Safety Code and its Guide to Good Practice. The MCA may also wish to comment on proposed changes to the Order.</p> <p>The MCA confirmed they do not believe an SoCG is required on this occasion; however, if the ExA wish to see one, a light touch approach based on the MCA Relevant Representation and this email would be sufficient.</p>
7 March 2024	Email correspondence	<p>ABP shared a copy of this draft SoCG with the MCA for their review.</p>
11 March 2024	Email correspondence	<p>The MCA provided feedback on the draft SoCG, adding an additional paragraph to matter 2 in Table 3-1 for ABP consideration. The MCA also confirmed they were still</p>

Immingham Green Energy Terminal
9.36 Draft Agreed Statement of Common Ground between Associated British Ports and the Maritime and Coastguard Agency (Tracked)

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Date	Form of Contact	Summary with key outcomes and points of discussion
		reviewing the documents in order to answer the <u>ExA's</u> questions for the MCA on the NRA and NavSim study and therefore these matters need to remain as under discussion in this SoCG.
<u>30 April 2024</u>	<u>Letter from MCA submitted to Examination at Deadline 3</u>	<u>Provides a further update on MCA's position including their review of the Applicant's responses to Written Questions on navigational matters.</u>
<u>9 May 2024</u>	<u>Email correspondence</u>	<u>Email from ABP to MCA acknowledging the MCA response at Deadline 3 and asking MCA to confirm if the one remaining SoCG point can be changed from 'under discussion' to 'agreed'.</u>
<u>17 May 2024</u>	<u>Email correspondence</u>	<u>Email from ABP to MCA sharing an updated SoCG and asking MCA to confirm that the one remaining SoCG point can be changed from 'under discussion' to 'agreed'.</u>
<u>20 May 2024</u>	<u>Email correspondence</u>	<u>Email from MCA to ABP agreeing to changes within the updated SoCG and requesting PDF for Sign Off</u>
<u>23 May 2024</u>	<u>Email correspondence</u>	<u>PDF version of updated SoCG shared with MCA for Sign Off</u>

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3 Matters Agreed and Matters Not Agreed

- 3.1 It is agreed that the record of engagement included in the Consultation Report **[APP-022]** submitted with the Application, accurately sets out the consultation and engagement undertaken between the Parties in relation to the Application. In particular, the following chapters:
- 3.1.1 Chapter 4 – First Statutory Consultation – the MCA was consulted by ABP as part of their statutory obligations.
- 3.1.2 Chapter 5 – Second Statutory Consultation – the MCA was consulted by ABP as part of their statutory obligations.
- 3.2 Table 3-1 contains a list of ‘matters agreed’ (shaded green); a list of matters in respect of which discussion is ongoing (shaded orange) and a list of matters not agreed (shaded red) at the date of the Examination along with a concise commentary of what the item refers to and how it came to be agreed between the Parties (as applicable).

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Table 3-1: List of Matters Agreed, Matters Outstanding and Matters Not Agreed

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ID	Matter	Reference	MCA Position	ABP Position	Status	Date
1	MCA interest in the Project and Roles	Relevant Representation [RR-017]	<p>The MCA has an interest in any works undertaken below the Mean High-Water Springs and the impact of those works on shipping, safe navigation and emergency response.</p> <p>The MCA has noted that all of the works that are required to be undertaken in the marine environment as part of the proposed project fall entirely within the statutory harbour area managed by ABP Port of Immingham. MCA note that ABP are therefore responsible for maintaining the safety of navigation within their area of jurisdiction during the construction and operation phases.</p>	<p>ABP acknowledges the MCA's interest in the Project.</p> <p>In regard to the MCA's comment on the extent of the Project, ABP would like to clarify that this will be the case but only as and when the Order is made, as it involves a slight extension to the existing SHA area of the port into what are currently waters managed by the Harbour Master Humber.</p> <p>That said, Humber Estuary Services (HES) – that is to say, the Humber Harbour Master's function as SHA for the Humber Estuary – is also the Competent Harbour Authority (CHA) in respect of pilotage for the entire estuary including individual ports on the Humber. The responsibility for the safety of navigation for a given port sits with the SHA for that port within which marine operations are taking place. Clearly though, given the all-encompassing role of HES as the Humber SHA, which is exercising statutory powers originally vested in the Humber Conservancy Commissioners, close liaison and communication between all local port SHA's and HES is of paramount importance. HES works very hard to ensure that all SHA</p>	Agreed	6 February 2024

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Immingham Green Energy Terminal
9.36 Draft Agreed Statement of Common Ground between Associated British Ports and the Maritime and Coastguard Agency (Tracked)

ID	Matter	Reference	MCA Position	ABP Position	Status	Date
				<p>operations abutting their own overarching Humber Estuary SHA area are co-ordinated with their own, to ensure the harmonious and safe flow of merchant vessels between the Humber's ports and the North Sea.</p> <p>Indeed, ABP – in its role as SHA and CHA for the Humber and as SHA for ABP's individual ports – is regularly audited by the MCA, not least to ensure ABP's marine safety management systems are in order.</p>		
2	Navigational Risk Assessment – MCA role	<p>Relevant Representation [RR-017]</p> <p>Rule 6 letter [PD-005]</p> <p>Environmental Statement Appendices - Appendix 12.A: Navigational Risk Assessment [APP-191]</p>	<p>The MCA confirmed in its response to ABP's letter of 31 January 2024 that it would not be intending to approve the NRA in any way, or comment on its acceptability, as that responsibility falls to the SHA.</p> <p>However, the MCA is being asked to comment on the proposals in order for the Examining Authority to make its recommendations to the SoS and, on this occasion, ABP as the applicant is the SHA.</p> <p>The MCA may therefore comment on the approach taken/methodology for the NRA, the consultation process and whether the MCA feel the proposals are being carried out in accordance with the Port Marine</p>	<p>In its letter of 31 January 2024, ABP drew the MCA's attention to the content of the ExA's Rule 6 letter specifically in regarding to their request for ABP to enter into a SoCG with the MCA and for the MCA to consider the following points within the scope of the SoCG:</p> <ul style="list-style-type: none"> The adequacy of the Applicant's NRA, with particular regard to the assessment methodology employed, including the application of standards and guidance. The adequacy of the Applicant's Navigational Simulation Survey (NSS), including the methodology for undertaking the NSS, its conclusions and the 	Agreed	20 May 2024

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ID	Matter	Reference	MCA Position	ABP Position	Status	Date
			<p>Safety Code and its Guide to Good Practice. The MCA may also wish to comment on the proposed changes to the Order which involves an extension to the existing SHA area of the port, depending on its significance.</p> <p>MCA's position is to ensure maritime safety and would welcome the applicant seeking consensus on the acceptability of the navigational risk to shipping with other IPs.</p> <p><u>MCA submitted a Deadline 3 response based on the applicant's answers to the first round of written questions. The MCA has confirmed in its response that it is content with how the applicant has explained the 5-knot speed limit and where this is secured. They are also satisfied that risk mitigation measures are secured.</u></p> <p><u>The MCA agrees that the role of navigational simulations was to ascertain feasibility, and that dredging has been adequately dealt with elsewhere. The MCA also acknowledges that the SHA should determine what factors are relevant for NRA purposes, whilst seeking consensus amongst marine users.</u></p>	<p>suitability of the mitigation measures proposed.</p> <ul style="list-style-type: none"> The adequacy of any proposed safety mitigation. <p>ABP sought the guidance of the MCA on the above as it is ABP's understanding that the MCA would be reluctant to comment on the adequacy of an NRA given it falls outside their remit. It is the SHA's responsibility to do this.</p> <p><u>ABP acknowledges the MCA's 30 April response and the MCAs confirmation that they are satisfied that the risk mitigation measures are secured) and on that basis, ABP concludes that no further explanation of the proposed mitigation is required.</u></p>		

Immingham Green Energy Terminal
 9.36 Draft Agreed Statement of Common Ground between Associated British Ports and the Maritime and Coastguard Agency (Tracked)

ID	Matter	Reference	MCA Position	ABP Position	Status	Date
			<u>The MCA welcomes the applicant's commitment to tolerable risk levels and related mitigation measures, as well as the applicant's commitment to continuing to share information with navigational users. The MCA is also content with how risk mitigation measures are secured.</u>			
3	Navigational Risk Assessment - Port Marine Safety Code (PMSC) and its Guide to Good Practice	Relevant Representation [RR-017] Environmental Statement Appendices - Appendix 12.A: Navigational Risk Assessment [APP-191]	The MCA provided comments regarding the NRA process in its Relevant Representation and in its response to ABP's letter of 31 January 2024 as detailed in Table 2-1 of this SoCG. The MCA would point ABP in the direction of the Port Marine Safety Code (PMSC) and its Guide to Good Practice, to develop a robust Safety Management System (SMS) for the project under this code.	ABP assured the MCA in its letter and email of 31 January 2024, that the Port Marine Safety Code and its Guide to Good Practice were used to assess the implications of the Project on navigational safety, as explained in the NRA. ABP agrees that a robust Safety Management System will need to be developed for the new terminal but as the facility will be managed as part of the Port of Immingham SHA area, this will involve review, revision and update to the existing document to ensure the navigational risks associated with the Project, as identified through the NRA process, are fully managed by implementing the risk controls that were set out in the NRA. ABP would like to highlight that is the SHA's responsibility to maintain the safety of navigation with their area of	Agreed	6 February 2024

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Immingham Green Energy Terminal
 9.36 Draft Agreed Statement of Common Ground between Associated British Ports and the Maritime and Coastguard Agency (Tracked)

ID	Matter	Reference	MCA Position	ABP Position	Status	Date
				jurisdiction during the construction and operational phases of the project.		

4 Glossary

Abbreviation / Acronym	Definition
ABP	Associated British Ports
DCO	Development Consent Order
EIA	Environmental Impact Assessment
ES	Environmental Statement
MCA	Maritime and Coastguard Agency
MMO	Marine Management Organisation
NRA	Navigational Risk Assessment
NRA	Navigational Risk Assessment
NSIP	Nationally Significant Infrastructure Project
PA 2008	Planning Act 2008
PINS	Planning Inspectorate
PMSC	Port Marine Safety Code
SHA	Statutory Harbour Authority
SMS	Safety Management System
SoCG	Statement of Common Ground
SoS	Secretary of State for Transport
UK	United Kingdom