

Date: 4 February 2022
Your Ref: EN010103
Our Ref: 13626



6 New Bridge Street
London EC4V 6AB

T: [REDACTED]
F: [REDACTED]
E: info@dwdllp.com
W: [REDACTED]

Mr Kevin Gleeson
Lead Member of the Examining Authority
National Infrastructure Planning
The Planning Inspectorate
Temple Quay House
2 The Square
Bristol, BS1 6PN

By email: netzeroteessideproject@planninginspectorate.gov.uk

Dear Mr Gleeson

EN010103 - THE NET ZERO TEESIDE PROJECT

REQUEST BY THE APPLICANTS IN RESPECT OF THE TIMING OF THE PRELIMINARY MEETING/EXAMINATION

I write on behalf of the Applicants, Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited, in response to your letter of 31 January 2022.

Your letter follows the Applicants' letter (dated 26 January), which set out their intention to seek changes to the Net Zero Teesside (NZN) Development Consent Order Application (the DCO Application) and requested that the Preliminary Meeting be arranged for mid-May 2022 to provide time for those changes to be consulted upon and the formal change request to be submitted in advance of the start of the Examination. The letter seeks further information from the Applicants about the proposed delay to the start of the Examination and requests that the Applicants clarify their position by responding to a number of questions (Questions 1 to 8). The Applicants' response to those questions is set out below:

Question 1 – Would the changes being considered, individually or cumulatively, lead to the Project being different in substance to that which was originally applied for in July 2021?

No, the Applicants do not consider that the changes being considered would, individually or cumulatively, lead to the NZN Project being different in nature or substance to that which was originally applied for in July 2021 and accepted for examination on 16 August 2021.

The Project would remain a full chain Carbon Capture, Usage and Storage project, comprising a number of elements, including a new gas-fired electricity generating station (with an electrical output of up to 860 megawatts) with post-combustion carbon capture plant; gas, electricity and water connections (for the electricity generating station); a CO₂ pipeline network for collecting CO₂ from a cluster of local industries on Teesside; a high-pressure CO₂ compressor station; and an onshore CO₂ pipeline.

Due to the Project's scale, the extent of land interests within the proposed Order limits and the potential to re-use existing infrastructure to reduce the construction effects of the Project, the DCO



Application submitted in July 2021 necessarily included a degree of optionality. The Applicants have previously explained to the Planning Inspectorate the need to retain a degree of optionality within the Application, but have also been clear that their aim would be to reduce that optionality, if possible, in advance of the Examination as a more detailed project design is progressed. The options included in the Application were consulted upon and assessed as part of the EIA for the Project.

The changes being considered relate primarily to the optionality included in the Application (particularly around the connection corridors for the Project) and a reduction in land take (or a reduction in the powers sought over land). They would deliver improvements to the Project and are anticipated to reduce its impacts. However, the nature and substance of the Project remain the same. In particular:

- The development proposed would remain the same, with no change to the description of development set out at Question 5 of the Application Form (Document Ref. 1.3), no change to the NSIP being applied for and limited updates to Schedule 1 to the draft Development Consent Order (DCO) (Document Ref. 2.1).
- The changes either reduce or leave unchanged the level of environmental effects from those assessed as part of the EIA and reported in the Environmental Statement (Document Ref. 6.1 to 6.4) in which the Rochdale Envelope approach was used in order to assess a worst case; nor are there any changes to the conclusions of the Habitats Regulations Assessment Report (Document Ref. 5.13).
- While there would be changes to the Order limits and Order land, to a significant degree this arises from the removal of options included in the draft DCO, which results in the removal of areas of the Order limits/land. There are also other areas where land would either be removed from the Order limits/land, or is retained within it and the change would seek a reduction in the powers sought over that land. These are positive changes resulting from further project design refinement and supported by discussions with potentially affected landowners, and do not change the development proposed.

The Applicants' response to Question 2 below further underlines that the changes would not alter the nature or substance of the Project.

Question 2 – What are the proposed changes and what are their implications in terms of EIA and compulsory acquisition of land?

The proposed changes are as follows – additional information will be provided in the Applicants' Step 1 submission:

- Reduction of options included within the Application, in particular for the connections and the River Tees crossings.
- Inclusion of a different method for crossing the Tees, utilising existing infrastructure – this is within the Order limits/land, and does not alter the nature or substance of the development proposed. If feasible this would be more sustainable, reduce construction impacts, and reduce the land required to undertake the Project. As the engineering review to confirm use of the relevant infrastructure is in train, the Applicants' proposed change would retain two options for the CO₂ Gathering Network. The Applicants will be in a position to provide additional information on the feasibility of the options in June 2022 and will invite the Secretary of State to make the DCO on the basis of the preferred option.

- Reductions to the Order limits/ land, arising from further project refinement and discussions with land owners.
- Reductions in the land powers sought within the Application for certain plots –these are principally changes from land over which new rights are sought to land required temporarily for construction.
- Inclusion of land (which is within the current Order limits/land) within a different Work Number on the Works Plans. One area currently included within Work No. 5 (Wastewater Disposal Works) would become part of Work No. 9 (Temporary Construction and Laydown Areas); and an area included within Work No. 2A (Gas Connection) and which includes the use of an existing road would become part of Work No. 10 (Access and Highway Improvements). These are changes required to the Works Plans only (Document Ref. 4.4) and do not change the works proposed or use of the areas concerned.

Question 2a – How many existing plots are likely to be affected?

Due to the scale and complexity of the Order land, the reduction in options, and the changes to the Order land (reductions in extent and powers sought), a significant number of plots are likely to be affected overall. For the reasons explained above, however, the effects are essentially beneficial or neutral in nature for those with an interest in the relevant plots of land. The Applicants estimate that the overall reduction in the Order land/limits would be around 25%; approximately 18% of the existing plots would be removed from the Order land; and approximately 20% of plots would reduce in extent and/or be subject to a ‘step down’ in terms of the powers sought.

Question 2b – How many new plots are expected to be created/has landowners consent to any additional compulsory acquisition been provided?

It is anticipated that there would only be one small additional plot of land to be included in the Order limits/land, of around 110 m². The additional plot is to be used for the same purpose as the plots it would adjoin and there is no change to the design of the development proposed. This has been discussed with the relevant land owner but they have not provided consent to its inclusion within the compulsory acquisition powers sought in the Application. At present it is therefore anticipated that the process in ‘The Infrastructure Planning (Compulsory Acquisition) Regulations 2010’ would need to be followed. This can be accommodated within the Examination timetable.

The land required for the River Tees crossings would be reduced in area and would (where retained) remain as land over which new rights are sought. Whilst the nature and substance of the Project would remain the same it is possible that the nature of the rights sought in order to deliver it would change. Similar potential considerations apply to the change relating to the land which would be included within Work No. 10, referred to above in response to Question 2. The Applicants consider that The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 may apply to these and will address this matter when they formally seek the relevant changes.

Question 2c – Do the proposed changes eliminate options currently shown on the Works Plans relating to the connection corridors?

Yes, the proposed changes would eliminate some options currently shown on the Works Plans relating to the connection corridors, as noted above. Options would remain for the CO₂ Gathering Network (Work No. 6) and Work No. 5 (Wastewater Disposal Works) – these relate to the potential re-use of existing infrastructure and their retention reflects the need to establish the feasibility of doing so. As noted above in relation to the CO₂ Gathering Network, the Applicants will provide additional

information on the feasibility of the options in June 2022 and will invite the Secretary of State to make the DCO on the basis of the preferred option.

Question 2d – What is the extent of the other changes to the Order limits?

Please refer to the responses to Questions 2a and 2b above. No other changes to the Order limits are anticipated.

Question 2e – What is the extent of the minor updates and changes proposed to the Project?

The other changes relate to the re-designation of land on the Works Plans (Document Ref. 4.4), as referred to in the final bullet in the response to Question 2 above. As noted there, these do not change the works as identified in the draft DCO or the use of the areas concerned.

Question 3 – Is the delay to the commencement of the Examination of the Application until mid-May justified in the context of paragraphs 40 and 45 of the DCLG Examination Guidance?

In the particular circumstances of this case, and in the context of the Guidance, a delay to the start of the Examination to mid-May 2022 is justified.

Both AN16 and the DCLG Guidance recognise that there are occasions when applicants may need to make a material change to an application after it has been accepted for examination, and that there may be good reasons why a change is proposed at this stage. This reflects the fact that Parliament has not set a statutory timetable for the pre-examination period, and that this allows for a degree of flexibility in the system established by 'The Planning Act 2008' to accommodate material changes to important nationally significant projects without giving rise to unfairness or inefficiency in the examination process.

There is a balance to be struck between the public interest in allowing for material changes to be made to nationally significant infrastructure projects – which means that a delay to the start of the examination “may be appropriate” (paragraph 45) – and the potential adverse consequences of undue delay in the processing of applications. The need for such a balance underlies the guidance to applicants to ensure that any delay to the start of the examination is kept to the minimum period necessary. What that means in any individual case will necessarily be fact-sensitive and dependent on the particular circumstances. Thus whilst the Guidance identifies the Secretary of State’s expectation as to what would normally be agreed, it does not represent a limit and the Guidance does not impose any fetter on the Examining Authority’s discretion as to what is appropriate in any individual case.

The potential adverse consequences associated with undue delay to the start of an examination are essentially practical in nature. As paragraph 45 explains, keeping the delay to the minimum necessary will limit the risk that the application, including pre-application consultation and environmental information, will no longer be sufficiently current to form the basis of an examination. In this case the proposal to commence the NZT Examination in mid-May 2022 would not give rise to any such practical difficulties, for reasons explained below. The absence of any significant adverse consequences is an important material consideration weighing in favour of the proposed Examination timetable.

In applying the Guidance here, it is also important to consider the particular nature of the NZT Project and of the proposed changes to it.

The Project is an unusual and a ‘first-of-a-kind’ development. It is a critical part of a Track 1 carbon capture and storage cluster project, which the Government has identified as being important for the decarbonisation of the power and industrial sectors in Teesside and nationally. The Project is located

in an area where there are a large number of existing industrial and other developments (both existing and proposed). That is reflected in the identity of the Interested Parties whose interests and infrastructure must be taken into account, and with whom the Applicants are negotiating in order to deliver the Project. A number of those Interested Parties have used their Relevant Representations to ask for changes to be made to the Application, and are actively engaged in negotiations with the Applicants to facilitate such changes. Paragraph 6.3 of AN16 recognises that the pre-examination stage provides an opportunity for applicants to take stock of the points made in relevant representations and negotiations, and that if changes are appropriate as a result this is the time when non-statutory consultation can take place so as to reduce the impact on the statutory timescales that apply during the examination stage.

The proposed changes being considered in this case would reduce optionality, land take and complexity, and they respond to matters raised in the Relevant Representations or in discussions directly with Interested Parties. Their overall effect would therefore be positive in reducing the potential effects of the Project on Interested Parties and affected persons, reducing the number of issues to be considered in the Examination once it commences and simplifying both the examination and decision-making processes. It would provide for a more efficient examination process, which would be of benefit to all parties, and more broadly will help to ensure delivery of the Project which is critical to the Government's strategy for net zero.

If the Examination were started earlier – mid-March 2022 is mentioned – the Applicants would still at that point be in the early stages of consulting on the proposed changes. This would result in added complexity for the parties involved in the Examination, as they would be required to review and respond to first written questions and comments on the Relevant Representations that are based upon the Application documents submitted in July 2021. That work would not be able to take account of the proposed changes, as those would still be the subject of consultation and the formal change request would not have been made to the ExA. By deferring the start of the Examination to mid-May that additional complexity can be avoided. The Applicants' view is that it would clearly be preferable to address the proposed changes now, so that the formal change request has been made in advance of the Examination and the changes can then be taken into account by the ExA in formulating the Examination timetable, written questions, and any other information requested, and they can be taken into account in all submissions and responses by Interested Parties.

The approach of seeking to make changes to a DCO application during an extended pre-examination period has been accepted in the case of other complex nationally significant infrastructure projects, such as in relation to Sizewell C, where the preliminary meeting was held approximately five and a half months after the end of the relevant representation period, with a number of changes consulted on and formally submitted in that time.

Further, the delay being sought to the start of the Examination is not of such a length that it would mean the pre-application consultation undertaken for the Project and the environmental information submitted with the Application is no longer sufficiently current. As noted above, the Project remains fundamentally the same development, and which was consulted on extensively during 2019 to 2021. The Applicants are proposing a robust consultation on the proposed changes, outwith the examination period in order to allow Interested Parties the fullest opportunity to engage with them and then subsequently the Examination itself.

The Applicants have considered the baseline to the Environmental Statement (Document Refs. 6.1 to 6.4) and do not consider that any changes would arise due to a delay to the Preliminary Meeting from mid-March to mid-May 2022.

The Applicants have identified that it may be beneficial for certain ecological surveys to be updated and are undertaking some confirmatory surveys shortly, in order to ensure that the position remains as reported in the Environmental Statement (which is expected). These would be provided to Natural England and other relevant Interested Parties directly, and would also be submitted to the ExA. For the avoidance of doubt, this is entirely unrelated to the proposed changes and the proposed postponement of the start of the Examination. The position would not be different if the Examination were to commence in mid-March 2022 (i.e. these confirmatory surveys would still be carried out).

Question 4 – What is the likelihood of the Applicants having to revise the intended timetable for Steps 1 to 4 that might further delay the Preliminary Meeting beyond the mid-May date being sought?

The Applicants have prepared a proposed timetable for Steps 1 and 4 that they consider to be both realistic and robust. The timetable provides:

- Sufficient time to prepare information on the proposed changes, taking account of the completion of the workstreams relating to optionality and land take.
- An opportunity for Interested Parties and the local community to be consulted upon the changes and submit comments, via a robust consultation process which is outwith the examination.
- A period for the Applicants to take account of any responses to that consultation and finalise the documents (including updated Application documents) that would need to form part of the formal change request made to the ExA.

The Applicants are committed to meeting the proposed timetable.

Further to the above, the Applicants have set a date of July 2023 for a Final Investment Decision (FID) on the Project, and proceeding to that step is contingent upon a DCO having been made by the Secretary of State and the relevant judicial review period (6 weeks) having expired. On that basis, the Examination could not start significantly later than mid-May 2022 as there would be a substantial risk of development consent not being in place for the Project in time for FID. The July 2023 date also links to the importance of timely delivery of the Project – as stated above, it is a critical part of a Track 1 carbon capture and storage cluster project which the Government has identified as being important for the decarbonisation of the power and industrial sectors in Teesside and nationally. The Government has committed that the cluster will be operational by 2027.

Question 5 – What action should the ExA take if the current timetable for Steps 1-4 cannot be met?

The Applicants would refer the ExA to the response given to Question 4 above. The Applicants are confident that the proposed timetable can be met and as explained, development consent for the Project needs to be in place for a FID in July 2023, meaning that the Examination could not start significantly later than mid-May 2022. Notwithstanding that, if the timetable were not met, then the ExA has discretion as to how to proceed, including as to whether to continue with the Applicants' proposed mid-May 2022 Preliminary Meeting.

The ExA would need to consider how to exercise that discretion on the basis of the circumstances as they exist at that time, including the reasons for any delay and the consequences for the Applicant, Interested Parties and the public interest of the available options.

Question 6 – Notwithstanding the Applicants’ proposed changes would it be appropriate for the ExA to commence the Examination in mid-March 2022 based on the application as currently before it?

The Applicants would refer the ExA to the response given to Questions 3 and 4 above.

If the Examination started in mid-March 2022 the proposed changes would have to be introduced, consulted upon and formally submitted during the examination process. This would make for a more complex Examination and consequently one that would be more burdensome for all parties including the ExA. The submissions by all parties would need to be either on the basis of the Application as originally submitted (notwithstanding that the change process would be happening at the same time), or to deal with the alternative scenarios which would be more complex and challenging.

The Applicants’ proposed timetable allows for the changes to be dealt with in advance of the Examination starting, in accordance with the advice at paragraph 3.6 of AN16 and with the benefits of this approach noted at paragraph 6.5. This would provide for a more efficient examination process to the benefit of all parties.

Question 7 – What implications would there be for the timetable if the Examination commenced in mid-March while the Applicants are progressing the proposed change request?

The Applicants would refer the ExA to the responses above to Questions 3 and 6.

Question 8 – What other considerations might be relevant to any procedural decisions that the ExA takes in respect of a delay to accommodate material changes?

The Applicants consider that the main considerations are those set out in the responses to the above questions.

In summary, the Applicants consider that there is benefit to all parties, including the ExA, and to the public interest if the Examination is delayed until mid-May 2022 to enable consultation on and then submission of the proposed changes to the Application. The changes are intended to refine the Project, the optionality and the Order land/limits, and would enable a more efficient and streamlined Examination.

As we have emphasised above, the Project is a critical part of a Track 1 carbon capture and storage cluster project, which provides for significant decarbonisation of the power and industrial sectors in Teesside and nationally. A mid-May 2022 Preliminary Meeting meets the timescales required for a decision on the Application in relation to the Government’s programme for CCS projects whilst also allowing an opportunity for the changes to be consulted on prior to an efficient examination process.

We trust that the Applicants’ responses to the above questions provide sufficient clarification and will assist the ExA in making a procedural decision setting out the next steps in the examination of the Application.

Yours sincerely

A solid black rectangular box used to redact the signature of Geoff Bullock.

Geoff Bullock
Partner
DWD – on behalf of NZT Power Limited & NZNS Storage Limited