



Immingham Green Energy Terminal

9.91 Applicant's Responses to the Examining Authority's
Schedule of Proposed Changes to the Draft Development
Consent Order

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1 Introduction

Overview

- 1.1 This document 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 ("the Applicant"). The Applicant was established in 1981 following the privatisation of the British Transport Docks Board. The **Funding Statement [APP-010]** provides further information.
- 1.3 The Project as proposed by the Applicant 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.

The Project

- 1.4 The Applicant 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 [AS-069]**.

Purpose and Structure of this Document

- 1.7 This document contains the Applicant's responses to the **Examining Authority's Schedule of Proposed Changes to the Draft Development Consent Order [PD-019]**.
- 1.8 Responses are ordered ascendingly by reference number, replicating the structure of the **Examining Authority's Schedule of Proposed Changes to the Draft Development Consent Order**.
- 1.9 Responses are provided in a table. The text of the question appears on the lefthand side, with the Applicant's answer to its right.
- 1.10 Further materials pertinent to the Applicant's response are included at the end of the document as appendices where necessary.

2 Applicant's Responses to the Examining Authority's Schedule of Proposed Changes to the Draft Development Consent Order

Schedule of Proposed Changes	
PC 01	
Question	Response
<p>Whole dDCO</p> <p>1. Please check internal references, statutory citations and references and legal footnotes and update as required.</p> <p>2. Please review additions to the dDCO ensuring that the titles and numbering of all provisions remains consistent throughout and with the Table of Contents. Also please undertake a check to ensure spelling and punctuations are correct throughout.</p> <p>3. Ensure dDCO follows best practice in Advice Notes 13 and 15, Guidance on the content of a DCO required for NSIPs (April 2024) and (as relevant) guidance on SI drafting from the Office of the Parliamentary Counsel.</p>	<p>The Applicant has carried out a full check of the draft Development Consent Order, taking into consideration the directions provided by the Examining Authority.</p>

PC 03	
Question	Response
<p>Schedule 2 – New Requirement 20 Low Carbon Hydrogen Certification</p> <p>Include a new requirement securing low carbon hydrogen certification, as follows: 20 – (1) Any hydrogen produced by the authorised development must receive low carbon hydrogen certification as soon as practicable following its production. (2) The certification must align with the low carbon hydrogen standard or other such standard that is consistent with the low carbon hydrogen objectives within the carbon budget delivery plan or its successor document. (3) The certification must be readily available for inspection by the relevant local planning authority.</p>	<p>Please see the response to Examining Authority's Written Questions 3 (WQ3) CC 3.2 [TR030008/EXAM/9.87], which explains why such a requirement fails to meet the statutory tests and why there is no lawful and rational basis, consistent with national policy, for requiring the Project simply to be enhanced or to improve its contribution to addressing net zero uncertainty (even assuming such a requirement would achieve that objective, which for the reasons set out in that response it would not). In addition to those fundamental points of principle, we comment below on the detail of the proposed requirement which only serves to add further conflict with national policy.</p> <p>In terms of proposed paragraph 20(1):</p> <ul style="list-style-type: none"> • It is explained in the answer to question CC 3.2 that Air Products cannot guarantee that every single batch of hydrogen could receive low carbon hydrogen certification, which can only be assessed and confirmed at the end of the production process. As such, if a batch is non-compliant for circumstances outside Air Products' control, Air Products will be in breach of this requirement. A requirement that cannot be complied with by the operator is clearly unenforceable and unreasonable. • It is also imprecise in its drafting as it requires there to be a low carbon hydrogen "certification" process which can align with the relevant low carbon hydrogen standard in place from time to time. In fact, the monitoring of compliance with any such standard is likely to combine regular monitoring by the operator (i.e. Air Products) and third-party auditing, such that it is unclear

what the necessary “certification” would comprise. We explain in the response to paragraph 20(2) below why it is not possible to draft a suitable precise requirement in these circumstances.

- Finally, it is also imprecise as it would make criminal liability contingent upon a subjective assessment as to whether any such certification had been received “as soon as practicable”.

In terms of proposed paragraph 20(2):

- The Carbon Budget Delivery Plan provides information for Parliament and the public on the government’s proposals and policies to enable carbon budgets to be met, but does not in itself set low carbon hydrogen objectives. It is therefore plainly inappropriate to refer to it in any requirement.
- Fundamentally, for the reasons set out in the response to question CC 3.2 and not repeated here, this paragraph would have unacceptable impacts on the operator and is unnecessary and unreasonable.
- This part of the requirement is also imprecise. It cannot be drafted in a way that provides precision, because it is not possible now to anticipate what standards may apply to this facility in the future and particularly which of those standards should apply to this facility in any future circumstances (aside from the fundamental point that such standards should not be secured through a requirement). There may, for example, be multiple standards for different markets. Some standards may be discretionary. The requirement could have the effect of requiring the operator to comply with standards which the government does not seek to apply to this facility. This would (at the very least)

lead to difficult questions of interpretation and enforceability, and ultimately create unacceptable uncertainty for the operator and the viability of its future operations. This only serves to demonstrate the inappropriateness of trying to duplicate a separate, highly complex and evolving regime for confirmation of compliance in a simple requirement suitable for the planning regime. That is one of the reasons why planning policy and guidance have consistently made clear that it is inappropriate in principle for the planning regime to seek to duplicate such separate systems of regulatory control.

For those reasons the Applicant has not included a requirement of the type suggested. The imposition of any such requirement would be contrary to policy, unnecessary, and unreasonable.

No alternative wording is proposed. The problems with the draft wording set out above further illustrate the fundamental point that imposing any such requirement would be wrong in principle. That is not something capable of being overcome by the use of different wording.

PC 04	
Question	Response
<p>Schedule 2 – New Requirement 21 Flood Emergency Response Plan</p> <p>Include a new requirement securing a Flood Emergency Response Plan, as follows: 21 – (1) No part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 or Work No. 7 may be commenced until a flood emergency response plan for that part has been submitted to and approved by the relevant planning authority, following consultation with the lead local flood authority and the Environment Agency. (2) Any a flood emergency response plan submitted and approved under sub paragraph (1) must (so far as applicable) be in general accordance with the flood risk assessment contained in appendix 18.A of the environmental statement.</p>	<p>Please see the Applicant's response to question FR 3.2 of the Examining Authority's Written Questions 3 (WQ3) [TR030008/EXAM/9.87], which sets out the Applicant's position in full on this proposed new requirement.</p> <p>The Applicant proposes amendments to the Examining Authority's proposed form of wording for a new requirement as follows, to reflect that (a) the requirement addresses only the operational phase and therefore (b) must be in place before the operation of any part commences but should not hold up construction works and (c) to align with the remaining drafting in the dDCO.</p> <p style="text-align: center;"><i>21 – (1) No part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 or Work No. 7 may be commenced <u>brought into operational use until a flood emergency response plan to apply during operation of for that part has been submitted to and approved by the relevant planning authority, following consultation with <u>North East Lincolnshire Council in its capacity as the lead local flood authority (within the meaning of the Flood and Water Management Act 2010) and the Environment Agency on matters related to their respective functions.</u></u></i></p> <p style="text-align: center;"><i>(2) Any a flood emergency response plan submitted and approved under sub paragraph (1) must (so far as applicable) be in general accordance with the flood risk assessment contained in appendix 18.A of the environmental statement.</i></p>

(3) Each part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 and Work No. 7 must be operated in accordance with the plan approved under sub-paragraph (1) for that part, unless otherwise approved by the relevant planning authority.

The Deemed Marine Licence would also need to be updated by new paragraphs 14(5)-(7) as follows:

(5) No part of the licensed activities may be brought into operational use until a flood emergency response plan to apply during operation of that part has been submitted to and approved by the MMO, following consultation with the Environment Agency on matters related to its functions.

(6) Any flood emergency response plan submitted and approved under sub-paragraph (5) must (so far as applicable) be in general accordance with the flood risk assessment contained in appendix 18.A of the environmental statement.

(7) Each part of the licensed activities must be operated in accordance with the plan approved under sub-paragraph (5) for that part, unless otherwise approved by the MMO.

These changes are included in the dDCO submitted at Deadline 6 [TR030008/APP/2.1 (8)].

If the Secretary of State were not to accept the Applicant's position, as set out in the response to question FR 3.2 [EXAM/9.87], that the CEMP(s) appropriately secures the production of a flood emergency response plan to apply during construction (and that an additional requirement would be unnecessary and unreasonable), the

	<p>Applicant sets out below the proposed drafting for an additional requirement in respect of the construction period:</p> <p><i>[20 – (1) No part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 or Work No. 7 (except the clearance of trees or other vegetation from Long Strip) may be commenced until a flood emergency response plan to apply during construction of that part has been submitted to and approved by the relevant planning authority, following consultation with North East Lincolnshire Council in its capacity as lead local flood authority (within the meaning of the Flood and Water Management Act 2010) and the Environment Agency on matters related to their respective functions.</i></p> <p><i>(2) Any flood emergency response plan submitted and approved under sub paragraph (1) must (so far as applicable) be in general accordance with the flood risk assessment contained in Appendix 18.A of the Environmental Statement.</i></p> <p><i>(3) Any works forming part of Work No. 1 outside of the UK marine area, Work No. 2, Work No. 3, Work No. 5 and Work No. 7 (except the clearance of trees or other vegetation from Long Strip) must be carried out in accordance with the approved flood emergency response plan for that part, unless otherwise approved by the relevant planning authority.]</i></p> <p>The equivalent drafting for the Deemed Marine Licence would be new sub-paragraphs to paragraph 14 as follows:</p> <p><i>(2) [No part of the licensed activities may be commenced until a flood emergency response plan to apply during construction of that part has been</i></p>
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	<p><i>submitted to and approved by the MMO, following consultation with the Environment Agency on matters related to its functions.</i></p> <p><i>(3) Any flood emergency response plan submitted and approved under subparagraph (2) must (so far as applicable) be in general accordance with the flood risk assessment.</i></p> <p><i>(4) Any licensed activities must be carried out in accordance with the approved flood emergency response plan for that part, unless otherwise approved by the MMO.]</i></p> <p>To assist the Examining Authority, these changes are also included in the dDCO submitted at Deadline 6 [TR030008/APP/2.1 (8)], albeit with footnotes referring to this response and that these are not considered reasonable or necessary. If the Examining Authority agrees in advance of Deadline 7, the Applicant would welcome this confirmation so that those provisions in square brackets may be deleted in the version of the dDCO submitted at Deadline 7.</p>
<p>PC 06</p>	
<p>Question</p>	<p>Response</p>
<p>Sch. 15, Documents and Plans to be certified</p> <p>List should be reviewed to ensure that documents are given the correct reference, revision number and submission date. To aid visual presentation and improve legibility, the ExA considers that the Schedule would be best presented as a table or with horizontal dividing lines inserted to make it easier to identify the individual documents and their associated references.</p>	<p>The Applicant is currently preparing a comprehensive list of documents and plans to be certified (including reference numbers, revision numbers and submission dates) which will be included in the updated draft DCO submitted at Deadline 7. If any further certified documents are produced or updated after this point, a final version of the list will be produced at the final deadline.</p> <p>The request by the ExA to aid visual presentation of the list of certified documents is noted.</p>

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