

**WRITTEN REPRESENTATION
OF REDCAR BULK TERMINAL LIMITED**

Application by Net Zero Teesside Power Limited ("NZT") for an Order Granting Development
Consent for the Net Zero Teesside Project ("the Project")

Introduction

1. This Written Representation is submitted on behalf of Redcar Bulk Terminal Limited (Company Registration Number 07402297) of Time Central, 32 Gallowgate, Newcastle Upon Tyne, Tyne And Wear, NE1 4BF (“RBT”).
2. As stated within RBT’s Relevant Representation [RR-001], RBT is the operator of a deep-water marine terminal situated on the South Bank of the River Tees (“the Terminal”). The Terminal has been visited by the Examining Authority as part of the Accompanied Site Inspection on 12 May 2022.
3. The Terminal consists of a 320 metre long quay at the Terminal, equipped with 2 rail mounted gantry cranes used for loading and unloading bulk and irregular sized cargo, with a capacity of up to 40,000 tonnes per day. The Terminal itself is the deepest on the east coast of the United Kingdom, being capable of handling Cape Size Vessels with drafts of up to 17 metres and operating 24-hours a day, 365 days a year.
4. The Terminal includes a c.130-hectare area adjacent to the quay used for short and long-term storage and processing for bulk cargoes. Parts of this site are also leased, licensed or under option to third parties for use in their various businesses. In addition to the lessees and licensees, RBT has a range of other customers bringing material in through the Terminal governed through short and long term materials handling and storage contracts. Those contractual arrangements are negotiated on commercial terms.
5. The Terminal has separate rail access and handling facilities for rapid loading and off-loading of rail freight traffic and direct access to the UK rail and road networks with links to the A66, A19 and A1(M). The Terminal (and in turn its lessees and licensees) have the benefit of easements over neighbouring land which allow for onward road connections to the highway.
6. As stated in RBT’s Relevant Representation [RR-001], RBT does not object to the principle of the underlying Project in terms of the benefits it seeks to deliver to Teesside and region beyond. However, it is concerned with the impact of the Project detrimentally affecting RBT’s on-going operations at the Terminal as well as that of its customers, lessees and licensees, particularly concerning interference from the use of compulsory acquisition powers within the DCO.

7. RBT has been in discussions and then subsequently, commercial negotiations, with NZT since around October 2020. However, RBT would stress that these negotiations have always been in context of NZT's commercial use of the Terminal as a paying customer, for the unloading of loads during construction, rather than in the context of the use of compulsory acquisition powers within the DCO.

NZT proposed operations on RBT land under the DCO

8. NZT is seeking to use RBT land and facilities for the purposes of unloading outsized loads during the construction phase of the Project.
9. In terms of the Terminal, it is understood that NZT is principally concerned with operations over:
 - i. Plot 222, being a large section of RBT's Terminal quay and adjacent area, where NZT is seeking to install a crane which will unload outsized loads from docked NZT vessels; and
 - ii. Plot 223 being part of the access corridor for the Terminal's storage area and quay, as well as certain lessees' and licensees' premises (the access corridor also known as "Red Main");
10. It is understood that the crane will unload up to 35 modules from NZT vessels docked at RBT's Terminal quay onto Self Propelled Modular Transporters ("SPMTs") which will then drive the modules along Red Main to exit RBT's facility for onward travel to the Project's construction site. This will be undertaken over a period of 36 months. It is currently undetermined how many unloading sessions on SPMTs will be undertaken, but it is expected that each session will take a day or less, so if evenly spread, access to the Terminal and Red Main by NZT will be needed for no more than about one day each month.
11. The Book of Reference [AS-139] and Compulsory Acquisition Schedule [REP1-044] identifies further Plots which RBT either holds either a Category 1 or Category 2 interest. Identified by NZT's land requirements these are as follows:
 - i. Permanent: 323, 327, 339, 341, 346, 361, 364, 369, 375, 380, 385, 389, 390, 391, 392, 394, 396, 398, 399, 400, 402, 403, 404, 406, 407, 410, 411, 414, 415, 422, 424, 429, 447, 449, 450, 451, 452, 454, 455, 456 & 457;

- ii. Temporary: 287, 300, 338, 381, 289, 290, 291, 292, 293, 295, 297, 298, 299, 300, 304, 308, 309, 334, 335, 336, 337, 338, 342;
- iii. New Rights and Temporary: 395, 397, 401, 420, 439, 377, 395, 408, 409, 425, 461, 462, 464, 478, 516, 517, 518, 519, 520.

12. NZT has not engaged in negotiations or discussions with RBT in respect of these Plots. It is therefore not understood by RBT the extent of impact on their interests (or those of their customers, lessees or licensees) within these Plots caused by the Project or by the exercise of compulsory acquisition powers over them. A number of interests within these Plots relate to easements for RBT's rail and road accesses from the Terminal, as well as utility cables and pipelines, essential to RBT's continued operation.

13. NZT has agreed that Plot 288 (which covered part of RBT's rail loading station and road and rail access) will be removed from the Order as this Plot is no longer needed for the installation of the Project's gas pipeline.

Commercial Negotiations between NZT and RBT

14. As is stated above, commercial negotiations have taken place between NZT and RBT concerning the use of the RBT facilities at the Terminal.

15. These have been undertaken on the basis of NZT being a commercial customer for Terminal services provided by RBT. The commercial detail of the discussions between RBT and NZT has been undertaken on a subject to contract and without prejudice basis, but have not been undertaken in context of the use of the compulsory acquisition powers sought within the DCO.

16. In the course of these negotiations, RBT suggested to NZT the use of an alternative Roll-On/Roll-Off procedure for unloading outsized loads from NZT vessels when berthed at the Terminal. This is an alternative to the installation of the crane which NZT is seeking within the DCO. The alternative Roll-On/Roll-Off procedure is RBT's preferred method of unloading outsized loads at the Terminal, as it poses less risk to the physical fabric of the Terminal quay and will likely be a faster method of unloading.

17. RBT disagrees with the Compulsory Acquisition Schedule [REP1-044] which infers that all the Plots listed against RBT are subject to negotiations in the context of

compulsory acquisition. No engagement has occurred to reach a voluntary agreement or explain NZT's operations over the Plots listed in paragraph 11 above and any impact it will have on RBT's operations or those of its customers, lessees and licensees.

Side Agreement

18. It is intended that a legal agreement between NZT and RBT will be put into place to reflect the commercial agreements for the use of RBT's facilities at the Terminal (the "Side Agreement").
19. As compulsory acquisition powers are sought by RBT within the DCO, the Side Agreement will include provisions to regulate the use of compulsory acquisition powers sought by NZT in the event they are granted. Similarly, although draft Protective Provisions have been provided by NZT for inclusion in the DCO for the benefit of RBT, these will be negotiated solely on the basis that the compulsory acquisition powers sought by NZT are granted against RBT's objection to them.
20. RBT considers that if the Side Agreement is completed, compulsory acquisition powers should not be granted within the DCO in respect of Plot 222 and Plot 223¹. NZT has indicated to RBT that their position is that despite the Side Agreement being in place, NZT should still benefit from compulsory acquisition powers in the event of breach of the Side Agreement by RBT.
21. RBT's case is that with the Side Agreement in place, NZT would be treated the same as any other customer of RBT, with the negotiated contractual protections within the Side Agreement, with the ability to obtain an order for specific performance should the terms of the Side Agreement be breached by RBT. Therefore the 'back up' option of relying upon compulsory acquisition powers is unnecessary given NZT's contractual and enforcement rights under a completed Side Agreement.

RBT's Objection to the inclusion of Compulsory Acquisition Powers

22. NZT does not make a specific case for the need for the rights of compulsory acquisition over RBT's Plots within the Statement of Reasons [AS-141]. The case for the compulsory acquisition over Plots within which RBT holds an interest has not been made.

¹ This position is reserved to include any further accesses, utility cables or pipelines which benefit RBT and its customers, lessees and licensees within the Plots listed at paragraph 11, the impact of which NZT has not clarified to RBT.

Extent of Compulsory Acquisition Powers Sought

23. RBT has specific concerns regarding the physical extent of the Plots over which compulsory acquisition powers have been sought. There is also uncertainty as to how NZT would exercise and use the compulsory acquisition powers if granted. RBT therefore objects to the compulsory acquisition over the Plots which RBT holds an interest.
24. NZT is seeking powers over Plot 222 and Plot 223 for “*Temporary use of land and in relation to which it is proposed to extinguish or suspend easements, servitudes and other private rights*”; as is indicated on the Land Plans [AS-147] and Book of Reference [AS-139].
25. RBT’s objection to the compulsory acquisition in respect of Plot 222 and Plot 223 is as follows:
- i. Plot 222 is a section of RBT’s Terminal quay. RBT opposes the compulsory acquisition and regards the land take as excessive. No justified reason or calculation has been provided by NZT for the land take for this Plot and consequently for preventing RBT from using this part of the Terminal quay for an undefined ‘temporary’ period.

It is considered by RBT that the length of the quay taken by Plot 222 exceeds that reasonably needed for a NZT vessel to dock at the Terminal for unloading. This land take would prevent other vessels from docking at the quay during an NZT unloading session, if compulsory acquisition powers were exercised. No justification has been given for the length of the quay sought by NZT.

The land take and use of the crane will also interfere with existing RBT infrastructure, including lighting towers which illuminate the quay area. It is assumed that these would need to be removed to accommodate the crane. No explanation is given for how this interference with apparatus is being accommodated if compulsory acquisition powers were to be exercised.

No area for oversailing of the crane jib has been allowed for the areas outside of Plot 222. RBT is of the view that if the crane jib oversails the RBT offices and welfare facilities adjacent to the wharf area itself, these offices and welfare facilities will need to be evacuated by staff for safety reasons during its use,

making it difficult for RBT to actually provide any ship handling or stevedoring services when the crane is so moving (i.e. the very time that ship handling and stevedoring services will be required by NZT). It has not been explained to RBT how the crane will operate if compulsory acquisition powers were exercised.

- ii. Plot 223 is the Red Main access corridor. The compulsory acquisition powers sought state that NZT will have exclusive occupation of Red Main during the entire construction phase and that consequently, RBT will be excluded from using Red Main for their own purposes, as will RBT's customers, lessees and licensees. In the latter case, this will prevent some of those third parties from operating their businesses at RBT. It does not appear that any alternatives to the use of Red Main have been considered by NZT. In the context of NZT's expected requirement for Red Main for an average of no more than one day per month, this is both excessive and unnecessarily disruptive.

Protective Provisions

26. It is not considered that the circulated Protective Provisions [AS-135] will be sufficient to regulate the use of compulsory acquisition powers, as it is not possible to consider whether the Protective Provisions issued by NZT will be adequate, given the lack of information provided by NZT as indicated above. The Protective Provisions also fail to accommodate RBT's customers, lessees and licensees.

27. RBT is of the view that NZT's use of their Terminal will be better managed under their standard negotiated and contracted terms. This is opposed to the limited use of Terminal facilities expected by NZT under compulsory acquisition powers, regulated by Protective Provisions, where the use of compulsory acquisition powers can be triggered where NZT does not consider RBT to be acting in their view, reasonably. This would clearly be a disproportionate use of statutory powers, where all other Terminal users are more than capable of being served on normal commercial terms. RBT has obligations to its existing customers, lessees and licensees which also need accommodation alongside any use of the Terminal by NZT.

Lack of Justification for Compulsory Acquisition

28. There is insufficient detail in the Statement of Reasons [AS-141] and Application as a whole for RBT to assess on an operational level the impact on RBT's ongoing operations at the Terminal and that of its customers, lessees and licensees if compulsory acquisition powers were exercised. Given RBT is an operational

Terminal, this uncertainty will lead to an unacceptable interference with RBT's operations and the businesses of its customers, lessees and licensees.

29. RBT argues that given this, the tests within Section 112 of the Planning Act 2008 have not been met. The Secretary of State cannot be satisfied that the Plots in which RBT holds an interest are required for the Project (or are required to facilitate it or are incidental to it), and if there is a compelling case in the public interest for inclusion of the powers sought.

Redcar Bulk Terminal Limited

9 June 2022