



Immingham Green Energy Terminal

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

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Version History

| Version | Date | Submitted |
|------------|-----------------------|-------------------|
| 1.0 | 13 March 2024 | Deadline 1 |
| 2.0 | 11 July 2024 | Deadline 5 |
| <u>3.0</u> | <u>15 August 2024</u> | <u>Deadline 7</u> |

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Status of the Statement of Common Ground

Associated British Ports and Air Products (BR) Limited considers that this **Final** Statement of Common Ground (SoCG) is an accurate description of the matters raised and the current status of each matter.

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On Behalf of Associated British Ports

| | |
|--------------|------------------------------------|
| Name | [REDACTED] |
| Position | Project Development Manager |
| Organisation | Associated British Ports |
| Signature | [REDACTED] |

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On Behalf of Air Products (BR) Limited

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

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1. Introduction

Overview

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

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The Project

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

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Parties to this Statement of Common Ground

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

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Purpose and Structure of this Document

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

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2. Summary of Engagement

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

Table 2-1: Record of Engagement

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

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| Date | Form of Contact | Summary with key outcomes and points of discussion |
|------------|--|---|
| 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. |
| 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 |

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

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

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| Date | Form of Contact | Summary with key outcomes and points of discussion |
|-------------------|---|--|
| | Air Products Construction Director | 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. |
| 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. |
| <u>14/08/2024</u> | <u>Email from Addleshaw Goddard to Air Products</u> | <u>Updated SoCG provided.</u> |

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3. Matters Agreed and Matters Not Agreed

3.1 It is agreed the following chapters of the **Consultation Report [APP-022]** submitted with the Application sets out the consultation and engagement undertaken between the Parties in relation to the Application:

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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 **Deadline 7**, along with a concise commentary of what the item refers to and how it came to be agreed between the Parties (as applicable).

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Table 3-1: List of Matters Agreed, Matters Outstanding and Matters Not Agreed

| 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><u>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.</u></p> <p><u>Network Rails position is subject to</u> 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><u>The process for obtaining this agreement is understood by both parties.</u></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 <u>has been subject to negotiations, but agreement has not been reached to date due to the position on the easement (explained at item 3 below).</u></p> <p>Air Products and ABP do not consider that the construction or operation of the Project would affect the operation of the rail network by Network Rail within and beyond the Port.</p> <p><u>In the absence of agreement to date on the form of the Asset Protection Agreement and associated easement (as addressed at item 3 below), Air Products and ABP note paragraph 61(6) of the Protective Provisions for the benefit of Network Rail (Schedule 14 Part 5 of the draft development consent order (dDCO) submitted at Deadline 7 [TR030008/APP/2.1(9)]) which requires</u></p> | <p>Agreed save that Network Rail's agreement is subject to the lift and shift provision being agreed – these are addressed at item 3 below.</p> | 14/08/2024 |

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| ID | Matter | Reference | Network Rail Position | ABP / Air Products Position | Status | Date |
|----|--------|-----------|-----------------------|---|--------|------|
| | | | | <p><u>the undertaker to enter into an Asset Protection Agreement with Network Rail prior to the carrying out of any "specified work" (i.e. so much of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property). The Asset Protection Agreement is defined as an agreement to regulate the construction and maintenance of the "specified work" in a form agreed between Network Rail and the undertaker.</u></p> <p><u>Air Products and ABP therefore accept and agree that a suitable Asset Protection Agreement must be in place before the works are undertaken.</u></p> <p><u>The detail of the "specified work" are also to be approved by Network Rail under paragraph 62(1).</u></p> <p><u>Paragraph 61(5) prevents the undertaker under the powers of the dDCO from doing anything which would affect the safe running of trains on the railway (save where Network Rail had agreed not to run such trains temporarily).</u></p> <p><u>Paragraph 60(1) acknowledges that any consent or approval given by Network Rail is subject to the condition that Network Rail complies with relevant railway operational procedures (as</u></p> | | |

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| ID | Matter | Reference | Network Rail Position | ABP / Air Products Position | Status | Date |
|----|---------------|-----------|--|---|--|------------|
| | | | | <p>defined) and obligations under its network licence or statute.</p> <p>Network Rail has confirmed that it has no objection in principle to the scope of the relevant works. The above provisions (alongside the other agreed provisions of the Protective Provisions) are for the benefit of Network Rail and will operate so as to ensure the protection and safety of the railway at the detailed design, engineering and construction and maintenance stages, and ensure that Network Rail can comply with the terms of its network licence throughout.</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><u>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</u></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><u>Air Products and ABP note Network Rail's position but do not agree that there is a link between the principle of track closure for construction purposes</u></p> | <p>Agreed save that Network Rail's agreement is subject to the lift and shift provision being agreed – these are addressed at item 3 below,</p> | 14/08/2024 |

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| ID | Matter | Reference | Network Rail Position | ABP / Air Products Position | Status | Date |
|----|-----------------------|----------------------|--|---|-------------------|------------|
| | | | <p>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>If the lift and shift provisions can be agreed, Network Rail does not object to the principle of the closures.</p> | <p>(which principle is agreed by Network Rail) and Network Rail's request for "lift and shift" provisions to apply during operation.</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 compulsory 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</p> | <p>Air Products / ABP agree that the draft DCO should include Protective Provisions in Network Rail's favour as explained at item 1 above.</p> <p>The Protective Provisions are agreed save as follows and as explained in full in [REP5-053].</p> <p>Air Products need to acquire a permanent easement under the railway for the purposes of the pipeline corridor in Work No. 6. In negotiations on the potential form of easement to be entered by the parties voluntarily (and as set out in [REP5-053]), it became apparent that Network Rail seek the ability to compel Air Products to cease supply and relocate ("lift and shift") the development authorised by the dDCO to accommodate future works as may be</p> | Matter not agreed | 14/08/2024 |

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| ID | Matter | Reference | Network Rail Position | ABP / Air Products Position | Status | Date |
|----|--------|-----------|--|--|--------|------|
| | | | <p><u>the draft Order for this DCO include a 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.</u></p> <p><u>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.</u></p> <p><u>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 management. Such a scenario poses an unacceptable risk of Network Rail breaching its licence - a situation</u></p> | <p>undertaken by Network Rail and <u>to terminate the easement where relocation or strengthening of the development authorised by the dDCO, is not possible (and in other future circumstances – see paragraph 4.2 of [REP5-053]),</u> Air Products are not able to “shift” the pipeline comprised in the authorised development <u>on notice for the reasons set out in [REP5-053] (see paragraph 5 which evidences this position).</u> 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><u>As such, the parties have not been able to reach agreement on the form of an easement to be entered into voluntarily and ABP and Air Products seek the power to acquire appropriate rights by compulsion.</u></p> <p><u>The draft Protective Provisions proposed by Network Rail however prevent the use of powers of compulsory acquisition pursuant to the dDCO without Network Rail's consent and, as Network Rail identify, matters considered by Network Rail to be safety-related are at their discretion. As such, Network Rail could withhold their consent to the proposed acquisition of the necessary right to install services</u></p> | | |

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Immingham Green Energy Terminal

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

| ID | Matter | Reference | Network Rail Position | ABP / Air Products Position | Status | Date |
|----|--------|-----------|---|---|--------|------|
| | | | <p><u>neither Network Rail nor the Office of Rail and Road can accept due to the safety implications.</u></p> <p><u>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.</u></p> <p><u>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 when granting rights over the railway to third parties.</u></p> <p><u>The requirement for the inclusion of this provision in any right granted to</u></p> | <p><u>under the railway without the "lift and shift" / termination provisions sought as above.</u></p> <p><u>ABP and Air Products have therefore proposed alternative Protective Provisions as set out and justified in [REP5-053]. Those Protective Provisions were incorporated in the dDCO submitted at Deadline 6 [REP6-004] and the same version of those Protective Provisions is included in the dDCO being submitted at Deadline 7.</u></p> <p><u>As set out in item 1, the Protective Provisions secure (amongst other extensive protections for Network Rail) an Asset Protection Agreement regulating the construction and maintenance of the railway and the safe running of trains, and preserve Network Rail's ability to comply with its network licence.</u></p> <p><u>No evidence is provided by Network Rail in its response to demonstrate how, in the circumstances of this case, the future existence of the proposed pipeline under the railway could affect its ability to comply with its licence and cause detriment to its statutory undertaking. Network Rail's response appears to be an assertion of its "standard" position.</u></p> <p><u>The objection of ABP and Air Products to this "standard" position is supported</u></p> | | |

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Examination Document Ref: TR030008/EXAM/9.24

Immingham Green Energy Terminal
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| | | | <p><u>the Applicant over the railway is not unreasonable on the basis that:</u></p> <ul style="list-style-type: none"> <u>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;</u> <u>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;</u> <u>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 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;</u> | <p>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 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] and [REP5-053]).</p> <p><u>The following points (in addition to those made in [REP5-053]) are made in response to Network Rail's position set out in the column to the left:</u></p> <ul style="list-style-type: none"> <u>Network Rail state that the existing railway infrastructure is of national significance. Air Products note however that Network Rail had previously indicated that the line is infrequently used, providing only limited on demand services to</u> | | |

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| | | | <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 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. NR has previously implemented this approach on several projects, consistently demonstrating a reasonable | <p>the Port and supported fewer than five trips in 2023.</p> <ul style="list-style-type: none"> Whilst Network Rail presents the "lift and shift" provision as a simple co-operation on future relocation, the provisions go further than that. As explained in [REP5-053], where relocation is not a possibility, Network Rail can terminate the easement on notice (the period of which was not negotiated or agreed in the circumstances, but is identified in the draft easement provided by Network Rail in square brackets as six months). A six-month period for Air Products to find a suitable alternative location or solution would be far from adequate for Air Products. The pipeline is a fixed corridor between two points and the choice of that crossing is evidenced in [REP5-053]. Air Products does not own any alternative land or rights which would enable relocation and did not identify any alternative route / crossing in designing the Project. Even if such land were to be available now, there is no guarantee that | | |

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| | | | <p><u>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.</u></p> <p><u>Accordingly, Network Rail requires its Protective Provisions (and in particular, the requirement to seek Network Rail's consent prior to exercising powers of compulsory 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:</u></p> <p><u>(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:</u></p> | <p><u>such a corridor would be available in the unidentified point in the future. If a suitable corridor was to be available, negotiations would be required with landowners and, if not successful, an appropriate body willing and able to use compulsory purchase powers would need to be identified and following that process could easily take one to two years if not more. Construction of the pipeline itself could likely take 18 months.</u></p> <ul style="list-style-type: none"> <u>The above demonstrates that, if Network Rail sought to exercise its "lift and shift" provisions without itself having identified an alternative corridor which ensures continued connection to Work No. 7, it would likely lead to termination of the easement. That in turn would prevent operation of Work No. 7 and the use of the hydrogen production facility as a whole.</u> <u>Network Rail draws attention to the fact that it has worked with affected parties to secure diversions (including temporary diversions) and, as a matter of</u> | | |

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| | | | <p><u>(i) removing NR’s ability to control the conditions and requirements of such a right compromises the safety of the railway; and</u></p> <p><u>(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</u></p> <p><u>(b) Such detriment cannot be made good by Network Rail by the use of other railway property,</u></p> <p><u>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 restriction referred to above is included).</u></p> <p><u>Network Rail would therefore respectfully request the inclusion of the restriction referred to above in the Protective Provisions for the benefit of Network Rail.</u></p> | <p><u>fact, has never had to cause a business to cease operation. Air Products is ready, willing and able to enter into an easement that facilitates co-operation on relocation, but that does not simply allow termination on notice should relocation not be possible. The fact that Network Rail has confirmed that it has never had to cause a business to cease to operate would suggest that the “standard” right to terminate is unnecessary and unreasonable.</u></p> <ul style="list-style-type: none"> <u>It is agreed that “lift and shift” provisions are well established and suitable in many circumstances - but that fact does not make them appropriate in all circumstances, including the circumstances in this case for the reasons set out in [REP5-053].</u> <u>Whilst both Air Products and Associated British Ports may have accepted provisions of this nature previously, that does not mean that those circumstances were equivalent to the circumstances in this case. In</u> | | |

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| | | | | <p><u>this case, "standard" lift and shift provisions are not suitable.</u></p> <ul style="list-style-type: none"> <u>It is agreed that the easement was to be granted for an initial term of 34.5 years – it was also agreed to be extendable for two further terms each of 15 years (and potentially longer subject to negotiations). Air Products would have the right to terminate the easement every five years. This was considered acceptable by Air Products in the context that the hydrogen production facility could be decommissioned at a point in the future. The fact that the pipeline may not be required by Air Products at a future point in time is a very different proposition to Network Rail having the effective ability to terminate the easement on 6 months' notice (and end operation of the hydrogen production facility).</u> <u>On the other hand, as noted above, no actual evidence is presented of any adverse impact on Network Rail's undertaking as a result of the retention of the works at some unidentified</u> | | |

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| | | | | <p><u>future point (Network Rail having accepted the principle of construction, retention and maintenance of the works). Network Rail has not explained or evidenced how the carrying out of repairs and upgrades to the railway in the location of the deep pipeline would be inhibited by the existence of that pipeline, nor how that amounts to serious detriment (even aside from the apparent limited use of the line).</u></p> <p><u>ABP and Air Products therefore maintain their position as set out in full in [REP5-053] and that the exercise of powers under the dDCO as drafted would not cause any serious detriment to Network Rail's undertaking.</u></p> | | |

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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 |

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