

Date: 2 August 2024
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Dear Sir,

**Planning Act 2008 (as amended) ("PA 2008"), the Infrastructure Planning (Examination Procedure) Rules 2010
Application by Associated British Ports ("the Applicant") for an Order Granting Development Consent for the Immingham Green Energy Terminal ("IGET")
Deadline 6 Cover Letter
Application Reference: TR030008**

As you know we act on behalf of the Applicant in relation to the application for a development consent order (the "**Application**") for the construction, operation and maintenance of the IGET and its Associated Development (the "**Project**"). The Application was originally submitted on 21 September 2023 and accepted for Examination on 19 October 2023, which has since commenced on 20 February 2024.

This letter has been prepared to accompany the Applicant's submissions to the Examining Authority ("**ExA**") at Deadline 6 (2 August 2024) of the Examination. These submissions are made in accordance with the Examination Timetable set out at Annex A of the Rule 8 Letter dated 28 February 2024 [**PD-007**].

1 Overview of Deadline 6 Submissions

- 1.1 Submissions made at Deadline 6 comprise the documents requested in the Rule 8 Letter, as well as other information, documents or updated documents either requested by the ExA or which the Applicant wishes to be submitted as part of the Examination.
- 1.2 Any updated documents supersede the documents previously submitted by the Applicant. The Guide to the Application submitted at Deadline 5 has been updated to reflect all of the submissions and updates at Deadline 6.
- 1.1 The table below lists the documents submitted by the Applicant at Deadline 6.

Document Title	Doc Ref	Version
Guide to the DCO Application (Clean)	1.3	10
Guide to the DCO Application (Tracked)	1.3	10
Draft Development Consent Order (Clean)	2.1	8
Draft Development Consent Order (Tracked)	2.1	8
Explanatory Memorandum (Clean)	2.2	8

To: Adrian Hunter
Date: 2 August 2024
Page: 2

Explanatory Memorandum (Tracked)	2.2	8
Land Plans	4.5	4
Outline Construction Environmental Management Plan (Clean)	6.5	7
Outline Construction Environmental Management Plan (Tracked)	6.5	7
Schedule of Mitigation and Monitoring (Clean)	7.2	4
Schedule of Mitigation and Monitoring (Tracked)	7.2	4
Shadow Habitats Regulations Assessment (Clean)	7.6	6
Shadow Habitats Regulations Assessment (Tracked)	7.6	6
Schedule of changes to the draft Development Consent Order	8.6	6
Draft Statement of Common Ground (" SoCG ") between the Applicant, Air Products and Humber Oil Terminal Trustees Limited (" IOT Operators ") (Clean)	9.20	2
Draft SoCG between the Applicant, Air Products and the IOT Operators (Tracked)	9.20	2
Woodland Compensation Plan (Clean)	9.34	3
Woodland Compensation Plan (Tracked)	9.34	3
Draft Section 106 Unilateral Undertaking relating to habitat compensation at Skeffling (Clean)	9.72	3
Draft Section 106 Unilateral Undertaking relating to habitat compensation at Skeffling (Tracked)	9.72	3
Applicant's Responses to the Examining Authority's Third Round of Written Questions [PD-017]	9.87	1
Applicant's Responses to Documentation Received at Deadline 5	9.88	1
Applicant's Response to Report on the Implications for European Sites (RIES) [PD-018]	9.89	1
Long Strip Construction Environment Management Plan	9.90	1
Applicant's Response to the Examining Authority's Schedule of Proposed Changes to the dDCO [PD-019]	9.91	1
Cover letter to Deadline 6 Submissions	9.92	1

2 Marine Management Organisation

- 2.1 The Applicant submitted representations in respect of the differing positions of the Applicant and the Marine Management Organisation ("**MMO**") in respect of Article 46 (Benefit of Order) of the draft DCO ("**dDCO**") at Deadline 5 [**REP5-049**] and notes from paragraph 1 of the MMO's letter of 10 July 2024 [**REP5-057**] that it will not be changing its position on the matter and may provide further comments, if it considers these to be required, at Deadline 6.
- 2.2 The Applicant notes that question DCO 3.2 of the ExA's Written Questions 3 and requests for information ("**WQ3**") [**PD-017**] asks the MMO if, save for paragraphs 24 to 27 of the deemed marine licence ("**DML**") in Schedule 3 of the dDCO the MMO is content with that Schedule. The Applicant would note that paragraphs 24 to 27 are proposed by the MMO but, for the reasons more particularly set out in paragraph 6.1 of the Summary of Issue Specific Hearing 4 ("**ISH4**") [**REP3-070**] the Applicant does not consider their inclusion to be appropriate. Paragraph 28 of Schedule 3 is instead what the Applicant considers should

To: Adrian Hunter
Date: 2 August 2024
Page: 3

be included, so as to align with what is set out in Schedule 17 (Procedure regarding certain approvals, etc.) of the dDCO. Except for paragraphs 24 to 28 of the DML, the Applicant understands that the remainder of Schedule 3 is in agreed form but will address any contrary submissions made by the MMO in response to DCO 3.2 as appropriate.

2.3 The Applicant agrees with that part of the ExA's comment in its Schedule of Proposed Changes to the dDCO **[PD-019]** in relation to DCO-PC 05 that in the above context it may "*fall to the ExA to make a recommendation to SoS on the final wording, should the DCO be made*".

3 **IOT Operators**

3.1 The Applicant notes the email dated 11 July 2024 sent by Alex Minhinick of Burgess Salmon Solicitors on behalf of the IOT Operators which withdraws their objection to the Project. The ExA has published the email and given it reference **[REP5-056]**. A statement of common ground has been agreed between the Applicant, Air Products and IOT Operators **[TR030008/EXAM/9.20]** and a copy is submitted by the Applicant to the ExA at Deadline 6.

4 **CLdN Ports Killingholme Limited ("CLdN")**

4.1 The Applicant notes the email dated 17th July 2014 sent to the ExA by Alex Tresadern of Pinsent Masons Solicitors on behalf of CLdN which withdrew their objection to the Application. Receipt of the email was duly acknowledged by Mr Karl-Jonas Johansson on Thursday 18 July 2024 on behalf of the ExA. We understand that the email of 17th July 2024 on behalf of CLdN will be published further to Deadline 6.

4.2 In light of the position reached between the Applicant and CLdN, as confirmed by Mr Tresadern, the Applicant has removed the square brackets from the protective provisions in favour of CLdN at Part 10 of Schedule 14 (Protective Provisions) of the dDCO (**[TR030008/APP/2.1]** (version 8)) submitted with these Deadline 6 submissions) and requests that these provisions be included in the DCO if made by the Secretary of State.

4.3 In light of the withdrawal of CLdN's objection to the Application, CLdN and the Applicant do not now propose to submit a Statement of Common Ground as originally requested in Annex F of the Rule 6 letter in respect of the application dated 8 January 2024 **[PD-005]**.

5 **Report on the Implications for European Sites**

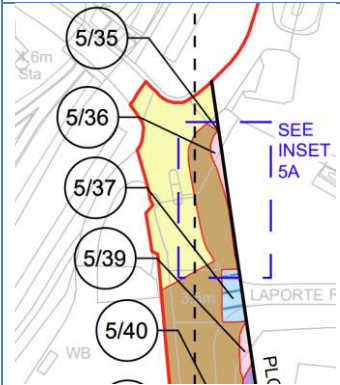
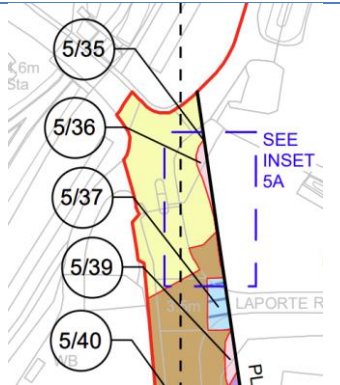
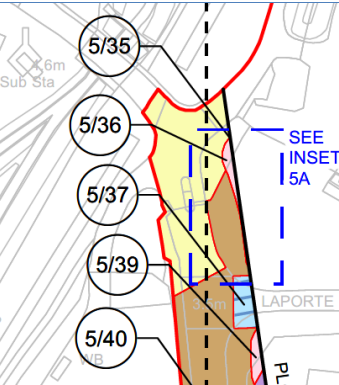
5.1 The Applicant has submitted with this cover letter its Comments on the Report on the Implications for European Sites (the "**RIES**") issued 17 July 2024 by the ExA **[PD-018]**. The Applicant notes that the Examination Timetable at Annex A of the Rule 8 Letter and paragraph 5.0.3 of the RIES require the Applicant's comments on the RIES to be submitted at Deadline 7 (15 August 2024), but as the points have been addressed at an earlier stage the Applicant is submitting its comments in advance of the deadline given.

6 **Land Plans**

6.1 On the version of the Land Plans submitted 21 September 2023 with the Application **[APP-015]** the area of land next to plots 5/35 and 5/36 (as shown on Sheet 5 and Inset 5A of the Land Plans) was shaded brown (described in the legend as "adopted highway not

To: Adrian Hunter
Date: 2 August 2024
Page: 4

included in the book of reference and not part of the Order land"). See the extract in column 1 below. At Deadline 3, the version of the Land Plans submitted **[REP3-015]** recoloured part of that area yellow (described in the legend as "land owned by Associated British Ports not included in the book of reference and not part of the order land"), so as to reflect the most up-to-date information on the extent of land owned and maintained by the Applicant versus being public highway maintainable at the public expense. Unfortunately, due to a misunderstanding in internal communication, the recolouring at Deadline 3 went too far and only part of that area should have been shaded yellow, as set out in column 3 below. This has now been identified.

Column 1	Column 2	Column 3
Land Plans submitted with Application 21 September 2023 [APP-015]	Land Plans submitted at Deadline 3 (3 May 2024) [REP3-015]	Land Plans submitted at Deadline 6 (2 August 2024)
		

6.2 The Applicant is therefore submitting at Deadline 6 revised Land Plans which correct the error on Sheet 5 and Inset 5A. Part of the relevant area (below the fence line which can be seen as a grey line bisecting the area of land) is being reverted to brown shading, as it stood on the Land Plans submitted with the Application **[APP-015]** (shown in column 1), and the remaining area (above the grey fence line) remains yellow as it stood on the Land Plans submitted at Deadline 3 **[REP3-015]** (shown in column 2). No part of the brown or yellow land forms part of the Order land and is not included in the Book of Reference **[REP3-009]**. No powers of compulsory acquisition or temporary possession are sought over this land. Accordingly, no other land interests are affected and there are no consequential amendments or changes to the Book of Reference required.

6.3 A complete set of the Land Plans is submitted at this Deadline, although the Applicant confirms that the only change to the Land Plans is in respect of the area described above.

7 Protective Provisions

7.1 While the Applicant's response to WQ3 CATP 3.1 **[TR030008/EXAM/9.87]** sets out the written summaries of all outstanding matters relating to compulsory acquisition and temporary possession, by way of update in respect of protective provisions, the Applicant notes the following:

7.1.1 Protective provisions in favour of Cadent Gas are not yet in agreed form and discussions are ongoing between the solicitors for the parties. At this stage of the Examination, the

To: Adrian Hunter
Date: 2 August 2024
Page: 5

Applicant considers it sensible to place on the face of the dDCO submitted at Deadline 6 (**[TR030008/APP/2.1]** (version 8)) the set last provided to Cadent Gas by the Applicant, at Part 7, Schedule 14 (Protective Provisions). It is understood that these provisions might be in substantially agreed form but a number of specific and material matters are not yet agreed and, again, confirmation is awaited. The protective provisions are square bracketed to indicate to the ExA that these remain under discussion. A further update will be provided at Deadline 7 as to progress between the parties, updating the dDCO where appropriate or identifying reasons why any proposed amendments are not considered appropriate.

7.1.2 The Applicant has today confirmed to Northern Powergrid that the final outstanding matter between the parties in relation to the protective provisions can be agreed. The protective provisions in favour of Northern Powergrid on the face of the dDCO submitted at Deadline 6 at Part 3, Schedule 14, are square bracketed. However, this will be updated in the iteration submitted at Deadline 7. The Land Rights Tracker to be submitted at Deadline 7 will reflect agreement being reached.

7.1.3 The Applicant's submissions at Deadline 5 set out its position in relation to Network Rail (**[REP5-001]**, **[REP5-053]**) and the dDCO submitted at Deadline 5 **[REP5-004]** included on its face protective provisions in favour of Network Rail favoured by the Applicant. At Deadline 6, this position remains the same and representations by Network Rail to the ExA on this matter are awaited.

7.1.4 Discussions between the Applicant and the Environment Agency are ongoing as to the final agreed form of protective provisions and associated flood defence agreement, with the Applicant returning its latest comments on both documents on 29 July 2024 and having had a productive meeting with the Environment Agency on 1 August 2024 in respect of appropriate amendments. The Applicant does not see any particular impediment to an appropriate flood defence agreement and protective provisions being agreed between the parties in advance of close of the Examination, and this is what the parties have agreed they are working towards.

8 **Early Works**

8.1 The Applicant submitted at Deadline 4 the "Early Works Applications Note" **[REP4-043]** which explains the proposals of the Applicant and Air Products (BR) Limited ("**Air Products**") to submit separate planning applications to North East Lincolnshire Council ("**NELC**") for certain early works. Paragraph 1.5 explains that the note and/or its appendices will be updated as necessary during the Examination.

8.2 By way of update:

8.2.1 As set out in paragraph 3.2 of the Early Works Application Note, Application 1 (as defined in the note) was submitted to NELC for planning permission for certain test piling works. A decision on that application is expected shortly.

8.2.2 As explained in paragraph 3.3 of the Early Works Application Note, Application 2 (as defined in the note) was submitted to NELC for planning permission for certain site preparation works. The application has been validated and is under consideration by NELC. The target determination date is 4 October 2024.

To: Adrian Hunter
Date: 2 August 2024
Page: 6

8.3 It is proposed to provide a formal update to the Early Works Application Note at Deadline 7 to reflect the position on Application 1.

8.4 The Applicant also proposes to undertake test piling works within operational port land under Permitted Development Rights (certain development on operational land by statutory undertakers or their lessees or agents in respect of harbour undertakings has the benefit of broad permitted development rights). Such rights would not apply if the proposed development is considered to require environmental impact assessment. A screening request was validated by NELC on 11 June 2024 to confirm whether the proposal requires environmental impact assessment and a decision is expected shortly. The Early Works Application Note to be submitted at Deadline 7 will provide an update on this proposal.

9 **Queens Road residential properties**

9.1 By way of update, since the Land Rights Tracker: Individual Landowners Compulsory Acquisition Schedule **[REP5-024]** was submitted at Deadline 5 (11 July 2024), the Applicant can confirm that the remaining residential property, 4 Queens Road (Plot 7/18 in the Book of Reference **[AS-054]** and Land Plans **[AS-060]**) has been acquired. This will be reflected in the revised Land Rights Tracker: Individual Landowners Compulsory Acquisition Schedule due to be submitted at Deadline 7.

10 **Draft Section 106 agreement for payment of contribution towards woodland compensation [REP4-039]**

10.1 The draft Section 106 Agreement submitted at Deadline 4 **[REP4-039]** is currently with NELC for review and approval. The Applicant is continuing to engage with NELC on the draft Agreement and intends to provide a final draft of the Section 106 Agreement at Deadline 7.

11 **Unilateral Undertaking securing ecological enhancement**

11.1 Response to Written Question HRA 3.2 makes clear that the draft Unilateral Undertaking ("**UU**") submitted at Deadline 4 **[REP4-041]** was drafted to provide for the delivery of habitat compensation in circumstances where Natural England concluded that an adverse effect on integrity ("**AEoI**") from the Project (alone or in combination with other plans or projects) on the protected sites cannot be ruled out. However, Natural England has subsequently confirmed (in its submissions at Deadline 5) that it agrees with the conclusion of the Applicant under the Shadow HRA that the Project will not have an AEoI on the protected sites alone or in combination with other plans and projects. As a result, the derogation stage of the Habitats Regulations Assessment ("**HRA**") is not engaged and therefore no compensation pursuant to the Conservation of Habitats and Species Regulations 2017 (the "**Habitat Regulations**") is required to be provided.

11.2 In light of the above, the Applicant has now amended the UU to remove reference to the delivery of habitat compensation. The Applicant still intends to allocate one hectare of the habitat that is being created at the Outstrays to Skeffling Managed Realignment Scheme (described further in the UU) as enhancement for the Project, but because the habitat is no longer required as habitat compensation for the Project under the Habitats Regulations, it does not need to be secured in conjunction with the marine works for the construction of the NSIP, as part of the Project. The UU has therefore been amended accordingly and the amendments are explained further in response to HRA 3.2.

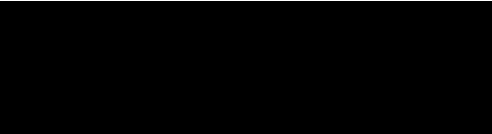
To: Adrian Hunter
Date: 2 August 2024
Page: 7

- 11.3 The updated draft UU has been provided to East Riding of Yorkshire Council for comment and an update on negotiations on the draft UU will be provided at Deadline 7.
- 12 **Updates to Schedule 15 (Documents and plans to be certified) of the dDCO ([TR030008/APP/2.1] (version 8))**
- 12.1 The Applicant notes item DCO-PC 06 in the ExA's Schedule of Proposed Changes to the draft Development Consent Order ("dDCO") issued 17 July 2024 [PD-019], which requests that the list of documents and plans to be certified at Schedule 15 "be reviewed to ensure that documents are given the correct reference, revision number and submission date", and notes that "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".
- 12.2 The Applicant has responded to this in its Deadline 6 submissions [TR030008/EXAM/9.91], but for avoidance of doubt, the Applicant confirms that it 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 dDCO 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.
- 12.3 The request by the ExA to aid visual presentation of the list of certified documents is noted and understood. Though the tables in the schedules of made DCOs do not as far as the Applicant is aware contain horizontal dividing lines as a matter of convention, the Applicant agrees this would be helpful and is aware that The Sunnica Energy Farm Order 2024 made in July 2024 did so. The Applicant will explore the insertion of such horizontal dividing lines in tables within the dDCO submitted at Deadline 7. The implications for achieving validation of the dDCO as a statutory instrument of such an approach are not currently known but the Applicant is proceeding on the assumption that the ExA will not consider such horizontal dividing lines to be "errors" for the purposes of such validation even if that is the conclusion of the validation process.

The Applicant would be pleased to answer any queries which you may have on this letter.

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

Yours sincerely



Bryan Cave Leighton Paisner

Enclosure

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