



# Immingham Green Energy Terminal

9.24 Draft Statement of Common Ground between  
Associated British Ports, Air Products (BR) Limited and  
Network Rail Infrastructure Ltd (Tracked)

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### Version History

<u>Version</u>	<u>Date</u>	<u>Submitted</u>
<u>1.0</u>	<u>13 March 2024</u>	<u>Deadline 1</u>
<u>2.0</u>	<u>11 July 2024</u>	<u>Deadline 5</u>



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### Status of the Statement of Common Ground

Associated British Ports ~~and~~ Air Products (BR) Limited ~~considers~~ 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 Air Products (BR) Limited

Name	[REDACTED]
Position	Commercial Director
Organisation	Air Products
Signature	[REDACTED]

Deleted: On Behalf of Network Rail Infrastructure Limited  
Name

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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), (2) Air Products and (3) Network Rail Infrastructure Ltd (“Network Rail”).
- 1.8 ABP is the promoter of the Project and the owner and operator of the Port.
- 1.9 Air Products is to be the first user of the new terminal with the construction and operation of its green hydrogen production facility.
- 1.10 Network Rail is the owner and developer of railway infrastructure in England, Scotland and Wales. Network Rail operates the rail line immediately adjacent to the Port and under which Air Products will be boring holes to run electrical cables and process pipework for ammonia, hydrogen and water.
- 1.11 In this SoCG, ABP, Air Products and Network Rail are collectively referred to as “the Parties”.



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### Purpose and Structure of this Document

- 1.12 The purpose of this document is to identify and summarise any agreement, disagreement or matters outstanding between the parties on matters relevant to the examination so as to assist the Examining Authority in its consideration of the Application.
- 1.13 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]**.
- 1.14 Section 1 of this SoCG provides a general introduction to the Project and to the Parties.
- 1.15 Section 2 of this SoCG sets out a summary of the correspondence and engagement between the Parties to date.
- 1.16 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.
- 1.17 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.
  - (b) Orange – matter ongoing.
  - (c) Red – matter not agreed.

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## 2. Summary of Engagement

- 2.1 A summary of the consultation and engagement between ABP, Air Products and Network Rail 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 (excluding immaterial correspondence around dates of meetings etc).

**Table 2-1: Record of Engagement**

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Date	Form of Contact	Summary with key outcomes and points of discussion
25/11/2022	Meeting between Network Rail and Air Products	Air Products presented the project scope and the requirement to bore under the railway for the purpose of running cables and process pipework. Network Rail (NR) provided the technical guidance for working alongside their railway and advised Air Products of the application process required to satisfy Network Rail.
02/03/2023	Email from Network Rail to Air Products	Network Rail sent Air Products their Basic Asset Protection Agreement, 0000235166/AS, setting out their costs and scope (Technical review, site inspection, site supervision during works) as part of the application process.
27/03/2023	Email from Air Products to Network Rail	Details requested on the location of the Queens Road railway bridge foundations to ensure that the Air Products design did not impact.
30/05/2023	Email from Network Rail to Air Products	Railway bridge construction information pack received from Network Rail to enable Air Products to verify that the underground pipeline design did not impact the bridge foundations.
06/07/2023	Email from Air Products to Network Rail	Request from Air Products to discuss Protective Provisions for Network Rail.
06/07/2023	Email from Network Rail to Air Products	Network Rail advised Air Products to contact their appointed legal representative in Addleshaw Goddard ("AG") for all correspondence related to Protective provision. This contact was passed onto the Air Products legal team.
10/08/2023	Email from Charles Russell Speechlys LLP (solicitors for Air	CRS informed AG, acting for National Rail ("NR"), that DCO submission imminent and provided a copy of the protective provisions accompanying the draft DCO.

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Date	Form of Contact	Summary with key outcomes and points of discussion
	<del>Products</del> ("CRS") to Addleshaw Goddard	
18/08/2023	Email from Addleshaw Goddard to CRS	AG confirmed their instruction, requested cost undertaking, provided full form protective provisions and requested further information.
18/08/2023	Email from CRS to Addleshaw Goddard	CRS provided further information and comparison of protective provisions appended to draft DCO and full form protective provisions.
15/08/2023	Site meeting attended by Network Rail and Air Products	The Air Products and Network Rail representatives walked the proposed pipeline routes <u>in situ</u> , Air Products advised on the planned locations for the bore lines under the railway. The Network Rail representative indicated that there were no immediate concerns for running boreholes in the locations advised by Air Products. Air Products confirmed that there would be no works taking place on Network Rail property.
21/08/2023	Email from CRS to Addleshaw Goddard	CRS provided chronology of contact between <u>Air Products</u> and NR and details of affected rights
23/08/2023	Email from CRS to Addleshaw Goddard	CRS provided further background information to the form of protective provisions.
24/08/2023	Teams call between CRS and Addleshaw Goddard	CRS and AG discussed the land plans and interaction with apparatus. AG raised the lack of <u>electromagnetic interference (EMI)</u> provisions in protective provisions and the use of level crossings by construction traffic as initial concerns.
25/08/2023	Email from CRS to Addleshaw Goddard	CRS confirmed that the current design has two 3 phase electrical cables running in the conduits beneath the railway so EMI provisions will be relevant; and confirmed the construction manager is happy to ensure Kiln Lane level crossing use is minimised/avoided as much as possible.
25/08/2023	Email from CRS to Addleshaw Goddard	AG requested that the construction manager take into account the level crossing on Southern Marsh Road as unsuitable for use by <u>Heavy Goods Vehicles (HGVs)</u> .
30/08/2023	Email from CRS to Addleshaw Goddard	CRS provided cost undertaking to AG.
07/09/2023	Email from Addleshaw Goddard to CRS	AG confirmed that NR has submitted a written representation in respect of Immingham Eastern Ro -Ro Terminal DCO ( <u>"JERT"</u> ). AG reiterated that South Marsh

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Date	Form of Contact	Summary with key outcomes and points of discussion
		Road level crossing not fit for HGV use and use of the Kiln Lane level crossing may have an adverse impact on its lifespan and so NR would want to be consulted and reasonable requirements adhered to. AG also setting out proposal put forward on IERRT.
13/09/2023	Email from CRS to Addleshaw Goddard	CRS confirmed that Air Products would be happy with traffic restriction wording provided any such consultation could happen quickly.
13/09/2023	Email from Addleshaw Goddard to CRS	AG to seek instruction from named contact and chase for confirmation on suggested approach to protective provision.
06/10/2023	Email from CRS to Addleshaw Goddard	CRS confirmed the form of protective provisions submitted with DCO and confirmed proposed approach from NR was not agreed.
10/10/2023	Email from Addleshaw Goddard to CRS	AG confirmed they would review the protective provisions.
10/10/2023	Email from CRS to Addleshaw Goddard	CRS requested inclusion of proposals in draft DCO and that approach taken should follow IERRT.
07/11/2023	Email from Addleshaw Goddard to CRS	AG provided draft protective provisions and 'framework agreement'.
14/11/2023	Email from CRS to Addleshaw Goddard	CRS confirmed ABP would need to confirm the approach to be taken on IERRT and requested draft asset protection agreement.
15/11/2023	Email from Addleshaw Goddard to CRS	Precedent form of asset protection agreement provided.
15/11/2023	Email from CRS to Addleshaw Goddard	Acknowledgment of receipt.
15/11/2023	Email from Addleshaw Goddard to CRS	AG indicated that proposed approach mirrors that put forward on IERRT.
15/11/2023	Email from CRS to Addleshaw Goddard	CRS noted that position put forward by AG did not reflect instructions on approach being taken on IERRT. CRS confirmed they would take further instructions on the desired approach by Network Rail.

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Date	Form of Contact	Summary with key outcomes and points of discussion
16/11/2023	Email from Air Products to Network Rail	Air Products shared their Front End Engineering Design (FEED) report for the underground pipelines with the Network Rail Asset Protection Team for review and to give Network Rail the opportunity to comment ahead of the official application.  Provision of FEED design report for underground pipeline.
17/11/2023	Email from Network Rail to Air Products	Acknowledgement received that the FEED report would be considered.
27/11/2023	Email from Addleshaw Goddard to CRS	Request for update as regards instructions on proposed documentation.
04/12/2023	Email from CRS to Addleshaw Goddard	CRS confirming that they are seeking instructions.
20/12/2023	Email from CRS to Addleshaw Goddard	CRS requesting confirmation of identity of AG's new instructing officer, to ensure consistency of information flow.
21/12/2023	Email from Addleshaw Goddard to CRS	AG confirming identity of instructing officer.
02/01/2024	Email from Addleshaw Goddard to CRS	AG requesting comments on proposed documentation.
05/01/2024	Meeting between Air Products and Network Rail	Meeting for Network Rail to present and discuss any comments or feedback arising from the FEED report. No concerns were raised by Network Rail on the construction scope of works. The only issue outstanding was the type of closure required for the rail line - this is an administrative decision for Network Rail based on the duration of time required for the drilling works under the railway to take place. This can only be determined once a specialist Civil Engineering company has been appointed by Air Products and made an estimate of the duration.
29/01/2024	Email from CRS to Addleshaw Goddard	CRS confirming that it is taking instructions on whether it is appropriate to proceed to negotiate documentation on the basis of Network Rail's desired approach.
06/02/2024	Meeting between Air Products and Network Rail:	Technical discussion on the proposed Horizontal Directional Drilling (HDD) under the railway line. Summary of topics / key conclusions: 1. Air Products outlined the proposal to NR.

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Date	Form of Contact	Summary with key outcomes and points of discussion
	NR Asset Protection Project Manager NR Asset Protection Project Management Assistant Air Products Interface Manager Air Products Construction Director	2. NR advised of their concerns and the need for track monitoring; these were understood and agreed to by Air Products. 3. NR advised that closures would be required to install / remove the HDD equipment, but as long as the monitoring equipment was installed with NR's approval then the HDD could proceed without closing the railway line. 4. NR advised on the procedure and notice period required for the closure. 5. NR advised on the requirement for further review of the design by a NR integrity engineer. 6. NR advised on the need to update NR's National Hazards directory; wording and associated signage to be advised by NR nearer the date of closure.
<a href="#">13/03/2024</a>	<a href="#">Meeting between Air Products and Network Rail</a>	<u>NR advised their outline requirements for easement(s) and protective provisions with regard the Project.</u>  <u>Air Products expressed their reservations on certain provisions.</u>
<a href="#">14/03/2024</a>	<a href="#">Email from Network Rail to Air Products</a>	<u>Minimum information document provided for completion to allow NR internal consultation process.</u>
<a href="#">04/04/2024</a>	<a href="#">Email from Air Products to Network Rail</a>	<u>Minimum information document returned.</u>
<a href="#">26/04/2024</a>	<a href="#">Email from Addleshaw Goddard to CRS</a>	<u>Draft deed of easement provided.</u>
<a href="#">03/05/2024</a>	<a href="#">Email from CRS to Addleshaw Goddard</a>	<u>CRS reiterating that including the ability within the easement to "Lift and Shift" was not acceptable nor feasible in the context of the Project. CRS confirmed that if "Lift and Shift" provisions were insisted upon by NR, then necessary powers to acquire the right to install the pipeline under the railway would be pursued through the DCO process.</u>
<a href="#">15/05/2024</a>	<a href="#">Phone call between Air Products and Network Rail</a>	<u>Further discussion on the 'Lift and Shift' clause within the proposed easement. Both parties reiterated their positions and no progress was made.</u>
<a href="#">02/07/2024</a>	<a href="#">Email from Air Products to Addleshaw Goddard</a>	<u>Updated SoCG provided for comment and return.</u>

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### 3. Matters Agreed and Matters Not Agreed

- 3.1 It is agreed the following chapters of the **Consultation Report [APP-022]** submitted with the Application sets out the consultation and engagement undertaken between the Parties in relation to the Application:
  - 3.1.1 Chapter [4]; First Statutory Consultation. Network Rail was consulted by the Local Authorities as part of their statutory obligations.
  - 3.1.2 Chapter [5]; Second Statutory Consultation. Network Rail was consulted by the Local Authorities 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	Network Rail Position	ABP / Air Products Position	Status	Date
1	Scope of works and implications of IGET on the operation of the rail network operated by Network Rail within and beyond the Port		<p>Network Rail acknowledges the scope of relevant works associated with the Project, comprising the boring of holes under the railway. No further impacts to Network Rail Assets are anticipated. There are no objections in principle to the planned work.</p> <p>An Asset Protection Agreement between Network Rail and ABP is being negotiated and will require signing prior to any work taking place.</p>	<p>Air Products has confirmed the scope of works associated with the Project, comprising the boring of holes under the railway. No further impacts to Network Rail Assets are anticipated.</p> <p>It is accepted by Air Products and ABP that an Asset Protection Agreement should be completed prior to any works taking place that would impact Network Rail Assets. The form of Asset Protection Agreement is being negotiated.</p> <p>Air Products and ABP do not consider that the construction or operation of the Project would affect the operation of the rail network by Network Rail within and beyond the Port.</p>	Discussion ongoing	
2	Track closure		<p>Network Rail accepts that track closures will be required to complete the underground boring of holes under the railway line. The duration and the timing of the closures will be agreed once details of the design and method statements are available. The duration and timing will be documented and agreed via Applications for Closure to be made by Air Products to Network Rail</p>	<p>ABP and Air Products understand that a closure of the railway line will be required to set-up and subsequently dismantle and remove the equipment associated with the Horizontal Directional Drilling. Under discussion and yet to be agreed is the duration and approach to agreement on dates of any closure of the rail line. An application for closure will be submitted for using</p>	Discussion ongoing	

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ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			Network Rail does not object to the principle of the closures and does not consider that there is any impediment to closure being agreed, however the duration and approach to agreement on dates of any closure are yet to be agreed.	Network Rail's Applications for Closure work process.		
3	Protective Provisions	<u>Draft DCO [REP4-004]</u>	<p>Network Rail requires the inclusion of Protective Provisions in the draft DCO in order to protect Network Rail's assets and interests.</p> <p>The wording of such Protective Provisions is under negotiation via solicitors for the respective parties.</p> <p>Should wording be agreed, appropriate protection will be in place for Network Rail and, as a result, Network Rail will not suffer any detriment to the carrying on of its undertaking as a result of the Project.</p>	<p>Air Products / ABP agree that the draft DCO should include Protective Provisions in Network Rail's favour.</p> <p>The Protective Provisions <u>are agreed save as follows.</u></p> <p><u>Air Products need to acquire a permanent easement under the railway for the purposes of the pipeline corridor in Work No. 6. The draft protective provisions proposed by Network Rail prevent the use of powers of compulsory acquisition pursuant to the draft DCO without Network Rail's consent.</u></p> <p><u>In negotiations on the potential form of easement (to be entered into voluntarily), Network Rail require the ability to compel Air Products to move or relocate ("lift and shift") the development authorised by the dDCO to accommodate works undertaken by Network Rail and ultimately terminate the easement where lift and shift is not</u></p>	<b>Matter not agreed.</b>	

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ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
				<p><u>feasible . Air Products are not able to “shift” the pipeline comprised in the authorised development. Further, the termination of the easement in the absence of an alternative pipeline would render Work No. 7 and therefore the entire hydrogen production facility unusable.</u></p> <p><u>Air Products would welcome Network Rail conceding that lift and shift provisions are not necessary or appropriate in the circumstances of the authorised development and entering into an appropriate easement voluntarily. However, if this is not achieved expeditiously, ABP may need recourse to the use of compulsory acquisition powers to acquire the relevant easement. In those circumstances, AP and ABP’s position is that the protective provisions in favour of Network Rail should not limit the use of those powers by making them subject to Network Rail’s approval.</u></p> <p><u>That position is supported by the guidance of the Department for Levelling Up, Housing and Communities (30 April 2024) (Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects, Paragraph 012 Reference ID 04-012-20240430) which</u></p>		





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ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
				<u>states that the preferred protective provisions produced by statutory undertakers must be “adapted as necessary so they accurately reflect the proposed development” and “should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers’ land (see also the Applicant’s response to WQ2.2 GEN concerning Network Rail [REP4-047]).</u>		

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#### 4. Glossary

Abbreviation / Acronym	Definition
ABP	Associated British Ports
<u>AG</u>	<u>Addleshaw Goddard</u>
<u>AP</u>	Air Products (BR) Limited
DCO	Development Consent Order
EIA	Environmental Impact Assessment
<u>EMI</u>	<u>Electromagnetic Interference</u>
ES	Environmental Statement
<u>FEED</u>	<u>Front End Engineering Design</u>
<u>HDD</u>	<u>Horizontal Directional Drilling</u>
<u>HGV</u>	<u>Heavy Goods Vehicles</u>
<u>IERRT</u>	<u>Immingham Eastern Ro-Ro Terminal</u>
MMO	Marine Management Organisation
<u>NR</u>	Network Rail Infrastructure Ltd
NSIP	Nationally Significant Infrastructure Project
PA 2008	Planning Act 2008
PINS	Planning Inspectorate
SoCG	Statement of Common Ground
SoS	Secretary of State for Transport
UK	United Kingdom

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