



Immingham Green Energy Terminal

9.24 Not Agreed Statement of Common Ground between
Associated British Ports, Air Products (BR) Limited and
Network Rail Infrastructure Ltd

Infrastructure Planning (Examination Procedure) Rules 2010
Volume 9

August 2024
Version 3.0

Planning Inspectorate Scheme Ref: TR030008
Document Reference: TR030008/EXAM/9.24

Immingham Green Energy Terminal
9.24 Not Agreed Statement of Common Ground between Associated British Ports, Air Products (BR) Limited and Network Rail Infrastructure Ltd. Network Rail Infrastructure Ltd version.

Version History

Version	Date	Submitted
1.0	13 March 2024	Deadline 1
2.0	11 July 2024	Deadline 5
3.0	15 August 2024	Deadline 7

Status of the Statement of Common Ground

This is a Not Agreed Statement of Common Ground (SoCG) between Associated British Ports, Air Products (BR) Limited, and Network Rail Infrastructure Ltd. This is Network Rail Infrastructure Ltd version of the Statement of Common Ground.

For the Inspector's knowledge, the majority of text is agreed. However the text which is set out in red, is not agreed. These primarily reflect the position of Network Rail.

On Behalf of Associated British Ports

Name	
Position	
Organisation	
Signature	

On Behalf of Air Products (BR) Limited

Name	
Position	
Organisation	
Signature	

On Behalf of Network Rail Infrastructure Limited

Name	Emily Williams
Position	Partner
Organisation	Addleshaw Goddard LLP
Signature	<i>Addleshaw Goddard</i>

TABLE OF CONTENTS

Chapter	Pages
1. Introduction	1
Overview	1
The Project.....	1
Parties to this Statement of Common Ground.....	1
Purpose and Structure of this Document	2
2. Summary of Engagement	3
Table 2-1: Record of Engagement	3
3. Matters Agreed and Matters Not Agreed.....	9
Table 3-1: List of Matters Agreed, Matters Outstanding and Matters Not Agreed	10
4. Glossary	20

1. INTRODUCTION

A) OVERVIEW

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

B) THE PROJECT

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

C) PARTIES TO THIS STATEMENT OF COMMON GROUND

- 1.7 This SoCG has been prepared by (1) ABP (as the Applicant), (2) Air Products and (3) Network Rail Infrastructure Ltd (“Network Rail”).
- 1.8 ABP is the promoter of the Project and the owner and operator of the Port.
- 1.9 Air Products is to be the first user of the new terminal with the construction and operation of its green hydrogen production facility.
- 1.10 Network Rail is the owner and developer of railway infrastructure in England, Scotland and Wales. Network Rail operates the rail line immediately adjacent to the Port and under which Air Products will be boring holes to run electrical cables and process pipework for ammonia, hydrogen and water.

- 1.11 In this SoCG, ABP, Air Products and Network Rail are collectively referred to as “the Parties”.

D) PURPOSE AND STRUCTURE OF THIS DOCUMENT

- 1.12 The purpose of this document is to identify and summarise any agreement, disagreement or matters outstanding between the parties on matters relevant to the Examination so as to assist the Examining Authority in its consideration of the Application.
- 1.13 In preparing this SoCG, the guidance provided in Planning Act 2008: examination of application for development consent (Department for Communities and Local Government (as it then was), March 2015) has been fully taken into account. In addition, this SoCG has had due regard to the Examining Authority’s **Rule 6 letter [PD-005]**.
- 1.14 Section 1 of this SoCG provides a general introduction to the Project and to the Parties.
- 1.15 Section 2 of this SoCG sets out a summary of the correspondence and engagement between the Parties to date.
- 1.16 Section 3 of this SoCG sets out the matters which have been agreed or which remain outstanding, together with any matters upon which it has not been possible to reach agreement.
- 1.17 The Tables in Section 3 use a colour coding system to indicate the status of the matters between the Parties as follows:
- (a) Green – matter agreed
 - (b) Orange – matter ongoing
 - (c) Red – matter not agreed

2. SUMMARY OF ENGAGEMENT

- 2.1 A summary of the consultation and engagement between ABP, Air Products and Network Rail up to the date of this SoCG in relation to the Project generally and concerning the matters raised in this SoCG specifically is presented in Table 2-1.
- 2.2 It is agreed by the Parties to this SoCG that Table 2-1 is an accurate record of the meetings and key correspondence between the Parties (excluding immaterial correspondence around dates of meetings etc).

E) TABLE 2-1: RECORD OF ENGAGEMENT

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

Immingham Green Energy Terminal

9.24 Not Agreed Statement of Common Ground between Associated British Ports, Air Products (BR) Limited and Network Rail Infrastructure Ltd. Network Rail Infrastructure Ltd version.

Date	Form of Contact	Summary with key outcomes and points of discussion
10/08/2023	Email from Charles Russell Speechlys LLP (solicitors for Air Products) ("CRS") to Addleshaw Goddard	CRS informed AG acting for National Rail ("NR") that DCO submission imminent and provided a copy of the protective provisions accompanying the draft DCO.
18/08/2023	Email from Addleshaw Goddard to CRS	AG confirmed their instruction, requested cost undertaking, provided full form protective provisions and requested further information.
18/08/2023	Email from CRS to Addleshaw Goddard	CRS provided further information and comparison of protective provisions appended to draft DCO and full form protective provisions.
15/08/2023	Site meeting attended by Network Rail and Air Products	The Air Products and Network Rail representatives walked the proposed pipeline routes <i>in situ</i> , Air Products advised on the planned locations for the bore lines under the railway. The Network Rail representative indicated that there were no immediate concerns for running boreholes in the locations advised by Air Products. Air Products confirmed that there would be no works taking place on Network Rail property.
21/08/2023	Email from CRS to Addleshaw Goddard	CRS provided chronology of contact between Air Products and NR and details of affected rights
23/08/2023	Email from CRS to Addleshaw Goddard	CRS provided further background information to the form of protective provisions.
24/08/2023	Teams call between CRS and Addleshaw Goddard	CRS and AG discussed the land plans and interaction with apparatus. AG raised the lack of electromagnetic interference (EMI) provisions in protective provisions and the use of level crossings by construction traffic as initial concerns.
25/08/2023	Email from CRS to Addleshaw Goddard	CRS confirmed that the current design has two 3 phase electrical cables running in the conduits beneath the railway so EMI provisions will be relevant; and confirmed the construction manager is happy to ensure Kiln Lane level crossing use is minimised/avoided as much as possible.
25/08/2023	Email from CRS to Addleshaw Goddard	AG requested that the construction manager take into account the level crossing on Southern Marsh Road as unsuitable for use by Heavy Goods Vehicles (HGVs).
30/08/2023	Email from CRS to Addleshaw Goddard	CRS provided cost undertaking to AG.

Immingham Green Energy Terminal
9.24 Not Agreed Statement of Common Ground between Associated British Ports, Air Products (BR) Limited and Network Rail Infrastructure Ltd. Network Rail Infrastructure Ltd version.

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

Immingham Green Energy Terminal
9.24 Not Agreed Statement of Common Ground between Associated British Ports, Air Products (BR) Limited and Network Rail Infrastructure Ltd. Network Rail Infrastructure Ltd version.

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

Immingham Green Energy Terminal
 9.24 Not Agreed Statement of Common Ground between Associated British Ports, Air Products (BR) Limited and Network Rail Infrastructure Ltd. Network Rail Infrastructure Ltd version.

Date	Form of Contact	Summary with key outcomes and points of discussion
06/02/2024	Meeting between Air Products and Network Rail: NR Asset Protection Project Manager NR Asset Protection Project Management Assistant Air Products Interface Manager Air Products Construction Director	Technical discussion on the proposed Horizontal Directional Drilling (HDD) under the railway line. Summary of topics / key conclusions: <ol style="list-style-type: none"> 1. Air Products outlined the proposal to NR. 2. NR advised of their concerns and the need for track monitoring; these were understood and agreed to by Air Products. 3. NR advised that closures would be required to install / remove the HDD equipment, but as long as the monitoring equipment was installed with NR's approval then the HDD could proceed without closing the railway line. 4. NR advised on the procedure and notice period required for the closure. 5. NR advised on the requirement for further review of the design by a NR integrity engineer. 6. NR advised on the need to update NR's National Hazards directory; wording and associated signage to be advised by NR nearer the date of closure.
13/03/2024	Meeting between Air Products and Network Rail	NR advised their outline requirements for easement(s) and protective provisions with regard the Project. Air Products expressed their reservations on certain provisions.
14/03/2024	Email from Network Rail to Air Products	Minimum information document provided for completion to allow NR internal consultation process.
04/04/2024	Email from Air Products to Network Rail	Minimum information document returned.
26/04/2024	Email from Addleshaw Goddard to CRS	Draft deed of easement provided.
03/05/2024	Email from CRS to Addleshaw Goddard	CRS reiterating that including the ability within the easement to "Lift and Shift" was not acceptable nor feasible in the context of the Project. CRS confirmed that if "Lift and Shift" provisions were insisted upon by NR, then necessary powers to acquire the right to install the pipeline under the railway would be pursued through the DCO process.

Immingham Green Energy Terminal

9.24 Not Agreed Statement of Common Ground between Associated British Ports, Air Products (BR) Limited and Network Rail Infrastructure Ltd. Network Rail Infrastructure Ltd version.

Date	Form of Contact	Summary with key outcomes and points of discussion
15/05/2024	Phone call between Air Products and Network Rail	Further discussion on the 'Lift and Shift' clause within the proposed easement. Both parties reiterated their positions and no progress was made.
02/07/2024	Email from Air Products to Addleshaw Goddard	Updated SoCG provided for comment and return.
14/08/2024	Email from Addleshaw Goddard to Air Products	Updated SoCG provided.
15/08/2024	Email from CRS to Addleshaw Goddard	Confirmation that the SoCG provided by Addleshaw Goddard on behalf of Network Rail is not agreed.

3. MATTERS AGREED AND MATTERS NOT AGREED

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

F) TABLE 3-1: LIST OF MATTERS AGREED, MATTERS OUTSTANDING AND MATTERS NOT AGREED

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
1	Scope of works and implications of IGET on the operation of the rail network operated by Network Rail within and beyond the Port		<p>Network Rail acknowledges the scope of relevant works associated with the Project, comprising the boring of holes under the railway. No further impacts to Network Rail Assets are anticipated. There are no objections in principle to the planned work.</p> <p>It is Network Rail's position that, in the absence of a formal agreement or understanding on the lift and shift provisions between the parties, coupled with a scenario where Network Rail's consent is not a prerequisite before any compulsory acquisition of rights or commencement of works, the implications of such works on the operation of rail network, as well as the proposed methodology for executing these works, are not endorsed or agreed upon in principle by Network Rail.</p> <p>Network Rails position is subject to an Asset Protection Agreement between Network Rail and ABP. This is being negotiated and will require signing prior to any work taking place.</p>	<p>Air Products has confirmed the scope of works associated with the Project, comprising the boring of holes under the railway. No further impacts to Network Rail Assets are anticipated.</p> <p>It is accepted by Air Products and ABP that an Asset Protection Agreement should be completed prior to any works taking place that would impact Network Rail Assets. The form of Asset Protection Agreement is being negotiated.</p> <p>Air Products and ABP do not consider that the construction or operation of the Project would affect the operation of the rail network by Network Rail within and beyond the Port. The process for obtaining this agreement is understood by both parties.</p>	<p>Agreed subject to the lift and shift provision being agreed.</p>	14/08/2024

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			<p>The process for obtaining this agreement is understood by both parties.</p>			
2	Track closure		<p>Network Rail accepts that track closures will be required to complete the underground boring of holes under the railway line. The duration and the timing of the closures will be agreed once details of the design and method statements are available. The duration and timing will be documented and agreed via Applications for Closure to be made by Air Products to Network Rail.</p> <p>It is Network Rail's position that, in the absence of a formal agreement or understanding on the lift and shift provisions between the parties, coupled with a scenario where Network Rail's consent is not a prerequisite before any compulsory acquisition of rights or commencement of works, the track closure for executing these works, are not endorsed or agreed upon in principle by Network Rail.</p>	<p>ABP and Air Products understand that a closure of the railway line will be required to set-up and subsequently dismantle and remove the equipment associated with the Horizontal Directional Drilling. Under discussion and yet to be agreed is the duration and approach to agreement on dates of any closure of the rail line. An application for closure will be submitted for using Network Rail's Applications for Closure work process.</p>	<p>Agreed subject to the lift and shift provision being agreed.</p>	14/08/2024

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			<p>If the lift and shift provisions can be agreed, Network Rail does not object to the principle of the closures.</p>			
3	Protective Provisions	Draft DCO [REP4-004]	<p>Network Rail requires the inclusion of Protective Provisions in the draft DCO in order to protect Network Rail's assets and interests.</p> <p>Where a third party seeks to compulsorily acquire land or rights over land owned by Network Rail, such acquisition must be subject to the prior consent of Network Rail in order to preserve Network Rail's ability to maintain the safety of the railway and avoid any risk of Network Rail being in breach of its Network Licence (granted by the Office of Rail and Road) and serious detriment being caused to the carrying on of Network Rail's statutory undertaking.</p> <p>The Protective Provisions which Network Rail require to be included in the draft Order for this DCO include a</p>	<p>Air Products / ABP agree that the draft DCO should include Protective Provisions in Network Rail's favour.</p> <p>The Protective Provisions are agreed save as follows.</p> <p>Air Products need to acquire a permanent easement under the railway for the purposes of the pipeline corridor in Work No. 6. The draft protective provisions proposed by Network Rail prevent the use of powers of compulsory acquisition pursuant to the draft DCO without Network Rail's consent.</p> <p>In negotiations on the potential form of easement (to be entered into voluntarily), Network Rail require the ability to compel Air Products to move or relocate ("lift and shift") the development authorised by the dDCO to accommodate works undertaken by Network Rail and ultimately terminate the easement where lift and shift is not feasible . Air Products are not able to</p>	Matter not agreed	14/08/2024

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			<p>restriction on the Applicant from using any powers of compulsory acquisition over railway property under the DCO without first obtaining Network Rail's consent. Network Rail, in giving this consent, must act reasonably, except in safety-related matters where it retains full discretion, as outlined in provisions 4(1) and 4(6) of the Protective Provisions.</p> <p>Under its Network Licence granted by the Office of Rail and Road, Network Rail must adhere to standards set by the Rail Safety and Standards Board to maintain safe and efficient train operations. This Licence mandates strict controls over any third-party interactions with the railway.</p> <p>If the Applicant was to compulsorily acquire rights over the railway outside of Network Rail's control, it would compromise Network Rail's ability to impose restrictions and conditions (including the ability of Network Rail to suspend these rights in emergencies) necessary in order for Network Rail to comply with its licence, potentially jeopardising safe railway</p>	<p>"shift" the pipeline comprised in the authorised development. Further, the termination of the easement in the absence of an alternative pipeline would render Work No. 7 and therefore the entire hydrogen production facility unusable.</p> <p>Air Products would welcome Network Rail conceding that lift and shift provisions are not necessary or appropriate in the circumstances of the authorised development and entering into an appropriate easement voluntarily. However, if this is not achieved expeditiously, ABP may need recourse to the use of compulsory acquisition powers to acquire the relevant easement. In those circumstances, AP and ABP's position is that the protective provisions in favour of Network Rail should not limit the use of those powers by making them subject to Network Rail's approval.</p> <p>That position is supported by the guidance of the Department for Levelling Up, Housing and Communities (30 April 2024) (Planning Act 2008: Content of a Development Consent Order required for Nationally Significant Infrastructure Projects, Paragraph 012 Reference ID 04-012-20240430) which</p>		

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			<p>management. Such a scenario poses an unacceptable risk of Network Rail breaching its licence - a situation neither Network Rail nor the Office of Rail and Road can accept due to the safety implications.</p> <p>Whilst Network Rail has sought to agree terms privately with the Applicant in order to avoid the requirement for rights over railway land to be compulsory acquired, the parties have been unable to reach agreement.</p> <p>The reason for which is that in granting a right to the Applicant to install and maintain infrastructure on railway land, Network Rail must be able to relocate the Applicant's infrastructure where necessary for Network Rail to carry on its statutory undertaking (for example to accommodate line repairs or improvements/upgrades to rail infrastructure at the respective locations with minimal disruption to railway operations). This is known as a "lift and shift" provision" and is a standard requirement of Network Rail</p>	<p>states that the preferred protective provisions produced by statutory undertakers must be "adapted as necessary so they accurately reflect the proposed development" and "should also not simply negate other provisions of the DCO, particularly concerning proposed compulsory acquisition of statutory undertakers' land (see also the Applicant's response to WQ2.2 GEN concerning Network Rail [REP4-047]).</p>		

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			<p>when granting rights over the railway to third parties.</p> <p>The requirement for the inclusion of this provision in any right granted to the Applicant over the railway is not unreasonable on the basis that:</p> <ul style="list-style-type: none"> • the railway is existing infrastructure of national significance and the Applicant is proposing to interfere with and inhibit Network Rail’s ability to maintain, upgrade and manage that infrastructure; • it is a well established principle that third party developers/utility providers are required to relocate infrastructure laid underneath the railway at Network Rail’s request; • Network Rail has previously entered into agreements on other schemes with both Air Products and Associated British Ports whereby they have accepted lift and shift provisions and so this is an established 			

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			<p>principle between the parties where the Applicant entities have previously sought rights to install and maintain infrastructure under the operational railway and this has not been raised as an issue previously;</p> <ul style="list-style-type: none"> • such a provision would provide the Applicant with [tba] months to find a suitable alternative location for the infrastructure which is a reasonable period of time to enable such infrastructure to be relocated; • the proposed infrastructure is not of a permanent nature in any event and is only proposed to be installed for a period of 34.5 years; • the Applicant has provided no evidence that a suitable alternative location for the pipeline could be facilitated in the event that the lift and shift provision was exercised; and • crucially, in the absence of this provision, Network Rail would be inhibited from carrying out 			

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			<p>repairs and upgrades to the railway at the locations where the Applicant's pipeline is in situ, thereby causing a serious detriment to the carrying on of its railway undertaking.</p> <ul style="list-style-type: none"> NR has previously implemented this approach on several projects, consistently demonstrating a reasonable and practical attitude. NR initiates engagement promptly, ensuring a fair period for discussion before issuing any notice. Furthermore, NR has facilitated alternative measures, such as establishing temporary routes or diversions during the works, followed by a restoration to the original route. There has never been an instance where NR's actions under these provisions have resulted in a business having to cease operations. <p>Accordingly, Network Rail requires its Protective Provisions (and in particular, the requirement to seek Network Rail's consent prior to exercising powers of compulsory</p>			

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			<p>acquisition over railway land) to be placed on the Order. In accordance with S.127 Planning Act 2008, it is Network Rail's position that in light of the risks, in the absence of this restriction as outlined above, the Inspector should not be satisfied that:</p> <p>(a) the rights sought by the Applicant in this DCO can be compulsorily acquired without serious detriment to the carrying out of NR's undertaking on the basis that in summary:</p> <p>(i) removing NR's ability to control the conditions and requirements of such a right compromises the safety of the railway; and</p> <p>(ii) the absence of a lift and shift provision from such a right inhibits Network Rail's ability to repair, maintain and upgrade its railway infrastructure, and</p> <p>(b) Such detriment cannot be made good by Network Rail by the use of other railway property,</p> <p>and in which case the Inspector should not be satisfied that the DCO can include provisions authorising the compulsory acquisition of rights over Network Rail's land (unless the</p>			

Immingham Green Energy Terminal

9.24 Not Agreed Statement of Common Ground between Associated British Ports, Air Products (BR) Limited and Network Rail Infrastructure Ltd

ID	Matter	Reference	Network Rail Position	ABP / Air Products Position	Status	Date
			<p>restriction referred to above is included).</p> <p>Network Rail would therefore respectfully request the inclusion of the restriction referred to above in the Protective Provisions for the benefit of Network Rail.</p>			

4. GLOSSARY

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