



Department
for Transport

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Associated British Ports
Immingham Dock
Immingham
DN40 2LZ

6 February 2025

Dear Sir/Madam,

PLANNING ACT 2008

APPLICATION FOR THE IMMINGHAM GREEN ENERGY TERMINAL DEVELOPMENT CONSENT ORDER

1. I am directed by the Secretary of State for Transport (“the Secretary of State”) to say that consideration has been given to:

- the recommendation report dated 6 November 2024 of the Examining Authority, a panel comprised of Adrian Hunter BA (Hons) BTP MRTPI (Panel Lead), Liam Page BSc (Hons) MSc MRTPI, Katherine Metcalfe PgDip Arch Cons IHBC ACIAT, Mukhtar Shaikh BEng (Hons) MSc CEng MChemE and Karin Taylor BA Hons B.TP MRTPI CMLI FRGS (the “ExA”), who conducted an Examination into the application made by Associated British Ports (“the Applicant”) for the Immingham Green Energy Terminal Development Consent Order (“the Application”) under section 37 of the Planning Act 2008 as amended (“the Planning Act”);
- the responses to the further consultations undertaken by the Secretary of State following the close of the Examination in respect of the Application; and
- late representations received by the Secretary of State following the close of the Examination.

2. Published alongside this letter on the Planning Inspectorate website is a copy of the ExA’s Report of Findings and Conclusions and Recommendation to the Secretary of State (“the Report”). All “ER” references are to the specified paragraph in the Report. Paragraph numbers in the Report are quoted in the form “ER x.xx.xx” as appropriate. References to “requirements” are to those in Schedule 2 to the Order as the ExA recommended at Appendix D to the Report (“the recommended Order”).

3. This decision was delegated by the Secretary of State to Lilian Greenwood MP, Parliamentary Under Secretary of State for Transport. While this decision has not been taken by the Secretary of State, by law, it must be issued in the name of the Secretary of State.

THE APPLICATION

4. The Application, dated 21 September 2023, was made under section 37 of the Planning Act. The Examination of the Application began on 20 February 2024 and completed on 20 August 2024. The Examination was conducted based on written and oral submissions submitted to the ExA and by a series of hearings. The ExA also undertook an Accompanied Site Inspection on 17 April 2024 and Unaccompanied Site Inspections on 6 and 7 December 2023.

5. The Development Consent Order (“the Order”) would grant development consent for a multi-user liquid bulk green energy terminal (“IGET”) located on the eastern side of the Port of Immingham, including the construction of harbour facilities and the erection of a Hydrogen Production Facility (“HPF”). The Applicant states that the IGET would be capable of handling 292 vessels per annum, with 12 of those anticipated to be for the delivery of ammonia [ER 1.3.9]. Vessels are intended to moor at IGET and offload liquid bulks via pipelines and the landside infrastructure. The HPF would then be in use to convert the ammonia into green hydrogen.

6. The elements comprising the scheme (collectively referred to as “the Proposed Development”), in relation to the green energy terminal are:

- a jetty, consisting of an approach trestle, approximately 1.2 kilometres in length, leading to a single berth including a loading platform, topside infrastructure, berthing and mooring dolphins with link walkways, and related landside infrastructure including jetty access ramps;
- topside infrastructure on the jetty for the handling of liquid bulks, including loading arms and pipelines; and
- an access road to the jetty from Laporte Road.

7. The remainder of the Proposed Development infrastructure associated with the HPF includes:

- two operational sites supporting hydrogen production facilities (referred to as the East Site and West Site);
- pipes and cables between the jetty and the East Site, between the East and West Sites and between process equipment and buildings on both Sites;
- a large ammonia storage tank (on the East Site);
- hydrogen production units that convert ammonia to produce green hydrogen (on both East and West Sites);
- hydrogen liquefier units (on West Site) to liquify the hydrogen for temporary storage (on the West Site);

- loading bays (on the West Site) to fill road tankers with liquified hydrogen which would then be distributed to hydrogen filling stations located throughout the UK;
- a hydrogen refuelling station and bulk hydrogen trailer filling station (on the West Site);
- ancillary buildings and works;
- process packages to provide utilities such as nitrogen, steam and cooling water;
- access from the public highway to the two hydrogen production sites;
- temporary construction areas; and
- various works (connections or diversions) to utilities including on highways land.

8. The location of the Proposed Development lies within the administrative areas of North East Lincolnshire Council (“NELC”). The marine works would take place on the bed of the Humber estuary, which is owned by the Crown Estate, over which the Applicant has the benefit of a long lease.

CHANGES TO THE APPLICATION

9. On 3 May 2024, during the Examination, the Applicant initially put forward a change request for 4 changes to the Proposed Development. These initial changes sought were to allow for:

- Change 1 – a change in the number of monopiles forming part of the IGET jetty berth from two to four monopiles;
- Change 2 – a change to the diameter of the piles supporting the jetty from 1.2m to 1.575m; increase in the distance between the piles; and an increase to the width of the approach jetty from 14m to 16m;
- Change 3 – an amendment to site boundary at the eastern edge of Work No. 7 to include additional land for temporary construction purposes and minor changes to the northern access from the A1173 to Work No. 7; and
- Change 4 – an addition of visual detail to show walkways linking the jetty head to the mooring dolphins [ER 1.7.3].

10. The Secretary of State notes that the details on these changes were set out in the Applicant’s Proposed Change Application Report [REP3-079], and that the Applicant undertook consultation on the changes with Interested and Statutory Parties between 26 March 2024 and April 2024.

11. The ExA was satisfied that neither the evidence provided by the Applicant in support of the proposed changes, or the responses to the consultation on them, identified any new or different likely significant effects that would occur as a result of their inclusion in the Application. The Secretary of State agrees with the ExA that the proposed changes would not, for the reasons detailed in the ExA’s procedural decision letter dated 14 May 2024 [PD-013], either individually or collectively, result in a

materially different project to the project originally applied for [ER 1.7.5]. The ExA also concluded that the change to the Order limits proposed in Change 3 would only be required on a temporary basis and therefore the Compulsory Acquisition Regulations were not triggered [ER 1.7.6]. The Secretary of State agrees with the ExA's conclusion to accept that these changes as part of the Proposed Development.

12. The Applicant submitted a further formal change request to the Proposed Development on 26 June 2024. In summary, the further changes were as follows:

- Proposed Further Change 5a – minor adjustment to the accesses from the A1173 to Work No. 7;
- Proposed Further Change 5b – minor reduction in the area of public highway proposed to be permanently stopped up to the south of Laporte Road and associated minor reduction in Work No. 3;
- Proposed Further Change 5c – adjustments to the speed limit change proposed along Laporte Road to introduce a new section with a 40mph speed limit and reduce the section proposed to be subject to a 30mph speed limit;
- Proposed Further Change 6 – new area of permanent stopping up in the vicinity of an access from Kings Road to Work No. 7;
- Proposed Further Change 7 – reduction in the area of Work No. 9;
- Proposed Further Change 8 – change to the ground protection methodology for Work No.9 to allow the installation of a geotextile layer and a layer of compacted fill material instead of the installation of ground matting; and
- Proposed Further Change 9 – change to the terrestrial piling methodology to include the potential use of driven piling in Work Nos. 3, 5 and 7 (collectively, the “proposed further changes”) [ER 1.7.8].

13. The Secretary of State notes that the Applicant submitted a ‘Proposed Further Change Application Report’ [AS-144] setting out the detail of the proposed further changes, and undertook consultation with Interested and Statutory Parties between 21 May 2024 to 16 June 2024.

14. The ExA concluded, noting that no new powers of compulsory acquisition were required as a result of these proposed further changes, that they would not result in a change to the Proposed Development to the extent that a new application was required, and that they did not result in any change, or any new significant effects, for any of the topics assessed in the ES [ER 1.7.10]. The Secretary of State agrees with the ExA's conclusion and its decision to accept these proposed further changes [ER 1.7.11].

SUMMARY OF EXA'S RECOMMENDATION

15. The principal issues considered during the Examination on which the ExA reached conclusions on the case for development consent are set out in the Report under the following broad headings:

- The Principle of the Development and Need;

- Climate Change;
- Design;
- Biodiversity – Terrestrial and Marine;
- Landscape and Visual Effect;
- Flood Risk and Coastal Change;
- Water Quality and Resources;
- Traffic and Transport;
- Marine Movement and Operational Safety;
- Major Accidents and Hazardous Substances;
- Socio-Economic;
- Cumulative Effects and In-Combination Effects;
- Heritage;
- Other Environmental Matters;
- Planning Balance;
- Habitats Regulations Assessment;
- Compulsory Acquisition and related matters; and
- Draft Development Consent Order and related matters.

16. For the reasons set out in the Report, the ExA recommended that the Secretary of State should grant the Order in the form attached at Appendix D to the Report [ER 8.4.1]

SUMMARY OF SECRETARY OF STATE’S DECISION

17. The Secretary of State has decided under section 114 of the Planning Act to make an Order granting development consent for the proposals in this Application. The letter is the statement of reasons for the Secretary of State’s decision for the purposes of section 116 of the 2008 Act and regulation 31(2) of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (“the 2017 Regulations”).

SUMMARY OF SECRETARY OF STATE’S CONSIDERATION

18. The Secretary of State’s consideration of the Report, responses to her consultations of 21 November 2024 and 4 December 2024, representations received after the close of Examination and all other material considerations are set out in the following paragraphs. Where consultation responses and late representations are not otherwise mentioned in this letter, it is the Secretary of State’s view that these representations do not raise any new issues that were not considered by the ExA and do not give rise to an alternative conclusion or decision on the Order.

19. The Secretary of State has had regard to the Local Impact Report (“LIR”) prepared by NELC. The Secretary of State has considered section 2 of the Report which sets out the ExA’s assessment of European Law and related UK Regulations, other relevant legal provisions, previous Development Consent Orders, transboundary effects and other relevant policy statements. The Secretary of State agrees with the ExA that these are matters to be considered in taking a decision on this Application.

20. The Secretary of State has also had regard to the environmental information, submitted as part of the Application, as defined in regulation 3(1) of the 2017 Regulations. In making the decision, the Secretary of State has complied with all applicable legal duties and has not taken account of any matters which are not relevant to the decision.

21. Where not otherwise stated in this letter, the Secretary of State can be taken to agree with the findings, conclusions and recommendations as set out in the Report and the reasons for the Secretary of State’s decision to be those given by the ExA in support of the conclusions and recommendations.

The Principle of the Development and Need

Nationally Significant Infrastructure Project

22. The Secretary of State has considered whether the Proposed Development constitutes a Nationally Significant Infrastructure Project (“NSIP”) within the meaning of section 14(1)(j) (construction or alteration of harbour facilities) of the Planning Act. Section 24 of the Planning Act states that the construction of harbour facilities for cargo ships falls within the meaning of NSIP only if, among other things, it is expected to be capable of handling 5 million or greater tonnes of material. While the Proposed Development will be capable of handling 11 million tonnes of liquid bulk cargo [ER 1.4.4], the ExA reported that the initial use of the Proposed Development for the import of ammonia by Air Products (BR) Ltd (“Air Products”) would fall below the relevant NSIP threshold. The Secretary of State notes that the ExA considered the additional evidence and further justification submitted during the Examination [section 2.1 of REP3-072] by the Applicant [section 2.1 of REP3-072] and was satisfied that the Proposed Development would have a capacity to handle in excess of the NSIP threshold and, therefore the Application falls to be considered under the NSIP regime [ER 1.4.5].

23. Under section 104(3) of the Planning Act, the Secretary of State must decide this Application in accordance with any relevant NPS which in this case is the National Policy Statement for Ports (“NPSfP”). Because the Proposed Development also includes the construction and operation of a green hydrogen facility for the production of green hydrogen from imported ammonia on site, the Overarching National Policy Statement for Energy (“NPS EN-1”) is therefore also an important and relevant consideration under section 104(2)(d) [ER 2.2.15]. The Secretary of State has also taken into account the LIR submitted by NELC [ER 2.3.2], matters prescribed in relation to the Proposed Development, and all matters that the Secretary of State considered to be both important and relevant to the decision, including the consideration of matters set out in section 104(4) to (8) [ER 2.2.4].

Need

24. The Secretary of State has notes that the Applicant has summarised the objectives relating to the need for the Proposed Development in paragraph 3.3.1 of the Environmental Statement (“ES”), which is to:

- provide essential port infrastructure, capacity, and resilience to support the growth and changing strategic needs of the energy sector to enable decarbonisation within the Humber Industrial Cluster and the Humber Enterprise Zone; and
- provide capacity to support the import and export of a range of liquid bulk energy products including (i) ammonia to produce low carbon hydrogen to support the decarbonisation of industrial activities and in particular the heavy transport sector and (ii) carbon dioxide, to facilitate carbon capture storage (“CCS”) [ER 3.3.24].

25. The provision of additional port infrastructure and capacity responds directly to the need identified in the NPSfP. Paragraph 3.4.16 of the NPSfP states that there is a compelling national need for substantial additional port capacity over the next 20 to 30 years. This national need is reinforced by section 3.5 of the NPSfP which states that there should be a presumption in favour of granting consent for applications involving port development given the level and urgency for the need of such infrastructure to increase port capacity that is essential for the sustainable growth in the UK economy [ER 3.3.8].

26. The provision of capacity to support the import and export of green ammonia to be converted into green hydrogen [ER 1.3.13 – 1.3.18] addresses the need identified in section 4.2 of the NPS EN-1. NPS EN-1 states that there is a critical national priority for low carbon infrastructure to support, among other things, hydrogen production and distribution, and, carbon dioxide distribution [ER 3.3.12]. Paragraph 3.2.6 of NPS EN-1 states that the Secretary of State should assess applicable applications on the basis that there is a demonstratable and urgent need for these types of infrastructure. Paragraph 3.2.7 states that the Secretary of State should give substantial weight to this need when considering applications for such infrastructure, and paragraph 3.2.8 states that the Secretary of State is not required to consider separately the specific contribution of any individual project to satisfying the need established in NPS EN-1.

Need for Liquid Bulk Port Capacity and the Weight of Benefits, Securing Low Carbon Energy Capacity and Contributions to Net Zero

27. The Secretary of State has taken account that the ExA considered the need for liquid bulk port capacity, whether the scale of the Proposed Development should proportionally affect the weighting of its benefits in the planning balance [ER 3.3.44], and securing low carbon energy capacity and contributions to Net Zero. The Secretary of State agrees with the arguments put forward by the Applicant during the examination on the matter of need and the weight of benefits which is summarised in paragraphs ER 3.3.46 – 3.3.50, and the matter of securing low carbon energy capacity and contribution to Net Zero which is summarised at ER 3.3.62 – 3.3.67. As set out above, NPS EN-1 is clear that the Secretary of State is not required to consider separately the specific contribution individual developments make in satisfying need

[ER 3.3.53]. Additionally, paragraph 5.3.12 of the NPS EN-1 does not require the Secretary of State to assess applications on their contribution to Net Zero or with other carbon commitments as operational emissions will be addressed in a managed, economy-wide manner to ensure consistency with carbon budgets, Net Zero and international climate commitments. Overall, the ExA concluded that the Proposed Development would accord with NPS EN-1 and benefit from the policy support given to low carbon infrastructure. NPS EN-1 establishes the weight that can be attached to a Proposed Development in this context would be substantial and the Secretary of State agrees with the assessment made by the ExA, and has therefore given this matter substantial weight in favour of the Proposed Development [ER 3.3.58].

Alternatives

28. The Secretary of State notes that the Applicant considered alternatives in Chapter 3 of its ES [ER 3.3.76] and also notes the ExA's questioning of whether the Applicant had considered alternative locations for the HPF to avoid sensitive receptors on Queens Road. The Applicant clarified that there were safety reasons for locating each component of the Proposed Development relatively closely together [ER 3.3.78]. The ExA was satisfied with the Applicant's assessment of alternatives and accepted that opportunities to develop the HPF at a different location would be restricted due to the safety concerns relating to longer ammonia pipelines, among other things [ER 3.3.80]. The Secretary of State agrees with the conclusion of the ExA that there were no reasonable alternatives to the Proposed Development. The Secretary of State agrees with the ExA's overall conclusion that the Proposed Development would accord with paragraphs 4.9.2 and 4.9.3 of the NPSfP which sets out the decision-making process for assessing alternatives to the development being proposed.

The Secretary of State's Overall Conclusions on the Principle of the Development

29. The Secretary of State is content that the Proposed Development is NSIP in accordance with section 14(1)(j) and section 24(1) of the Planning Act and that section 104(2) of the Planning Act has effect in relation to the Proposed Development.

30. The Secretary of State agrees with the ExA's view that the Proposed Development would accord with the NPSfP and would therefore benefit from the presumption in favour of granting consent [ER 3.3.84]. The Scarishrook case law established the amount of weight that can be attached to a Proposed Development benefitting from a policy presumption could be considerable and on this basis the ExA recommended that great weight be attached in favour of the Proposed Development [ER 3.3.84]. The Secretary of State agrees with this assessment and has given this matter substantial weight in favour of the granting of the Order.

31. The ExA concluded that Proposed Development would accord with NPS EN-1 and would benefit from the policy support given to low carbon infrastructure of critical national priority, and recommended that great weight should be attached in favour of the Proposed Development [ER 3.3.85]. The Secretary of State agrees with that assessment and has therefore given these two matters substantial weight in favour of the granting of the Order.

32. The Secretary of State further agrees with the ExA that the Proposed Development accords with the provisions of the NPSfP relating to alternatives [ER 3.3.86].

Climate Change

Background

33. The UK's international obligations include its obligations under the Paris Agreement, which was ratified by the UK Government in 2016 after the NPSfP was designated in 2012. This is translated in the UK by way of the carbon budgets set under the Climate Change Act 2008. In June 2019, the Government announced a new carbon reduction 'Net Zero' target for 2050 which was given effect by the Climate Change Act 2008 (2050 Target Amendment) Order 2019 [ER 3.4.15]. This is a legally binding target for the Government to cut carbon emissions to net zero, against the 1990 baseline by 2050.

34. The Climate Change Act requires five-yearly carbon budgets to be set 12 years in advance so as to meet the 2050 target [ER 2.2.9]. Six carbon budgets have been adopted. The time periods covering the fourth, fifth and sixth carbon budgets are 2023-2027, 2028-2032 and 2033-2037 respectively. Achieving net zero will require future greenhouse gas ("GHG") emissions to be aligned with these and any future new or revised carbon budgets that may be set out by Government to achieve the 2050 target. Compliance with the Climate Change Act 2008 (as amended) would provide a route towards compliance with the Paris Agreement.

35. Paragraph 4.12.3 of the NPSfP states that a decision-maker is not required to take into account how a new port development might affect the GHG emissions produced by ships traveling to and from the port [ER 3.4.4] The Secretary of State notes that the ExA deemed it correct for the Applicant to include shipping related greenhouse gas emissions within their ES, as it was mindful of UK and international obligations on climate change because the sixth carbon budget includes shipping related greenhouse gases within its calculations. The ExA recommended that the Secretary of State should have regard to current UK climate change legislation, policy and guidance as important and relevant considerations under section 104(2)(d) of the Planning Act, notwithstanding paragraph 4.12.4 of the NPSfP [ER 3.4.36 – 3.4.38].

Applicant's Assessment

36. The Secretary of State notes that the Applicant carried out an assessment of GHG emissions, climate change resilience and in-combination climate change impact in Chapter 19 of the ES for both the construction and operational phases of the Proposed Development [ER 3.4.16].

37. The Applicant's ES calculated the GHG emissions to be 830,306 tCO_{2e} over the 11-year construction period, equating to less than 0.02% of the UK's fourth, fifth and sixth carbon budgets [ER 3.4.23 – 3.4.24]. The Applicant's ES assessed that the most substantial GHG impact during the terrestrial construction phase derives from construction activities, and from the embodied carbon in the construction materials during the marine construction phase (Table 19-18 (enabling works and construction estimated GHG emissions) of ES, Chapter 19 [APP-061]).

38. Regarding operation, the Applicant's ES calculated GHG emissions to be 4,141,333 tCO_{2E} over an assumed 25-year operational period (ES, Chapter 19, paragraph 19.8.10 [APP-061]). The Applicant's ES assessed that the most substantial

GHG impact from the operation phase derives from sea freight transport (Table 19-20 (estimated emissions from operational energy use of Project (25-year period)) of ES, Chapter 19). The Secretary of State notes that the emissions from the operation of the Proposed Development (set out in Table 19.21 of the ES) would equate to 2.24% of the forecasted ninth carbon budget [ER 3.4.29]. She notes that while the Applicant considers this to be significant in itself, it would be expected that the major emission sources would likely decarbonise by 2050 as natural gas is displaced by low carbon fuels by 2048 (ES, Chapter 19, paragraph 19.8.19 [APP-061]).

39. The Secretary of State notes that the low carbon hydrogen to be produced by the Proposed Development would replace 300MW of diesel usage in the HGV transport sector, which the Applicant's ES assessed as creating GHG emission savings of 21,757,414 tCO_{2e} over 25 years, resulting in an overall net emissions savings 17,615,842 tCO_{2e} (Table 19.20 of the ES [APP-061]) [ER 3.4.27 and 3.4.30].

40. The climate change resilience of the Proposed Development was also assessed in Chapter 19 of the Applicant's ES. The Secretary of State notes that, while several risks and impacts were identified in the ES, the Applicant concluded that following the addition of embedded and standard mitigation, all impacts from climate change on construction and operations are considered low and not significant (ES, Chapter 19, paragraph 19.11.6 – 19.11.9).

Greenhouse Gas Emissions within the Supply Chain

41. The Secretary of State agrees with the ExA that the Applicant has adequately assessed shipping related greenhouse gas emissions from the Proposed Development. The Secretary of State also agrees that the chance of low carbon imports being replaced by high carbon imports is low [ER 3.4.48 – 3.4.49]. The Secretary of State also agrees that any future development or works to the Proposed Development beyond that consented would be subject to a number of appropriate controls. First, the development of alternative liquid bulk capacities other than ammonia would require additional infrastructure and therefore require separate express planning consent. Second, permitted development would be limited where an Environmental Impact Assessment ("EIA") was required. Third, if works fell outside the definition of development and the planning system, article 41 of the Order would only authorise works where emissions and climate change impacts would not be materially new or materially different than those assessed in the EIA [ER 3.4.46].

42. Paragraph 4.12.7 of the NPSfP states that new developments should be designed to maximise the use of renewable energy sources, and that the Secretary of State should consider the extent to which an applicant has considered the use of renewable energy on the port estate. Where renewable energy is not planned to be used, paragraph 4.12.8 of the NPSfP states that the Secretary of State should scrutinise the reasons as to why this is the case.

43. The Secretary of State notes from the Applicant's response of March 2024 [REP1-024] to the ExA's First Written Questions that the Proposed Development will use electric and natural gas energy sources. The Secretary of State is aware that the Applicant intends to secure electricity supplies through a Power Purchase Agreement or direct supply from a renewable energy generator, but that it is not able to confirm the proportion of power it will purchase in this way (electrical power consumption

response to Q1.3.2.13). The Secretary of State also notes that Applicant has identified that it may be possible in future to use biogas, renewable hydrogen, or an electric furnace as an alternative to the use of natural gas (natural gas consumption response to Q1.3.2.13). The Secretary of State notes that the hydrogen that is to be produced at the Proposed Development must meet the carbon intensity threshold values set by the Renewable Transport Fuels Obligation Order (maximum carbon intensity of less than or equal to 32.9gCO₂e/MJ), and the Low Carbon Hydrogen Standard (maximum carbon intensity of less than or equal to 20gCO₂ e/MJ) (part (b) of response to Q1.3.2.5). The Applicant states that meeting these carbon intensity thresholds will require the use of renewable energy sources. The Secretary of State therefore agrees with the Applicant that the Renewable Transport Fuel Obligation and the Low Carbon Hydrogen Standard can be relied on to incentivise the use of renewable energy sources at the Proposed Development as and when it becomes possible to do so (final paragraph of response to Q1.3.2.13). The Secretary of State notes that while the ExA reported that more detail on the use of renewable energy sources at the Proposed Development would have been helpful, the ExA considered that it was not determinative in this case due to the nature of what was being proposed and was essentially in accordance with the NPSfP [ER 3.4.52], and it was satisfied that the Applicant had considered renewable energy sources to reduce operational greenhouse gas emissions [ER 3.4.51 – 3.4.52, 3.4.94 and 5.2.13]. The Secretary of State is also satisfied that the Applicant has adequately considered the ways in which it can maximize the use of renewable energy sources at the Proposed Development and that the Renewable Transport Fuel Obligation and the Low Carbon Hydrogen Standard will incentivise the use of renewable energy sources.

Low Carbon Hydrogen within the Supply Chain

44. The Secretary of State has considered the Applicant's submissions on this topic summarised by the ExA at ER 3.4.54 – 3.4.56. The Secretary of State agrees with the ExA that greenhouse gas emissions savings would not be materially different or dependent on the deployment of the low carbon hydrogen produced at the Proposed Development in a specific sector. The Secretary of State also agrees with the ExA that the possibility of the low carbon hydrogen produced being exported for use outside of the UK is low, given that it would not be cost-effective to export it by ship and because the Proposed Development would require additional infrastructure to do so [ER 3.4.56 and 3.4.95].

Downstream Effects

45. The Secretary of State notes that the ExA queried the Applicant on the implications of R (on the application of Finch on behalf of the Weald Action Group) (Appellant) v Surrey County Council and others (Respondents) [2022] EWCA Civ 187 (Finch Court of Appeal case law) and whether any such downstream effects from the Proposed Development associated with the use of low carbon hydrogen comprised indirect effects in accordance with the EIA regulations [ER 3.4.59 – 3.4.60]. She notes that the ExA agreed with the Applicant's conclusion that there would be a causal connection between the low carbon hydrogen produced by the Proposed Development and the greenhouse gas emissions savings from its use as an alternative to high carbon fuels in the HGV transport sector or elsewhere [ER 3.4.66]. The Secretary of State agrees that, in this particular case, it is necessary to consider the downstream effects of the Proposed Development, that is the effects of the low carbon

hydrogen which it will produce because these effects are likely to occur and capable of meaningful assessment. She agrees with the ExA's conclusion in respect of the displacement of greenhouse gas emissions associated with higher carbon fuels and that those emissions savings would result in significant beneficial effects [ER 3.4.99] which weigh in favour of the Proposed Development. The Secretary of State notes that downstream effects of this type are unusual for what is a transport project. She does not regard her conclusion that downstream effects must be assessed in this case as setting any precedent for other transport projects which will not usually produce downstream effects (whether positive or negative) in the same way and each case must be considered on its own merits in light of the relevant case law.

Upstream Effects

46. The Secretary of State notes that while the ExA accepted the Applicant's argument that the Proposed Development and the ammonia production facility in Saudi Arabia are separate projects for the purposes of the EIA regulations, it considered that the greenhouse gas emissions from the production of ammonia should have been assessed by the Applicant as an indirect effect of the Proposed Development [ER 3.4.77] because there is a causal connection between the Proposed Development and the facility in Saudi Arabia [ER 3.4.74] and the green gas emissions of that facility are capable of meaningful assessment [ER 3.4.76]. The Secretary of State disagrees and prefers the arguments of the Applicant that the upstream greenhouse gas emissions would happen anyway irrespective of the Proposed Development due to the presence of other hydrogen production facilities [ER 3.4.89], for the reasons given in the Applicant's responses to the ExA's Third Round of Written Questions [REP 6-022] and their updated note on the implications of *Finch v Surrey County Council* [2024] UKSC 20 [REP5-052]. In particular, the Secretary of State agrees that:

- the Saudi Arabian facility already has consent and is under construction, which will proceed regardless of whether this Order is granted;
- there is no evidence to demonstrate that the facility at Immingham will stimulate any greater demand for Green Ammonia; and
- the Applicant has confirmed that the production of ammonia at the Saudi Arabian facility will continue in the same quantities irrespective of whether it can export the ammonia to Immingham.

47. However, the Secretary of State notes the Applicant's response to the ExA's First Written Questions [REP1-024] which states that in order to market low carbon hydrogen from the Proposed Development, the operator of the facility will need to demonstrate the low carbon credentials of the imported ammonia (third paragraph for part (b) of the response to Q1.3.2.5). The Applicant also explained that the reporting boundary for both the Renewable Transport Fuel Obligation and the Low Carbon Hydrogen Standard require inclusion of upstream emissions from producing ammonia, and that there will be regular third-party auditing of the hydrogen products to ensure compliance with these standards in line with auditing required by the standards, which will include auditing of the carbon intensity of upstream ammonia (second paragraph for part (b) to the response to Q1.3.2.5). Accordingly, in order to market low carbon hydrogen in Immingham, the operator of the hydrogen production facility will need to be able to demonstrate the low carbon credentials of the imported ammonia. The ExA acknowledged that in order to market the low carbon hydrogen produced at the

Proposed Development, the Applicant will need to comply with the Renewable Transport Fuel Obligation and the Low Carbon Hydrogen Standard [ER 3.4.55], and that together with the controls contained with the Order [ER 3.4.46] to ensure low carbon imports are not replaced by high carbon imports [ER 3.4.49], the lack of such an assessment of the upstream greenhouse gas emissions from the production of ammonia does not compromise the reliability of the conclusions in the Applicant's ES [ER 3.4.77 – 3.4.80] and that the lack of an assessment of upstream emissions would not be determinative when considering climate change evidence in the round. Therefore, even if the ExA's position on upstream effects were correct, in light of the obligation on the operator to ensure compliance with low carbon standards, the Secretary of State considers that the upstream effects of Proposed Development weigh neither for nor against the Proposed Development.

Compliance with Low Carbon Hydrogen Standards and Certification

48. The Secretary of State has considered the question of whether or not a requirement should be included in the Order to ensure low carbon hydrogen certification. The Secretary of State agrees with the overall conclusion [ER 3.4.98] that such a requirement is not necessary for the reasons set out in ER 3.4.85 – 3.4.88.

The Secretary of State's conclusions on Climate Change

49. The Secretary of State agrees with the ExA that the Proposed Development would accord with the NPSfP in relation to climate change and would not lead to the UK being in breach of its domestic and international climate change obligations. In reaching this conclusion, the Secretary of State emphasises in particular that the Proposed Development constitutes a small proportion of existing carbon budgets at the construction stage, that the major emissions sources will likely decarbonise over the course of its operation, and the beneficial impacts of downstream displacement.

50. She considers that the upstream effects of the Proposed Development weigh neither for or against the Proposed Development and agrees with the ExA's conclusion that the scale of greenhouse gas emissions savings from the Proposed Development would result in significant beneficial effects on the environment and agrees with the great weight placed in favour of the Proposed Development [ER 3.4.99]. In coming to her conclusion, she notes that no concerns relating to climate change matters were raised in the LIR from NELC [ER 3.4.32]. The Secretary of State has also considered the representation from the Davey Family and the response from the Applicant in relation to the science of climate change [ER 3.4.90] and she agrees with the ExA that the Proposed Development has been assessed against the correct legislation and policy on climate change [ER 3.4.91].

Design

51. The ExA summary of the Applicant's design assessment is set out in ER 3.5.9 – 3.5.13. The Secretary of State notes that the Applicant concluded that the design of the Proposed Development was compatible with the location within and adjoining the existing Port of Immingham and their conclusion that they had delivered good design by ensuring that marine and land side infrastructure was functional and fit for purpose, in accordance with the approach set out by the NPSfP [ER 3.5.13].

52. The Secretary of State notes that the matters that the ExA focused on during the Examination was the Applicant's lack of design detail and the future of the properties at Queens Road [ER 3.5.17].

Lack of design detail

53. The ExA reported that it had concerns regarding the level of detail provided by the Applicant particularly in relation to the design requirements of the HPF, and also on the lack of evidence of the evolution of design, how it mitigated for other adverse impacts and how the information submitted met the requirements of the NPSfP [ER 3.5.18]. The Secretary of State notes that the ExA concluded that as a result of the Applicant's submissions during the Examination [ER 3.5.18 – 3.5.25], the Applicant had demonstrated that the approach to matters in relation to design meet the requirements of the NPSfP which are set out in ER 3.5.2 – 3.5.6.

Future of the properties on Queens Road

54. The Secretary of State notes that this matter was considered in detail during the Examination [ER 3.5.28 – 3.5.30]. The ExA was of the view that the Applicant could have provided more to address the lack of design detail and the future of the Queens Road properties site [ER 3.5.34]. However, it was satisfied that this matter will be resolved through the local planning process, and that Requirement 4 of the recommended Order and the HPF Design Code, secured in Schedule 15, provide the means with which NELC can secure good design at this site.

The Secretary of State's Overall Conclusion on Design

55. The Secretary of State agrees with the ExA that together with the information submitted in response to the ExA's questions during the Examination [ER 3.5.18 – 3.5.25], the Applicant's approach to matters in relation to design meet the requirements in the NPSfP on design [ER 3.5.33]. The Secretary of State also agrees that design matters will be resolved through the local planning process, and that there are adequate provisions within the Order to ensure that NELC can secure good design [ER 3.5.34]. In taking her decision, the Secretary of State has also had regard to the LIR from NELC which stated that while the overall scale of the Proposed Development would be extensive, the site location already includes large-scale infrastructure [ER 3.5.14], that the Proposed Development would not stand alone but add to the existing industrial landscape [ER 3.7.33], and that it would accord with Policy 22 of the North East Lincolnshire Local Plan 2018 ("NELLP") [ER 3.5.15]. She also notes that no other Interested Parties raised issues relating to design during the examination [ER 3.5.16].

56. The Secretary of State agrees with the ExA's overall conclusion that design matters should weigh neither for or against the making of the Order [ER 3.5.35]. She has therefore given design matters neutral weight in the planning balance.

Biodiversity – Terrestrial and Marine

57. Biodiversity matters were covered in Chapters 8 (Terrestrial Ecology), 9 (Marine Ecology) and 10 (Ornithology) of the Applicant's ES. The Applicant's assessment considered the effects of the Proposed Development on protected species and habitats and on sites of national, local and regional interest. Impacts on European designated sites were discussed within the Applicant's shadow Habitats Regulation

Assessment report (“sHRA”) and separately within this decision letter (paragraph 150 - 167).

58. The Secretary of State has noted the scope and methods adopted by the Applicant in assessing impacts on terrestrial and marine ecology and impacts on ornithology which is summarized by the ExA in paragraphs 3.6.17 - 3.6.19 of the Report. The Secretary of State has also considered the Applicant’s assessment of effects and proposed mitigation for each of these receptors which is set out by the ExA in paragraphs 3.6.20 - 3.6.35 of the Report.

59. The Secretary of State notes that the ExA gave the following three issues further consideration through the Examination [ER 3.6.41]:

- marine piling times, restrictions and cumulative effects;
- partial loss of Long Strip and the compensatory woodland and habitats; and
- biodiversity enhancements.

Marine piling times, restrictions and cumulative effects

60. The ExA requested further information on the piling restrictions described in the ES in relation to marine mammals, coastal waterbirds and migratory fish [ER 3.6.42]. The information submitted by the Applicant in response to the ExA’s questions is summarised in paragraphs 3.6.42 – 3.6.48 of the Report. The ExA was satisfied that the Applicant had addressed its questions relating to the types of piling that would be used, the timings of when these methods would be utilized, seasonal and temporal restrictions and the cumulative effects of marine piling from IGET and the Immingham Eastern Ro-Ro Terminal (“IERRT”) project [ER 3.6.49].

61. The Secretary of State is aware that the Statement of Common Grounds (“SoCG”) between the Applicant and the Marine Management Organisation (“MMO”), and the Applicant and Natural England (“NE”), had been agreed to resolve the concerns on the impacts from marine piling in the Humber raised by both of these parties during the Examination. However, she notes that while the Applicant provided analysis of cumulative impacts with the IERRT in response to the ExA’s second round of questions, it did not provide details for the five other projects in the Humber Estuary that could overlap with the Proposed Development, a concern that was raised by the MMO in its relevant representation. Additionally, the Secretary of State is aware that during the Examination the MMO suggested the use of a tracker to record where developments in the Humber Estuary are taking place to manage cumulative effects. The Secretary of State therefore consulted the MMO and NE on 4 December 2024 to request further information on how cumulative impacts from marine piling were being managed in the Humber Estuary and to ask whether they were content with the general oversight of construction activity and across the five other projects within the Humber Estuary.

62. Both parties responded on 17 December (MMO) and 18 December 2024 (NE) to confirm that they are content that cumulative impacts on the European designated sites from the Proposed Development have been addressed through the Examination and agreed with the conclusion of no adverse effects on integrity on these sites. Whilst the MMO stated that it had no further comments to make, NE reiterated their recommendation that improved strategic coordination is achieved for projects within

the Humber Estuary for future strategic collaboration, outside of the development consent order process for the Proposed Development. NE made clear that their desire for coordination does not affect the conclusions of the HRA. The Secretary of State encourages collaboration between NE, the MMO, future applicants and other Interested Parties to consider developing a tracker within the Humber Estuary to manage cumulative impacts in the region.

63. The ExA concluded that while mitigation is secured by the outline Construction Environmental Management Plan and deemed Marine License at Schedule 3 of the draft Order, this would not completely remove the potential harm to marine and terrestrial receptors from marine piling [ER 3.6.50]. However, the ExA was satisfied that while this would weigh against the making of the Order, given that any harm is reduced by the proposed mitigation the Secretary of State should give this matter this little negative weight [ER 3.6.50]. The Secretary of State agrees and has given this matter little negative weight in the planning balance.

Partial loss of Long Strip and compensatory woodland and habitats

64. The Proposed Development would result in the partial removal of woodland known as the Long Strip, and the Secretary of State is aware that NELC raised concerns about the Applicant's suggested compensation for this loss of this woodland. The Secretary of State notes that during the Examination, the Applicant updated its outline Woodland Compensatory Plan to include compensation woodland planting on-site at Manby Road, additional compensation at Battery Road and details of how important grassland can be protected within the compensation sites [ER 3.6.53]. The ExA reported that a section 106 Agreement for the funding and future maintenance of the Battery Road Woodland Compensation Area between the council and the Applicant had been agreed [ER 3.6.54], and that a specific Construction Environmental Management Plan ("CEMP") detailing protective measures for the Long Strip woodland during construction and along with enhancement measures is secured by Schedule 15 of the draft Order [ER 3.6.55]. The ExA reports that by the end of the Examination, the SoCG agreed between NELC and the Applicant confirmed that all matters relating to the loss of woodland at Long Strip and the proposed compensatory planting and habitat creation were agreed [ER 3.6.56].

65. The ExA concluded that while the compensatory measures and controls would offset some of the harm that is expected as a result of the Proposed Development, as the partial loss of the Long Strip woodland would result in harm to non-SPA and Ramsar breeding birds and loss of protected trees, the ExA recommended that the Secretary of State should give this moderate weight against the making of the Order [ER 3.6.60]. The Secretary of State agrees.

Biodiversity Enhancements

The Secretary of State notes that during the Examination, the ExA explored how the Applicant is seeking to secure biodiversity enhancements in light of NE's relevant representation which recommended that although there is no mandatory requirement for Biodiversity Net Gain ("BNG"), BNG provisions should be secured [ER 3.6.61].

66. For biodiversity enhancements on-site, the Secretary of State notes that the Applicant's written summary of its oral case at issue specific hearing 2 states that while it has incorporated the best habitats it has been able to within the terrestrial site areas in its outline Landscape and Ecology Management Plan ("oLEMP"), the size of the

operational plant and other structures leaves little spare land for additional planting [ER 3.6.62]. The Secretary of State notes that following a site visit by the ExA, further areas for the provision of additional species rich grassland were identified and that the oLEMP was updated to reflect this [ER 3.6.63].

67. Off-site enhancement measures in relation to intertidal mudflats have also been provided at the Outstrays to Skeffling Managed Realignment Scheme (“OtSMRS”), which is a joint venture between the Applicant and the EA to create new habitats due to development in other parts of the Humber Estuary. The Secretary of State notes that the provision of 1 ha of intertidal mudflat would be provided as compensatory habitat if she disagreed with the conclusion of no AEoI in relation to the Habitats Regulations [ER 3.6.65]. As the Secretary of State agrees with the ExA in relation to the conclusions of the HRA (see paragraph 163 of this decision letter), the Secretary of State is content that the habitat creation should be secured as an enhancement measure in this instance. She also notes that the enhancement will be secured as a Unilateral Undertaking [ER 3.6.66].

68. The Secretary of State agrees with the ExA’s recommendation that due to the constraints with providing BNG and the fact that the OtSMRS scheme would proceed with or without the Proposed Development, she should give little beneficial weight to the biodiversity enhancements proposed by the Applicant [ER 3.6.73].

Secretary of State’s conclusions on Biodiversity

69. The Secretary of State is satisfied that impacts on biodiversity and ecology have been adequately assessed by the Applicant and agreed with the ExA that the policy requirements of the NPSfP have been met [ER 3.6.74]. In taking her decision, she notes that NELC’s LIR concluded that overall, the Development would accord with Policy 41 (Biodiversity and Geodiversity) of their Local Plan [ER 3.6.39].

70. The Secretary of State agrees with the ExA that the mitigation and compensatory measures identified address the potential harm expected as a result of the Proposed Development, but acknowledges that harm has not been completely removed in respect of the loss of woodland habitat at Lond Strip Wood and from impacts from piling [ER 3.6.78]. The Secretary of State also agrees with the ExA’s recommendation that only little beneficial weighting should be given to the enhancement measures at OtSMRS and on-site planting [ER 3.6.77]. The Secretary of State has therefore given both marine and terrestrial biodiversity matters little weight against the making of the Order [ER 3.6.79].

Landscape and Visual Effect

71. The Applicant’s assessment of Landscape and Visual Impacts in Chapter 13 of the ES identified no national statutory landscape designations within the study area although the Lincolnshire Wolds National Landscape is situated approximately 10km south of the Proposed Development [ER 3.7.15].

72. The Secretary of State has had regard to the site of the Proposed Development being situated within an existing heavily industrialised context [ER 3.7.47] in an area that contains a varied landscape with open and extensive views across remote and rural areas, contrasting with heavy industry associated with towns and ports [ER

3.7.16]. The Proposed Development lies within Marine Character Area 6: Humber Water with a large coastal plan estuary bound by intertidal mud and sand flats and saltmarsh which provide internationally important wildlife corridors [ER 3.7.17].

73. The Applicant's ES concluded that during the construction phase, there would be a significant adverse effect on the site and its immediate setting from Viewpoints 2 and 3 (Public Right of Way and proposed England Coast Path) [ER 3.7.24]. The Secretary of State has taken account that the Applicant highlighted the limited mitigation opportunities in relation to Viewpoints 2 and 3, due to the size and scale of the Proposed Development [ER 3.7.28].

74. The Secretary of State has noted the LIR from NELC set out that the Proposed Development would be clearly visible in the immediate and wider landscape but would not stand alone and would be part of the existing industrial context [ER 3.7.33] and that overall the LIR concluded that the Proposed Development would accord with Policy 42 (Landscape) of the NELLP [ER 3.7.35]. She has further noted that by the end of the examination, the signed SoCG between NELC and the Applicant indicated that all matters relating to landscape and visual impacts had been agreed [ER 3.7.37]. and has taken account that no other Interested Party raised any substantive issues on landscape and visual matters [ER 3.7.36].

75. The ExA had concerns with the Applicant's assessment of no significant effects on Viewpoint 4 from the Proposed Development and from the additional photomontages provided on Viewpoints 3, 4 and 11, the ExA considered that the impact of the scale of the HPF and jetty access road could be harmful to the views for pedestrians on the Kings Road and users of the Public Right of Way ("PRoW") [ER 3.7.38].

76. The Secretary of State notes that by the end of the examination, all residential properties on Queens Road had been acquired voluntarily, resulting in the landscape and visual harm to residents being removed [ER 3.7.44].

The Secretary of State's Overall Conclusion

77. The Secretary of State agrees with the ExA that the Applicant's assessment of the landscape and visual impacts meet the requirements set out in the NPSfP [ER 3.7.42].

78. The Secretary of State agrees with the ExA's conclusion that there would be a great adverse effect on the medium and long-range views along the estuary, on the PRoW running through Long Strip and across the West Site due to the Proposed Development introducing substantial structures into the areas [ER 3.7.45]. The ExA acknowledged the existing heavily industrialised context along with several extant permissions for additional large scale industrial structures and developments nearby. Against this context she further agrees with the ExA placing moderate weight against making the Order in the planning balance [ER 3.7.47].

Flood Risk and Coastal Change

79. The ExA's consideration of impacts on flood risk and coastal change can be found in section 3.8 of the Report. The Secretary of State notes that the Applicant's

assessment on marine physical processes and flood risk, drainage and coastal protection are set out in Chapters 16 and 18 of the ES respectively and notes the supporting documentation for each assessment as outlined by the ExA [ER 3.8.19 – 3.8.22]. The Secretary of State has considered the ExA’s summary of the scope and methods used by the Applicant in their assessment [ER 3.8.23 – 3.8.33] and the Applicant’s assessment of impacts and proposed mitigation, including climate adaptation measures [ER 3.8.34 – 3.8.62].

80. The Secretary of State notes that the only issue the ExA considered as requiring further engagement through the Examination related to the EA’s concern regarding impacts on physical processes and effects on flood defences [ER 3.8.67]. The ExA confirmed that all issues relating to physical processes were agreed between the Applicant and relevant Interested Parties by the close of the Examination, and the Applicant had answered its questions in relation to physical processes in adequate detail [ER 3.8.73].

Flood Risk, Drainage and Coastal Protection

81. The ExA’s consideration of the issues relating to flood risk, drainage and coastal protection are set out in paragraphs 3.8.76 – 3.8.91 of its Report. The ExA reports that by the close of the Examination, most of the issues relating to flood risk, drainage and coastal protection were agreed and the ExA’s questions on this issue were also dealt with in sufficient detail by the Applicant and relevant Interested Parties. The ExA was therefore satisfied that most issues that arose during the Examination were brought to an acceptable conclusion [ER 3.8.92].

82. The ExA states that the Environment Agency (“EA”) was generally satisfied with how flood risk was addressed within the ES [3.8.76]. However, the ExA highlighted the concern raised by the EA on the need to address reconstruction, future ownership, operation and maintenance during construction and operation to mitigate any impacts on tidal flood defences as a result of the Proposed Development [ER 3.8.77]. The ExA reported that during the Examination, the Applicant and the EA considered that this a matter that could be dealt with through a legal agreement and protective provisions [ER 3.8.78], but that neither the legal agreement nor the protective provisions had been agreed by the close of Examination [ER 3.8.118]. The ExA concluded that without these in place, the Proposed Development could increase the flood risk elsewhere meaning that it would not comply with the third part of the flood sequence test set out in paragraph 5.2.16 of the NPSfP. The ExA therefore considered that the legal agreement and protective provisions are necessary to ensure the Proposed Development would not adversely impact existing flood defences [ER 3.8.95], and without these in place the Proposed Development would be unacceptable in terms flood risk and consent should be withheld [ER 3.8.98]. The Secretary of State notes the ExA’s detailed assessment of the possibility of a negatively worded requirement to address this and that in the event that such a requirement was secured, the Proposed Development would accord with the NPSfP [ER 3.8.101 – 109]. However, in her consultation letter dated 21 November 2024, the Secretary of State requested Interested Parties for an update on any matters that remained outstanding. In response to this consultation, the EA submitted a late [representation dated 17](#)

[December 2024](#)¹ to confirm that it had completed a legal agreement with the Applicant and to withdraw its objection. The EA also confirmed that the protective provisions had been agreed. This being the case, the Secretary of State's view is that further consideration of the ExA's reasoning for a negative requirement is unnecessary.

Climate Change Adaptation

83. The Secretary of State is aware that no Interested Parties raised any concerns in relation to climate change adaptation and notes that the ExA was satisfied that the Applicant's assessment was based on the most recent climate change projections and relevant wind and wave design standards. The ExA concluded that the Proposed Development would be adaptable to climate change and that it met the relevant provisions set out in the NPSfP [ER 3.8.112 – 3.8.113].

The Secretary of State Overall Conclusion on Flood Risk and Coastal Change

84. Overall, the ExA was satisfied that the Proposed Development would preserve physical processes and be in accordance with the NPSfP, including the requirements in Section 5.3 which sets out key considerations where onshore infrastructure projects are proposed on the coast. The ExA considered this issue to be neutral and therefore recommended that it should weigh neither for nor against the Proposed Development [ER 3.8.75]. The Secretary of State agrees and has given this neutral weight in the planning balance.

85. In relation to the impact of the Proposed Development in terms of flood risk, drainage and coastal protection, the Secretary of State notes that NELC confirmed that the Proposed Development was part of an allocated site in the NELLP and that no concerns were raised by NELC's drainage team on reviewing the Flood Risk Assessment, deeming it to be in accordance with Policies 33 and 34 of the NELLP [ER 3.8.63 – 3.8.64]. As set out above, because agreement between the Applicant and the EA on a legal agreement and protective provisions has been reached, the Secretary of State is satisfied that the Proposed Development would not increase flood risk and would accord with the NPSfP. The Secretary of State notes that the ExA has recommended that she gives this matter neutral weight in the planning balance.

86. On climate change adaptation, the Secretary of State agrees with the ExA that the Proposed Development would be in accordance with the relevant provisions of the NPSfP and has given this issue neutral weight in the planning balance [ER 3.8.116].

Water Quality and Resources

87. The ExA's consideration of impacts on water quality and resources can be found in section 3.9 of the Report. The Applicant's assessment on water quality and water resources is set out in Chapter 18 of the ES [ER 3.9.8] and that assessment was supported by a number of documents [ER 3.9.9].

Water Framework Directive Compliance

88. The Secretary of State notes the ExA's summary of:

¹ <https://infrastructure.planninginspectorate.gov.uk/wp-content/ipc/uploads/projects/TR030008/TR030008-001417-241217%20EA%20letter%20to%20SoS%20withdrawing%20objection%20-%20I%20GET%20TR030008.pdf>

- the scope and methods used by the Applicant in their assessment [ER 3.9.10 – 3.9.14]; and
- the Applicant’s assessment of effects and proposed mitigation in relation to water resources, water quality and the Water Framework Directive (“WFD”) assessment [ER 3.9.15 – 3.9.23].

89. The Secretary of State is aware that the Applicant submitted a WFD Compliance Assessment in support of their Application in relation to the North Beck Drain and the Humber estuary [ER 3.9.21] and that Assessment is provided at Appendix 17.A [APP-208] [ER 3.9.22]. The Proposed Development was assessed as having no effects that would result in the deterioration in the WFD status or prevent the identified waterbodies from achieving their WFD objectives provided that the best practice and established guidance are adhered to, as reflected in the measures identified in Chapter 17 of the ES are adhered to [ER 2.6.2].

90. The Secretary of State also notes, in relation to WFD compliance:

- NELC did not raise any substantive comments on water quality and resources in their submitted LIR [ER 3.9.24];
- the SoCG between the Applicant and the EA confirmed that, subject to the implementation of the required pollution prevention measures and NE not raising any issues in respect of the HRA conclusions, all matters relating to WFD compliance are agreed [ER 3.9.25 and 3.9.26]; and
- with NE having no outstanding issues on the WFD, and with pollution prevention measures being secured by requirement 6 of the Order [ER 3.9.26], the ExA therefore concluded that all matters regarding compliance with Water Framework Directive had been agreed [ER 3.9.29].

Water Quality and Resources

91. The Applicant’s ES concluded that, with the stated mitigation measures in place and secured through the Order, the residual effects on water quality from the Proposed Development would be negligible or minor adverse [ER 3.9.19]. The Secretary of State agrees with the ExA that the Applicant has adequately assessed the impact of the Proposed Development with regard to water quality and water resources in line with the requirements of the NPSfP [ER 3.9.30 and 5.2.42].

Anglian Water

92. The Secretary of State notes that at the close of Examination, negotiations between the Applicant and Anglian water regarding water supply to the Proposed Development remained outstanding. The Secretary of State understands that while the Applicant had received a commercial offer to supply sufficient non-potable water for the Proposed Development from Anglian Water [ER 3.9.32], Anglian Water raised concerns on their ability to meet the demands of the Proposed Development due to the issue of water resources in the Immingham Area. The Secretary of State is aware that Anglian Water requested the inclusion of pre-commencement requirement in the Applicant’s draft Order to require the Applicant to complete a Water Resources Assessment [ER 3.9.33]. The Applicant submitted this to be unnecessary as the Proposed Development’s water use would be regulated through the Environmental Permit and there was therefore no need to duplicate controls through the requirements

of the Order [ER 3.9.34]. The Secretary of State notes that the SoCG between the Applicant and Anglian Water on this matter remained an outstanding matter [ER 3.9.36].

93. In her consultation letter dated 21 November 2024, the Secretary of State requested an update on any matters that remained outstanding. In response to the letter, Anglian Water submitted a representation on 5 December 2024 to confirm that the matter of water supply remains 'ongoing' and reiterated their request for a pre-commencement Water Resources Assessment requirement in the Order. The Applicant's response of 16 December 2024 also confirmed that the commercial offer of water supply remains ongoing, and that it remains Air Product's position that a pre-commencement requirement is unnecessary and unreasonable, reiterating its position that the water use will be regulated through the Environmental Permit.

94. The ExA set out that there was no evidence to suggest Anglian Water's impact assessment associated with water demand or supply as part of their Water Resource Management Plan 2024 is no longer valid, or that it would not renew their commercial offer of supplying non-potable water to the Applicant [ER 3.9.41]. On that basis, the ExA concluded that the Proposed Development would not have an adverse impact on water resources [ER 5.2.41]. The Secretary of State agrees. The Secretary of State also agrees with the ExA's conclusion that given water use and efficiency would be regulated through the Applicant's Environmental Permit under the Environmental Permitting (England and Wales) Regulations 2016, a requirement for a pre-commencement Water Resources Assessment is unnecessary [ER 3.9.37 and 3.9.39].

The Secretary of State's Overall Conclusion on Water Quality and Resources

95. The Secretary of State agrees with the ExA that the Proposed Development accords with the requirements of the Water Framework Directive Regulations 2017, the requirements of the NPSfP [ER 3.9.26 & 3.9.40] and that mitigation measures to avoid, prevent and reduce the effects on the local surface water environment that are proposed in the Water Management Plan would be secured by requirement 6 in the draft Order [ER 3.9.28]. The Secretary of State also agrees with the ExA that in respect of water quality and water resources, the Applicant's assessment and the Proposed Development overall, meet the requirements set out in the NPSfP [ER 3.9.42]. She therefore accepts the ExA's recommendation to give water quality and water resources matters neutral weight in the planning balance [ER 3.9.43].

Traffic and Transport

96. The Secretary of State has considered the Applicant's assessment on landside traffic and transport effects, set out in Chapter 11 of the ES [ER 3.10.7].

97. The Applicant's ES assessed that the Proposed Development would employ 120 workers for IGET and the HPF during the operational phase. It also anticipated that 96 two-way daily HGV movements would occur with the operational HPF [ER 3.10.12]. The Applicant's ES also estimated that a total of 1,518 two-way worker trips and 199 HGV trips will be generated during the peak of the construction phase with construction activities occurring across both the western and eastern sites [ER 3.10.22].

98. The Secretary of State notes that while the Applicant's assessment concluded that the majority of traffic and transport effects within the defined study area would be negligible, there would be a minor, not significant impact at Link 2 (A1173 - between A1173/Kiln Lane and A1173/Kings Road), Link 3 (Kings Road, between A1173 and Queens Road) and Link 4 (Queens Road between Kings Road and Laporte Road) [ER 3.10.29].

99. The NELC LIR set out that the Proposed Development would not unduly affect highway safety or amenity either through the construction or operational phase [ER 3.10.31]. Although NELC raised concerns in its relevant representation on the large number of traffic movements and the proposed highways works associated with the Proposed Development, by the end of the examination, the signed SoCG between NELC and the Applicant indicated that all matters relating to traffic and transport had been agreed with no further assessment or mitigation being required [ER 3.10.34]. The Secretary of State also acknowledges that by the end of the Examination all traffic and transport matters have been agreed by the Applicant and National Highways ("NH"), set out in their signed SoCG with NH predicting that the strategic road network would operate within capacity at the peak year of construction when impacts are likely to be at their highest [ER 3.10.36].

100. The Secretary of State notes that while Polynt Composites and the Davey Family both raised concerns on the traffic and transport impacts from the Proposed Development. The Davey family made no further representations during the Examination [ER 3.10.39]. In relation to the concerns raised by Polynt Composites regarding the possibility of access restrictions to their site due to additional traffic on Laporte Road, the ExA was satisfied that the Applicant had addressed these concerns in their response to the ExA which stated that they did not envisage there would be a material impact on vehicles trying to gain access to the Polynt Compositated site [ER 3.10.40] The ExA was satisfied that the concerns raised by both parties had been taken into account during the examination [ER 3.10.41].

The Secretary of State's Overall Conclusion on Traffic and Transport

101. The Secretary of State agrees with the ExA that the Applicant's assessment of the effects on Traffic and Transport meets the requirements set out in the NPSfP [ER 3.10.42]. She also agrees that while there would be an increase in traffic from the Proposed Development, the control and management measures secured through requirements 6, 7 and 8 of the draft Order will ensure that the mitigation identified in the ES will be adequately carried out [ER 3.10.43]. The Secretary of State agrees with the ExA's conclusion that no significant traffic or transportation effects are likely to arise from the Proposed Development [ER 3.10.44]. She also agrees with the ExA's recommendation that traffic and transport matters are neutral in the planning balance and weigh neither for nor against making the Order [ER 3.10.45].

Marine Movement and Operational Safety

102. The Secretary of State notes Chapter 12 (Marine Transport and Navigation) of the ES sets out the baseline analysis and likely significant effects in respect of the construction and operation of the Proposed Development on marine navigation [ER 3.11.8].

103. She notes that the Applicant's Navigation Risk Assessment ("NRA") which was submitted with the Application and provided a baseline assessment of activities within the study area and a review of the predicted future baseline [ER 3.11.12]. The NRA concluded that, in all cases, the risks were assessed to be tolerable and As Low As Reasonably Possible ("ALARP") based on existing controls and/or new measures to be established as part of the Proposed Development [ER 3.11.13]. The Applicant also undertook a real time Navigational Simulation Study ("NSS") to assess the feasibility of the Proposed Development. The NSS informed the NRA and initially considered a jetty supporting two berths and concluded that the layouts were feasible assuming appropriate exclusion zones were provided. An updated report detailing a revised design to make provision for only a single berth confirmed the overall conclusions of the NSS remained valid despite the design change [ER 3.11.14].

104. As a result of the NRA and NSS, a number of mitigation measures were proposed as set out at ER 3.11.15; with the NSS recommended an adjustment for the approach and departure tracks for vessels operating at the adjacent Immingham Oil Terminal [ER 3.11.16]; and the NSS concluded no additional restrictions needed to be imposed on ships to navigate safely in the main channel ER 3.11.17. With these measures and the controls already in place, the ES concluded that effects during construction and operation would be ALARP and therefore not considered to be significant [ER 3.11.18].

105. During the examination the MMO deferred to the Marine and Coastguard Agency and Trinity House on shipping and navigation matters [ER 3.11.22]. The Marine and Coastguard Agency noted that the works associated with the Proposed Development fall entirely within the statutory harbour area managed by ABP Port of Immingham who would be responsible for maintaining the safety of navigation during construction and operation. Trinity House did not make any substantive comments on navigation matters beyond registering its interest [ER 3.11.22]. The Harbour Master, Humber considered that the Applicant's assessment approach, including the NRA and NSS, was robust and its conclusions on identified risks were reasonable [ER 3.11.25]. The Secretary of State also notes his view that the existing legislation and byelaws, as well as the measures in the proposed Order would ensure the safe operation of vessels accessing IGET [ER 3.11.24]. The Secretary of State notes that by the end of the examination, all matters raised by the Immingham Oil Terminal and CLdN Ports Immingham were resolved [ER 3.11.26]. She also notes that although DFDS Seaways did not object to the principle of the Proposed Development, it had queries about tolerability thresholds and tide assumptions in the NRA and tug availability [ER 3.11.27]. The Applicant responded that tolerability was set in accordance with the Port Marine Safety Code and its associated Good Practice Guide; that in relation to tidal direction the Applicant confirmed its model included a more sophisticated approach than that referred to by DFDS; and on tug availability identified that towage is not guaranteed but it made commercial sense for towage providers to make sufficient tugs available to service current market needs [ER 3.11.28].

The Secretary of State's Overall Conclusion on Marine Movement and Operational Safety

106. The Secretary of State agrees with the ExA that marine movement and operational safety matters have been considered satisfactorily in the Application [ER 3.11.29]. She also agrees with the ExA that proposed mitigation and measures set out

in the ES and secured in the draft Order, together with existing controls, would ensure that the risk from additional marine movement and operational safety issues arising from the Proposed Development would be minimised. She agrees with the ExA's conclusion that there are no outstanding issues which are likely to cause a danger to marine movement or operational safety [ER 3.11.31].

107. The Secretary of State therefore agrees with the ExA's conclusion that marine movement and operational safety are neutral in the planning balance and weigh neither for nor against making the Order [ER 3.11.32].

Major Accidents and Hazardous Substances

108. The Secretary of State notes that the Control of Major Accident Hazardous ("COMAH") Regulations 2015 ("the COMAH Regulations") applies to establishments that store or handle quantities of chemicals of a hazardous nature over a certain threshold, such as at the Proposed Development [ER 3.12.4]. The COMAH Regulations impose duties and measures to prevent major accidents and limit the consequences to people and the environment of any major accidents which may occur [ER 3.12.8, first bullet]. Additionally, the Secretary of State notes that the Proposed Development will require a hazardous substances consent under the Planning (Hazardous Substances) Regulations 2015, through which the relevant Hazardous Substance Authority will determine whether the presence of a hazardous substance is acceptable in the vicinity of the Proposed Development [ER 3.12.8, second paragraph].

109. The Applicant's assessment of impacts from potential major accidents and accidental release of hazardous substances is set out in Chapter 22 of the ES [ER 3.12.9]. The Secretary of State has taken into account the ExA's summary of: the scope and methods used by the Applicant to assess the impacts that may arise [ER 3.12.10 – 3.12.13]; the Applicant's assessment of effects and proposed mitigation [ER 3.12.14 – 3.12.18]; the details of the events identified by the Applicant that could cause a major incident and how these were derived [ER 3.12.21 – 3.12.23]; and how these events would be reduced to an acceptable level [ER 3.12.24 – 3.12.28].

110. The Secretary of State notes that the Applicant's Assessment concluded that for all phases of the Proposed Development 10 of the 15 potential hazardous scenarios it had identified as being credible and therefore deemed risk events [ER 3.12.17]. Due to the flammable and toxic properties of the materials involved, the Applicant concluded that the risks could not be removed entirely, and to achieve the 'as low as reasonably practicable' level required by the 2015 COMAH Regulations, the risk events would be managed throughout the lifecycle of the Proposed Development by a comprehensive safety and environmental protection programme implemented through operational measures, engineering design and management [ER 3.12.18].

111. The Secretary of State has had regard to the safety concerns raised by the Immingham Oil Terminal operators, regarding potential fire, explosion and toxic gas release hazards but notes that following discussions with the Applicant during the Examination these concerns were subsequently withdrawn [ER 3.12.24]. She has further taken account of concerns raised by Polynt Composites regarding the impact of an additional COMAH facility in the area. The Applicant responded to these

concerns that as required by the COMAH Regulations and other consenting regimes, operations and cumulative effects had been assessed and that they were committed to engaging with local stakeholders regarding emergency plan arrangements [ER 3.12.25]. The Secretary of State notes that during the Examination, in light of concerns raised by NELC on the size and extent of the COMAH zones associated with the Proposed Development, the ExA also considered land use planning and impacts on the surrounding area in regard to future development growth [ER 3.12.29 – 3.12.35]. The Secretary of State is aware that the hazardous substances consent can only be granted by NLEC, the relevant Hazardous Substances Authority, following consultation with the Health and Safety Executive (“HSE”) who as part of the consultation would provide NELC with advice on land use planning zones or COMAH zones [ER 3.12.23] and whether consent should be granted. The Secretary of State notes that during the Examination NELC confirmed that it has received a hazardous substances consent application from the Applicant, but it had yet to receive a consultation response from HSE which it did not expect to receive before the end of the Examination [ER 3.12.36].

112. The Secretary of State is aware that the Air Products Limited, the intended first user of the Proposed Development for the import of ammonia [ER 1.4.5], commissioned Glexcon Ltd to carry out a land use planning report to calculate risk zones and understand potential land use planning impacts that may occur as a result of the Proposed Development. The Secretary of State notes that section 5.2 of this report identified ten residential properties located on the west side of Queens Road which would likely result in an advise against consent conclusion from the HSE [ER 3.12.32]. The ExA reports that by the end of Examination, the Applicant had voluntarily purchased these 10 residential properties identified as falling within the inner COMAH zone [ER 3.12.33]. While recognising that whether the purchase of these properties would mean that the land use planning issues identified would cease to exist could not be confirmed until the HSE has completed their assessment and submitted their conclusions to NELC, there was no evidence before the ExA to suggest that the HSE will arrive at a different conclusion to the Applicant on the size and extent of the COMAH Zones. The ExA was therefore satisfied that this issue had been addressed [ER 3.12.35].

The Secretary of State’s Overall Conclusion on Major Accidents and Hazardous Substances

113. The Secretary of State agrees with the ExA’s overall conclusion that the potential impacts on human health, welfare and the environment have been appropriately identified and mitigated [ER 3.12.37]. With respect to concerns raised by Interested Parties, and having regard to the regulatory framework as raised by the EA, the Secretary of State notes that the ExA was satisfied that safety concerns raised by those Interested Parties would be addressed by the implementation of required safety measures under the COMAH Regulations [3.12.26]. The ExA further found that the Applicant has as far as reasonably possible identified and mitigated risks to the ‘as low as reasonably practicable’ level [ER 3.12.28]. The ExA concluded that with no evidence to suggest otherwise, it has been assumed the HSE will arrive at the same conclusion to the Applicant with regard to the COMAH zones and it was on this basis that the ExA agreed with the Applicant’s assessment and was satisfied that the impact of the Proposed Development on future land use planning would not be considered significant [ER 3.12.38]. The Secretary of State has noted that the agreed SoCG

between the Applicant and NELC stated that NELC was reassured that the surrounding allocated employment land would not be sterilised for future development growth [ER 3.12.34]. Additionally, the Secretary of State did not receive any evidence during the decision-making stage to suggest that the HSE would reach a different conclusion to the Applicant on the size and extent of the COMAH Zones. The Secretary of State therefore accepts the ExA's conclusion that major accidents and hazardous substances matters should carry neutral weight in the planning balance and weigh neither for nor against the making of the order [ER 3.12.39].

Socio-Economic

114. The Secretary of State notes that the Applicant's assessment on socio-economic impacts is set out in Chapter 23 of the ES [ER 3.13.9] and that the Applicant's ES highlighted a number of sensitive receptors within the study areas [ER 3.13.16]. Through the process of design development and by embedding mitigation measures, the Applicant stated that environmental impacts and effects had either been avoided or minimised [ER 3.13.18] and that standard mitigation measures would also be used [ER 3.13.19].

115. The Applicant's ES calculated that there would be a temporary major beneficial effect on the North East Lincolnshire economy from the 627 net employment jobs created during the construction phase, further calculating the total Gross Value Added ("GVA") for the North East Lincolnshire area to be £24.5 million which the Applicant concluded would have a temporary moderate beneficial effect on the North East Lincolnshire economy [ER 3.13.20-3.13.21]. The ES also set out that there would be a net employment of 207 jobs from the operational phase of the Proposed Development and which the Applicant assessed to have a permanent moderate beneficial effect on the North East Lincolnshire economy and was considered to be significant [ER 3.13.24].

116. The Secretary of State notes that the Applicant highlighted that there would be a temporary minor adverse effect on the local PRoW network from the temporary diversion of Public Bridleway 36 during the construction phase [ER 3.13.22].

117. The Applicant's worst case scenario assessment on the impact from the Proposed Development on local primary healthcare concluded that the overall practice list size for local GP practices would increase from 2099 patients per GP to 2101 patients per GP. The Applicant considered this to have a permanent minor adverse effect which was not considered to be significant [ER 3.13.26].

118. The Secretary of State notes that the LIR from NELC did not consider there to be any unacceptable impacts to neighbouring land uses and highlighted the economic benefits the Proposed Development would bring [ER 3.13.29].

119. The Secretary of State notes that the Applicant highlighted the potential adverse effects from the Proposed Development due to short term risks on possible shortages for accommodation and healthcare but did not consider these to be significant [ER 3.13.33].

The Secretary of State's Overall Conclusion on Socio-Economic Matters

120. The Secretary of State agrees with the ExA's conclusion that the Applicant's assessment on socio-economic matters meet the requirements set out in the NPSfP [ER 3.13.39]. She also agrees with the ExA's conclusion that the proposed mitigation measures as set out in the ES are secured in the recommended Order and would adequately minimise the potential adverse effects on primary healthcare, accommodation and the users of PRow from the construction phase [ER 3.13.37]. She further agrees that the Proposed Development would bring wider socio-economic benefits to North East Lincolnshire and would secure significant employment opportunities to the area both during construction and operation as well as bringing wider socio-economic benefits to the area [ER 3.13.38]. The Secretary of State has also considered the representation from the Davey Family on the effects of the Proposed Development on local services and notes that the ExA was satisfied that the concerns raised have been taken into account during the examination [ER 3.13.34].

121. Given the emphasis set out in the NPSfP on the substantial weight to be given to positive socio-economic impacts, the Secretary of State agrees with the ExA and places a positive weight in respect of socio-economic matters in favour of making the Order in the planning balance [ER 3.13.40].

Cumulative Effects and In-Combination Effects

122. The ExA's consideration of the cumulative and in-combination effects that may arise as a result of the Proposed Development is summarized in section 3.14 of the Report. The Secretary of State notes that during the Examination, the ExA considered whether the cumulative effects of the construction and operational phases have been sufficiently assessed alongside other plans, projects and on-going activities [ER 3.14.2.]; and whether the in-combination effects of the construction and operational phases have been sufficiently considered, in particular in-combination effects on the living conditions of nearby residents [ER 3.14.3].

123. The Secretary of State has considered the ExA's summary of the Applicant's Cumulative Effects Assessment which is set out in Chapter 25 of the ES, and notes that additional information was submitted and that the Applicant submitted at deadline 5 of the Examination an updated Chapter 25 and associated documents were submitted [ER 3.14.7 – 3.14.14].

124. The Secretary of State notes that the following two projects were assessed as having the potential to result in cumulative effects with the Proposed Development:

- the IERRT project granted on 4 October 2024; and
- the Viking CCS Pipeline (“the Viking CCS Pipeline”) project.

125. The IERRT project is in close proximity of the Proposed Development and was highlighted as having the potential to result in significant cumulative effects. However, the ExA reports that no significant adverse effects were identified, and that the construction of the Proposed Development and the IERRT project is considered likely to generate employment, which would lead to greater beneficial health effects than either project in isolation. The ExA also reports that a significant (moderate beneficial)

residual cumulative effect was expected as a result of employment during construction and operation [ER 3.14.16].

126. The examination of the Viking CCS Pipeline project closed on 30 September 2024 and the Examining Authority appointed by the Planning Inspectorate to examine this application submitted its recommendation report to the Secretary of State for the Department of Energy Security and Net Zero on 5 December 2024. The Applicant concluded that while there might be a risk of a temporary shortage in accommodation or labour if both the Proposed Development and the Viking CCS Pipeline project, if granted, progress simultaneously, the generation of additional employment opportunities would be significantly beneficial overall [ER 3.14.19].

127. In addition to the above projects, the Secretary of State also notes that potential adverse effects were identified on residential properties at Queens Road in relation to cumulative intra-project impacts. The ExA reports that by the end of the Examination, all properties along Queen's Road were voluntarily acquired by the Applicant, removing any potential cumulative impact [ER 3.14.20].

The Secretary of State's Overall Conclusion on Cumulative Effects and In-Combination Effects

128. The Secretary of State agrees with the ExA's conclusion that the Applicant's assessment of both cumulative and combined effects meet the requirements of both the EIA Regulations and the relevant NPSs [ER 3.14.21]. She also agrees that there is not likely to be any significant adverse cumulative or combined effects than the effects of the Proposed Development alone. Like the ExA, she is satisfied that adequate measures to mitigate against any individual and cumulative effects have been included in the Order [ER 3.14.21]. She therefore accepts the ExA's recommendation to give cumulative and in-combination effects neutral weight in the planning balance [ER 3.14.22].

Heritage

129. The Secretary of State notes that the Applicant's assessment on heritage matters is set out in Chapters 14 and 15 of the ES [ER 3.15.18]. The Applicant's assessment highlighted that, while there were no designated heritage assets identified within the Order limits, the Immingham War Memorial, a Grade II Listed building, was identified within the 2km study area [ER 3.15.28]. The Secretary of State notes that no designated heritage assets were identified as being subject to any physical impacts or effects on their settings from the Proposed Development [ER 3.15.31]. Within the 1.6km study area, 17 non-designated heritage assets were also identified [ER 3.15.30]. She also notes that two non-designated assets were assessed as being subject to physical impacts arising from the construction and/or operation of the Proposed Development. These assets were the Long Strip woodland and the peat deposits on the West Site which were assessed as having the potential to be subject to significant effects, from the partial or complete permanent truncation/removal of below ground remains [ER 3.15.32]. She further notes that the ExA found that there would be no impacts to designated heritage assets but that the Proposed Development could result in significant adverse effects to non-designated heritage assets including the known peat deposits on the West Site and identified and as yet unidentified archaeology on the seabed [ER 3.15.53]. The ExA agreed the proposed

mitigation measures secured in the recommended Order would help minimise any harm to the significance of these non-designated assets [ER 3.15.54]. The Secretary of State agrees.

130. During the archaeological assessment, 162 seabed features of possible archaeological potential were identified with the Order limits [ER 3.15.37] and it was noted that direct impacts would be most likely to occur during capital dredging and marine piling operations and these would be permanent and irreversible if they occurred [ER 3.15.38]. The Secretary of State notes that the Applicant concluded that, following proposed mitigation, the effects on the marine historic environment would be negligible [ER 3.15.40].

131. The Secretary of State notes that while NELC raised a query on the archaeological recording of the Long Strip, by the end of the examination, the signed SoCG between NELC and the Applicant set out that all heritage matters had been agreed [ER 3.15.46].

132. The Secretary of State notes that by the end of the examination, all heritage matters between the Applicant and Historic England had been agreed and included confirmation from Historic England that the changes to the Application were acceptable and did not alter their position [ER 3.15.51]. The detail of the two change applications which were submitted by the Applicant, are set out at ER 3.15.48 and 3.15.49.

The Secretary of State's Overall Conclusion on Heritage Matters

133. The Secretary of State agrees with the ExA that the Applicant's assessment of the effects on heritage matters meet the requirements set out in the NPSfP [ER 3.15.52].

134. The Secretary of State agrees with the ExA's conclusion that while the mitigation measures will minimise the impacts on the non-designated heritage assets, this will not completely remove the potential harm that could be caused to the significance of these assets [ER 3.15.58]. She therefore agrees with the ExA's recommendation that heritage matters should carry little negative weight against making of the proposed Order in the planning balance [ER 3.15.59].

Other Environmental Matters

Air Quality and Emissions

135. The Secretary of State notes that the Applicant's assessment on air quality matters is set out in Chapter 6 of the ES [ER 3.16.6]. The Applicant's assessment highlighted that the residential dwellings on Queens Road, the properties on Kings Road and several designated nature conservation sites were considered to be sensitive to changes in air quality [ER 3.16.7]. The assessment also concluded that the dust from earthworks and the emissions from construction equipment and traffic could temporarily impact the air quality at the sensitive locations during the construction phase without appropriate mitigation in place. The Secretary of State notes that mitigation measures have been included in the Outline Construction Environment Management Plan ("oCEMP") to address such impacts. As a result of

the implementation of these measures including a Dust Management plan, no significant air quality effects on sensitive receptors were identified during the construction phase [ER 3.16.8]. The Applicant confirmed following questions from the ExA that the oCEMP requires the contractor to prepare a Dust Management Plan and although in relation to air quality and emissions generally the Applicant confirmed that during construction no control measures were proposed as their assessment concluded there would be no significant adverse effects in relation to emissions. However, the Applicant referred to best practice guide contained in the oCEMP which encouraged the contractor to avoid unnecessary emissions [ER3.16.11].

136. The Secretary of State notes that the Applicant's assessment concluded that there would be no significant air quality effects from the operation of the Proposed Development due to the management controls and monitoring of emissions required by an Environmental Permit, which is to be regulated by the EA [ER 3.16.9].

137. The ExA reports that the SoCG agreed between the Applicant and the EA confirmed that that the Applicant had adequately considered the effect of emissions from the HPF, and that it was satisfied that the impact of emissions from the HPF would be further considered under the operating permit required by the Environmental Planning Regulations ("EPR") 2016 [ER 3.16.12].

138. The Secretary of State agrees with the ExA's conclusion that the Applicant's assessment on air quality and emission matters meet the requirements set out in the NPSfP [ER 3.16.15]. The Secretary of State notes that the construction of the Proposed Development may result in minor localised effects on air quality but agrees with the ExA's conclusion that they would be temporary and not significant in EIA terms. She also agrees with the ExA's conclusion that the operation of the Proposed Development would not have significant adverse long-term effects on air quality at the closest residential receptors [ER 3.16.14]. She therefore agrees with the ExA that the effect of air quality and emissions in the planning balance is neutral and does not weigh either for or against making of the Order [ER 3.16.15].

Noise and Vibration

139. The Applicant identified receptors that were potentially sensitive to changes in noise along Queens Road and properties within the eastern part of Immingham [ER 3.16.20]. During construction, the Applicant identified that construction related impacts from noise and vibration could occur from general operations within the development site and that the levels of noise and vibration expected to result from such activities would vary at different stages of construction [ER 3.16.21].

140. The Secretary of State has noted that the Applicant proposed a range of mitigation measures to minimise and control construction noise and vibration that would be delivered through the CEMP. With the implementation of these measures, she has taken account that the Applicant considered that no significant noise and vibration effects were likely during construction [ER 3.16.22]. In relation to operational noise and vibration, the Applicant considered that effects on residential receptors would be experienced by those on the eastern edge of Immingham and those located adjacent to routes used by operational development traffic [ER 3.16.23]. She has had regard to the Applicant's proposals for noise limits for certain plant and equipment, with acoustic barriers and screening to contain operational noise and that by installing

these measures and controls the Applicant concluded that no significant operational noise and vibration effects were likely to occur [ER 3.16.24].

141. The Secretary of State is aware that by the end of the examination, all residential properties along Queen's Road had been purchased by the Applicant, removing them as sensitive noise receptors [ER 3.16.28].

142. The Secretary of State agrees with the ExA's conclusion that through embedded measures in the project design and measures contained in the oCEMP and through the submission and approval of a scheme of operational noise management secured through requirement 17 of the draft Order significant adverse effects have been avoided as required by the NPSfP and that other adverse impacts have been mitigated or minimised [ER 3.16.31]. She therefore agrees with the ExA that noise and vibration matters are neutral and do not weigh for or against making the Order [ER 3.16.32]. The Secretary of State is also satisfied that the Applicant's assessment on the effects of noise and vibration meet the requirements set out in the NPSfP [ER 3.16.31].

Materials and Waste Management

143. The Secretary of State notes that no substantive concerns were raised on materials and waste management matters during the Examination [ER 3.16.39].

144. The Secretary of State agrees with the ExA's conclusion that the Applicant's ES has adequately assessed the potential impacts of waste arisings during the construction and operational phases and that any hazardous and non-hazardous waste arising from the construction and operation of the Proposed Development would be properly managed, meeting the requirements set out in the NPSfP [ER 3.16.40]. She agrees with the ExA that materials and waste management matters are neutral and do not weigh for or against making the Order [ER 3.16.41].

Ground Conditions and Land Quality

145. The Secretary of State notes that no substantive concerns were raised on ground conditions and land quality matters during the Examination [ER 3.16.51].

146. The Secretary of State is aware that the Applicant's final remediation strategies detailing the programme of groundwater and surface water monitoring would be approved through requirement 15 of the draft Order [ER 3.17.47]. She further notes that the EA was satisfied that requirement 15 would be sufficient to manage the risks from contamination at the site, which was confirmed in the signed SoCG between the EA and the Applicant [ER 3.16.52].

147. The Secretary of State agrees with the ExA's conclusion that all matters relating to ground conditions and land quality would be properly managed, that all necessary controls are secured in the draft Order and would comply with the requirements set out in the NPSfP [ER 3.16.54]. She therefore agrees with the ExA that ground conditions and land quality matters are neutral and therefore weigh neither for nor against making the Order [ER 3.16.55].

Human Health and Well-being

148. The Secretary of State notes that the Applicant concluded that mitigation measures including those proposed in the Construction Traffic Management Plan would minimise the anticipated adverse impacts on human health and well-being arising from the construction phase of the Proposed Development. The Applicant concluded that with these mitigations in place that no significant adverse effects would occur on human health and wellbeing during construction [ER 3.16.58 – 3.16.60]. She also notes that the Applicant concluded that no significant effects in relation to human health and well-being would arise from the operation of the Proposed Development [ER 3.16.61]. The Secretary of State is also aware that the Applicant concluded that there would be wider economic benefits brought to the area from both the construction and operation of the Proposed Development as a result of new employment opportunities [ER 3.16.58 and 3.16.61].

149. The Secretary of State agrees with the ExA that human health impacts of the Proposed Development have been considered, minimised and mitigated as much as possible, but that temporary adverse effects are likely to occur during the construction phase. Conversely the identified positive health benefits as a result of new employment opportunities would be delivered during the construction and operational phases of the Proposed Development [ER 3.16.62 – 3.16.63]. She therefore agrees with the ExA's that due to the positive health benefits that would be delivered the matter weighs positively in favour of making the order but given the temporary adverse effects that have been identified human health and well-being matters should be given a little positive weight in the overall planning balance [ER 3.16.64].

Habitats Regulations Assessment

150. This section should be read alongside the Secretary of State's Habitats Regulations Assessment for an Application under the Planning Act – Immingham Green Energy Terminal (February 2024).

151. Under regulation 63 of the Conservation of Habitats and Species Regulations 2017 (as amended) ('the Habitats Regulations'), the Secretary of State, as the competent authority, is required to consider whether the Proposed Development (which is a project for the purposes of the Habitats Regulations) would be likely, either alone or in combination with other plans and projects, to have a significant effect on a European site. The purpose of the likely significant effects ("LSE") test is to identify the need for an 'appropriate assessment' ("AA") and the activities, sites or plans and projects to be included for further consideration in any AA.

152. Where LSE cannot be ruled out, the Secretary of State must undertake an AA under regulation 63(1) of the Habitats Regulations to assess potential adverse effects on site integrity. Such an assessment must be made before any decision is made on undertaking a plan or project or any decision giving consent, permission or other authorisation to that plan or project. In light of any such assessment, the Secretary of State may grant development consent only if it has been ascertained that the plan or project will not, either on its own or in combination with other plans and projects, adversely affect the integrity of such a site, unless there are no feasible alternatives and imperative reasons of overriding public interest apply (regulation 64).

153. The Secretary of State notes that the Proposed Development is not directly connected with, or necessary to, the management of a European site [ER C. 1.12]. The European sites that were considered in the Applicant's assessment of LSE were the:

- Humber Estuary SAC;
- Humber Estuary Ramsar site;
- Humber Estuary SPA;
- Greater Wash SPA; and
- Wash and North Norfolk Coast SAC.

154. No Interested Parties suggested additional European sites for inclusion in the screening assessment. The Secretary of State notes that Natural England's Relevant Representation [RR-019] queried why only a selection of the component species of the Humber Estuary SPA were included within the screening assessment [ER C 2.4]. The Applicant explained in its response [REP1-021] that the bird species that had been screened out did not occur in the construction zone in high numbers (representing <1% of the estuary wide mean peak) [ER C.2.5]. NE were satisfied with this justification [REP1-087] and no other Interested Parties raised any additional qualifying features to be added to the screening.

155. NE requested that two further impact pathways should be included in the screening assessment, which were added at [REP1-012] including:

- potential mortality or injury to coastal waterbirds as a result of flare stack operation [RR-019]; and
- physical changes to habitats resulting from accidental releases of ammonia [REP3-112].

156. The Applicant screened out the Greater Wash SPA within Table 2 of the initial HRA report and identified no pathways to be screened in at Stage 1 screening that could have any LSE on the qualifying features of the SPA. The Applicant concluded no LSE would occur from the Proposed Development either alone or in-combination with any plans or projects. NE agreed with that conclusion [RR-019].

Likely Significant Effects Assessment

157. The Applicant identified impacts from the Proposed Development considered to have the potential to result in LSE alone and in-combination on the remaining sites were summarised in Table C, Appendix C of the ER. Those sites were [ER C.2.16]:

- Humber Estuary SAC;
- Humber Estuary SPA;
- Humber Estuary Ramsar; and
- The Wash and North Norfolk SAC.

158. Having considered the assessment material submitted during and since the Examination, the Secretary of State considers that LSE in relation to the construction and operation of the Proposed Development could not be ruled out in relation to the

Humber Estuary sites and The Wash and North Norfolk SAC. The Secretary of State therefore considered that an AA should be undertaken to discharge her obligations under the Habitats Regulations. The AA is provided in detail within the Secretary of State's Habitats Regulations Assessment published alongside this letter and should be read in conjunction with it.

Appropriate Assessment

The Wash and North Norfolk Coast SAC

159. The only impact pathway that was identified during the screening to give rise to LSE were underwater noise effects on marine mammals resulting from capital dredging, piling, dredge disposal and vessel operations including maintenance dredge and maintenance dredge disposal [ER. C 2.30 Table C]. The Applicant put forward the case [App-238, Table 29 and 30] that it is unlikely that the immediate vicinity of the Proposed Development is within the core range for harbour [common] seal qualifying features of the SAC, which is located over 75 km from the Proposed Development. The ExA and the Secretary of State is satisfied that, with the correct mitigation secured in the CEMP [REP4-008] and the deemed Marine Licence secured in the Order [REP4-004], there would be no adverse effect on site integrity from the Proposed Development alone or in combination with other plans or projects.

Humber Estuary SAC

160. In relation to the Humber Estuary SAC, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, in relation to lamprey species and grey seal, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievements of the conservation objectives arising from the LSE identified. The ExA [ER 4.1.39] was satisfied that with the correct mitigation secured in the Order and CEMP there would be no adverse effect on site integrity from the Proposed Development alone or in combination with any other plans or projects. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.

Humber Estuary SPA

161. In relation to the Humber Estuary SPA, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievement of the conservation objectives arising from the LSE identified. The ExA [ER 4.1.39] was satisfied that with the correct mitigation secured in the proposed Order and CEMP, there would be no adverse effect on site integrity from the Proposed Development alone or in combination with any plans or projects. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.

Humber Estuary Ramsar site

162. In relation to the Humber Estuary Ramsar site, the Secretary of State is satisfied that, of the identified effects on the qualifying features of this site and where relevant, the measures in place to avoid and reduce potential harmful effects, there would not be any implications for the achievements of the conservation objectives arising from

the LSE identified. The ExA [ER 4.1.39] was satisfied that with the correct mitigation secured in the Order and the CEMP, there would be no adverse effect on site integrity from the Proposed Development alone or in combination with plans or projects. The Secretary of State is satisfied and finds no reason to disagree with this conclusion.

Appropriate Assessment Conclusions

163. The Secretary of State concludes that when mitigation measures are taken into account, there would be no adverse effects, from the Proposed Development alone and in combination with other plans and projects, on the integrity of the Humber Estuary SPA, the Humber Estuary SAC, the Humber Estuary Ramsar site and The Wash and North Norfolk Coast SAC. These conclusions are set out in more detail in the HRA that accompanies this letter.

The Secretary of State's conclusion on the Habitats Regulations Assessment

164. The Secretary of State is satisfied that, given the relative scale and magnitude of the identified effects on the qualifying features of these European sites and where relevant, the measures in place to avoid and reduce the potential harmful effects, there would not be any implications for the achievement of the conservation objectives for all of the European sites identified from the Proposed Development alone and in combination with other plans or projects.

165. During the pre-application stage, Natural England had not come to an agreement with the Applicant on excluding AEoI beyond reasonable scientific doubt in relation to permanent loss of intertidal habitat due to the Proposed Development on the Humber Estuary SAC and the Humber Ramsar site. The Applicant therefore produced a 'Without Prejudice Derogations Report' [APP-235] which assessed the Project against three tests. Each test must be passed sequentially before proceeding to the next in order for the project to proceed. This report set out a consideration of alternatives, imperative reasons of overriding public interest, and suitable compensation measures for the Proposed Development to continue. Although the Secretary of State welcomes this submission and notes that the Derogations Report states that the Proposed Development would pass the derogations tests, the Secretary of State has concluded no AEoI in relation to this impact pathway, and so the derogations case is not required in this instance. As such, the HRA undertaken by the Secretary of State has concluded at Stage 2: Appropriate Assessment and the need to engage with the HRA derogations, including the need for compensatory measures, is no longer required. It is understood that the compensatory measures will be undertaken regardless at the Outstrays to Skeffling Managed Realignment Scheme (OtSMRS).

166. The Secretary of State had regard to representation from the MMO [RR-016] and NE [RR-019] dated 4 December 2023 that highlights the presence of five projects within the Humber Estuary that could run concurrently with the Proposed Development and result in cumulative impacts on the designated sites in addition to those cumulative impacts assessed by the Applicant with the Immingham Eastern Ro-Ro project. The MMO suggested that the creation of a tracker or similar could be useful in managing cumulative impacts. The Secretary of State issued a consultation letter dated 4 December 2024 enquiring whether the MMO and NE were content with strategic oversight of projects in the Humber Estuary given their comments in their representations. The MMO confirmed in a letter dated 17 December 2024 that it had

no further comments to make and its concerns had been addressed throughout the examination. NE confirmed that in the context of HRA, its concerns in relation to cumulative and in-combination effects had been addressed, but it was happy to discuss the development of a tracker tool for projects in the Humber Estuary with the MMO, the Applicant and other IPs. The Secretary of State is therefore content that issues discussed during the Examination in relation to the in-combination assessment have been addressed, and encourages the development of a tracker tool, outside of the DCO process for the Proposed Development.

167. The Secretary of State, as the competent authority for the purposes of the Habitats Regulations, has therefore concluded that, taking into account the package of mitigation measures, it is permissible for her to grant development consent for the Proposed Development.

PLANNING BALANCE

168. The ExA considered that the following matters should carry great weight in favour of the Proposed Development:

- the need for the Proposed Development established in the NPSfP and NPS EN-1. In accordance with the NPSfP, the Secretary of State has given both compliance with the NPSfP and with NPS EN-1 substantial weight in the planning balance;
- the contribution to creating additional port capacity for liquid bulks [ER 5.2.3];
- the contribution to creating additional port capacity for ammonia to produce low carbon hydrogen and carbon dioxide for Carbon Capture Storage [ER 5.2.4];
- the contribution to greenhouse gas emissions savings [ER 5.2.18];
- the generation of significant employment opportunities and wider socio-economic benefits to the North East Lincolnshire area that would occur as a result of the Proposed Development [ER 5.2.57]; and
- the health benefits from new employment opportunities which would be delivered during both the construction and operational phases [ER 5.2.69].

169. The Secretary of State agrees and has given these matters substantial positive weight in favour of making the Order.

170. The ExA recommended that the following matters should neither way for or against the granting of the Order:

- design [ER 5.2.23];
- flood risk and coastal change [ER 5.2.39];
- water quality and resources [ER 5.2.43];
- traffic and transport [ER 5.2.47];
- marine movement and operational safety [ER 5.2.49];
- major accidents and hazardous substances [ER 5.2.54];

- cumulative and in-combination [ER 5.2.59];
- air quality [ER 5.2.68];
- noise and vibration [ER 5.2.68];
- materials and waste management [ER 5.2.68]; and
- ground conditions and land quality [ER 5.2.68].

171. The Secretary of State agrees and has given these matters neutral weight in the Planning Balance.

172. The ExA recommended that the following matters should weigh against the granting of the Order:

- Biodiversity – the ExA recommended that the Secretary of State gives minor negative weight in the planning balance due to the partial loss of Long Strip Woodland and impacts from the marine piling operations, notwithstanding the proposed mitigation and compensatory measures [ER 5.2.26 & 5.2.29];
- Landscape and Visual – the ExA recommended that moderate negative weight be given to the harm that would occur on the views along the estuary and on the PRow running through Long Strip and across the West Site from the introduction of substantial industrial structures [ER 5.2.32 & 5.2.34]; and
- Heritage – the ExA recommended that the potential harm to non-designated heritage assets should carry minor negative weight [ER 3.2.66 – 3.2.67].

173. The Secretary of State agrees with the ExA's conclusions on these matters and therefore accepts the weight that it has suggested she give to these in the Planning Balance.

The Secretary of State's Conclusion

174. Having weighed the matters in favour of a decision to grant the Order against the adverse effects of the Proposed Development, the Secretary of State is satisfied that the potential negative impacts do not outweigh the need for the Proposed Development or the other benefits that are expected as a result of it.

COMPULSORY ACQUISITION AND RELATED MATTERS

The Secretary of State notes that the Application seeks:

- compulsory acquisition of land and rights over and under land;
- to override or extinguish existing rights and interests in or over land;
- to create new rights in or over land;
- to impose restrictive covenants over land; and
- powers to temporarily possess land [ER 6.3.6]

The ExA's Conclusions

175. After considering the powers sought by the Applicant [ER section 6.3] and the material submitted to the Examination [ER 6.5.7 – 6.5.20], the ExA concluded that:

- the Application site has been appropriately selected;
- all reasonable alternatives to CA have been explored;
- the land to be taken is no more than is reasonably required and is proportionate;
- the Applicant would have access to the necessary funds and the draft Order provides a clear mechanism whereby the funding can be guaranteed;
- there is a need to secure the land and rights required to construct, operate and maintain the Proposed Development within a reasonable timeframe, and the Proposed Development represents a significant public benefit to weigh in the balance;
- that in all cases relating to individual objections and issues, CA and TP are justified in order to enable implementation of the Proposed Development; and
- the powers sought satisfy the conditions set out in sections 122, 123, 127 and 138 of the Planning Act as well as the CA Guidance [ER 6.7.1].

176. However, the ExA reported that there were a number of outstanding matters [ER 6.5.5], but that the majority of Interested/Affected Parties were in the final stages of reaching voluntary agreements with the Applicant [ER 6.5.6]. The ExA stated that the remaining substantive issues relating to statutory undertakers were:

- Anglian Water Services Ltd (“Anglian Water”);
- Environment Agency; and
- Network Rail Infrastructure Limited (“Network Rail”).

177. The ExA also advised that because consent has not been granted by the relevant Crown authorities in relation to Crown Land, the powers sought by the Applicant in this respect does not meet the conditions in section 135 of the Planning Act. The Secretary of State has considered each of these outstanding matters in detail below.

Statutory Undertakers

178. The Secretary of State notes that the Applicant seeks powers to acquire land, rights or other interests owned by several statutory undertakers. Section 127 of the Planning Act provides that where a statutory undertaker objects to the compulsory purchase of their land/right, a development consent order may only include powers to compulsorily acquire such land or a right if the decision-maker is satisfied that: the land or right can be purchased without serious detriment to the carrying on of the undertaking of the statutory undertaker; or that any such detriment can be made good by alternative use of land.

179. The Secretary of State has also considered whether the conditions in section 138, which applies to the extinguishment of statutory undertakers' rights and removal of their apparatus, has been met. Section 138 states that where a Statutory Undertaker

has a right or apparatus in the land to be acquired compulsorily, the Secretary of State can only authorise the extinguishment of the right or removal of the apparatus if it is necessary for the purpose of carrying out the development to which the development consent order relates.

- Anglian Water

180. The Secretary of State is aware that Anglian Water have assets within the Order Limits and the Applicant included protective provisions for Anglian Water in response to its relevant representation which highlighted the need for provisions to protect its assets in the Applicant's draft Order. The ExA reported that by the close of Examination, the Applicant's Lands Rights tracker indicated that these protective provisions had been agreed [ER 6.6.1]. The ExA also confirmed that the Applicant's Heads of Terms listed Anglian Water's leasehold interests in Plot 5/14 as 'Subject to negotiations'. However, the ExA noted that the final SoCG between the Applicant and Anglian Water confirmed that all matters relating to compulsory purchase had been agreed [ER 6.6.2]. In response to the Secretary of State's consultation of 21 November 2024 which sought updates on outstanding matters, the representation from Anglian Water dated 5 December 2024 did not raise any concerns relating to the protective provisions included in the draft Order. As no objections in relation to protective provisions remain outstanding, the Secretary of State considers that section 127 is not engaged. She is also satisfied that the conditions set out in section 138 of the Planning Act are met.

- Environment Agency

181. The ExA reports that the EA submitted representations during the examination relating to concerns regarding flood defence assets [ER 6.6.3]. The ExA's detailed summary of flood risk and management are set out in section 3.8 of the Report and the Secretary of State's consideration of this matter is set out in the Flood Risk and Coastal Change section in this decision letter. While the ExA concluded that the proposed measures included in the Order are sufficient to protect EA's land and assets and to meet the requirements of sections 127 and 138 of the Planning Act [ER 6.6.6], the Secretary of State notes that protective provisions for the EA had not been finalised by the close of the Examination. During the Secretary of State's decision-making period, in response to her consultation initiated on 21 November 2024, the EA confirmed that it had completed a legal agreement with the Applicant and that its objection had been withdrawn. The Secretary of State is satisfied that as there is now agreement on the protective provisions, section 127 is no longer engaged and that the conditions set out in section 138 of Planning Act are met.

- Network Rail

182. The ExA reports that Network Rail raised concerns regarding their land, infrastructure and operations [ER 6.6.7]. The Secretary notes that, apart from the issue regarding Air Products' need for a permanent easement under the railway line for the pipeline corridor, all other matters relating to protective provisions had been agreed [ER 6.6.7]. The Secretary of State understands that Network Rail consider that in order to maintain a safe and reliable railway service, it would require Air Products to move or relocate infrastructure located under the railway line to accommodate any required works that it may need to undertake [ER 6.6.8]. The Secretary of State notes Air Products' position is that it would not be possible to move or relocate the constructed

pipeline, and that termination of the easement would result in the hydrogen production facility becoming unusable [ER 6.6.9]. The Secretary of State notes that Network Rail's objection had not been withdrawn by the end of the examination.

183. The ExA concluded that the protective provisions in the draft Order would allow Network Rail to assess any risks and take precautionary measures to prevent any serious detriment to its undertaking. The ExA also agreed with the Applicant that it would not be suitable to relocate or move the pipeline once it has been installed and is operational. The ExA concluded that the powers sought by the Applicant are necessary and therefore meet the requirement set out in section 127 of the Planning Act. [ER 6.6.10]. The Secretary of State agrees with the ExA, and is also satisfied that with the protective provisions included in the Order, the conditions in section 138 are met.

Crown Land

184. The Secretary of State notes that the Applicant has a leasehold interest over Crown Land. Under section 135(2) of the Planning Act the Applicant must seek consent of the appropriate Crown authority to include provisions applying to such land within the Order limits [ER 6.3.18].

185. The ExA reported that by the end of the Examination, consent from the Crown Estate had not been confirmed. The ExA concluded that while it was unlikely the Applicant would not achieve Crown Estate consent, as the consent had not been granted by the close of the Examination, the powers sought by the Applicant do not meet the tests set out in section 135 [ER 6.6.13]. On 12 December 2024, the Secretary of State received a letter from The Crown Estate confirming its consent to the inclusion of provisions authorising the compulsory acquisition of interests in Crown land. The Secretary of State is therefore satisfied that the requirement to obtain Crown consent under section 135(2) of the Planning Act is met.

Queen's Road Residential Properties

186. In addition to the above, the ExA highlighted concerns on the potential impacts from the Proposed Development on the residential properties at Queen's Road [ER 6.6.14]. However, the ExA reported that by the end of the Examination, these properties had been voluntarily acquired by the Applicant. The Secretary of State therefore agrees with the ExA that these concerns are no longer a relevant issue in the consideration of the CA powers being sought [ER 6.6.15].

The Secretary of State's Overall Conclusion on Compulsory Acquisition

187. The Secretary of State agrees with the ExA's conclusion on CA detailed in section 6.7 of the Report. As set out above, the Secretary of State is satisfied that the powers sought by the Applicant are necessary for the Proposed Development and consistent with section 127 and 138 of the Planning Act. The Secretary of State is also satisfied that the letter from The Crown Estate dated 12 December 2024 means that there is nothing under section 135 of the Planning Act which impedes the making of the Order in respect of Crown consent. She is satisfied that there is a compelling case in the public interest for the CA and TP powers sought, and accepts the ExA's recommendation on the inclusion of the CA and TP powers in the draft Order [ER 6.7.2].

OTHER MATTERS

Transboundary Impacts

188. Two screening exercises for transboundary impacts was undertaken by the Planning Inspectorate on behalf of the Secretary of State for the Ministry of Housing, Communities and Local Government for the purposes of Regulation 32 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 on 2 March 2023 and 1 February 2024 respectively. In doing so, the Planning Inspectorate applied the precautionary approach set out in the Planning Inspectorate's 'Advice Note 12: Transboundary Impacts Consultation'. The first transboundary screening exercise concluded that the Proposed Development is likely to have a significant effect on the environment of the Republic of Iceland and the state of Denmark relating to bird populations of conservation importance [ER 2.7.2]. The second transboundary screening exercise confirmed that no new European Economic Area states were identified in respect of likely significant effects [ER 2.7.3]. Both Denmark and Iceland were notified in response to each transboundary screening exercise.

189. In relation to the first transboundary screening exercise, Denmark responded on 17 April 2023 to say that it consulted several of its authorities and the Environmental Protection Agency to confirm that it has reviewed the Planning Inspectorate's screening document and the Applicant's EIA Scoping Report. The Secretary of State notes that the Danish Environmental Protection Agency stated that it expected the impacts on the identified bird species to be fully considered as part of the forthcoming environmental impact report and other process, and that it had no comments and did not wish to engage further in the process of environmental assessment. The Secretary of State further notes that the Danish Circular Economy and Waste Unit also responded to say that if the ammonium (sic) that is to be imported to the Proposed Development is to be treated as waste during shipment, Regulation (EC) No 1013/2006 of 14 June 2006 on shipments of waste would apply, and if not other relevant legislation and the consequences should be considered. The ExA reports that the Republic of Ireland did not respond to the notification.

190. In relation to the second transboundary screening exercise, the Secretary of State notes that the state of Denmark responded on 14 March 2024 to ask if the ammonium (sic) to be transported to the Proposed Development is not to be treated as waste, what legislation would apply and the consequences thereof. The ExA reported that that the Republic of Iceland did not respond to the Planning Inspectorate's notification on the second screening report [ER 2.7.4].

The Secretary of State's Conclusion on Transboundary Effects

191. The ExA's Report does not confirm whether it further scrutinised as part of the Examination the State of Denmark's comments on the appropriate legislative framework for the handling of ammonia to be transported to the Proposed Development. She acknowledges that the Planning Inspectorate conducted the Transboundary Screening exercise on behalf of the Secretary of State for the Ministry of Housing, Communities and Local Government, who is relevant Secretary of State for the Pre-Application and Examination stages of the NSIP process.

192. In considering the impacts from the Proposed Development on bird populations of conservation importance in her HRA, she has taken into account the bird qualifying

features of Humber Estuary SPA and Ramsar site which are used by the migratory birds for breeding, wintering and passage. The Secretary of State is aware that these sites are internationally designated because they are important, on an international scale, for conservation. As set out in her HRA, the Secretary of State concluded that with the various measures to mitigate against potential harmful effects, there would not be any implication for the achievement of the conservation objectives of either the Humber Estuary SPA or Ramsar site from the Proposed Development either alone or in-combination with other plans or projects. Additionally, the Secretary of State notes that no Interested Parties raised any concerns relating to impacts on non-UK European sites during the Examination [ER Appendix C, C.1.15].

Human Rights

193. The Secretary of State notes that the ExA considered Human Right 1998 in Examining the Application and in particular to Article 6 (fair and public hearing), Article 8 (respect for private and family life, home and correspondence) and Article 1 of the First Protocol to the European Convention on Human Rights (peaceful enjoyment of possessions) [ER 6.2.7].

194. In respect of the Examination of the Application, the ExA was satisfied that it has ensured a fair and public hearing, that any interference with human rights arising from implementation of the Proposed Development is proportionate and strikes a fair balance between the rights of the individual and the public interest. In respect of the compulsory acquisition powers included in the Order, the ExA concluded that compensation would be available in respect of any quantifiable loss, and therefore here is no disproportionate or unjustified interference with human rights so as to conflict with the provisions of the Human Rights Act 1998 [ER 8.2.9].

195. The Secretary of State agrees with the ExA and is therefore satisfied that granting the Proposed Development would not violate any human rights as enacted into UK law by the Human Rights Act 1998.

The Equalities Act 2010 and the Public Sector Equality Duty

196. Section 149 of the Equality Act 2010 includes a public sector “general equality duty” setting out the need to eliminate discrimination, advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. The public sector equality duty (“PSED”) applies to the Secretary of State in the exercise of her functions as they relate to this decision.

197. The Secretary of State notes that the Examining Authority, in Examining the Application and coming to its conclusions in the Report, has had due regard to the duties under this legislation in conducting the examination and that the Proposed Development would be consistent with the PSED [ER 8.2.10]. The Secretary of State has also considered the steps taken by the ExA in managing the Examination set out in Table A4 in Appendix A of the Report and is satisfied with the ExA’s conclusion.

198. The Secretary of State is aware that an Equalities Impact Assessment (“EqIA”) dated 19 September 2023 was submitted to the Planning Inspectorate as part of the Application for the Proposed Development. The Applicant’s EqIA identified the key

issues and potential impacts related to protected characteristic groups with regards to the Proposed Development. Having considered this assessment, the Secretary of State is satisfied that the Applicant has engaged in inclusive public engagement through its consultation and engagement processes. She further notes that the Applicant has committed to continue to engage in such a manner as the Proposed Development develops. While the Applicant has concluded that no direct discrimination, harassment and victimisation of any protected group is expected to occur as a result of the Proposed Development, the Applicant highlighted potential negative impacts from the relocation of a number of residents on the western stretch of the Queens Road, increase in noise and the diversion of Public Bridleway 36 during construction. In taking her decision, the Secretary of State has considered whether there is a potential for negative impacts on groups with the protected characteristics of age and disability and notes:

- The Applicant has voluntarily acquired the 10 properties on the western side of the Queens Road. The approach outlined by the Applicant in section 7.3 of its Equalities Impact Assessment will have ensured that the residents of the properties acquired by the Applicant through voluntary agreements, including those with protected characteristics, would have received fair and suitable payments for their properties and support in finding alternative accommodation.
- The ExA concluded that mitigation measures proposed by the Applicant would avoid significant adverse effects from noise and that other adverse impacts have been minimised [ER 3.16.31].
- The diversion of Public Bridleway 36 which would result increase the journey length by up to 400m longer than the current route may result in a minor adverse impact on existing users. However, the ExA concluded that as the diversion would only be in place during the construction stage, this impact would be temporary [ER 5.2.55]. Additionally, the Applicant reports that Bridleway 36 is currently unsuitable for those with restricted mobility. Therefore, it concluded that while the diversion would result in an increased journey length it is unlikely to present additional impediment to the current users of Bridleway 36.

199. The Secretary of State is satisfied that the ExA has complied with the public sector equality duty in its examination role. In reaching her decision, the Secretary of State has had due regard has been given to the matters set out in section 149(1) of the Equality Act 2010 in accordance with section 149(3) to (5), and regards her decision as consistent with the needs set out in the PSED.

Natural Environment and Rural Communities Act 2006

200. The Secretary of State, in accordance with the duty in section 40(1) of the Natural Environment and Rural Communities Act 2006 as amended by section 102 of the Environment Act 2021, has had regard to the purpose of conserving and enhancing biodiversity and, in particular, to the United Nations Environmental Programme on Biological Diversity of 1992. In reaching a decision to grant

development consent, the Secretary of State has had due regard to the duty of conserving and enhancing biodiversity.

DRAFT DEVELOPMENT CONSENT ORDER AND RELATED MATTERS

201. The Secretary of State has made a number of minor textual amendments to the recommended Order in the interests of clarity, consistency and precision. Further to the textual amendments the Secretary of State also makes the following modifications:

- The preamble has been amended to:
 - remove references to paragraphs 6 and 16 of Schedule 5 to the Planning Act in the vires as the Secretary of State does not see these powers as applicable or necessary; and
 - insert reference to section 123 of the Planning Act, as the Order includes powers in relation to Crown Land.
- Article 2(1) (interpretation) has been amended to remove or insert (as the case may be) definitions where those definitions are only used once in another provision in the Order where those definitions can now be found.
- Article 7(1)(d) (street works) has been amended to remove references to “renew” and “alter”. It was not clear to the Secretary of State what these terms were intended to cover and repair or reconstruct are within the definition of “maintain” within the Order.
- Article 9(4) (power to alter layout, etc., of streets) has been amended to include that the street authority may attach any reasonable conditions to any consent given under that article. The Secretary of State considers that without such provision, the scope of article 9 is broader than ordinarily the case, without sufficient justification.
- Article 12 (permanent stopping up of public rights of way) has been amended to provide for the erection of a site notice 28 days prior to the extinguishment of a right of way under that article. A new paragraph (2) provides for the content of that site notice.
- Article 20(1) (protective works) has been amended to clarify that the applicable land outside of the Order limits is that which is “adjacent to” those limits. The Secretary of State notes that it is not usual to provide for powers outside of the Order limits, and whilst its content in this case, does not consider it is a position that is endorsed generally without proper justification.
- Article 21(1) (removal of human remains) has been amended to remove the words “which the undertaker reasonably considers may contain human remains”. The Secretary of State is not satisfied that it is necessary given the effect of paragraph (2) which already provides that the Article relates to development or works which will or may disturb any human remains.
- Article 31 (temporary use of land for constructing the authorised project) has been amended to:

- remove the reference to sub-paragraph (1)(a)(ii) in article 31(1)(a); and
 - remove paragraph (6)(h), as it is unnecessary to provide for the breaching or failure to comply with the provisions of the Order, section 161 of the Planning Act already deals with compliance with the terms of the Order.
- Article 34(4) has been amended to broaden the definition of “public utility undertaker”. The Highways Act 1980 definition is limited to gas or hydraulic power.
 - Article 46(10) and (20) have been amended to substitute the “Company” and “Air Products” for the catchall term “undertaker”. It is the Secretary of State’s understanding that this drafting is consistent with the applicable sections of the explanatory memorandum, which only contemplate the exercise of those powers between the two parties.
 - Article 58 (procedure in relation to appeals under Control of Pollution Act 1974) has been removed in full. The Secretary of State considers the existing statutory procedures to be sufficient, and doesn’t consider that the explanatory memorandum has justified its inclusion.
 - Article 61(1) (arbitration) has been amended to substitute the President of the Institution of Civil Engineers for the reference to the Secretary of State and Schedule 16 has been amended accordingly. The Secretary of State considers that this is a more appropriate and efficient body for the applicable appointment.
 - Schedule 2 (requirements) has been amended at various places to substitute “substantially in accordance” for “in general accordance”. The Secretary of State considers the latter to be imprecise.

SECRETARY OF STATE’S OVERALL CONCLUSION AND DECISION

202. For all the reasons set out in this letter, the Secretary of State has decided to grant development consent, subject to the changes in the Order mentioned above. The Secretary of State is satisfied that none of these changes constitutes a material change and is therefore satisfied that it is within the powers of section 114 of the Planning Act for the Secretary of State to make the Order as now proposed.

CHALLENGE TO DECISION

203. The circumstances in which the Secretary of State’s decision may be challenged are set out in Annex A of this letter.

PUBLICITY FOR THE DECISION

204. The Secretary of State’s decision on this Application is being publicised as required by section 116 of the Planning Act and regulation 31 of the 2017 Regulations.

Yours faithfully,

Gareth Leigh

ANNEX A

LEGAL CHALLENGES RELATING TO APPLICATIONS FOR DEVELOPMENT CONSENT ORDERS

Under section 118 of the Planning Act 2008, an Order granting development consent, or anything done, or omitted to be done, by the Secretary of State in relation to an application for such an Order, can be challenged only by means of a claim for judicial review. A claim for judicial review must be made to the High Court during the period of 6 weeks beginning with the day after the day on which the Order is published. Please also copy any claim that is made to the High Court to the address at the top of this letter.

The Associated British Ports (Immingham Green Energy Terminal) Development Consent Order 2025 (as made) is being published on the Planning Inspectorate website at the following address:

<https://national-infrastructure-consenting.planninginspectorate.gov.uk/projects/TR030008>

These notes are provided for guidance only. A person who thinks they may have grounds for challenging the decision to make the Order referred to in this letter is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (020 7947 6655).