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By email: NetZeroTeessideProject@planninginspectorate.gov.uk

Our ref: JLW/185618.1

2 August 2022

Dear Sir / Madam

**The Net Zero Teesside Project EN010103 (“the Project”)
Deadline 5 Submission on behalf of Redcar Bulk Terminal Limited (“RBT”)**

We write on behalf of RBT further to their Deadline 4 submission [REP4-042] and attendance at ISH3 and CAH2.

Attached to this letter is RBT’s preferred set of Protective Provisions, which as indicated in RBT’s submissions at ISH3 they would be provided at Deadline 5.

As was stated at ISH3 these are issued without prejudice to RBT’s position that powers of Temporary Possession should not be granted within the RBT Terminal Operational Area (being Plots 222 & 223).

RBT is continuing to negotiate a Side Agreement with the Applicants, completion of which would put the relationship between the parties onto RBT’s standard contractual arrangements for their customers using RBT facilities.

Secondly, attached to this letter are the Written Summaries of RBT’s Oral Submissions to both ISH3 and CAH2, as required to be submitted at Deadline 5.

Yours sincerely,

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PART 14

FOR THE PROTECTION OF REDCAR BULK TERMINAL LIMITED

157. For the protection of RBT, the following provisions have effect, unless otherwise agreed in writing between the undertaker and RBT.

158. In this Part of this Schedule—

“apparatus” means any mains, pipes, cables or other apparatus within the Order limits which provide water, electricity or electronic communications to the RBT operations together with any replacement of that apparatus pursuant to the Order;

“alternative apparatus” means appropriate alternative apparatus which enables water, electricity and electronic communications supply to be provided to the RBT operations in a manner no less efficiently than previously by existing apparatus;

“offloading procedure” means the procedure whereby the undertaker, its employees, contractors or sub-contractors are offloading materials, plant or machinery required for the authorised development at the wharf within the RBT site, such procedure to commence when the undertaker, its employees, contractors or sub-contractors have commenced docking the relevant vessel at the wharf for the purposes of such offloading;

“RBT” means Redcar Bulk Terminal Limited (Company number 07402297) and any successor in title or function to the RBT operations;

“the RBT operations” means the port business and other operations of RBT carried out upon the RBT site;

“the RBT site” means land, property and access rights within the Order limits, vested in RBT, including roadways, railway lines and apparatus;

“works details” means—

(a) plans and sections;

(b) details of the proposed method of working, management measures and locations on the RBT site;

(c) details of the timing of execution of works and any interference this may cause to the RBT operations and apparatus;

(d) details of vehicle access routes across the RBT site for any traffic;

(e) details of lifting and scheduling activities on the RBT site, including the programming and access requirements for any offloading procedures;

(e) details of alternative apparatus; and

(f) any further particulars provided in response to a request under paragraph 163.

Regulation of powers

159. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the RBT operations, use of apparatus or access to any of them or the RBT site without the prior written consent of RBT.

160. Any approval of RBT required under paragraph 159 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

- (a) the continuing safety, operational viability and profitability of the RBT operations;
- (b) subject to paragraph 162, the continued use of the apparatus; and
- (c) the requirement for RBT to have reasonable access to the RBT operations and RBT site at all times.

161. Without limiting paragraph 160, it is not reasonable for RBT to give approval pursuant to paragraph 160 subject to requirements which restrict or interfere with the undertaker's access to the RBT site during an offloading procedure.

Interference with Apparatus

162. If, in exercise of the powers conferred by this Order, the undertaker acquires any estate interest or right in any land in which any apparatus is located, the apparatus must not be removed, interrupted, severed or disconnected, and any right to use or retain the apparatus in the land must not be extinguished, until equivalent alternative apparatus has been constructed by the undertaker at the undertaker's cost and is in operation and equivalent rights for the alternative location of the apparatus have been granted to RBT.

Consent under this Part

163. Before commencing—

- (a) any part of the authorised development which would have an effect on the RBT operations or access to them; or
- (b) any activities on or to the RBT site,

the undertaker must submit to RBT the works details for the proposed works or activities and such further particulars as RBT may, not less than 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

164. No—

- (a) works comprising any part of the authorised development which would have an effect on the RBT operations or access to them; or
- (b) activities on the RBT site, are to be commenced until the works details in respect of those works or activities submitted under paragraph 163 have been approved by RBT.

165. Any approval of RBT required under paragraph 164 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

- (a) the continuing safety, operational viability and profitability of the RBT operations
- (b) subject to paragraph 162, the continued use of the apparatus; and
- (c) the requirement for RBT to have reasonable access to the RBT site at all times.

166. Without limiting paragraph 165, it is not reasonable for RBT to give approval pursuant to paragraph 165 subject to requirements which restrict or interfere with the undertaker's access to the wharf and roadways within the RBT site during an offloading procedure.

167.—

(1) The authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the works details approved under paragraph 164 and any requirements imposed on the approval under paragraph 165.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 171 and the arbitrator gives approval for the works details, the authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 171.

Co-operation

168. Insofar as the construction of any part of the authorised development or activities on the wharf and roadways within the RBT site, and the operation or maintenance of the RBT operations or access to them would have an effect on each other, the undertaker and RBT must—

(a) co-operate with each other with a view to ensuring—

(i) the co-ordination of activities and programming to allow the authorised development, the undertaker's activities on the wharf and roadways (including offloading procedures) and the RBT operations to continue;

(ii) that reasonable access for the purposes of constructing the authorised development and the undertaker's activities on the wharf and roadways (including offloading procedures) is maintained for the undertaker, its employees, contractors and sub-contractors; and

(iii) that operation of the RBT operations and access to the RBT site is maintained for RBT at all times; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the RBT operations, the construction of the authorised development and the undertaker's activities on the wharf and roadways within the RBT site (including offloading procedures).

169. The undertaker must pay to RBT—

(a) a cost agreed with RBT for the daily use of the RBT site and RBT services in consequence of the construction of any works referred to in paragraph 163 and use of the RBT site by the undertaker; and

(b) the reasonable costs and expenses incurred by RBT in connection with the approval of plans, inspection and approval of any works details.

Indemnity

170.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 163 or by the use of the RBT site by the undertaker any damage is caused to the RBT site (including the wharf, roadways, any

RBT buildings, plant or machinery or apparatus) or to the RBT operations, or there is any interruption in any service provided, or in the provision by RBT or denial of any services, the undertaker must—

(a) bear and pay the cost reasonably incurred by RBT in making good such damage or restoring the provision by RBT of any services; and

(b) make reasonable compensation to RBT for any other expenses, loss, damages, penalty or costs incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or denial of any service provided by RBT.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of RBT, its officers, employees, servants, contractors or agents.

(3) RBT must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which must not be unreasonably withheld.

(4) RBT must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 170 applies. If requested to do so by the undertaker, RBT must provide a reasonable explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 170 for claims reasonably incurred by RBT.

Arbitration

171. Any difference or dispute arising between the undertaker and RBT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RBT, be referred to and settled by arbitration in accordance with article 47 (arbitration).

Written Summary of RBT's Oral Submissions at ISH3

1. RBT confirmed that they are negotiating Protective Provisions with the Applicants. These are in respect of Plots 222 and 223 which form the Terminal's Operational Area. RBT indicated that they are resisting the powers sought over these Plots, therefore any agreement of these Protective Provisions is without prejudice to RBT's position regarding the removal of these Plots.
2. In respect of RBT's interests within Plots outside of the immediate Terminal Operational Area, RBT is presently unable to negotiate Protective Provisions as there is still an absence of information regarding the impact on RBT's road and rail access, utility cabling, pipelines and communications cables within those Plots. This impact is not addressed in the Protective Provisions provided by the Applicants within the draft DCO.
3. One meeting has been held to date in mid-June between RBT and the Applicants (which was requested by RBT) but further work is required to understand the impact of the Project on those interests and how RBT's interests will be appropriately protected. RBT's submission at Deadline 4 [REP4-042] provides annotated land plans which show RBT's road and rail access, utility connections and communications cable routes both inside and outside of RBT's Terminal Operational Area, to illustrate this to the Examining Authority.
4. It is RBT's intention to submit to the Examination Protective Provisions which cover both RBT's interests within its Terminal Operational Area and RBT's interests outside, without prejudice to RBT's position regarding the removal of Plots 222 & 223. These will be negotiated as part of the Side Agreement between RBT and the Applicants over the next few weeks. RBT would intend that these draft Protective Provisions would be submitted at Deadline 5.

Written Summary of RBT's Oral Submissions at CAH2

1. RBT rehearsed that their interests impacted by the Project could be split into those inside the Terminal Operational Area (Plots 222 and 223) and those outside (being those listed at paragraph 11 of RBT's Written Representation [REP2-095]).
2. In respect of the Terminal Operational Area, RBT and the Applicants have agreed Heads of Terms and a draft Side Agreement is currently being negotiated. RBT's position is that if this Side Agreement is completed there is no need for Temporary Possession powers within the DCO and these powers should subsequently be removed.
3. RBT's position is that when the Side Agreement is completed it is placing the Applicants onto RBT's standard commercial terms if they were a paying customer. The Applicant's position is that these powers should be retained in the case of default of the Side Agreement by RBT. RBT's position against this is that in that circumstance, the Applicants should rely on the standard dispute resolution procedures if that event ever occurred, being the normal position accepted by any paying user of RBT facilities. Therefore the powers sought in respect of Plots 222 & 223 are not required if the Side Agreement is completed.
4. In respect of the RBT interests outside of the Terminal Operational Area, the Heads of Terms agreed do not include reference to the exercise of powers over those Plots. These powers have the potential to interfere with RBT's road and rail accesses, utility cabling, pipelines and communication cables which are essential for RBT's ongoing

operations and those of its customers. A number of these interests are over land owned by STDC, it is presently unknown what arrangements the Applicants are making with STDC, which is relevant not only to the easements granted to RBT but also interference caused to RBT operations.

5. Only one meeting has been held to date to discuss the potential interference which could be caused, further work is still required to understand the impact of the Project within these Plots.
6. The position of RBT on these Plots is that, at minimum, equivalent rights and replacement or diverted connections must be provided prior to their interference by the Project. At present it is unclear if the Applicants can re-grant these equivalent rights and provide diverted or replacement connections to RBT under DCO powers. This will need to be clarified by the Applicants to confirm that RBT will not suffer any disruption to their services or accesses as a result of the Project.