

Date: 14 November 2024  
Our ref: GOOD/3004864.3  
Your ref: TR030008  
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The Secretary of State for Transport  
c/o the Planning Inspectorate  
National Infrastructure Planning  
Planning Inspectorate  
Temple Quay House  
2 The Square  
Bristol  
BS1 6PN

Dear Sir / Madam,

**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")  
Letter to Secretary of State  
Application Reference: TR030008**

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, and closed on 20 August 2024.

Following closure of the Examination, the Planning Inspectorate ("**PINS**") notified the Applicant that any further representations or updates would not be captured in the recommendation report produced by the Examining Authority ("**ExA**") containing its findings, conclusions, and recommendation to the Secretary of State as to whether the development consent order ("**DCO**") should be made. Instead, any such updates would be provided to the Secretary of State alongside that report on 20 November 2024, being three months after close of the Examination and the date by which the ExA must have submitted its report to the Secretary of State. We note that the report was provided to the Secretary of State on 6 November 2024.

The Applicant considers that it may be helpful to the Secretary of State to provide the following updates on the progress of various matters, including outstanding negotiations with Interested Parties, since the close of the Examination.

**1 Cadent Gas Limited ("Cadent")**

1.1 Gowling WLG, solicitors to Cadent, confirmed in a letter to the Planning Inspectorate dated 30 September 2024 as follows:

- An appropriate agreement had been entered into between Cadent, the Applicant and Air Products;
- Cadent was content with the protective provisions in its favour at Part 7 of Schedule 14 of the draft DCO submitted at Deadline 7 of the Examination [**REP7-004**] (the "**Deadline 7 DCO**");

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- Cadent was, accordingly, formally withdrawing its representations in respect of the Application, and confirmed that no weight should be placed on them.

1.2 For ease of reference, a copy of the letter on behalf of Cadent is included at Appendix 1 to this letter.

## 2 **Northern Powergrid (Yorkshire) PLC (“Northern Powergrid”)**

2.1 Weightmans, solicitors to Northern Powergrid, confirmed in a letter to the Planning Inspectorate dated 14 October 2024 as follows:

- Northern Powergrid had completed an appropriate agreement with the Applicant and Air Products and agreed the form of the protective provisions in its favour at Part 3 of Schedule 14 of the Deadline 7 DCO.
- Northern Powergrid was, accordingly, formally withdrawing its objection in respect of the Application and no weight should be placed on it.

2.2 For ease of reference, a copy of the letter on behalf of Northern Powergrid is provided at Appendix 2 to this letter.

## 3 **Environment Agency**

3.1 Since the close of the Examination, the Applicant and the Environment Agency have been meeting and corresponding constructively to agree:

3.1.1 the form of protective provisions in Part 2 of Schedule 14 of the draft DCO (for the protection of the Environment Agency); and

3.1.2 a bespoke agreement providing for ABP maintaining an appropriate length of the flood defences once oversailed by the jetty comprised in the authorised project and, in coming years, ABP raising that length to align with the Environment Agency’s own planned flood defence improvements.

3.2 The principle of that maintenance and raising are agreed by the Applicant and the focus has been on the optimal manner in which the agreement can capture the practicalities of the necessary arrangements. The Applicant and the Environment Agency are aware of the urgency of completing the agreement and are working to do so over coming weeks. The protective provisions are in agreed form, subject to completion of the agreement.

3.3 The Applicant will provide further updates as required. The Environment Agency has confirmed to the Applicant that it agrees with the aforementioned summary of the position.

## 4 **Section 135(2) consent from the Crown**

4.1 The Land Plans [**REP6-008**] show Crown land (defined in section 227 of the PA 2008) as plots 1/1, 2/1, 3/3 and 4/31 within the Order limits shaded orange and label them “Crown land with leasehold ownership of Associated British Ports not part of the Order land”. This land shaded orange falls within the demise of a lease entered into between The Queen’s Most Excellent Majesty, the Board of Trade and the Humber Conservancy Commissioners on 1 January 1869 (the “**Lease**”) whereby the Board of Trade on behalf of Queen Victoria

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granted the Humber Conservancy Commissioners a 999 year lease of certain foreshore and bed of the Humber and its estuary. The Applicant is successor to the Humber Conservancy Commissioners. The Crown Estate is the successor to The Queen's Most Excellent Majesty and the Board of Trade. ABP therefore has the benefit of the residual term of 844 years.

- 4.2 Section 135(1) of the PA 2008 provides that a DCO may include provision authorising the compulsory acquisition of an interest in Crown land only if the appropriate Crown authority consents to the acquisition. Section 135(1) is not relevant to the DCO for the Project. This is because the Applicant has the benefit of the Lease and the DCO does not therefore need to seek to acquire any interests in Crown land.
- 4.3 Section 135(2) of the PA 2008, however, provides that a DCO may include any other provision (i.e. except seeking to acquire interests over Crown land) applying in relation to Crown land only if the appropriate Crown authority consents to the inclusion of the provision.
- 4.4 Town Legal, solicitors to the Crown, have provided the Applicant with a draft letter to come from Jonathan Treadaway (being Senior Legal Counsel for and on behalf of the Crown Estate Commissioners (the "**Commissioners**")) to the Planning Inspectorate (the "**Crown Letter**") stating that the Commissioners confirm their consent for the purposes of Section 135(2) to provisions in the Deadline 7 DCO applying in relation to the Crown land within the Order limits. Town Legal has asked the Applicant to confirm that it is content with the content of the Crown Letter, which the Applicant has now done, and awaits its formal issue. The Crown Letter specifies that its confirmation will be made subject to the following matters:
- Inclusion of specified wording at Article 60 (Crown rights) of the Deadline 7 DCO. This wording is now included in the draft DCO provided at Appendix 3 to this letter (the "**Revised DCO**").
  - The Commissioners being consulted further if any variation to the Deadline 7 DCO is proposed which could affect any other provisions of the Order subject to section 135(2) of the Act. There are no such variations in the Revised DCO and none are anticipated.
  - The Applicant or any beneficiaries of the DCO having an agreement for lease or lease from the Commissioners in respect of the Crown land forming part of the Crown Estate to which the DCO Applies. The Lease referred to earlier in this letter is such a lease.
- 4.5 A copy of the Crown Letter formally issued to the Applicant will be provided once received.

## 5 **Early Works**

- 5.1 At Deadline 7, the Applicant submitted an updated version of the Early Works Applications Note ([**REP7-058**]). The note refers to two applications – defined in paragraph 2.3 of that note as "Application 1" and "Application 2".
- 5.2 Application 1 (for test piling at two locations off Kings Road and Queens Road to include 16 boreholes, backfilling with concrete, metal reinforcement, temporary siting of equipment and access matting with associated excavation, infrastructure and works) was granted on 1 November 2024 (DM/0326/24/FUL). Accordingly that permission is intended to be referred to in the definition of "existing early works planning permission" (see paragraph 6.2 below).

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5.3 Application 2 (DM/0512/24/FUL) was withdrawn on 24 September 2024 as the timescale for determination meant that the desired programming benefits were not likely to be realised. As a result, all references to Application 2 in the Early Works Applications Note should be ignored.

5.4 No further planning applications for early works have been submitted by the Applicant and no works have been undertaken pursuant to the permission granted pursuant to Application 1 to date.

## 6 The draft DCO

6.1 The Applicant has made a number of changes to the Deadline 7 DCO and clean and comparison versions are provided at Appendices 3 and 4 to this letter. The changes have either been requested by third parties or have been made for typographical or consistency reasons, as more particularly explained in the table below.

6.2 Please ignore the amendments to the numbering shown in the redline comparison DCO – no such changes have actually been made, and it is merely a foible of the interaction between the statutory instrument template and the comparison software.

Provision	Reason for change
Article 2 (Interpretation)	“existing early works planning permission” – means the planning permission granted by the relevant planning authority on 1 November 2024 with reference number DM/0326/24/FUL and any amendments or variations made or granted in respect of it pursuant to section 96A, section 73, section 73A or section 73B of the 1990 Act;
Article 23 (Time limit for exercise of powers to acquire land compulsorily or to possess land temporarily)	It would be more appropriate for the time limits in this Article to run from the point at which the power is actually exercisable, being the point at which the DCO is brought into force. This would also make the time limit for use of compulsory purchase and temporary use powers consistent with the time limit for the DCO being implemented in Requirement 2 (Time limit for beginning the authorised project) of Schedule 2 (Requirements), which also runs from the point at which the DCO is brought into force.
Article 60 (Crown rights)	The amendments reflect the wording required by the Crown and set out in the Crown Letter.
Article 61 (Application of sections 91(3A) and (3B) of the 1990 Act)	The amendment reflects that the heading of Requirement 2 is proposed to be amended so that it more accurately reflects use of the word “begun” in the Requirement itself.
Requirement 2 (Time limit for beginning the authorised project), Schedule 2 (Requirements)	The heading of Requirement 2 is proposed to be amended so that it more accurately reflects use of the word “begun” in the Requirement itself.
Part 2 (For the protection of the Environment Agency)	The amendments reflect changes agreed in discussions with the Environment Agency, on the terms more particularly described in paragraph 3 of this letter.

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Provision	Reason for change
Paragraph 36 (Removal of apparatus), Part 3 (For the protection of Northern Powergrid), Schedule 14 (Protective provisions)	Statutory drafting conventions do not require capitalisation of all words in headings.

## 7 Ongoing negotiations with individual landowners

7.1 The Applicant and Air Products continue to engage with representatives for a number of Affected Persons in relation to private agreements relating to affected land interests. By way of brief summary:

7.1.1 Graypen Limited – at Deadline 7 (**[REP7-018]**) it was confirmed that the draft deed of easement was in agreed form and there was one remaining commercial matter. This has since been agreed and Air Products anticipates being able to issue engrossments and move to completion shortly;

7.1.2 Tronox Pigment UK Limited – at Deadline 7 (**[REP7-018]**) it was confirmed that the draft option agreement and lease were in agreed form, with one commercial point outstanding. Discussions are progressing in this regard and the parties are confident the outstanding matter can be resolved;

7.1.3 Polynt Composites UK Limited – the form of the agreement for lease, the lease the option agreement are close to being in agreed form with one commercial point outstanding. Subject to that and some outstanding confirmations relating to the plans, the final form documents should be agreed in short order;

7.1.4 Negotiations are ongoing between a number of Affected Parties and Gateley Hamer, the land agent for the Applicant and Air Products:

- Elba Securities Limited – Heads of Terms are with the Affected Party's land agent for review;
- Integrated Waste Management – Heads of Terms are with the Affected Party's recently appointed land agent for review;
- Brocklesby Estate – Air Products is currently signing off the final package which will then go to solicitors to progress.

7.2 Negotiations between the above Affected Parties and the Applicant and Air Products are progressing well and the Applicant is confident that agreement will be reached in all cases.

7.3 Additionally, we note that the Land Interest Tracker: Individual Landowners Compulsory Acquisition Schedule submitted at Deadline 7 (**[REP7-018]**) confirmed, in respect of the Kings Road land interests, that the Applicant would keep those Affected Persons updated following the close of Examination. The Applicant confirms Gateley Hamer wrote in early October to the Kings Road Affected Parties advising them of the close of Examination and the anticipated timescales for the recommendation and decision stages of the process. A copy of this correspondence is appended to this letter as Appendix 5.

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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

Appendix 1 – Letter dated 30 September 2024 to PINS withdrawing Cadent’s representations

Appendix 2 – Letter dated 14 October 2024 to PINS withdrawing Northern Powergrid’s representations

Appendix 3 – Revised DCO

Appendix 4 – Comparison – Revised DCO against Deadline 7 DCO

Appendix 5 – Update Letter to Kings Road Affected Persons

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