



Immingham Green Energy Terminal

9.82 Summary of Issue Specific Hearing 8 (ISH8)

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Written Summary of Applicant's Oral Submissions to Issue Specific Hearing 8

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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 8 on 2 July 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 13:18 on 2 July 2024. The agenda for the hearing [[EV11-001](#)] was published on the Planning Inspectorate's website on 24 June 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, and Dr Jamie Oaten, Senior Marine Environmental Consultant at ABP Mer.

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2 APPLICANT'S SUMMARY OF CASE ON ITEM 2: APPLICANT'S PROPOSED FURTHER CHANGES

2.1 Item 2 (Applicant's Proposed Further Changes)

Issue Discussed	Summary Of Oral Case
<p>The ExA asked the Applicant to outline its request for further changes to the application and the changes requested, the consultation undertaken and the responses received.</p>	<p>The Applicant gave a brief outline of its request for further changes to the Application, which it formally submitted on 26 June following submission of the Proposed Further Changes Notification Report in May [AS-042]. The request and the implications of the proposed changes are set out in full in the Proposed Further Change Application Report ("PFCAR") [AS-042], but in short what is proposed is a small number of minor changes to the application and updates in information contained in the Environmental Statement ("ES") leading to minor adjustment in the mitigation proposed.</p> <p>The proposed minor changes reflect the outcome of continued engagement with stakeholders over the details of the proposed development, and continued development of the design. The proposed changes to the application are described and their rationale and the need for them are explained at section 2 of the PFCAR.</p> <p>The Applicant gave a high-level summary of the proposed changes, as follows:</p> <ul style="list-style-type: none">• Minor adjustments to the highway and associated drawings following a request from NELC in its capacity as local highway authority (Proposed Change No. 5). There are three such minor adjustments:<ul style="list-style-type: none">- Minor adjustments to two accesses from the A1173 to Work No. 7 (Change 5(a)) (paras. 2.2.1-2.2.4)- Minor (beneficial) reduction in the area to be stopped up to the south of Laporte Road, and associated reduction in Work No. 3 (Change 5(b)) (paras. 2.3.1-2.3.4)- Adjustments to the way that the speed limit change agreed with NELC will take place along Laporte Road (Change 5(c)). (paras. 2.4.1-2.4.4)• A new area of permanent stopping up in the vicinity of an existing entrance (AA) from King's Road to Work No. 7, as a result of new information about the adopted highway boundary, with an associated minor reduction in Work No. 7 (Proposed Change No. 6) (paras. 2.5.1-2.5.4)

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- A (beneficial) reduction in the area of Work No. 9 and the Order Limits to reflect ongoing discussions with the relevant landowner and the EA (Proposed Change No. 7) (paras. 2.6.1-2.6.4)

The minor adjustments in the information in the ES which lead to adjustment in the mitigation proposed in the outline Construction Environmental Management Plan ("**outline CEMP**") [\[REP4-008\]](#) are described as Proposed Changes 8 and 9 in the PFCAR, but the Applicant noted that they do not alter the description of the development for which development consent is sought or the powers proposed to be contained within the DCO.

- Proposed Change 8 consists of a change to the proposed ground protection methodology in Work No. 9. Instead of using ground matting it is proposed to instal a geotextile layer and a layer of compacted fill material, which will provide better protection to the soil (paras. 2.8.1-2.8.5); and
- Proposed Change 9 consists of a change to the proposed terrestrial piling methodologies in Work Nos. 3, 5 and 7 to include the potential use of driven piling, which has a reduced potential for adverse effects on the underlying aquifer and source protection zone, reducing material requirements and reducing the duration of works (paras. 2.9.1-2.9.6).

The Applicant noted that the location of the Proposed Changes was shown at Appendix 1 to the PFCAR, and associated application plans at Appendices 2 – 4, and Appendix 12 of the PFCAR provides a schedule of the documents proposed to be updated in light of the proposed changes, and which were submitted with the Applicant's request for the Proposed Changes to be made in the Application.

The Applicant then described the consultation undertaken in relation to the Proposed Changes, and noted that the response was limited in volume and scope. All replies to the consultation are included in the Proposed Further Changes Consultation Report Addendum submitted with the request for changes at Chapter 3 as well as Section 5 of the PFCAR.

The Applicant noted that there were only three substantive responses to consultation, (from Anglian Water, Natural England and the Environment Agency) and none of these bodies raised any objection to the proposed changes, and all agreed with the assessment of the implications for the environmental effects of the project. The consultation feedback received was taken into account but it did not lead to any changes to what was proposed.

The Applicant then noted that, as explained at para. 3.1 in the covering letter submitted with the request to make the changes [\[AS-038\]](#), that following engagement with NELC as local highway authority during

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	<p>the consultation period, minor adjustments were made to the final shape of the polygons for Access AB and Access AC compared to those shown on the indicative plans in the Proposed Further Changes Notification Report, but those are very limited and do not affect any of the assessments that were contained in that report.</p> <p>The Applicant further noted that when looking at the changes overall, they do not lead to a requirement for any additional compulsory acquisition powers so the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 are not engaged.</p> <p>In terms of environmental effects of the Proposed Changes, the Applicant has examined all the Proposed Changes to understand if (individually or in combination) they would affect the assessment of likely significant environmental effects as reported in the ES and other environmental information submitted on behalf of the Applicant. None of the Proposed Changes, either alone or in combination, are considered likely to result in new or different likely significant residual environmental effects. This is summarised in the PFCAR in Section 3 and detailed in Appendices 5 to 11.</p> <p>The Applicant noted that the remaining Examination timetable allows for a fair opportunity for interested parties to consider and make representations about these Proposed Changes, and for the ExA to ask any questions it might have, and that there is no practical difficulty in accommodating any issues arising before close of examination on 20 August.</p>
<p>The ExA then asked follow up questions principally relating to Proposed Change 9, including on the noise assessment provided with the Proposed Further Change Application, the duration of piling depending on methodology, the assessment of the impact of piling methodology on geoarchaeology, the location of Noise Sensitive Receptor ('NSR') 4, and in relation to a point picked up in Anglian Water's response to consultation.</p>	<p>In response to the ExA's question as to why the hours of 13:00 - 19:00 on a Saturday were identified in the updated noise assessment, the Applicant noted that the choice of Saturday afternoon as a key time for assessment of noise is because it is this period that is most sensitive for noise receptors owing to the fact that Saturday morning is generally considered to be part of the working week. The outline CEMP contains a commitment to ensure that there is no driven piling in Work No. 7 between the hours of 13:00 and 19:00 on a Saturday near to NSRs 1 and 2 (if NSRs 1 or 2 remain in residential use at the relevant time) such that an effect would be triggered. The Applicant's assessment acknowledges that there is in theory a potential for a significant adverse effect in the absence of mitigation but there is mitigation in place to control it. The Applicant took an action to submit a note to provide further detail on this point, particularly around the differentiation between Saturday morning and Saturday afternoon in the noise assessment, which is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 8 (ISH8) [TR030008/EXAM/9.81].</p> <p>The Applicant took a further action to provide a note on explaining the effect of change in piling methodology (as part of Proposed Change 9) on duration of piling in response to a question on the same. This is provided at Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 8 (ISH8) [TR030008/EXAM/9.81].</p>

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In relation to the ExA's queries around whether assessment of the impact of the different piling methods (as part of Proposed Change 9) has been carried out in relation to potential impacts on deposits of high geological potential [APP-201] (as referred to in the Report on the Geoarchaeological Survey and Monitoring of Geotechnical Investigations), the Applicant confirmed that the results of the peat analysis survey have been received and shared with the relevant heritage consultees, and will be reflected in an updated outline CEMP which will be submitted at Deadline 5. The Applicant took as an action to provide a note at Deadline 5 sharing the updated peat analysis information and ensuring it covers how different piling methods may impact deposits of high archaeological potential. This is provided at [TR030008/EXAM/9.85].

In response to the ExA's question as to why the measurement location for NSR4 is located at the northern most point, the Applicant took an action to provide a note explaining the rationale for the choice. This is provided at Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 8 (ISH8) [TR030008/EXAM/9.81].

In response to the ExA's question about Anglian Water's suggested pre-commencement requirement to secure production and approval of a water resources assessment ("**WRA**"), the Applicant noted that although this was raised in response to the consultation on the Proposed Changes, it does not relate to the Proposed Changes themselves. Addressing the substantive issue that had been raised, the Applicant explained that there was a lack of clarity from Anglian Water as to exactly what the proposed WRA was intended to address and why it was said to be necessary. It was noted that there are other processes in place that deal with the use and supply of water; for example, the environmental permit deals with measures to regulate and rationalise the use of water on site and the Water Resource Management Plan process regulates Anglian Water's arrangements for complying with its statutory obligations to supply the identified needs of its customers.

As such, the Applicant is currently engaging with Anglian Water to seek clarification as to exactly what the proposed requirement is intended to regulate and why. Once that information has been provided by Anglian Water, the Applicant would be able to assess whether such a requirement could satisfy the requisite tests for the imposition of a requirement.

The Applicant continues discussions with Anglian Water to understand what exactly they require and how that fits into the general statutory regime for the regulation of water supply and use and so far, this has not yet been made clear. If agreement is not reached, the parties will need to set out their positions at the end of the examination.

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

3.1 Item 3 (Marine Ecology and Habitats Regulations Assessment)

Issue Discussed	Summary Of Oral Case
<p>Discussion was held around issues marked 'amber' (ongoing discussion) and 'yellow' (not agreed but no material impact) on the Statement of Common Ground ("SoCG") with Natural England [REP3-052].</p>	<p>The Applicant gave a general update on the recent engagement with Natural England:</p> <ul style="list-style-type: none"> - Since the Statement of Common Ground (SoCG) with Natural England submitted at Deadline 3 [REP3-052], constructive discussions with Natural England have continued and progress has been made on the outstanding issues. - A meeting with Natural England was held on 4 June to discuss the remaining 'amber' items on the SoCG and whether the updated Shadow HRA submitted at Deadline 3 [REP3-032] was sufficient to resolve the outstanding issues. Those discussions were productive, and additional clarifications requested by Natural England in the meeting were incorporated into a further update of the Shadow HRA. We shared these updates with Natural England prior to submitting the updated Shadow HRA at Deadline 4 [REP4-014]. <p>The Applicant then provided an update of the status of issues NE36 and NE38, the only two issues remaining as 'amber' in Natural England's Deadline 4 representation.</p> <p><u>NE 36</u></p> <p>The Applicant explained that in relation to Natural England's request on NE36 for further information on the ecological integrity, functioning and overall quality of the habitat that will be lost, in-combination with other projects, the Applicant has added additional detail to tables 36 and 38 of the Shadow HRA, which present the in-combination assessment of all potential projects screened into the assessment together. A draft of these updates was shared with Natural England, and they have now confirmed they agree with the assessment and conclusion of no adverse effect on integrity of the Humber Estuary SAC/Ramsar from habitat loss in-combination, so this issue has moved from 'amber' to 'green'. An updated version of the Shadow HRA will be submitted at Deadline 5 to capture the updated assessment.</p> <p>The Applicant then provided a brief summary of the information of this assessment. The IGET Project, along with the Able Marine Energy Park ("AMEP"), Stallingborough Flood Defence Scheme, and IERRT,</p>

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will result in loss of qualifying intertidal habitat. Loss caused by AMEP and Stallingborough Flood Defences will be compensated for at Cherry Cobb Sands and Skeffling respectively.

With respect to the IERRT project, the total loss of intertidal in-combination with IGET is anticipated to be 0.0541 ha. This is based on the combined direct losses due to jetty piling and modelling both schemes together to calculate potential indirect intertidal losses (due to erosion). This is a small amount of loss, representing approximately 0.000148% of the Humber Estuary SAC and approximately 0.000576% of the 'mudflats and sandflats not covered by seawater at low tide' feature of the Humber Estuary SAC.

In terms of direct loss beneath the piles for both IERRT and IGET, this will not involve a continuous and solid footprint (such as a reclamation), but instead will constitute discrete and highly localised point features with large spaces of open mudflat habitat between each of the piles. The spaces between the piles will not be altered and the ecological function and species composition will be maintained.

Indirect losses for both projects together, which in simple terms is potential erosion of the foreshore due to changes in tidal flows, consists of very narrow strips on the lower shore around the sublittoral fringe. These predicted losses would be of a similar scale to that which can occur due to natural background changes in mudflat extent in the local region (e.g., following storm events). Away from the very thin strips of predicted losses, ecological functioning of the mudflat will continue with natural processes associated with maintaining mudflat not affected. In addition, any changes associated with other ecological parameters important in maintaining mudflat such as sediment type, elevation and sediment deposition will be negligible as a result of the predicted loss.

Therefore, in summary with the provision of the compensatory habitat required for AMEP and the Stallingborough Flood Scheme, and given that the combined intertidal loss of IERRT and IGET will be de minimis and ecologically inconsequential, there is no potential for an adverse effect on integrity ("AEOI") on qualifying interest habitat features as a result of intertidal habitat loss.

NE38

Natural England had requested more detail on the nature of the combined effects of underwater noise on the grey seal feature for all the projects together.

As for issue NE36, additional detail has been provided in the final rows of Table 36 and Table 38 of the Shadow HRA [REP4-014] which sets out the in-combination assessment for all projects together. Again, a draft of this information has been shared with Natural England, but they were unable to provide an update on this issue for this hearing as they are awaiting specialist advice from their marine mammal

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advisors. We will continue to engage with Natural England on this point and provide an update at Deadline 5 within the SoCG.

To briefly summarise the updated assessment on in-combination underwater noise effects, the key relevant projects include:

- Maintenance dredge disposal at Grimsby, Immingham and Sunk Dredged Channel (ID 155) in relation to dredging;
- the Humber International Terminal ("HIT") berth 2: adaptation for car carriers (ID 94) relating to piling;
- AMEP including Material Changes 1 and 2 (ID 25) due to piling and dredging;
- IERRT (ID 22) due to piling and dredging); and
- North Killingholme Power Project (ID 27) due to piling.

With respect to dredging, this is only expected to cause behavioural reactions in a localised area in the vicinity of the dredger for all projects that would not cause a barrier effect. It is therefore concluded that the predicted residual in-combination effects from dredging will not result in an AEOI on the grey seal feature.

With respect to piling, behavioural effects are limited to the section of the estuary between around Salt End (upstream) and Grimsby to Spurn Bight (downstream) – these hard geographical constraints mean that underwater noise will not propagate to the outer part of the estuary, and as such will not affect the grey seal breeding colony at Donna Nook. Grey seals are also known to undertake wide ranging seasonal movements over several thousand kilometres. This therefore leaves the expansive areas of the North Sea in which seals can still forage – only a very small percentage of their foraging ranges will be affected during any in-combination marine piling activity.

In addition, any disturbance and barrier to movements caused by the noise during marine piling would be temporary with significant periods during a 24-hour period when no piling will be undertaken. This is because marine piling does not take place continuously as there will be periods of downtime, pile positioning and set up. This of itself will allow the unconstrained movements of marine mammals through the Humber Estuary.

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The same mitigation measures are proposed for both IGET and IERRT to help minimise potential adverse effects associated with underwater noise (including soft start procedures, timing restrictions to avoid sensitive periods for migratory fish and the use of marine mammal observers). Other projects involving piling (i.e. HIT Berth 2, AMEP and North Killingholme Power Project) will also require similar mitigation to the IGET that will help to minimise or avoid the potential for cumulative and in-combination effects on features of designated sites (such as soft-start procedures, timing restrictions to avoid sensitive periods for migratory fish and the use of marine mammal observers).

Taking all of that into account, the predicted sum of residual behavioural effects from all projects in-combination are not considered to result in an AEOI on qualifying marine mammal interest features, as a result of piling and/or dredging activities.

The Applicant then provided an update on the two issues coded 'yellow' the ExA indicated it wished to discuss, NE33B and NE34.

NE33B

The Applicant responded to ExA's queries around the maximum number of vessels that could be accommodated by the jetty, in light of the Applicant's explanation as to why the maximum number of vessels should not be secured in the DCO given in the SoCG submitted at Deadline 3 [**REP3-052**]. The Applicant noted that the maximum number of vessels (292) given was a conservative number, and that it was not aware of any evidence of a realistic scenario where numbers would exceed that. As such, there doesn't appear to be any evidence from interested parties that there is a realistic likelihood that the number of vessels using the jetty will go beyond that which has been used for the purposes of the assessment.

In the absence of any party putting forward the position that the number used for the purposes of assessment should have been higher, the only issue is whether it is necessary to provide for some mechanism in the DCO to prevent the number of vessels using the jetty from being higher than that. This issue has been dealt with in the Applicant's Deadline 2 response to Natural England's Deadline 1 submissions [**REP2-013**] on page 4. The Applicant also pointed out that Natural England categorised NE33B as yellow, meaning that the matter is not agreed but that its resolution would not make a material difference to Natural England's advice or to the outcome of the decision-making process. It follows from Natural England's categorisation of this as an issue falling into the 'yellow' category that it considers that this project can be approved whether or not such a requirement is imposed. That means any such requirement would fail the test of necessity.

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In response to the ExA's question relating to how the number of vessel movements would be monitored should the maximum number be reached, the Applicant noted that the number of vessels that has been used for the purposes of assessment exceeds by a considerable margin the number of vessels that are likely to service first customer of the jetty (Air Products and the hydrogen production facility).

As such, in order for the usage of the jetty to approach (let alone reach or exceed) the levels used for the purposes of assessment further infrastructure will be required on land to facilitate the import of more and/or different bulk liquids. The Applicant has addressed that issue in the examination number of times already in the context of the definition of the NSIP. However, for present purposes this means that in order to ensure a robust assessment, bearing in mind the capacity of the jetty for which we are seeking consent, we have undertaken an environmental assessment that does not just look at the likely usage projected by the first customer, but looks at what the jetty could accommodate if it was importing at its full capacity.

To progress from the level of use of the jetty by Air Products in connection with its proposed hydrogen production facility to the numbers that have been used for the purposes of assessment, additional landside infrastructure would be needed. If it was identified at that stage, that the number of vessels that were projected to use the jetty was likely to go beyond those that have been assessed in this application, there would be a control because planning permission, or whatever the appropriate mechanism would be, would not be granted unless the decision maker was satisfied that the environmental effects and the effect on navigation and other matters of the likely increase were acceptable.

Therefore, there is no need to establish a process of monitoring the vessel numbers. In the absence of any limit on the vessel numbers in the DCO, there will be no requirement to monitor them. Any development which would lead to use of the jetty beyond that which has been assessed would itself require further assessment, and any such increase in vessel numbers would be a material consideration for the decision maker to take into account when deciding whether to authorise any further land side infrastructure. This is the significance of the need for a further consent because the Applicant cannot get close to the maximum number of vessels assessed unless a further permission is obtained.

It is the need for this further decision-making process that should provide the Secretary of State with the comfort that there is no real risk that the maximum number used for the purposes of assessment could be reached, let alone exceeded, without there being a further application and decision by the local planning authority or Secretary of State. At that point the relevant decision maker would have to consider all of the effects associated with the further infrastructure then proposed, including any effects

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	<p>on navigation or effects associated with ship use, which would include effects on the natural environment</p> <p><u>NE34</u></p> <p>The Applicant confirmed that discussions are ongoing with Natural England in relation to air quality, and that a technical note will be provided to them in relation to this matter before Deadline 5. The applicant took an action to provide an update at Deadline 5 in relation to the discussions on air quality impact. This is provided at Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 8 (ISH8) [TR030008/EXAM/9.81].</p> <p>The Applicant also referred the ExA to paragraph 4.7.24 of the shadow HRA submitted at Deadline 4 [REP4-014] where the flare stack modelling referred to in Natural England's comments on NE34 has been addressed.</p>
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4 APPLICANT'S SUMMARY OF CASE ON ITEM 4: NAVIGATION AND OPERATIONAL SAFETY

4.1 Item 4 (Navigation and Operational Safety)

Issue Discussed	Summary Of Oral Case
<p>The ExA had intended to ask the Applicant and participating Interested Parties, specifically representatives Associated Petroleum Terminals (Immingham) Limited and Humber Oil Terminals Trustees Limited ('IOT Operators') of questions around speed limits, marine congestion and resource availability, as well as the need for operational mitigation measures. However, the ExA had been notified that a position had been reached between the Applicant and the IOT Operators, and the IOT Operators</p>	<p>The Applicant noted that a written update of the Statement of Common Ground between the Applicant, Air Products (BR) Limited and the IOT Operators would be provided at Deadline 5.</p> <p>The ExA determined that any follow up questions would most appropriately be addressed through the ExA's Third Written Questions.</p>

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determined not to attend (after providing reasons to the ExA of the same).	
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5 APPLICANT'S SUMMARY OF CASE ON ITEM 5: DESIGN, LANDSCAPE AND VISUAL EFFECTS

5.1 Item 5 (Design, Landscape and Visual Effects)

Issue Discussed	Summary Of Oral Case
<p>The ExA raised questions around the Hydrogen Production Facility Design Code [REP4-046] (the "Design Code") in relation to the buildings included and excluded, the materials proposed and its accordance with local policy.</p>	<p>The Applicant noted that the ExA had requested additional information related to "peripheral support buildings, which would be the "public facing" elements of the proposal" (ExQ2 DAS 2.1 [PD-014]) and explained that in identifying the buildings to be covered by the design code, Air Products considered the illustrative layout [APP-013] as extracted in the design code document ([REP4-046] figure 2.3) and buildings identified in DCO Schedule 1 [REP4-004]. The Applicant confirmed that the buildings identified are the larger buildings immediately adjacent to Kings Road on the West Site; the buildings which are smaller or dictated by their process duties and are set back in the facility amongst the project structures have not been included.</p> <p>In relation to Work No. 3 specifically, the Applicant explained that the welfare and operations building in Work No. 3 was not covered by the design code because it is a much smaller building (approximately 10m x 5m), set back considerably from the edge of the road behind the security fence and is also located closer to operational structures (such as the ammonia tank which is a considerable structure (approx. 70m diameter x 40m high). On this basis, the welfare and operations building in Work No. 3 was not considered to be a public facing building and was therefore not made subject to the design code.</p> <p>The Applicant explained that the design code did not cover a number of operational buildings, typically including either machinery or other process equipment on either the East or West Site, including process instrumentation buildings, electrical substations, and power distribution centres. Such buildings are excluded due to their operational nature (containing process and electrical equipment) and are not occupied.</p> <p>The Applicant noted that there are a number of buildings titled "process control buildings" within Work No. 7 and Work No. 5 which are covered by the design code (being buildings from where a process is</p>

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	<p>controlled and comprising room(s) with operators and control screens to control the relevant process). The Applicant clarified that the process instrumentation building referred to by the ExA is in fact a building containing process instruments; it is not an occupied building (nor is it one able to be occupied). Its form is therefore dictated by its process use and as it was not considered to be a public facing building it was not made subject to the design code. The Applicant confirmed that there are process instrumentation buildings throughout Work Nos. 3, 5, and 7.</p> <p>In response to questions relating to the use of different materials and colours, the Applicant confirmed that the design code identifies a single colour for the exterior of buildings. However, elsewhere within the design code (and referencing the Design North East Lincolnshire: Places and Spaces Renaissance document) it is noted that the colour palette should reflect the contextual environment. The Applicant confirmed that the Design North East Lincolnshire: Places and Spaces Renaissance document states that all new industrial buildings should be light grey.</p> <p>The Applicant confirmed that the external colour of the buildings would be reviewed and agreed with NELC as part of the application for discharge of Requirement 4. Further, the Applicant noted that there is also scope to develop the external appearance of the building in terms of colour and finish as well as possible non-structural cladding; this too would be discussed further with NELC as part of the discharge of Requirement 4.</p>
<p>The ExA asked for clarification in relation to the Long Sections provided at DL3 [REP3-065] and updated at DL4 [REP4-067] as to whether they were intended to be representative.</p>	<p>The Applicant explained the context for the submission of the Long Sections was in response to ISH 5 Action Point 4 [EV7-010], which requested the Applicant 'submit analysis of the designs associated with extant planning permissions to understand how the Proposed Development relates in terms of scale and massing'. The Applicant referred in its answer to Appendix 5 of [REP4-047], the Updated Key Map for the West Site (the "Key Plan"), which shows the location of the other major developments in the area included in the Long Sections (updated Long Sections at Appendix 6 to [REP4-067])/ [REP3-065] also contains further details of the individual developments, so that the nature of each new development, as well as their scale (height and massing) can be understood, without reference to the Long-Sections, so that even without the Long sections it is possible for the decision-maker to take its own view as to the size and massing of that Development.</p> <p>The Applicant clarified that the Long Sections have not been used for Landscape and Visual Impact Assessment purposes, and should not be regarded as being representative of any particular 'view'.</p> <p>The Applicant explained that the Long Sections are elevations, not cross-sections, which is clear when checking the lines of the Key Plan to determine intersections. The Long Sections are effectively 'lines of view', and are not scaled to distance or intended to be quasi-photomontages. Instead they were</p>

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	<p>designed to provide a representation of the other developments in the same plane as the IGET development.</p> <p>The Applicant further noted that the Long Sections enable the general scale of the IGET development to be viewed relative to the scale of the other developments in the area, showing that they are of a scale with other consented developments.</p> <p>It was also noted that the Long Sections do not show other existing developments in the area.</p> <p>The Applicant took an action to provide a note at Deadline 5 to clarify the purpose of the Long Sections and how they should be used. The note will also specifically address the ExA's query as to the relative sizes of the various developments, including North Beck Energy. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 8 (ISH8) [TR030008/EXAM/9.81].</p>
<p>Discussion around whether additional views depending on seasons in relation to the additional viewpoint provided at Deadline 4 [REP4-038] were necessary.</p>	<p>The Applicant had no further comments in relation to whether additional viewpoints would be provided in light of NELC's comments on the same.</p>
<p>Discussion around proposals at decommissioning in relation to mitigation and enhancement undertaken as part of the Project, as set out in the outline Decommissioning Environmental Management Plan ("DEMP") [APP-222].</p>	<p>The Applicant explained that the reference at Table 6 of the outline DEMP to the protection and retention where possible of 'valued trees, woodland, existing vegetation and other landscape features' from decommissioning works would, in the final DEMP produced at the time of decommissioning, in practice resemble the commitments made in the outline Landscape and Ecology Management Plan ("LEMP") [REP4-012] and that these would be approved by the local authority when satisfied that the measures to protect the valued trees, woodland and existing vegetation were included. The Applicant confirmed this would include the elements of habitat mitigation and enhancement described in the outline LEMP (noting that certain elements of mitigation, e.g. the planting at Manby Street are controlled by their own requirements).</p> <p>The Applicant took as an action to update Table 6 in the outline DEMP at Deadline 5 to refer to the outline LEMP to clarify what is comprised in 'valued trees, woodland, existing vegetation and other landscape features'. This is provided in the Applicant's Response to the Examining Authority's Action Points from Issue Specific Hearing 8 (ISH8) [TR030008/EXAM/9.81].</p>

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6 APPLICANT'S SUMMARY OF CASE ON ITEM 6: MAJOR ACCIDENTS AND HAZARDS

6.1 Item 6 (Major Accidents and Hazards)

Issue Discussed	Summary Of Oral Case
<p>The Applicant will be asked to provide a brief overview of the recent changes to the dDCO and the EM.</p>	<p>The Applicant provided a brief summary of the process by which the risk mitigation measures are identified and secured through the parallel regime established under the Control of Major Accident Hazards (COMAH) Regulations:</p> <ul style="list-style-type: none"><li data-bbox="757 603 1939 794">• Under the COMAH Regulations, Air Products as the operator must submit a safety report to the competent authority (the HSE acting jointly with the EA), both prior to construction and prior to the start of commissioning / operations, as explained in ISH 7 item 4 [REP3-073]. Air Products cannot start operations until the safety report is agreed with the competent authority. This ensures that relevant matters relating to safety must have been addressed to the Competent Authority's satisfaction through the parallel COMAH regime.<li data-bbox="757 831 1939 1086">• The safety report will demonstrate that all measures necessary have been implemented to prevent, control, and mitigate the hazards posed by the IGET facility (i.e. demonstrate that risks are as low as reasonably practicable (ALARP)). This demonstration is developed by employing a range of structured and comprehensive hazard identification exercises, and both qualitative and quantitative risk analysis. The quantitative risk analysis shall include calculation of the extent of the worst-case hazards and the potentially affected populations. Based on these results, potential risk reduction measures are identified and subsequently evaluated (collaboratively with third parties as necessary) in terms of their cost versus risk reduction benefit.<li data-bbox="757 1123 1939 1278">• The underlying principle of ALARP (and underpinning the legislation) is that risk mitigation measures must be implemented unless the cost of their implementation is grossly disproportionate to the risk reduction benefit, thereby placing a bias for implementation of the risk reduction measure. The principle of gross disproportionality is set out in HSE "Principles and Guidelines" and in HSE document titled "Guidance on ALARP Decisions in COMAH".<li data-bbox="757 1315 1939 1374">• Robust justification must be provided wherever the decision has been made not to implement a potential risk reduction measure.

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As to the identification of mitigation measures, the Applicant explained that Air Products has engaged Gexcon Ltd as its process safety consultant to develop the COMAH safety report and associated studies.

In support of development of the safety report, consequence modelling has been performed, using industry-recognized and validated software, for a broad range of scenarios including the lower likelihood, yet worst case scenarios. The consequence modelling has been performed to fully understand the extent and severity of the offsite hazards posed by the hydrogen production facility. This is to be used as the basis for detailed evaluation of any potential mitigation measures that may be required for offsite premises.

As part of the preparation of that work, Gexcon is carrying out a detailed ALARP review of potential impacts on offsite premises, this involves:

- Consequence modelling of worst case toxic hazards
- Occupied Building Risk Assessments
- Escape, Evacuation and Rescue Analysis
- Risk reduction measures review / ALARP workshop

Following this review, risk mitigation measures (on site but potentially also off site) will be agreed and subsequently implemented. This work is ongoing but Air Products has identified specific mitigation measures for the IOT Operators.

The Applicant confirmed, as set out in the update issued to ExA prior to ISH8 (on 1 July 2024), the Applicant is close to an agreement with the IOT Operators setting out how the mitigation measures will be implemented. The Applicant confirmed that should the Gexcon work, once completed, identify any further offsite mitigation measures, the Applicant will engage with the relevant operator to agree how those measures could be implemented.

As to who bears responsibility for implementing the mitigation measures, the Applicant confirmed there is a tiered approach:

- First: the Competent Authority is responsible for ensuring that COMAH process is followed and it must decide on receipt of a safety report whether to allow operations to proceed or to prohibit them.

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	<ul style="list-style-type: none"> • Second: the operator (in this case, Air Products). As the operator of the facility, Air Products is responsible for ensuring the measures are implemented, so that the facility can operate in accordance with the law. This may be done either by Air Products (under a side agreement with third party allowing access to the land) or by the third party themselves (also under side agreement with Air Products). The Applicant confirmed that while not expressly stated, as Air Products is responsible for the implementation of the risk mitigation measures, it expects to be responsible for the costs associated with implementing any off site measures. The Applicant reiterated that Air Products is in the final stages of discussions with the IOT Operators to sign a formal agreement in relation to these works and will then proceed to develop a further detailed scope / implementation agreement under the terms of that umbrella agreement. • Third: the third party themselves. Although Air Products has overall responsibility for the implementation of these measures in the context of ensuring its facility can operate, as employers, third party businesses have duties as to the health and safety of their employees at work under health and safety legislation. Businesses regulated under the COMAH Regulations are also subject to the more stringent requirements of that legislation. Third party businesses should therefore facilitate implementation of measures designed to ensure the safety of their employees. <p>The Applicant proposed to submit a short written note at Deadline 5 setting out how the COMAH Regulations operate, in lieu of providing comprehensive oral submissions on this issue as the IOT Operators were not in attendance at the hearing and noting that agreement was close to being reached between the parties.</p>
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7 APPLICANT'S SUMMARY OF CASE ON ITEM 7: DRAFT DEVELOPMENT CONSENT ORDER

7.1 Item 7 (Draft Development Consent Order)

Issue Discussed	Summary Of Oral Case
<p>The Applicant was asked to provide updates on Articles of the dDCO, including:</p> <ul style="list-style-type: none"> • Article 3 – disapplication of legislative provisions; 	<p>The Applicant gave updates on Articles 3, 9 and 19 of the dDCO in light of discussions with various parties.</p> <p><u>Article 3</u> The Applicant explained that Article 3(1)(a) – (c), which relate to the disapplication of provisions around requiring consents needed under the Land Drainage Act 1991 and byelaws under the Water Resources Act 1991 and Land Drainage Act 1991, would be superseded by protective provisions in favour of the</p>

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<ul style="list-style-type: none">• Article 9 – Justification of need for article and exploration of NELC concerns; and• Article 19 – Benefit of the Order.	<p>North East Lindsay Drainage Board (“NELDB”) (set out at part 9, Schedule 14 of the dDCO). The Applicant confirmed that draft protective provisions are close to agreement, with constructive discussions ongoing around the single outstanding issue of compensation. The Applicant confirms that it expects this will be resolved before the end of the Examination.</p> <p>The Applicant then explained that Article 3(1)(d), relating to the disapplication of consent required for carrying out a relevant flood risk activity under the Environmental Permitting Regulations 2016, would be replaced by protective provisions in favour of the Environment Agency, and for NELC as Lead Local Flood Authority (“LLFA”).</p> <p>The protective provisions with NELC (Schedule 14, part 6 of the dDCO) have been agreed, as referenced in the SoCG submitted at Deadline 4 (see Table 3-1: List of Matters Agreed, Matters Outstanding and Matters Not Agreed, ID dDCO3 [REP4-021]), and the dDCO submitted at Deadline 5 will include the updated agreed protective provisions.</p> <p>The Applicant confirmed that constructive negotiations are ongoing with the Environment Agency to agree its protective provisions (Schedule 14, Part 2 of the dDCO) and the associated flood defence agreement, and that the parties are confident that agreement will be reached prior to the end of the Examination.</p> <p>The Applicant then explained that Article 3(2), which relates to three Local Acts applying to marine works in the River Humber and Humber Estuary, would be replaced by protective provisions in favour of the Statutory Conservancy and Navigation Authority (Schedule 14, part 1 of the dDCO), which are agreed as referenced in the SoCG submitted at Deadline 4 [REP4-025].</p> <p><u>Article 9</u> NELC has provided a list of queries on certain powers in the dDCO to carry out works to the highway, and ABP provided a written response to each query, accompanied by a legal note prepared by Charles Russell Speechlys explaining the powers sought in the dDCO and their effect. It is the Applicant’s understanding that this response is being considered by NELC, who will revert to the Applicant to discuss any further questions it may have as a result of that consideration, and that both parties are working constructively to resolve the outstanding points. The Applicant expects that these will be agreed before the end of Examination.</p> <p><u>Article 46</u> The Applicant confirmed that as per its expectations it has not been possible to reach agreement with the Marine Management Organisation (“MMO”) on the ability for the Secretary of State to approve the transfer of the benefit of the DML. As such it will need to be a matter that the Secretary of State will</p>
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	<p>need to determine, having regard to the arguments advanced by both parties and the ExA's recommendation. The MMO's representation at Deadline 4 [REP4-052] sets out its case as to why that ought not be allowed.</p> <p>The Applicant explained that it regarded the MMO's representations as unpersuasive and are clearly influenced by their misunderstanding of the effect of Article 46 and the reasons given for seeking the provision, so the MMO's representations have not changed the Applicant's position. The Applicant noted that its position had been set out in the Applicant's comments on the Deadline 1 submissions from the MMO in respect of WQ1.18.3.16 [REP2-012] and the Applicant's summary of its oral submissions made at ISH4 [REP3-070] in relation to Agenda Item 7 [EV6-001].</p> <p>The Applicant took an action to provide a written response at Deadline 5 to the specific points in the made in the MMO's Deadline 4 submission in relation to Article 46. This is provided in the Applicant's Responses to Documentation Received at Deadline 4 [TR030008/EXAM/9.80].</p>
<p>The Applicant gave justification for the Early Works Applications (referred to in the Early Works Applications Note (the "Note") [REP4-043] and explained the changes to the DCO required as a result of the Early Works Applications.</p>	<p>The Applicant provided an overview of the two early works applications submitted to NELC under the Town & Country Planning Act 1990 (TCPA):</p> <ul style="list-style-type: none">• Application 1 – submitted by Air Products on 22 March 2024 and validated on 28 March 2024 seeks approval for the carrying out of test piling works on the West Site (Work No. 7) and the East Site (Work No. 3). The test pile results will enable the detailed design of the permanent piling to be completed and the pile type and piling method statement to be confirmed. This puts the project in a position to commence permanent piling sooner.• Application 2 – submitted by Air Products on 23 May 2024 and validated on 14 June 2024 seeks approval for works on the West Site (Work No. 7) and the East Site (Work No. 3) for a number of general early works activities, most importantly land levelling and backfilling but also including:<ul style="list-style-type: none">○ relocation of drainage ditches which currently run across the West site so they would be filled and diverted around the perimeter;○ temporary fencing○ vegetation and tree removal○ the creation of two entrances off the A1173;○ preparation of temporary car parking and compound areas. <p>These are generic site preparation activities which will allow other project specific activities approved under the DCO, such as permanent piling, to commence earlier than would otherwise be the case and thereby improve the overall schedule.</p> <p>The Applicant set out the reasons for seeking separate TCPA early works permissions:</p>

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	<ul style="list-style-type: none">• Schedule improvement (bringing forward the date at which Air Products can first receive ammonia and produce of hydrogen); and• Schedule risk mitigation. <p><u>Schedule improvement</u></p> <p>In a best-case scenario, with a DCO in place in Q1 2025, the hydrogen production facility forming part of the Project could be operational in Q3 2027. This is some months after the inbound ammonia from the Middle East is scheduled to be available in Europe (which is expected in March 2027).</p> <p>As noted in paragraph 8.36 of the Explanatory Memorandum [REP3-007], given the urgent imperative of delivering this nationally significant infrastructure project in that context, the Applicant and Air Products are considering all appropriate ways of maintaining an expeditious construction programme to ensure that the hydrogen production facility could be operational as soon as possible in 2027. In regard to these specific applications:</p> <ul style="list-style-type: none">• Permanent piling is a long and critical path activity for the construction phase of the project. By conducting the test piling under an early works planning application, the detailed design of the permanent piling and procurement of the materials will be completed sooner enabling an earlier start to this critical activity.• In relation to application 2, by conducting the ground preparation works under an early works planning application, other critical path activities (particularly permanent piling) can start sooner than currently planned without disruption and delay caused by ground preparation works and associated truck movements.• In terms of overall durations, allowing time for discharge of pre-commencement requirements, if ground preparation works can start under the TCPA at around mid to end of October 2024 (instead of under DCO in say mid-March 2025) this could translate into a 4-5 month schedule improvement in that critical path activity. This would in itself would translate into the overall date of first receipt of ammonia. <p><u>Schedule risk mitigation</u></p> <p>The commencement of the Project construction phase is dependent on a number of matters:</p> <ul style="list-style-type: none">• Approval of the DCO, if successful.• No judicial review of the decision• Discharge of pre-commencement requirements
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All of these have inherent schedule risk. If Application 2 is successful, this schedule risk could be mitigated by allowing work to continue on ground preparation whilst the DCO pre-commencement requirements, for example, are awaiting formal approval.

As to the legal position, the Applicant explained how such applications are commonplace for NSIPs and reflect the fact that the legislation allows developers to use either the TCPA or the Planning Act 2008, or both, to authorise associated development.

The Applicant noted that the Early Works Note [**REP4-043**] includes two examples and additionally referred to the example of the new nuclear power station at Hinkley Point C. In that case, there was a planning permission for extensive early earthworks on the main site to prepare development platforms (which did a great deal but stopped short of authorising the construction of the power plant), a Harbour Empowerment Order authorising the early construction of an aggregates jetty for the import of aggregates needed to construct the power station (if consented) and a Transport and Works Act Order authorising the compulsory purchase of land needed to facilitate delivery of that jetty. In terms of the DCO as made, it included:

- Art. 4 – explains the effect of the Order on the site preparation permission;
- Art. 52 – explains the effect of Order on temporary jetty harbour empowerment order.

The Applicant noted an important distinction between the Hinkley case and this application is that here the application site is allocated in the development plan for industrial development which is the type of development that could also be facilitated by the early works proposed to be done here – as explained in the Early Works Note [**REP4-043**] – those works would still benefit any future industrial works coming forward should the DCO not be granted. Unlike the Hinkley example where the works were specific to the NSIP to be promoted via the DCO and would have no other justification or purpose.

The Applicant emphasised that if in any particular case the use of the TCPA to authorise early works enables urgently needed infrastructure to be in place and operating more quickly, that is strongly in the public interest. Further, the decision as to whether the benefits associated with the early works applications outweigh any adverse effects is a matter to be determined by the local planning authority in the public interest in the usual way. The ExA/SoS do not therefore need to form any view as to the merits of what is proposed in the early works applications because neither are called upon to make a decision on them. Equally, the ExA/SoS do not need to form any view as to the desirability or otherwise of submitting early works applications.

The Applicant confirmed that, so far as the examination and decision-making processes on the DCO application are concerned, the only implications are set out in sections 6, 7 and 8 of the Early Works Note [**REP4-043**]:

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- DCO drafting – provisions would need to be added to make clear and to govern the relationship between the development consent granted by the DCO and any planning permissions that may be granted for the same development. There are good precedents in previously made DCOs that have addressed this issue, and the proposed drafting is set out at Appendix 4 to the Early Works Note [**REP4-043**]. The ExA and the SoS will need to consider the drafting, and its effectiveness to achieve the intended aims.
- Environmental Information – in undertaking the exercise required by regulation 21 of the EIA Regulations, the SoS will need to examine the environmental information contained in Appendix 3 to the Note as well as that which had previously been supplied. That reflects the fact that it is possible that some of the works forming part of the project may be undertaken earlier than if they had been authorised only by the DCO. For the reasons given in the Note, the assessment shows that the residual likely significant effects are not changed as a result of the early works applications but nevertheless you will need to consider that material and the soundness of that conclusion.
- Updates – The Applicant will update the ExA as appropriate in the event there are any changes in the position before the end of the examination. In addition, the SoS may wish to receive an update as to the position in terms of early works applications ahead of the decision on the DCO application just to understand whether Any material has changed. It is important to keep in mind that no planning permissions will be granted in this case unless the LPA considers that it is appropriate in the public interest, having regard amongst other things to the relationship between the specific works proposed and the wider project. That is the case now, and it will remain the case throughout the decision-making process on this application and beyond. The ExA and the SoS should assume that NELC will fulfil its role as LPA effectively and lawfully.

In response to questions relating to the interaction between DCO requirements and TCPA permission conditions concerning biodiversity net gain (**BNG**) the Applicant confirmed that the Early Works Note [**REP4-043**] addresses this point. Importantly:

- The general position is that once work starts under the DCO and one triggers the change from relying on the planning permission to relying on the DCO, then those planning conditions would fall away and the position will be governed by the DCO.
- However, as BNG is not a requirement for the purposes of the DCO, but it is triggered by some of the early works applications, an exception has been made in relation to BNG which would continue to be delivered and regulated under the planning permission (but not imported as a requirement into the DCO).

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	<ul style="list-style-type: none"> Therefore, the local planning authority in deciding whether or not to grant planning permission, it can do that confident in the knowledge that the DCO does not seek to do away with any BNG obligation under the planning permission in the event that the DCO is granted. <p>In response to questions concerning piling, the Applicant confirmed that the test piling to be conducted under the first early works application is essentially a survey of ground conditions, the results of which will determine the design and the method of the permanent piling to be used for development of the Project.</p>
<p>The Applicant was asked to provide an update on the Protective Provisions (at Schedule 14 of the dDCO), specifically:</p> <ul style="list-style-type: none"> Network Rail, in relation to the current position on the 'Lift and Shift' clause; CLdN Killingholme, in relation to whether any protective provisions were proposed; and Any protective provisions with Electronic Communications Code Network Operators. 	<p>The Applicant provided the following updates:</p> <ul style="list-style-type: none"> Network Rail (Schedule 14, Part 5): with reference to the Applicant's response to the ExA's second written questions, pages 8 and 9 [REP4-047]. The Applicant noted that the draft protective provisions prevent the exercise of compulsory acquisition over Network Rail's land without their consent. Network Rail's position to date is that any form of easement will be granted on a voluntary basis, and its consent to the exercise of powers of compulsory acquisition being used will be subject to 'lift and shift' provisions. The Applicant has explained to Network Rail the adverse implications of those provisions for the Project, and why they are unacceptable. It was explained that those provisions remain controversial and it is considered unlikely that agreement will be reached on that matter. In light of this, it will likely be necessary for the Applicant to rely on the use of compulsory acquisition powers over Network Rail's land to implement the scheme rather than achieving this through a negotiated land agreement as had been hoped. The Applicant confirmed that it will provide at Deadline 5 a written explanation of the position reached and what the Applicant's position is as to what form the protective provisions should take to ensure there is no serious detriment to Network Rail's undertaking as a result of the use of compulsory acquisition powers. The only difference between the Applicant and Network Rail in relation to the proposed protective provisions relates to the removal of the need for Network Rail's consent to the exercise of compulsory acquisition powers. In setting out its position on this matter, the Applicant will refer to the relevant guidance and what it says about provisions of this sort. The Applicant anticipates that Network Rail will set out its own position in writing, and it will then be for the ExA and the Secretary of State to determine the appropriate outcome. CLdN Killingholme: the Applicant explained that protective provisions have been agreed and that it is understood that those agreed protective provisions are sufficient to address the interested party's outstanding concerns. These agreed protective provisions will be included on the face of the dDCO submitted at Deadline 5 [TR030008/APP/2.1] in square brackets, which will be removed following the completion of internal administrative steps the parties must take

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	<p>to formally confirm their position. The Applicant confirmed it was confident this would be done in good time before the end of the examination.</p> <ul style="list-style-type: none">• Electronic Communications Code Network Operators: the Applicant confirmed that none of the relevant operators have engaged or made any submissions about the draft protective provisions, which it noted was not unusual given the extensive experience in how to protect these interests, as reflected in the draft protective provisions. Those draft protective provisions are therefore considered by the Applicant to be in their final form.
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