

Date: 20 August 2024
Our ref: GOOD/3004864.3
Your ref: TR030008
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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 8 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 commenced on 20 February 2024.

This letter has been prepared to accompany the Applicant's submissions to the Examining Authority ("**ExA**") at Deadline 8 (20 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 8 Submissions

- 1.1 Submissions made at Deadline 8 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 7 has been updated to reflect all of the submissions and updates at Deadline 8.
- 1.3 The table below lists the documents submitted by the Applicant at Deadline 8.

Document Title	Doc Ref	Version
Guide to the DCO Application (Clean)	1.3	12
Guide to the DCO Application (Tracked)	1.3	12
Applicant's Statement of Commonality (Clean)	9.11	6
Applicant's Statement of Commonality (Tracked)	9.11	6
Statement of Common Ground (" SoCG ") between the	9.13	5

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Applicant, Air Products (BR) Limited (" Air Products ") and the Environment Agency (Clean)		
SoCG between the Applicant, Air Products and the Environment Agency (Tracked)	9.13	5
SoCG between the Applicant, Air Products and Cadent Gas Limited (Clean)	9.26	5
SoCG between the Applicant, Air Products and Cadent Gas Limited (Tracked)	9.26	5
Final Completed Section 106 Agreement for Payment of Contribution towards Woodland Compensation (Clean) dated 20 August 2024 (in Counterpart – Applicant's Signed Copy)	9.71	4
Final Completed Section 106 Agreement for Payment of Contribution towards Woodland Compensation (Clean) dated 20 August 2024 (in Counterpart – North East Lincolnshire Council's Signed Copy)	9.71	4
Final Completed Section 106 Agreement for Payment of Contribution towards Woodland Compensation (Tracked)	9.71	4
Final Completed Section 106 Unilateral Undertaking relating to Ecological Enhancement dated 20 August 2024 (Clean)	9.72	4
Final Completed Section 106 Unilateral Undertaking relating to Ecological Enhancement (Tracked)	9.72	4
Guide to Environmental Information (Clean)	9.97	2
Guide to Environmental Information (Tracked)	9.97	2
Validation Report	9.100	1
Applicant's Cover Letter to Deadline 8 Submissions	9.101	1

2 **Draft DCO - Word Version and Validation Report [TR030008/EXAM/9.100]**

- 2.1 As explained in email correspondence, it was not possible to submit the validation report for the draft DCO or the word version at Deadline 7. The Applicant has now completed the validation process and can confirm that a Validation Report is included with the submissions at Deadline 8 together with the word version of the draft DCO submitted at Deadline 7 [**REP7-004**] as requested. Save for the removal of an errant square bracket, the draft DCO submitted at this Deadline is identical to that provided at Deadline 7.
- 2.2 The Validation Report submitted at this Deadline highlights six 'best practice' warnings in the draft DCO. Five of these relate to the absence of dates in the requisite date fields, which cannot be inputted at this stage due to the DCO's draft status. The sixth warning relates to the format of an apostrophe in the footnote of paragraph 62(7) of Schedule 14 (Protective Provisions), Part 5 (For the Protection of Network Rail). Despite working with the SI support team, it has not been possible to resolve this warning, but the Applicant notes that in the absence of any validation errors in the draft DCO, there should be no issues with the registration and publication of this document.

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3 Woodland compensation and Section 106 Agreement for Payment of Contribution towards Woodland Compensation [TR030008/EXAM/9.71]

- 3.1 Further to our update provided in the Applicant's cover letter to the Deadline 7 submissions [REP7-001], the Applicant has agreed the Section 106 Agreement for Payment of Contribution towards Woodland Compensation (the "**Section 106 Agreement**") with North East Lincolnshire Council ("**NELC**") and submits the completed Section 106 Agreement in counterpart dated 20 August 2024 and sealed by both parties.
- 3.2 In the Applicant's response to written question BIO 2.4 in the ExA's second round of written questions [REP4-047], the Applicant indicated that once the compensatory woodland is fully established the habitat is expected to support a similar assemblage and density of woodland breeding birds as would be lost from the Long Strip woodland and that "*further consideration will be given to whether the residual effect on woodland breeding birds would reduce below the moderate adverse effect reported in ES Chapter 10 [APP-052], as a result of the woodland compensation defined in [REP3-065]*". The common woodland species can be expected to colonise the compensatory woodland planting within 15-20 years of the woodland being planted as the plantings become established. In response to the point which remained outstanding from the Applicant's Deadline 4 response to BIO 2.4 referred to above, the Applicant has not revised the conclusions of Environmental Statement – Chapter 10: Ornithology [APP-053] on effects on woodland breeding birds because of the initial time period for the compensatory planting to become established. That is a precautionary approach to the assessment on the part of the Applicant. The Applicant notes that NELC has concluded in its response to BIO 2.4 [REP4-049] that NELC are satisfied with the proposed planting in the context of the impact on breeding birds.

4 Section 106 Unilateral Undertaking relating to habitat compensation at Skeffling (the "Unilateral Undertaking") [TR030008/EXAM/9.72]

- 4.1 As explained in the Applicant's cover letter to the Deadline 6 submissions [REP6-001], Natural England confirmed (in its submissions at Deadline 5 [REP5-058]) that it agreed with the conclusion of the Applicant under the Shadow Habitats Regulations Assessment ("**HRA**") [REP7-015] that the Project will not have an adverse effect on integrity on the protected sites alone or in combination with other plans and projects. As a result, the derogation stage of the HRA process in respect of the Project is not engaged and therefore no compensation pursuant to the Conservation of Habitats and Species Regulations 2017 (the "**Habitats Regulations**") is required to be provided.
- 4.2 In light of the above, the Applicant amended the Unilateral Undertaking to remove reference to the delivery of habitat compensation and the updated draft was submitted at Deadline 6 [REP6-020]. The Applicant set out for the ExA a detailed summary of the status of the Unilateral Undertaking in its response to the Third Round of Examining Authority's written questions at HRA 3.2 [REP6-022].
- 4.3 Further to the update provided in the Applicant's cover letter at Deadline 7 [REP7-001], the Unilateral Undertaking to secure the one hectare of Ecological Enhancement as part of the Outstrays to Skeffling Managed Realignment Scheme (both terms as defined in the Unilateral Undertaking) has now been agreed with the relevant planning authority (East Riding of Yorkshire Council). The Applicant now provides a final

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completed version of the Unilateral Undertaking which has been signed by the Applicant and dated 20 August 2024.

5 **Response to the Marine Management Organisation's ("MMO") Deadline 7 Submission [REP7-066]**

- 5.1 The Applicant notes the MMO's submission at Deadline 7 which confirms that the MMO has reviewed the draft DCO and responses to the Examining Authority's Third Written Questions and submissions from the Applicant and other third parties. The Applicant responded to the MMO Deadline 6 submissions [REP6-029] at Deadline 7 [REP7-060] and confirms that it too has nothing further to add.
- 5.2 The final agreed Statement of Common Ground between the Applicant and the MMO was submitted at Deadline 7 [REP7-031].

6 **Response to Natural England Deadline 7 submission [REP7-067]**

- 6.1 The Applicant has considered Natural England's Deadline 7 submission and notes that a number of matters are now confirmed as resolved.
- 6.2 The Applicant responds to the unresolved points below to signpost where these various points are addressed in the Applicant's previous submissions to the Examination and in relation to Article 19 of the dDCO [TR030008/APP/2.1] makes one additional point in response:

- **Article 19 (authority to survey and investigate land) of the draft DCO**

Natural England has raised a concern that Article 19 of the draft DCO, which provides authority to survey and investigate land, could authorise works to be done without appropriate permissions from Natural England. However the draft DCO does not disapply the provisions of the Wildlife and Countryside Act 1981 or the Habitats Regulations, and therefore to the extent that relevant statutory provisions in these pieces of legislation would be engaged by the works that are to be undertaken, those relevant statutory provisions would continue to apply and would be complied with by the undertaker exercising those powers under the DCO (including the Applicant, who is a statutory undertaker with various duties under the Habitats Regulations in its own right).

- **Article 45 (powers to dredge) of draft DCO**

Natural England has queried what it calls a "discrepancy" between the level of detail in the draft DCO at Article 45 and in the Deemed Marine Licence ("DML") (at Schedule 3 of the draft DCO). The draft DCO confirms that dredging works form part of the Authorised Project (as defined in the draft DCO at Article 2 (Interpretation)) and are approved pursuant to the draft DCO. The DML secures the detailed requirements for the capital dredge. There is no inconsistency between the draft DCO at Article 45 and the DML as set out in the Applicant's Responses to Documentation Received at Deadline 4 [REP5-049].

- **Vessel Management and Monitoring Plan**

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Natural England reiterates its request for a Vessel Management and Monitoring Plan. It remains the Applicant's position that a requirement for such a plan is not required and would fail the test of necessity.

The Applicant draws the ExA's attention to the Applicant's summary of oral submissions on NE33B (as referred to in the SoCG between the Applicant, Air Products and Natural England [REP7-033]) for Item 3 at Issue Specific Hearing 8 [REP5-050], which summarises the Applicant's position on this issue and draws together the various Examination library references for the Applicant's various submissions on this point.

- **Schedule 3 (DML), Part 2 (Conditions Applying to All Licensable Activities), Paragraph 16 (Piling and marine construction works)**

As acknowledged by Natural England in their Deadline 7 submission, the Applicant provided further information at Deadline 5 [REP5-049] as to why hammer energy is not considered by the Applicant to be a key impact parameter. The Applicant's full response on this point is set out in the Applicant's Responses to Documentation Received at Deadline 4 [REP5-049] and the Applicant confirms it has nothing further to add on this point.

7 **Update on Protective Provisions in favour of Cadent Gas**

- 7.1 As stated in the Applicant's Deadline 7 cover letter [REP7-001], discussions between the parties in relation to the Protective Provisions in favour of Cadent Gas have been ongoing and, since Deadline 7, have been agreed. As explained in the SoCG being submitted at Deadline 8 [TR030008/EXAM/9.26] which is agreed and signed by all parties, the Protective Provisions at Part 7, Schedule 14 of the draft DCO submitted at Deadline 7 [REP7-004] represent the final agreed set of Protective Provisions and there are no further matters outstanding with Cadent Gas. For completeness, we note that the side agreement between the parties has also been agreed and following its completion, Cadent Gas will withdraw its representations on the Application.

8 **Response to Network Rail Infrastructure Limited's ("Network Rail") Deadline 7 submissions [REP7-068]**

- 8.1 As indicated in the Applicant's cover letter for Deadline 7 [REP7-001], a version of the SoCG between the Applicant, Air Products and Network Rail was received by the Applicant on 14 August 2024, and there was therefore insufficient time to agree and submit a single agreed version at Deadline 7 (15 August 2024).
- 8.2 Network Rail submitted a similar version to the version the Applicant received from Network Rail on 14 August 2024 to the ExA at Deadline 7, 15 August 2024 [REP7-068] and the Applicant submitted its own version on 15 August 2024 [REP7-043] in which the Applicant responded to the points made by Network Rail in its 14 August version. The Applicant's version [REP7-043] therefore contains all the points made by Network Rail (together with the Applicant's response).
- 8.3 The very minor and insubstantial differences between the Network Rail document provided to the Applicant on 14 August 2024 (and incorporated into the Applicant's submitted document on 15 August 2024 [REP7-043]) and the Network Rail document submitted to the ExA on 15 August 2024 [REP7-068] are the activities identified on 14

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August and 15 August 2024 in the SoCG at Table 2-1 ("Record of Engagement") and the acknowledgement on page 2 of the SoCG that the text which is set out in red by Network Rail is not agreed. For all matters of substance, therefore, the Applicant's Deadline 7 version [REP7-043] sets out the final position of the parties.

9 **Update on Protective Provisions with Environment Agency (Schedule 14, Part 2 of the draft DCO) and response to Environment Agency D7 submissions [REP7-065]**

9.1 As explained in the Applicant's cover letter for its Deadline 7 submissions [REP7-001], common ground has been reached on the principle of certain outstanding matters but final agreement with the Environment Agency is pending an appropriate form of bespoke flood defence agreement being completed and agreement on the final form of Protective Provisions in favour of the Environment Agency (at Schedule 14 (Protective Provisions), Part 2). The current draft of the protective provisions in the draft DCO are those included in the draft DCO submitted at Deadline 7 (please see paragraph 2 above).

9.2 Constructive discussions are still underway concerning drafting details. The parties have engaged constructively on these legal documents and endeavoured to agree them before the close of the Examination. However, this has not been possible despite the parties' best efforts. The Applicant sees no particular impediment to reaching agreed form documentation as soon as possible but such agreement will not now be reached until after the close of the Examination.

9.3 The Environment Agency's Deadline 7 submission [REP7-065] is noted. As soon as that agreed form documentation is achieved the Environment Agency can confirm its final satisfaction on the matter to the ExA. The Applicant will keep the ExA updated.

10 **Update on Protective Provisions with Northern Powergrid (Schedule 14, Part 3 of the draft DCO)**

10.1 As set out in the Applicant's cover letters at Deadlines 6 [REP6-001] and 7 [REP7-001], the Protective Provisions in favour of Northern Powergrid are agreed and are included on the face of the draft DCO at Schedule 14, Part 3 [REP7-004]. The side agreement between the parties is agreed and following its completion, Northern Powergrid will write to the ExA withdrawing its representations on the Application.

11 **Update on securing Crown Consent under Section 135 Planning Act 2008 ("PA 2008")**

11.1 The Applicant provided an update to the ExA on the status of securing Crown Consent under Section 135(2) PA 2008 in the version of the Land Rights Tracker: Crown Land Schedule submitted at Deadline 7 [REP7-020] noting that the Crown Estate's solicitors have been instructed to review the DCO, but that the typical course of action is that "they tend to review these towards the end of an Examination, with a view to issuing the consent at the end of, or indeed after the Examination".

11.2 The Applicant went on to confirm that the Crown Estate's solicitors "have requested certain details in relation to the DCO to inform the wording of the s135(2) consent

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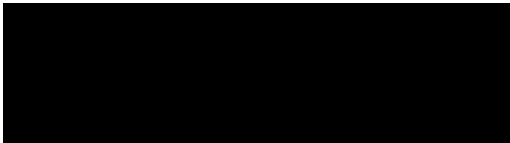
sought" and the Applicant can confirm that it has now provided the requested information.

- 11.3 The Crown Estate's solicitors have confirmed to the Applicant that it is in the process of reviewing the information provided and will respond in due course. As noted to the Examination previously, no particular impediment is anticipated to achieving the s135(2) consent sought. The Crown Estate's consent will however follow the close of the Examination. The Applicant will keep the ExA updated with progress.

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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