



OUR REF T2783.4/CBW/FCG
YOUR REF EN010103
2 August 2022

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Dear Planning Inspectorate

The Proposed Net Zero Teesside Project (EN010103) (the “Project”)

Deadline 5 Submission

1. Summary

- 1.1 We act on behalf of Teesside Gas Processing Plant Limited (“**TGPP**”) and Teesside Gas & Liquids Processing (“**TGLP**”) in relation to the development consent application by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (together the “**Applicants**”) for the Project (the “**Application**” or the “**DCO**”). TGLP and TGPP’s interests are managed by North Sea Midstream Partners (“**NSMP**”) and they will hereafter be referred to for ease of reading as NSMP.
- 1.2 NSMP owns the Teesside Gas Processing Plant (the “**Gas Processing Plant**”), which is a key national energy infrastructure installation delivering material quantities of gas into the National Transmission System (“**NTS**”) and whose continued safe operation is crucial to security of the UK’s energy supply.
- 1.3 NSMP has only recently been made aware of the Project and TGLP and TGPP’s status as Affected Persons, as explained in our Deadline 3 submission (REP3-018). Part of TGLP’s freehold land has been identified as within the DCO’s Order Limits (Plots 103, 105 and 106). In addition to rights over this freehold land, the Applicants are also seeking powers in respect of land over which NSMP has crucial rights of access and easements. This includes but is not limited to Plots 98, 108 and 111, which contain sections of the sole access road to the Gas Processing Plant (the “**Access Road**”).
- 1.4 To operate the Gas Processing Plant, NSMP is reliant on crucial rights over areas which are subject to the DCO. Should the DCO be granted in its present form, these rights are at risk of being extinguished. This is an unworkable outcome for NSMP which would jeopardise the safe operation of the Gas Processing Plant and undermine NSMP’s ability to use and develop its land and operations. In particular, preservation of NSMP’s use of the Access Road is fundamental: any disruption in smooth and unimpeded use of this road for even a short window would have severe and immediate consequences to NSMP’s continued ability to safely operate the Gas Processing Plant and maintain a stable flow of gas into the national supply. As the Gas Processing Plant is classified as an Upper Tier Control of Major Accident Hazards (“**COMAH**”) site, any hindrance of access could have very serious adverse consequences.
- 1.5 The Applicants have confirmed that they are liaising with the holders of the adjacent Cats North Sea Limited (“**CATS**”) site to procure access via the main terminal road and have assured NSMP that construction traffic will not be by way of the Access Road. However, the Application in its present form does not reflect these assurances.

- 1.6 NSMP understands the importance and the urgency of achieving UK Net Zero targets and the need to build and develop low carbon infrastructure in the UK. Indeed, NSMP is itself closely involved in key energy transition projects and initiatives. Currently however, natural gas facilities such as the Gas Processing Plant remain a key component of the UK's energy mix and are crucial to ensuring security of supply during the economy's green transition. Natural gas will continue to play a critical role in the nation's energy mix as the UK moves towards Net Zero.
- 1.7 While NSMP is not opposed to the Project in principle, it has some fundamental concerns in relation to the Application, being:
- 1.7.1 The substantial delay in engagement by the Applicants with NSMP in light of the potential for disruption of the Gas Processing Plant and interference with NSMP rights which are required for the Gas Processing Plant's safe and continued operation.
 - 1.7.2 The preservation of unimpeded access, maintenance and other existing rights, both in relation to NSMP's land and third party land and installations over which NSMP has rights.
 - 1.7.3 Ensuring that the DCO reflects the principle communicated by the Applicants to NSMP that construction traffic and associated disruption will not be undertaken by way of the Access Road.
 - 1.7.4 Preservation of NSMP's ability to develop its business and operations in the future by making use of its existing assets and rights, including in relation to green transition initiatives and improvements and modifications to the Gas Processing Plant.
 - 1.7.5 Appropriateness of the principle and exercise of compulsory acquisition powers under the DCO.

2. Introduction

- 2.1 The Gas Processing Plant is located at Seal Sands on Teesside, in the northeast of England. It is a highly efficient and flexible gas processing plant which has, since construction in 1993, been operated and managed to world class standards with an excellent track record in SHE, asset integrity, reliability, and cost performance. The Gas Processing Plant is owned by NSMP and operated under a contractual arrangement by Px Limited ("Px"), who provide day-to-day duty holder operations and maintenance services under a long-term operations and maintenance agreement.
- 2.2 As a major gas processing facility, the Gas Processing Plant is vital national infrastructure and supports the operation of approximately 30 natural gas fields in the North Sea. Any negative impacts on the Gas Processing Plant's operation would have a considerable impact on the UK's energy security. Being a major energy installation, the Gas Processing Plant is also a highly secure facility and maintaining the highest standards of safety and security at all times is a key priority for Px and NSMP.
- 2.3 The Gas Processing Plant processes gas from the UK Central North Sea and from the northern part of the Southern Gas Basin, currently comprising two gas processing facilities:
- 2.3.1 Train 1, which receives high pressure natural gas supplied from the Southern North Sea, from the Breagh Alpha platform via the 20" 100km Breagh Gas Pipeline; and
 - 2.3.2 Train 2, which receives high pressure natural gas from the Central North Sea, via the Central Area Transmission System Pipeline.
- Together these facilities have a combined capacity to process up to 19 million cubic metres of gas per day, representing approximately 10% of daily UK gas demand. As the Examining Authority are aware, the thresholds for qualifying as a Nationally Significant Infrastructure Project in sections 17, 18 and 19 of the Planning Act 2008 set a flow rate threshold of at least 4.5 million cubic metres per day, multiples below the Gas Processing Plant's capacity.
- 2.4 The Gas Processing Plant also has a unique processing equipment for deep liquids extraction, not available at any other processing facility on Teesside. Each processing train removes impurities and natural gas liquids ("NGLs") from the incoming gas. The processed natural gas is metered before leaving the Gas Processing Plant and being fed into the NTS by way of a pipeline which runs underneath the adjacent CATS site. This pipeline runs under Plot 110, which is also

subject to the DCO. The NGLs are fractionated into useable products meeting tightly controlled specifications. The products ultimately produced are natural gas, propane, butane and condensate.

- 2.5 These products are transported via pipeline to nearby storage and other facilities as raw materials for use by industry. The various pipelines are regulated, operated, and maintained under the Pipeline Safety Regulations 1996.
- 2.6 The Gas Processing Plant is classified as an Upper Tier COMAH site and is operated in compliance with the COMAH Regulations 2015. Operational availability since start-up has been more than 99.5% and the plant has an exemplary safety record.
- 2.7 In NSMP's view, the Applicants should have been fully aware of the importance of the Gas Processing Plant to the security of national energy supply. In addition and having regard to the principle of "good design", the Project should have been designed to avoid potential negative interactions. The Project would be neither sustainable, durable nor adaptable if it were to have adverse effects on existing nationally important infrastructure.

3. NSMP's principal concerns relating to rights sought by the Applicants

- 3.1 NSMP's principal concerns relating to rights and powers of temporary possession being sought by the Applicants pursuant to the Application relate to potential significant impacts on its land and its key operational requirements. These include:
 - 3.1.1 A need to maintain 24 hour unimpeded access to its land and operations during construction and decommissioning of the Project, including ensuring the DCO reflects that construction traffic and construction disruption is not via NSMP land or on the Access Road.
 - 3.1.2 A need to maintain 24 hour unimpeded access to their land and operations during the operational phase of the Project.
 - 3.1.3 Retention and adequate protection of all rights currently enjoyed by NSMP in relation to land within the Order Limits, including rights of access, maintenance, contractual rights and easements, both to ensure continued safe operation of the Gas Processing Plant and to allow NSMP to develop or modify its land and operations as it sees fit in the future.
- 3.2 Unimpeded 24 hours access on foot and by cars and HGVs along the Access Road including Seal Sands Road and along Plots 108, 103 and 106, as well as access to Plot 105 itself, are essential for NSMP to continue their operations effectively and in a safe manner. Any disruption of access, even for a short period, would result in substantial disruption up to and including the need to shut down the Gas Processing Plant. As an Upper Tier COMAH site and given the Gas Processing Plant's key role in securing security of supply, this poses a serious risk.
- 3.3 The DCO covers areas of land that are critical to the operations of NSMP, including but not limited to the following.
 - 3.3.1 **Access Rights:**

Plots 98, 108, 111: NSMP benefits from a right of access over Seal Sands Road (Plot 98) and the private road situated within Plot 108 which is the sole access route to the NSMP site. The DCO provides that these Plots are required in connection with Work No. 10. Schedule 1 of the DCO provides that Work No.10 is for new rights of access and highway improvements, comprising works to create, improve, repair or maintain access road, haul roads and access points. The DCO provides that new rights are to be compulsorily acquired, in relation to which it is proposed to extinguish easements and other private rights over these Plots. As this is the sole access road to the NSMP site, it is unacceptable that the rights of access could be extinguished. An uninterrupted right of access to the NSMP site must be maintained at all times to ensure the continuity and safety of NSMP operations. As the Access Road is the sole road serving the NSMP site, it is unworkable for any construction traffic to use the access road over Plots 103, 106 and 108. The Applicants have assured NSMP that any construction access should be via the adjacent CATS site, and NSMP requires this principle to be reflected in the DCO

and associated documentation. It is presumed that if construction access is removed, this would be reflected in the permanent rights as well.

3.3.2 Freehold and operations:

Plots 103, 105 and 106: NSMP owns the freehold title to the land situated within Plots 103, 105 and 106. Plot 105 is leased to Sembcorp Utilities (UK) Limited ("**Sembcorp**") and therefore any proposals under the DCO will require the consent and input of both Sembcorp and NSMP in respect of Plot 105. The DCO provides that these Plots are required in connection with Work No. 2A. Schedule 1 of the DCO provides that Work No.2A is an underground high pressure pipeline. The DCO provides that new rights are to be compulsorily acquired, in relation to which it is proposed to extinguish easements and other private rights over these Plots. Plots 103 and 106 cover part of the sole access road to the NSMP site and as stated above uninterrupted access must be maintained at all times. As explained in paragraph 5.1.2 below, Work No. 2A is currently proposed over Plot 106. We understand from discussions with the Applicants that there will be no construction undertaken in Plot 106 (and indeed NSMP could not accept any such construction). NSMP therefore asks that the DCO be amended to reflect that Work No.2A is proposed to be constructed only within Plot 105.

3.3.3 Pipelines:

Plots 98, 111, 134, 144, 147, 148, 151, 152, 153, 154, 158, 158a, 159, 160 and 161: NSMP operates and benefits from associated easements and rights of access to pipelines situated within these Plots for transmission of NGLs together with ancillary access rights to certain of the same. In addition NSMP have rights to lay a pipe not exceeding 16" in diameter for the purpose of conveying surface water through land situated within Plots 98, 111, 144, 147, 148, 151 and 154. The DCO provides that these Plots are required in connection with Work No.6, 9b and 10. Schedule 1 of the DCO provides that Work No. 6 is for a carbon dioxide gathering network, comprising underground and overground pipelines, Work No.9b is for temporary construction and laydown areas and Work No.10 is for new rights of access and highway improvements.

Plots 186, 190 and 199: NSMP operate and benefit from associated easements and rights of access to the Breagh 20" gas pipeline and 3" MEG pipelines situated within these Plots. The DCO provides that these Plots are required in connection with Work No.6, 9b and 10. Schedule 1 of the DCO provides that Work No. 6 is for a carbon dioxide gathering network, comprising underground and overground pipelines, Work No.9b is for temporary construction and laydown areas and Work No.10 is for new rights of access and highway improvements.

Plot 98: NSMP benefit from a right to construct, place and use three pipelines each up to 10" in diameter through land situated within Plot 98 as well as a right to access to maintain the same. In addition, NSMP benefit from a right to lay one 8" and one 24" pipeline through an easement strip situated within Plot 98 and Plot 174c. The DCO provides that these plots are required in connection with Work No.6 and 9b. Schedule 1 of the DCO provides that Work No. 6 is for a carbon dioxide gathering network, comprising underground and overground pipelines, Work No.9b is for temporary construction and laydown areas.

Plot 169: NSMP have a right of access to maintain the 6" pipeline situated within Plot 169. The DCO provides that these Plots are required in connection with Work No.6. Schedule 1 of the DCO provides that Work No. 6 is for a carbon dioxide gathering network, comprising underground and over ground pipelines.

Aside from these specific key rights, NSMP has many additional rights over land and infrastructure subject to the DCO.

- 3.4 The DCO provides that new rights are to be compulsorily acquired by the Applicants over land subject to the DCO and it is proposed to extinguish easements and other private rights over all

of the affected Plots. The pipelines referred to above are among many rights held by NSMP which are required as part of the NSMP safe operations and it is unacceptable that they could be extinguished. It is critical that there is no interruption to the supply and export of gas and NGLs to and from the Gas Processing Plant.

- 3.5 Generally, NSMP is very concerned about the potential for disruption (whether temporary or permanent) to its rights as well as the danger of damage to pipelines owned or used by NSMP in the course of construction of the Project. In addition to these general concerns, there are a number of Px policies in place regarding operational interfaces and proximity works with which NSMP would expect the Applicants to comply and which can be shared as discussions progress.
- 3.6 NSMP urges the Examining Authority to consider the importance of the NSMP site from a national security of supply perspective, as well as the Gas Processing Plant's status as an Upper Tier COMAH site. Any works undertaken in the relevant Plots that contain pipelines supplying, exporting from or benefiting the Gas Processing Plant and the NSMP site must not risk or impede the safe operation of the Gas Processing Plant or access to the NSMP site or relevant pipelines.
- 3.7 As set out above, the Applicants have communicated to NSMP that for any construction in Plots 105, 110 and 112, these Plots should be accessed via the adjacent CATS site. However, from our review of the Application it appears to us that, currently, the only access to Plots 105, 110 and 112 for the Applicants is along to Access Road including Plots 108, 103 and 106. This is also NSMP's only means of access to their land. It has not been demonstrated by the Applicants in any reasonable way that construction traffic can be taken over this access without a risk to NSMP's operations. Given this and the fact that the Gas Processing Plant is classed as an Upper Tier COMAH site, Plots 108, 103 and 106 are not an appropriate location for construction traffic for the works the Applicants propose to do at Plots 105, 110 and 112.
- 3.8 We understand that the Applicants are in discussions with CATS to gain access to Plots 105, 110 and 112 from the main terminal road but this is not yet agreed. NSMP are of the opinion that an alternative access to Plots 105, 110 and 112 which does not go over Plots 108, 103 or 106 is essential and that NSMP receives secured commitments that all construction work (in the short and medium term) and operational traffic (for the life of the Project) for Plots 105, 110 and 112 are to use this alternative access rather than the current access over Plots 108, 103 and 106.
- 3.9 The Applicants have confirmed that they do not anticipate any abnormal indivisible load movements to be needed over these Plots. NSMP requires this to be reflected in the DCO.
- 3.10 In addition to the serious concerns about the potential for the Project to disrupt the sole access to the Gas Processing Plant, the new rights sought by the Applicants over the land within the Order Limits are extensive and include rights to create or improve accesses which, if exercised, may impede NSMP's access to their land and ability to use and develop the NSMP site. This is discussed more at paragraph 5.1.3 below.
- 3.11 NSMP benefits from a large number of rights over land and infrastructure which provide it with optionality and flexibility for future development or modification of the Gas Processing Plant and the NSMP site. The Teesside area is a major industrial cluster with substantial interconnectedness and value to the UK economy, and NSMP has various rights which it may seek to use or exercise in the future. In addition, the interdependency and close proximity of installations on Teesside means that parties are often working together in close quarters. The continuation of operations as well as existing access, maintenance and other rights is crucial to the continued safety and security of the Gas Processing Plant itself and also the wider area.
- 3.12 Unless these matters are fully resolved, the acquisition and extinguishment of rights would fail the condition that there is a compelling case in the public interest for the land (or rights to the land) within the Order Limits to be acquired compulsorily¹.

4. Requirement for technical solution, legal agreement and protective provisions

- 4.1 NSMP object to the Project to the extent that it potentially impacts on their land, operations and access and will maintain this objection unless and until:

¹ Section 122(3) of the Planning Act 2008

- 4.1.1 a technical solution is agreed between the Applicants and NSMP which mitigates the impacts of the Project on their land, operations and access;
 - 4.1.2 any agreed solution is secured within a legal agreement; and
 - 4.1.3 NSMP's position is adequately protected through protective provisions within the DCO, including reflecting the Applicants' stated intention that construction and operational traffic will not be permitted in Plots 108, 103 and 106 or otherwise in a manner that could disrupt use of the Access Road.
- 4.2 NSMP are currently in discussions with the Applicants regarding a legal agreement and protective provisions but neither are currently in an agreed form.

5. Comments on the draft Development Consent Order

- 5.1 NSMP note the following:
- 5.1.1 Only half of the access road entrance into Plot 105 is included within the Order Limits (contained in Plot 106). NSMP understand from the Applicants that they are not proposing to amend the Order Limits to include the full access road entrance and are instead intending to gain rights of access over the half of that section of road outside of the Order Limits through a land agreement with TGLP (as freeholder). This remains under consideration by NSMP.
 - 5.1.2 Plot 106 is not currently included in Schedule 7 of the draft Development Consent Order ("DCO"). We have raised this with the Applicants who have confirmed that this will be corrected in the next version of the draft DCO. Given Plot 106 contains part of the Access Road, we assume this will be subject to Work No 10. However, we note that the Guide to Land Plan Plots (AS-143) states that Work No 2A (underground high pressure pipeline) is relevant to Plot 106. In discussions with the Applicants, the pipeline and easement required to serve the facility to be constructed in Plot 112 is only required wholly within Plot 105 to connect into Plot 110. Plot 106 contains the Access Road which must be maintained at all times and should not be subject to any works falling under Work No 2A. The Applicants should change the work type for Plot 106 to Work No 10 only.
 - 5.1.3 The new rights sought over Plots 108 and 103 (and presumably over Plot 106) under Work No. 10 are very broad and not only include rights of access but also include highway improvement works. If exercised, these rights may impact and even restrict access to NSMP's land which is unworkable. NSMP have requested that a new Work No 10a is created for Plots 103, 106 and 108 which only grants the Applicants new rights of access, as opposed to the current Work No 10 which is much broader. However, the Applicants have rejected this request. NSMP will continue to engage with the Applicants on this issue to ensure that 24 hour unhindered access by NSMP to its site and operations can be maintained and that no construction traffic or works are permitted.
- 5.2 NSMP have reviewed the generic Protective Provisions contained within Part 1 of Schedule 12. They are not adequate and fail to provide sufficient protection.
- 5.3 NSMP will comment further on the draft DCO once it has had a chance to review the updated draft DCO which is to be submitted by the Applicants at this Deadline 5.
- 5.4 We note that the Applicants have submitted potential proposals to amend the draft DCO in respect of removing the optionality for the CO₂ Gathering Network by dropping the Horizontal Directionally Drilled crossing of the Tees (Change 14) (REP4-031) which it is anticipated will be formally submitted at Deadline 6. At that point we will further evaluate the scheme and any repercussions that this may have to the representations that have been submitted.

6. Insufficient engagement to date and appropriateness of the DCO process

- 6.1 As mentioned in our Deadline 3 submission (REP3-018), NSMP only became aware of the Application in June 2022 through discussions with another Affected Person. No formal written notification of the Application has been received to date.

- 6.2 The information contained in this letter demonstrates a fundamental flaw in the approach of the Applicants to this Project. In particular, they have failed to properly appreciate the sensitivity of the Gas Processing Plant and as a consequence have failed to design a project which minimises the potential interactions. Furthermore, the Applicants' approach to obtaining compulsory acquisition powers has failed to properly appreciate and understand the impact that grant of such right and powers would have on the Gas Processing Plant and all its associated infrastructure. It is evident that what is sought by the Applicants could never meet the condition of being a compelling case in the public interest. This is because of the blanket nature of the rights sought together with the ancillary powers of being able to extinguish existing rights. The only way in which this Application could become compliant with the requirements of both statute and policy would be to provide adequate protection to the Gas Processing Plant and its associated infrastructure. It was clear from the outset that the Applicants would have to properly engage with the Affected Persons to provide an effective means of protecting the various interests which already exist and persist in the area.
- 6.3 The Applicants failed to adequately consult with NSMP (as Affected Persons) during the various consultation stages, and the Applicants did not engage with TGLP (as freeholder of land within the Order Limits) to discuss alternatives to compulsory acquisition until July 2022. This has put NSMP in a disadvantaged position in that it only has four months to engage with the Applicants and the Examining Authority during the Application process to ensure the impacts of the Project on their land, operations and access are satisfactorily mitigated and their position is adequately protected. This is in comparison to other landowners and Affected Persons in the surrounding area who have been in discussions with the Applicants since as early as late 2019. This demonstrates that the Applicants have not given sufficient regard to NSMP's land and operations which is an obvious land use known to the Applicants which should have been evaluated and accounted for by the Applicants when formulating their proposals. Avoiding potential negative interactions with and impacts to existing operations should have been a design objective in formulating the DCO. "Good design" in this context would have ensured that there would have been no possibility of interfering with critical national energy infrastructure such as the Gas Processing Plant.
- 6.4 NSMP are appreciative of the recent communication with the Applicants and their legal representatives and hope that this engagement continues during the remainder of the Examination and beyond.

Yours faithfully



For and on behalf of Shepherd and Wedderburn LLP