Net Zero Teesside Project

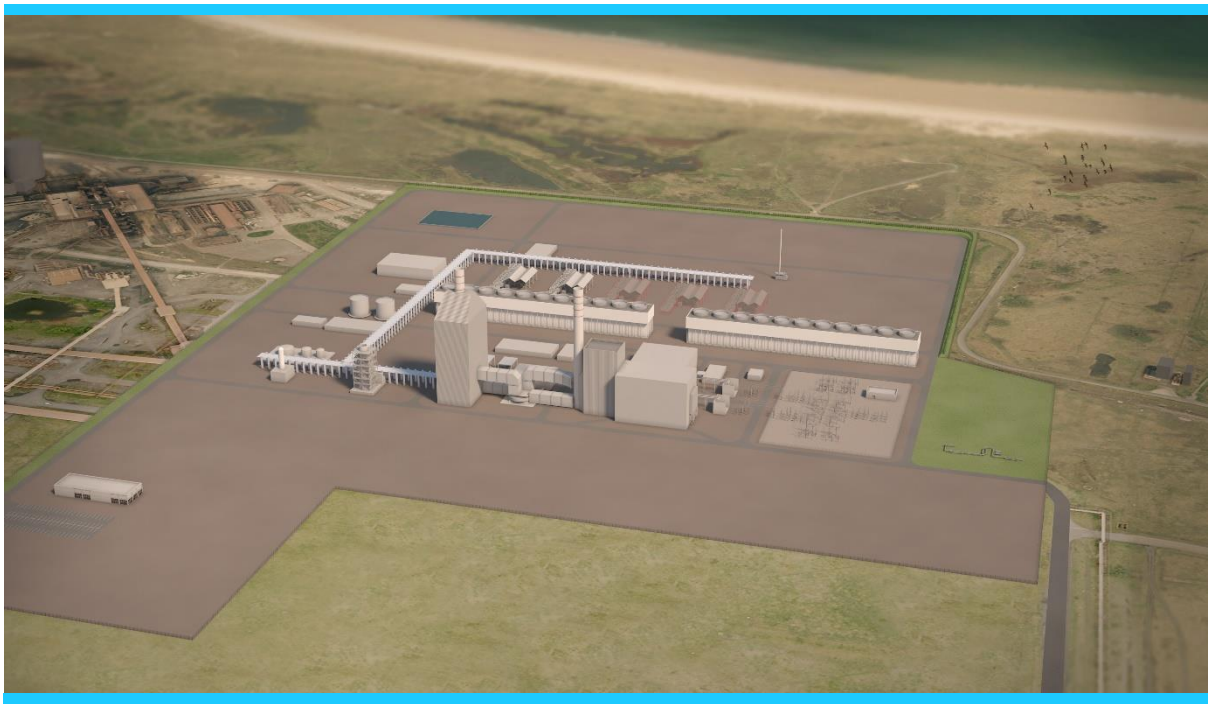
Planning Inspectorate Reference: EN010103

Land at and in the vicinity of the former Redcar Steel Works site, Redcar and in Stockton-on-Tees, Teesside

The Net Zero Teesside Order

Document Reference: 9.43 Written Summary of Oral Submissions for Issue Specific Hearing 5

The Planning Act 2008
The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009



Applicants: Net Zero Teesside Power Limited (NZT Power Ltd) & Net Zero North Sea Storage Limited (NZNS Storage Ltd)

Date: October 2022

DOCUMENT HISTORY

Document Ref	9.43		
Revision	1.0		
Author	Imogen Dewar (ID)		
Signed	ID	**Date**	26.10.2022
Approved By	Nick McDonald (NM)		
Signed	NM	**Date**	26.10.2022
Document Owner	Pinsent Masons		

CONTENTS

1.0 Introduction 2

2.0 Written Summary of Oral Submissions 4

APPENDICES

Appendix

1.0 INTRODUCTION

1.1 Overview

1.1.1 This Written Summary of Oral Submissions for Issue Specific Hearing 3 ('CAH3') (Document Ref. 9.45) has been prepared on behalf of Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (the 'Applicants'). It relates to the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy ('BEIS'), under Section 37 of 'The Planning Act 2008' (the 'PA 2008') for the Net Zero Teesside Project (the 'Proposed Development').

1.1.2 The Application was submitted to the SoS on 2 and was accepted for Examination on 16 August 2021. A change request made by the Applicants in respect of the Application was accepted into the Examination by the Examining Authority ('ExA') on 6 May 2022. A further change request has been submitted to the ExA at Deadline 6 on 23 August 2022.

1.2 Description of the Proposed Development

1.2.1 The Proposed Development will work by capturing CO_2 from a new the gas-fired power station in addition to a cluster of local industries on Teesside and transporting it via a CO_2 transport pipeline to the Endurance saline aquifer under the North Sea. The Proposed Development will initially capture and transport up to 4Mt of CO_2 per annum, although the CO_2 transport pipeline has the capacity to accommodate up to 10Mt of CO_2 per annum thereby allowing for future expansion.

1.2.2 The Proposed Development comprises the following elements:

- **Work Number ('Work No.') 1** – a Combined Cycle Gas Turbine electricity generating station with an electrical output of up to 860 megawatts and post-combustion carbon capture plant (the **'Low Carbon Electricity Generating Station'**);
- **Work No. 2** – a natural gas supply connection and Above Ground Installations ('AGIs') (the **'Gas Connection Corridor'**);
- **Work No. 3** – an electricity grid connection (the **'Electrical Connection'**);
- **Work No. 4** – water supply connections (the **'Water Supply Connection Corridor'**);
- **Work No. 5** – waste water disposal connections (the **'Water Discharge Connection Corridor'**);
- **Work No. 6** – a CO_2 gathering network (including connections under the tidal River Tees) to collect and transport the captured CO_2 from industrial emitters (the industrial emitters using the gathering network will be responsible for consenting their own carbon capture plant and connections to the gathering network) (the **'CO_2 Gathering Network Corridor'**);

- **Work No. 7** – a high-pressure CO_2 compressor station to receive and compress the captured CO_2 from the Low Carbon Electricity Generating Station and the CO_2 Gathering Network before it is transported offshore (the **'HP Compressor Station'**);
- **Work No. 8** – a dense phase CO_2 export pipeline for the onward transport of the captured and compressed CO_2 to the Endurance saline aquifer under the North Sea (the **'CO_2 Export Pipeline'**);
- **Work No. 9** – temporary construction and laydown areas, including contractor compounds, construction staff welfare and vehicle parking for use during the construction phase of the Proposed Development (the **'Laydown Areas'**); and
- **Work No. 10** – access and highway improvement works (the **'Access and Highway Works'**).

1.2.3 The electricity generating station, its post-combustion carbon capture plant and the CO_2 compressor station will be located on part of the South Tees Development Corporation (STDC) Teesworks area (on part of the former Redcar Steel Works Site). The CO_2 export pipeline will also start in this location before heading offshore. The generating station connections and the CO_2 gathering network will require corridors of land within the administrative areas of both Redcar and Cleveland and Stockton-on-Tees Borough Councils, including crossings beneath the River Tees.

1.3 The Purpose and Structure of this document

1.3.1 The purpose of this document is to provide a Written Summary of the submissions made orally by the Applicants at ISH5 held on Tuesday 18 October 2022 at 10am. Table 2-1 in Section 2 of this document contains the Applicants' summary and is structured so that the summary of each agenda item is on a separate row. Table 2-1 document also contains the Applicants' response to the action points arising from ISH5 [EV9-007] published on the Planning Inspectorate's website on 21 October 2022 following completion of the hearings.

2.0 WRITTEN SUMMARY OF ORAL SUBMISSION – ISSUE SPECIFIC HEARING 5

Table 2-1 Summary of Oral Submission at ISH5

AGENDA	SUMMARY OF ORAL CASE
Item 1 **Welcome, Introductions, and arrangements for Issue Specific Hearing 5**	N/A
Item 2 **Purpose of the Hearing**	N/A

Item 3
Articles of the dDCO
 	
• The Applicants will be asked to provide a brief overview of the proposed changes to the Articles of the dDCO including the reasons for the changes, since ISH4.
• The ExA will specifically ask the Applicants to address IP submissions in relation to:
  ○ Article 2 'permitted preliminary works'
  ○ Article 8 Consent to transfer benefit of the Order
  ○ Article 49 Modification of Interface Agreement
• IPs will also be invited to ask questions of clarification in relation to DCO Articles.
	Nick McDonald for the Applicants ("NM") notes the ISH5 Agenda Item 3 includes a request that the Applicants address the submissions of Interested Parties in relation to Articles 2, 8 and 49.
	
	Since Issue Specific Hearing 4 the Applicants have submitted three updates to the draft DCO:
	
	1. A draft DCO was submitted at Deadline 5 on 2nd August [REP5-002] in accordance with the examination timetable. The updates addressed comments received from Interested Parties at Deadline 4 on 7th July, and matters raised by the Examining Authority and Interested Parties at Issue Specific Hearing 2 on the DCO on 12th July, at Compulsory Acquisition Hearing 2 on 13th July, and at Issue Specific Hearing 3 on environmental matters on 14th July.
	
	2. A draft DCO was submitted at Deadline 6 on 23rd August [REP6-002]. This was submitted as part of the Applicant's change request

	in order to remove the optionality for the CO2 gathering network crossing of the River Tees, and which was accepted into the examination by the Examining Authority pursuant to the procedural decision on 6th September [PD-017]. The only substantive amendments to the DCO were to incorporate the changes required to give effect to the change request. No other changes were made with the exception of: i) amending Articles 49 and 50, which relate to the Hornsea Project 4 Interface Agreement, in order to comply with statutory drafting requirements; and ii) correcting related formatting errors. 3. A draft DCO was submitted at Deadline 8 on 20th September [REP8-003] in accordance with the examination timetable. This update addressed all other matters since the draft DCO was submitted at Deadline 5 including updates committed to in the Applicants' response to the Examining Authority's Second Written Questions at Deadline 6 on 23rd August [REP6-002]. The draft DCO also included updates to address comments received from Interested Parties at Deadline 5 on 2nd August, Deadline 6 on 23rd August and Deadline 7 on 1st September. The changes to the Articles since ISH4 comprise: 1. Amendments to Article 2 (Interpretation). These changes involve the insertion of new definitions or amendments to existing definitions in order to give effect to changes to other Articles or Requirements, or in order to address comments from Interested

	Parties. A number of the changes were required as part of changes to Articles or Requirements that the Applicants are required to address in the agenda items that are to follow. The Applicants do not propose to say any more about these definitions at this stage. 2. Amendments to Article 8 (transfer of benefit of the Order). The Applicants have made limited changes to Article 8, paragraph 13 in order to clarify the timing of the notification to the Environment Agency and Marine Management Organisation that an agreement has been entered into for powers in the DCO to be transferred. The other changes that have been made to Article 8 relate to comments from South Tees Development Corporation. The Applicants note that there is a separate agenda item in relation to representations from Interested Parties on Article 8. Accordingly, the Applicants were not proposing to say more about Article 8 at this stage. 3. A change to paragraph 6 of Article 32 (Temporary use of land for maintaining the authorised development). This was to clarify that the undertaker is not to be required to replace a building or any debris removed where it is restoring land used temporarily under this Article. This mimics the drafting in Article 31(5) (Temporary use of land for carrying out the authorised development) and ensures that the two provisions are consistent. 4. Various changes to Article 49 (modification of the interface agreement) and the insertion of a new Article 50 (inserting an alternative process for the modification of the interface agreement and related compensation arrangements). The Applicants note that there is a separate agenda item which requires them to

	address representations from Interested Parties on Article 49. Accordingly, the Applicants do not propose to say more about Article 49, or the new and related Article 50, at this stage. 5. Limited other changes to address formatting issues, including table and paragraph numbering, and a minor change to the Article 27 heading to align with the defined terms in Article 2 (Interpretation). In addition to the submission of each of the updated draft DCO versions, the Applicants have submitted comparison versions showing the changes to the DCO from the previous version that was submitted. Each draft DCO submission has also been accompanied by a Schedule of Changes, summarising each of the changes to the DCO, and an update to the Applicant's Explanatory Memorandum (the latest version of the EM carries examination library reference REP8-006). Comparison versions, showing the changes from the previous submission of the EM, have also been provided. On Article 2: Harry Philpott KC ("HPKC") for the Applicants explained that the Applicants had provided a full explanation of the concept of Permitted Preliminary Works ("PPW") including the justification for the scope of those works in its written summary of its oral submissions at ISH3 [REP5-025]. STDC and Sembcorp made comments on the possibility of PPWs affecting their interests at REP2-097a and REP3-025. Action 1 of the Examining Authority's ISH3 Action List [EV6-010] requested that the parties continue to work towards Protective Provisions to overcome the concerns raised by STDC and Sembcorp.

	In discussions with STDC, the Applicants have agreed to make certain amendments to the Protective Provisions ("PPs") in Part 19 of Schedule 12 to the dDCO, requiring the undertaker to submit works details to STDC for approval prior to the carrying out of any PPW within the Teeswork site. The drafting of the PPs on this point is agreed between STDC and the Applicants, as reflected in the Deadline 8 Statement of Common Ground [REP8-037] and will be included in the Deadline 12 version of the dDCO. HPKC explained that the Applicants did not believe that Sembcorp had any outstanding concerns with the scope or definition of PPWs. During discussions with Sembcorp, the Applicants have explained that PPs are linked to the commencement of the authorised development, rather than to specified Work numbers. PPWs are necessarily part of the authorised development, and are therefore caught by the control of works provisions. There is therefore no need to the Sembcorp PPs to be amended so as expressly to refer to PPWs. In relation to the definition of "TG entities", HPKC explained that a definition of "TG entities" had been included in Article 2 in light of the new Requirement 38 which required consultation with TG entities in respect of works that the relevant planning authority considers could affect their interests. *Post Hearing Note: Requirement 38 is to be deleted from the final draft development consent order to be submitted at Deadline 12 on 1st November. The Examining Authority is directed to the Applicants response to Action 12 of the ISH5 hearing below.* NM, for the Applicants, explains that Article 2 (definitions) of the draft DCO, was updated at Deadline 8 [REP8-003] to include definitions for the "Sembcorp Pipeline Corridor protective provisions supporting plans" and the "shared areas plan" because those two terms are used both in

	Schedule 12 (protective provisions) and in Schedule 14 (certified documents). The "shared areas plan" has been submitted to the Examination [REP8-008] and the "Sembcorp Pipeline Corridor protective provisions supporting plans" have not yet been submitted to the Examination. *[Post-hearing note, **Action 2**: confirm the date for submission of the Sembcorp plans: the Applicants confirm that the Sembcorp Pipeline Corridor protective provisions supporting plans will be submitted at Deadline 12]* NM confirms that in response to comments by Sembcorp that the Applicants will consider amending the definition of "Sembcorp" to include its successors in title. *[Post-hearing note, **Action 3**: Clarify the use of the definition of Sembcorp throughout the draft DCO: The Applicants intend to update the definition of "Sembcorp" in Article 2 (Interpretation) of the Order as follows:* *"means Sembcorp Utilities (UK) Limited, with Company Registration Number 04636301, whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successor in title or function to the Sembcorp operations".* *The definition of "Sembcorp operations" "Sembcorp Pipeline Corridor" and "Wilton Complex" will be moved from Schedule 12, Part 16 (protective provisions for the benefit of Sembcorp) to Article 2 (Interpretation) to give effect to the new definition of "Sembcorp".*

	The effect of this change is that the use of "Sembcorp" is consistent throughout the Order. Both the consultee role for Sembcorp in the provisions in Schedule 2 (Requirements) and the protective provisions for the benefit of Sembcorp in Schedule 12, Part 16 would benefit successors in title or function to the Sembcorp operations. This approach is being agreed with Sembcorp pursuant to the final Statement of Common Ground to be submitted at Deadline 12. On Article 8: HPKC for the Applicants explained that the general approach to transferring the benefit of a DCO was set out in the Applicants' Written Summary of its Oral Submission for ISH3 [REP5-025]. This concept is well established and can be found in a number of recent DCOs. Since ISH4, the Applicants have updated Article 8 in order to include a new sub-paragraph (14). This specifies that where a transfer or grant has been made in accordance with sub-paragraph (1) or (2) and relates to STDC's interests, the undertaker must, within 10 working days of the date of the transfer or grant, notify STDC. A new sub-paragraph 15 sets out what information must be provided to STDC in the notice, including the name and contact details of the person to whom the benefit of the powers have been transferred or granted, the date on which the transfer or grant took effect, and the powers that have been transferred or granted. This update was intended to address the request for STDC to be notified in its Comments on the Applicants Submissions at Deadline 6 [REP6-143]. STDC subsequently made representations at Deadline 8 [REP8-057] requesting that it should be notified before the transfer or grant of powers under Article 8 of the Order (rather than within 10 working days of the

	transfer or grant). The Applicants' position remains that paragraph 14 of Article 8 is entirely reasonable and gives STDC notice of the transfer or grant within a short timescale of it occurring. However, the Applicants have communicated to STDC that they are willing to include an additional restriction, so that notice must be given to STDC within 10 working days of the transfer or grant, and prior to the exercise of any powers by the transferee or grantee. That ensures that STDC will be informed in all cases of a relevant transfer or grant prior to powers being exercised by any new undertaker. *Post Hearing Note,* ***Action 4:*** *STDC to provide proposed wording for Article 8 to secure notification from the Applicants to South Tees Development Corporation (STDC) for transfer of powers. Respond to Applicants' proposals of 17 October 2022: The Applicants will consider the drafting provided by STDC at Deadline 11. However the Applicants' position remains that the proposal set out at the hearing is reasonable and ensures STDC will always have notice of a transfer prior to the exercise of powers in the DCO over its land interests. The Applicants will make the necessary changes to Article 8 to this effect in the finalised DCO to be submitted at D12, subject to consideration of any alternative drafting presented by STDC at Deadline 11.* In response to the suggestion from North Tees Group [AS-208] that Article 8 should include a test of financial standing for any proposed transferee, HPKC explained that there were very limited circumstances in which the Secretary of State's consent would not be required prior to transfer of the benefit. The circumstances in which the Secretary of State's consent is not required prior to transfer are limited such that the issue of financial standing would not need to be assessed, having regard to the parties to whom the transfer can be made, and the nature and scope of the interests that can be transferred. Where the Secretary of State's consent is

	required, it is not necessary to make explicit that he or she must have regard to financial considerations, or to dictate how such matters are addressed. The Secretary of State can be relied upon to exercise his judgment reasonably and to take account of all relevant matters (including, where appropriate, financial matters) in forming a judgment as to whether to grant consent. *[Post-hearing note, **Action 5**: Respond to concerns raised by the NT Group regarding article 8 and the financial standing test. The Applicants have provided a response to the additional Position Statements by the NT Group [AS-206 and AS-207] including a response to the NT Group's points in relation to article 8 – see the Applicants Comments on Deadline 9 Submissions and Additional Submissions (Document Ref. 9.42)]* On the item of Articles 49 and 50: HPKC explained that the Deadline 9 submissions from Ørsted raised two issues: • human rights issues relating to Articles 49 and 50, in the form of a response to the Opinion of Jason Coppell KC submitted to the HP4 examination and copied to this ExA as Annex 1 to [REP6-121] (epage 234); and • the degree of nexus between the Net Zero Teesside Project and Hornsea Project 4 ("HP4") The Applicants would respond in detail to both issues at Deadline 11. *Human rights issues*

	In summary, HPKC explained that Ørsted's Deadline 9 representation [REP9-032] did not raise any issues that were unique to the NZT context. Those matters would all need to be addressed by the Secretary of State in determining the HP4 application (something reflected in the fact that Ørsted was responding to a document submitted to the HP4 examination). For these purposes Articles 49 and 50 reflect the substance of what bp has proposed in the HP4 examination. The Applicants would submit both Ørsted's Deadline 9 submission and their own Deadline 11 response to that submission to the Secretary of State to inform his decision on HP4, alongside the ExAR. In the period following ISH3, the examination of the HP4 application concluded on time (22 August) and there is no indication of any likely delay in the submission of the ExAR to the Secretary of State or that the Secretary of State's decision on HP4 will be delayed. In all likelihood, the Secretary of State will determine the NZT application three months after the HP4 decision and six months after receiving the Examining Authority's report on HP4. It was explained that the Applicants had already addressed the alternative scenario where there is any material delay to that decision. It was noted that there would be a written response to the submissions made on behalf of Ørsted by James Maurici KC (JMKC), and so the oral submissions were kept brief and confined to three main points. First, HPKC explained that the Secretary of State, in determining the HP4 application, would have to form a judgment on whether the proposed interference with the interface agreement is justified and proportionate. It does not seem to be disputed that this is ultimately a matter of judgment, or that the Secretary of State could rationally conclude that it

	was appropriate to vary the compensation provisions under the Interface Agreement in the way proposed by the Applicants because they pose a significant risk to the ECC Plan and that delivery of that plan is very important in the public interest. The two parties disagree how that issue of judgment ought to be resolved. It was noted that the issue would only fall for determination by the Secretary of State if he was persuaded by bp's evidence both that the coexistence of HP4 and the NEP in the overlap area was not practical and that the existing Interface Agreement would present an unacceptable risk to delivery of the ECC Plan and/or full development of the Endurance Store. In those circumstances the Applicants consider the proposals to be proportionate and reasonable, whereas Ørsted's position is different, namely that that the Secretary of State should conclude that preventing full development of the Endurance Store and frustrating delivery of the ECC Plan is a price worth paying to protect the full extent of its potential claim under the Interface Agreement. The Secretary of State will need to decide between those positions when determining the HP4 application, if he accepts bp's case on the underlying assumptions which give rise to that issue. Second, JMKC's submissions do not add anything of substance to that debate which is new. What is said does not really 'move the dial' in terms of the essential judgment the Secretary of State needs to make.

	Third, and in any event, the balance is no different in this examination, and Ørsted has not suggested otherwise, and it is therefore not appropriate to re-litigate those issues in this examination. As the Applicants have made clear [REP5-025], the only separate issue for this examination is whether, if disapplication of the Interface Agreement is found by the Secretary of State to be appropriate in principle on the HP4 DCO, there is a justification for reproducing that provision in the NZT DCO. Ørsted's Deadline 9 submissions do not clearly address that point. Its position remains opaque. It was recalled that at ISH3 the Applicants had explained why that was a separate issue for this examination to grapple with, and sought clarification as to Ørsted's position on that issue (see [REP5-025] internal page 10). Ørsted's D9 submissions do not include a clear statement of its position on that point, and nor do they grapple with the potential adverse public interest implications of omitting Articles 49 and 50 in those circumstances. *The degree of nexus between NZT and HP4* The second issue raised in Ørsted's Deadline 9 submissions [REP9-033] relates to the need or otherwise for NZT to make use of those parts of the Endurance store which sit within the overlap zone. If storage in the overlap zone is not required, Ørsted asks whether the Applicants "would be agreeable to a restriction being inserted in the DCO" to prevent use of overlap zone for storage. They also raise a second issue,

	namely whether in those circumstances Articles 49 and 50 are sufficiently related to the proposed development for purposes of s.120 PA 2008. As to the use of those parts of the Endurance store in the overlap zone, the Applicants have already responded to a previous formulation of the same question by Ørsted at section 8.4 of [REP6-122]. In that document it was explained that it is anticipated that the carbon emitted and captured from the Proposed Development would largely settle at the crest of the Endurance Store outside of the overlap zone, following offshore transportation and injection. This residual area outside the overlap zone represents approximately 30% of the technical storage capacity of the Endurance store. Storage within the overlap zone is anticipated to occur in subsequent stages of the NEP project in line with the timescales/programme advised by BEIS for the implementation of the ECC Plan under the cluster sequencing process. The use of the terms "largely settle" and "largely outside" in REP6-122 and repeated in what was said at D8 [REP8-049] reflects the fact that the storage settlement of CO2 is based on forecast modelling at this stage and the eventual, actual settlement will only be capable of being definitively confirmed following detailed monitoring, the terms of which will be governed pursuant to the relevant offshore consents. HPKC confirmed that having sought instructions from bp's technical team, the crest of Endurance store (within which it is anticipated the CO2 would settle) is outside the overlap zone and has ample capacity to accommodate the rate and volume of CO2 emitted and captured from the Proposed Development. This means that to the extent that there is any potential for some of the CO2 to extend into the overlap zone as it settles, this would be de minimis and not material for present purposes. The Applicants would provide a fuller explanation in writing at D11, but the short answer

	was that Ørsted's concern about the way this is phrased in the D8 response is unfounded and there is no underlying point of substance that affects the arguments in this case. *[Post-hearing note: The Applicants have provided a fuller explanation in the Applicants Comments on Deadline 9 Submissions and Additional Submissions (Document Ref. 9.42)]* Ørsted's request for a restriction to prevent storage in overlap zone is misconceived for two main reasons. First, the question for the Examining Authority in the first instance, and the Secretary of State is not what the Applicants are "agreeable" to but rather whether Ørsted has demonstrated through its evidence that the criteria for imposition of such a restriction are satisfied, including necessity and reasonableness. Ørsted's evidence has not attempted to satisfy those criteria, which its submissions do not even acknowledge let alone address. If Ørsted did wish to argue for the necessity of such a requirement, it would (at least) first need to adduce technical evidence sufficient to show that the development and powers authorised by this DCO would present a real threat to the ability to deliver HP4 in the absence of such a requirement. Not only would that require Ørsted to go further than their position in HP4, where they say that coexistence is possible, it would also require them to go further than bp's technical case in HP4 and demonstrate that the development and powers authorised by this DCO are incompatible with HP4 going ahead. That is not bp's case and there is no evidence from either side that the Proposed Development presents any risk to HP4.

	It is striking that Ørsted has at no stage indicated to the ExA/Secretary of State in the HP4 examination that the development and powers proposed to be authorised via the NZT DCO represents any threat at all to the development and operation of its windfarm. If it did wish to make that case in the NZT examination, it would need to address the implications for the determination of the HP4 examination (including whether that represents a potential impediment of relevance to its proposed CA powers). Second and in any event, there is no infrastructure or powers proposed to be authorised under this DCO that could physically interact with or present a physical impediment to HP4. Such interface is limited to development or use of the Endurance store which is subject to consenting process that is still to come. That is the appropriate forum in which to resolve those disputes. Ørsted cannot properly suggest to the Secretary of State that the offshore consenting process is unable to address such matters, if required. Indeed, that process will be much better placed to make such judgments because it will have the benefit of a clearer and more detailed understanding of exactly what is proposed offshore and where it will be placed. Ørsted make a further point at paragraph 2.8 of their response on the issue of vires, where they suggest that if there is no nexus between the Proposed Development and HP4 Articles 49 and 50 are not sufficiently related to or ancillary to the Proposed Development, as required by section 120 PA 2008. The Applicants have provided extensive justification for need for these provisions (for example at REP1-035, Appendix 7 and Written Summary of Oral Submissions at ISH3 – REP5-025). As the Applicants have explained,

	Articles 49 and 50 are required to address the risk posed by the Interface Agreement to the full development of the Endurance Store and viability of the wider ECC Plan, of which NZT forms part, rather than any risk of direct interaction between the use of the Endurance store for the Proposed Development and HP4. Ørsted's submissions do not acknowledge or grapple with the explanation that has been provided. The Applicants have explained the limited issue that arises on this application. In any of the scenarios in which Articles 49 and 50 would be engaged, the Applicants have explained why it is appropriate to reproduce those provisions in this DCO because of the risk that would otherwise arise to the full exploitation of the Endurance Store and the viability of the ECC Plan, of which the NZT Proposed Development forms part. This provides clear justification which brings the provisions within s.120 PA 2008. *Post-hearing note, **Action 6**: With reference to the Interface Agreement and the dDCO, clarify the distinction between 'overlap zone' and 'exclusion zone':* *The 'Exclusion Area' referenced within Articles 49 and 50 (and within the equivalent references in the protective provisions put forward by bp in the Hornsea Project Four examination) represents a sub-area within the wider 'Overlap Zone' (as defined under the Interface Agreement – being the overlapping area of seabed subject to the respective projects' Agreements for Lease with the Crown Estate).* *The Exclusion Area was optimised to represent the minimum possible area necessary to safeguard the ability to develop the full extent of the Endurance Store and so preserve the viability of the ECC plan (clarification on the extent of the Exclusion Area was set out in bp's Deadline 1*

	*submission in the Hornsea Project Four DCO examination (Appendix 2 of the Joint Position Statement between Orsted and bp, paragraph 12.3.1, electronic page 136 and re-submitted into the NZT DCO examination at Deadline 2 [*REP2-021*]).* *The Exclusion Area is shown on the Endurance Store Protective Provisions Plan, which was originally submitted into the Hornsea Project Four DCO examination to inform bp's proposed protective provisions (which, per previous submissions, form the basis of Articles 49 and 50) and is re-produced for this examination as Endurance Store Protective Provisions Plan (Document Ref. 4.18) and included in the Deadline 11 submission. The next and final update to the draft DCO will include reference to this plan in Schedule 14 as a certified document for the purpose of the DCO.*
Item 4 **Schedule 2 of the dDCO – Requirements** • The Applicants will be asked to provide a brief overview of the proposed changes to the Requirements (R) in Schedule 2 of the dDCO including the reasons for the changes, since ISH4. • The ExA will specifically ask the Applicants to address IP submissions in relation to: ○ R3 Detailed design ○ R13 Contaminated land and groundwater ○ R16 Construction environmental management plan ○ R31 Carbon dioxide capture transfer and storage ○ R32 Decommissioning	Hereward Philpott KC ("HPKC") on behalf of the Applicants notes that the ISH5 Agenda requires the Applicants to address the changes to a number of Requirements. HPKC explains that the Applicants have made some minor and generally self-explanatory changes to some other Requirements since ISH4. Details of all of these changes are explained in the Schedule of Changes to the DCO submitted at Deadline 5 [REP5-004], Deadline 6 [REP6-004] and Deadline 8 [REP8-005]. The Applicants do not propose to say any more at this stage given the nature of the changes. Requirement 3 The Applicants have made a number of changes to Requirement 3 in order to address comments from Interested Parties. At the outset, they are not

• IPs will also be invited to ask questions of clarification in relation to Schedule 2.	aware of any remaining disagreement with an Interested Party on the terms of Requirement 3. The changes to Requirement 3 since ISH4 are as follows: 1. A new sub-paragraph 13 has been added to secure that the detailed design of Work Numbers 1 and 7 (the power station and compressor station) must be in accordance with sections 7 and 8 of the design and access statement. This was to address Action 6 of the ExA's post-hearing action list for ISH4 [EV8-006] which asked that the Applicants review Requirement 3 of the draft DCO and consider whether any amendment is necessary to address detailed design matters. Further information on this change is set out at page 9 of the Applicant's Written Summary of Oral Submission for Issue Specific Hearing 4 (ISH4) [REP5-027]. 2. Requirement 3 (Work Numbers 2, 3, 6, 7 and 10) – both Sembcorp and Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited have been given a consultee role on parts of the design requirement that affect their interests, following representations to this effect and given their particular positions. See Sembcorp's Deadline 6 Submission [REP6-130] and Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited Deadline 9 representation [REP9-035]. 3. Requirement 3(2)(b), (7)(b) and (9)(b) - the exact number of cathodic protection posts will be determined at the detailed design phase and as such the word "approximate" has been removed from this Requirement. The Applicants committed to make these changes in its response to Question DCO.2.2 in the Applicants

	Response to the Examining Authority's Second Written Questions [REP6-121]. 4. Requirement 3(2)(d), 3(d), 4(c), 5(b), 6(b), 7(c), and 9(c) - details of the works involving trenchless technologies including their location must now be provided as part of the detailed design process for WN2A, 2B, 3, 4, 5, 6, and 8. The Applicants committed to make these changes in its response to Question DCO.2.8 in the Applicants Response to the Examining Authority's Second Written Questions [REP6-121]. Requirement 13 HPKC for the Applicants confirms that the Applicants made updates to Requirement 13 at Deadline 8 to address comments from the EA at Deadline 5 [REP5-032]. The majority of the updates were committed to in the Applicants Response to the EA's Submissions at Deadline 6 [REP6-122] and comprised additions to the list of matters that must be included in the submitted scheme to deal with contamination of land. A meeting was held with EA representatives on 13 October to discuss R13. It was agreed that the EA would retain only a consultee role on R13, rather than an approval role jointly with the relevant planning authority as the EA had previously indicated was required. The Applicants issued a proposed draft of R13 to the EA on 13 October, reflecting what was agreed in the meeting that day. The EA has confirmed to the Applicants that it has no further comments on R13 which is therefore agreed, and that the EA will confirm this position to the ExA in forthcoming submissions. It will also be reflected in an update to the SoCG.

	The updates to R13 will be incorporated in the finalised DCO to be submitted at Deadline 12 on 1st November. *Post-Hearing Note **Action 7**: Ensure that confirmation (or not) of the Environment Agency's (EA) stance on R13 is in the Statement of Common Ground (SoCG): the SoCG has been updated to confirm that the drafting of R13 is agreed with the EA. The final SoCG with the EA will be submitted at Deadline 13.* Requirement 16 The Applicants have updated the details of what must be included in the final CEMP under Requirement 16(2). The final CEMP must now include: 1. A groundwater monitoring plan which must take into account the updated hydrogeological impact assessment and any further ground investigation reports and groundwater monitoring required by requirement 13(2)(f). The Applicants committed to include the groundwater monitoring plan taking into updated assessments in its response to the EA at Deadline 6 [REP6-122]. The EA confirmed that it had no further comments and was satisfied with the updates to R16 updates in its response at Deadline 7 [REP7-012]. 2. Further changes were made to R16(2) to specify that the final CEMP must include:

	i) a materials management plan in accordance with paragraph 5.3.76 of chapter 5 of the environmental statement; ii) a hazardous materials management plan in accordance with paragraph 10.5.3 in Chapter 10 of the environmental statement; and iii) any other management or mitigation plans set out in the framework construction environmental management plan. These changes were committed to by the Applicants in its response to Questions GEN.2.12, WE.2.3 and DCO.2.19 in the Applicants Response to the Examining Authority's Second Written Questions [REP6-121]. The Applicants added Sembcorp as a consultee on the details of the CEMP following a request by Sembcorp at ISH3. This change was made in the dDCO submitted at Deadline 5 [REP5-002]. *Post-Hearing Note: **Action 8** Explain why limb (i) of Requirement 16 from [REP6-122] was not taken forward. A new limb (i) was shown for completeness in the Applicants' response to the EA at Deadline 5 (page 11 of REP-122). This stated that the CEMP must include "the measures outlined in paragraphs 6.19 and 6.1.22 of the Habitat Regulations Assessment Report". The rationale for inserting this provision, and conditions for it to be taken forward in the updated dDCO was set out in the Applicants' response to Second Written Question BIO.2.5 [REP6-121]. In summary the measures in the aforementioned paragraphs of the HRA Report required visual screening that was required to address the visual impacts from the HDD option for the CO2 gathering network across the*

	River Tees. As this option was subsequently removed from the Order pursuant to the procedural decision of the Examining Authority on 6 September 2022 [PD-017], this mitigation for the HDD option was not required. The Applicants (as they stated would be the case in their response to BIO.2.5) did not therefore include this sub-paragraph in the DCO submitted at Deadline 8 [REP8-003]. Requirement 23 [which was raised at ISH5 but was not on the agenda for this hearing] In response to a question from the Examining Authority, HPKC for the Applicants confirms they will respond in writing as to whether the Environment Agency has confirmed that it is content with the proposed amendments to Requirement 23 and to ensure this is captured in the SoCG. *Post-hearing note: **Action 9:** Has the EA confirmed that it is content with the proposed amendments to Requirement 23. Ensure that it is captured in the SoCG: the EA has confirmed that it is content with the proposed amendments to Requirement 23. This will be confirmed in the SoCG to be submitted at Deadline 13.* Requirement 31 Representations have been made with respect to Requirement 31 by two parties. Since ISH4, ClientEarth have submitted a written summary of its oral case at ISH3 (DCO) hearing on 12th July [REP5-030]. This was submitted at Deadline 5 on 2nd August. At Deadline 6 on 23rd August ClientEarth

	submitted Comments on information submitted at Deadline 5 and in response to ExQ2 DCO.2.13 [REP6-129]. A submission was also received from ClientEarth at Deadline 9 on 6th October [REP9-025]. This responded to the information requested by the ExA under Rule 17 of the Examination Rules on 16th September. The submissions by ClientEarth remain focussed on the need for the NZT DCO to mimic the Keadby 3 final preferred draft DCO which introduced three additional definitions in the interpretation article. A definition of "carbon capture and compression plant" which would mean a plant "designed to capture, compress and export to the National Grid Carbon Gathering Network, a minimum rate of 90% of the carbon dioxide emissions of the generating station operating at full load". A definition of "commercial use" that would extend the NZT DCO definition so that it included the export "of captured compressed carbon dioxide emissions" from the authorised development on a commercial basis. A definition of "commissioning" that would extend the NZT DCO definition so that it included the process of testing all systems and components of the authorised development (including the carbon capture and compression plant). ClientEarth have cited submissions by the promoter of the Keadby 3 DCO that these changes mean:

	• that the DCO secures the 90% minimum capture rate and the conveyance of the captured carbon dioxide into the [National Grid] network; and • that the new definition of "carbon capture and compression plant" would secure a "minimum capture rate" of 90% when the plant is operating at full load, and that the captured carbon must then be transported and stored at the identified offshore storage network. The submissions by ClientEarth do not add anything new, over and above the points to which we have already responded orally and in writing. They appear to require that the NZT DCO must have exactly the same drafting as the Keadby 3 Applicant accepted for that DCO, but without properly engaging with the detailed submissions we have made as to why that is not necessary. The Applicants' position remains as it set out at ISH3 on the DCO on 12th July. The detail of this is set out at pages 14 – 16 in the Applicant's Written Summary of its Oral Submission for ISH3 [REP5-025]. ClientEarth's substantive concern has now been addressed by the terms of Requirement 31. Specifically that no part of the authorised development may commence until evidence has been submitted that, amongst other things, an environmental permit has been granted for Work No.1 (the generating station with carbon capture plant) and Work Number 7 (the carbon dioxide compressors), and that commercial operations for these elements of the project must have commenced before commercial operations for the power station may commence. With respect to setting a capture rate in the DCO, the Applicants' position remains that this will be controlled via the environmental permit for the generating station, something the EA has subsequently confirmed, and so that matter does not need to be and should not be duplicated in the DCO requirement.

	Parliament has provided the means by which carbon capture rates should be regulated and that is through the environmental permitting regime, with an independent regulator in the Environment Agency. It is a sufficient and adequate regime and the decision on this application must (a) assume that regime will operate effectively and (b) not seek to duplicate its effects in the DCO. ClientEarth's submission at Deadline 6 [REP6-129] attempts to argue that the permitting regime would only control the capture plant and not the power station and that "there is currently no indication that the environmental permit will require that the generating station is operated only when the carbon capture plant is also in operation, at a particular capture rate or otherwise". That is not correct, for the reasons fully set out by the Applicant in its response at Deadline 7. The Examining Authority is directed to pages 8 and 9 of the Applicants' Comments on Deadline 6 Submissions [REP7-009]. In addition and importantly, the EA, who will be responsible for granting and enforcing the environmental permit, have confirmed the position at Deadline 9 and therefore removed any room for further debate on this point. The Examining Authority is directed to its response to the Examining Authority's request for information [REP9-027] where the EA confirm: 1. That the BAT rate of 95% carbon capture applies to the CCGT and carbon capture plant as a whole. That is consistent with the Applicants' position. The CCGT and carbon capture plant are inextricably linked. The capture plant itself does not emit carbon and could not be subject to a capture rate on its own. The permit

	plainly needs to regulate the operation of the CCGT in tandem with capture plant. 2. It is likely that the Environment Agency will specify 95% carbon capture as a minimum over a year, with the exception of periods of time when the CCGT is exempt from operating in carbon capture mode. 3. The Environmental Permit will ensure that the minimum level of carbon capture is secured. The methodologies and reporting requirements under the UK Emissions Trading Scheme Monitoring, Reporting & Verification will be used to demonstrate performance. Dr Richard Lowe ("RL") for the Applicants confirms that an environmental permit is an established protocol to regulate industry in accordance with Best Available Techniques (BAT). RL explains that BAT is typically reviewed on a 6-8 year cycle. BAT represents a progressive tightening on the control of emissions. Use of carbon capture at this generating station is considered to be BAT. Draft wording for the environmental permit is not yet available, however the normal approach in permits (for discharges other than carbon dioxide) is well understood and the Applicants consider the permit is the appropriate mechanism for regulating the emissions generated by the plant. HPKC confirms that this is so as not to duplicate regimes between the DCO and the environmental permit, because such duplication is impractical and not necessary, and potentially harmful where it could lead to conflict between the controls under each regime. HPKC also notes, in response to comments by ClientEarth, that Keadby 3 is not yet a made DCO, and the key test is to what is necessary (not, as suggested by ClientEarth, a lack of

	harm); in any case the Applicants say there is harm in duplicating the DCO and environmental permit regimes. The permitting regime will clearly regulate the power plant and require it to capture carbon at a rate that matches or exceeds what ClientEarth are insisting upon in the DCO. Since ISH4, the only other comment on Requirement 31 was from the Environment Agency at Deadline 5 where it highlighted that there appears to be "no requirement to construct Work No. 6, the carbon dioxide gathering network". The Examining Authority asked a question in its Second Written Questions (Question DCO.2.9) as to whether R31(3), which specifies what elements of the project need to have commenced commercial operations before the power station, should "be extended to include reference to Work No 6". The Applicants responded to this question at Deadline 7. See page 50 of the Applicants Responses to Second Written Questions [REP6-121]. The Applicants' positions remains the same as set out in that response (below in case required). The Applicants discussed Requirement 31 with the Environment Agency at a meeting on 13th October. The Applicants' summarised their position, as previously set out at pages 13 – 15 of the Applicant's ISH2 Summary of Oral Submissions, and page 50, and the response to DCO.2.9 of the Applicant's Response to Second Written Questions. The Applicants also explained the commercial and reputational imperatives to deliver the CO2 Gathering Network. The EA advised the Applicants that they were content with the approach and had no further comments, and has since confirmed by email to the Applicants that it has no comments on Requirement 31, and agreed this will be formalised in the updated SoCG to be submitted.

	Post Hearing Note: ***Action 10*** *Include reference in the SoCG to the EA's position on the tie-in between the gathering network (Work No 6) and the construction of the electricity generating station. The SoCG has been updated with the EA to confirm that it has no comments on R31 and is content with the Applicants' approach as set out in page 13 – 15 of the Applicants' ISH2 Summary of Oral Submissions [REP1-036], and page 50, response to DCO.2.9 of the Applicant's Response to 2WQs [REP6-121]. The Applicants will submit the updated SoCG at Deadline 13.* Requirement 32 The Applicants updated R32(4) in response to Sembcorp's Response to Second Written Questions at Deadline 6 [REP6-130]. Sembcorp requested that the decommissioning environmental management plan must include details of apparatus to be removed, and where apparatus is proposed to be left in-situ and not removed, the steps to be taken to decommission such apparatus and ensure it remains safe. The Applicants committed to these changes in its Comments on Sembcorp's Responses to Second Written Questions [REP7-009] and incorporated these changes in the draft DCO submitted at Deadline 8 [REP8-003]. An additional sub-paragraph (i) has been included in R32(4) to specify that the decommissioning environmental management plan submitted must include details of mitigation for any potential noise impacts. The Applicants committed to make this change in its response to Question NV.2.1 in the Applicants Response to the Examining Authority's Second Written Questions [REP6-121]. The Environment Agency has been added as a consultee on the approval of DEMP. This update was included in the DCO submitted at Deadline 8

	[REP8-003]. The Applicants previously committed to make this change in its response to DCO.2.10 in the Applicants Response to the Examining Authority's Second Written Questions [REP6-121]. HPKC on behalf of the Applicants confirms in response to questions from the Examining Authority that Requirement 32 does not allow for a 'stalemate' between the local planning authority and the Applicants, because in the event that the decommissioning plan is not approved the Applicants must make a further submission within two months, and there is ability to appeal (see paragraph 5 in Schedule 13 to the DCO). *Post Hearing Note: the Applicants have reviewed R32 and identified that clarification is required as to the procedure that applies for a re-submission within two months pursuant to R32(3) where the Applicants elect to a appeal a refusal to approve details of the decommissioning environmental management plan (DEMP) under Schedule 13. The Applicants propose to insert a new sub-paragraph in R32 to clarify that the Applicants will not be obliged to re-submit a DEMP following a refusal of a previous version within two months where it has submitted an appeal pursuant to Schedule 13. However, if that appeal is dismissed, the Applicants would then be obliged to submit an updated version of the DEMP to the relevant planning authority within two months of the date of dismissal of the appeal. This ensures that the Applicants would always be obliged to continue to submit details where the previous details have been refused, including in an appeal scenario. The Applicants will provide the updated drafting in its final DCO at Deadline 12.* Submissions made by Interested Parties in relation to Schedule 2 Sembcorp – Sembcorp questioned the necessity for Requirement 37 with concerns it was unnecessary and could lead to slower decision making and

	greater administrative burden for all parties. Adrian Miller for RCBC explained Council's approach to consultation on DCO requirements and planning conditions. HPKC explained purpose of the Requirement was to limit the need to consult Sembcorp accept where the relevant planning authority was satisfied that there would be an impact on its interests and that bar very low for consultation (where its interests "could" be affected). *Post Hearing Note:* ***Action 12*** *Reconsideration of the wording of Requirement 37 taking on board the comments from RCBC. The same may apply to Requirement 38 (TG Entities). The Applicants will delete Requirement 37 (consultation with Sembcorp Utilities (UK) Limited) as requested by Sembcorp at the ISH5 hearing. The effect of the deletion is that the relevant planning authority will be obliged to consult Sembcorp when this is specified in a requirement. In accepting that Requirement 37 is not necessary in respect of Sembcorp, the Applicants consider that the same principle applies to Requirement 38 (consultation with TG entities) and therefore Requirement 38 will also be deleted. These changes will be made in the draft DCO to be submitted at Deadline 12.* North Tees Group – in response to request by North Tees Group ("NTG") for consultee status on requirements [AS-207] and to comments made by NTG regarding consultation pursuant to requirements at the hearing, the Applicants noted that they do not accept the NTG to be in a similar position to Sembcorp. The NTG is a landowner and does not perform similar functions to that of Sembcorp, and as Sembcorp operates and manages the pipeline corridor, and it is this role that is of relevance to consultation with it. Sembcorp's role as a consultee reflects the unusual position of their operating the pipeline corridor, and so the Applicants consider it appropriate that Sembcorp is a named consultee. HPKC explained that there had to be a particular reason to name a consultee. Generally, the

	approach is to leave consultation to the discretion of the relevant planning authority. *Post Hearing Note: **Action 13** Address the concerns raised by NTG in the hearing re the reason for having consultee status as per STDC. The Applicants have provided a full response as to why it does not consider it necessary for NTG to be added as a consultee in its response to NTG's Position Statement [AS-208] – see the Applicants Comments on Deadline 9 Submissions and Additional Submissions (Document Ref. 9.42)]* In response to a request from NTG that all apparatus should be removed on decommissioning, HPKC explained that the question of whether it was appropriate in the public interest for apparatus to be removed on decommissioning involved a judgment about relative environmental and other risks. That is a matter on which the landowner, applicant and others may have different views. Affected landowners would be consulted by the relevant planning authority but it would be inappropriate for the landowner's interests to necessarily trump all other interests. It must be assumed that the relevant planning authority will exercise its functions reasonably to determine how that balance is best struck in the public interest, on a case by case basis.
Item 5 **Schedules 10 and 11 of the dDCO – Deemed Marine Licences** • To obtain an update on progress between the Applicants and the Marine Management Organisation regarding draft marine licences.	The Applicants have continued to make good progress with agreeing the terms of the DMLs with the MMO. Since the previous DCO hearing, ISH3 on 12th July, the Applicants and the MMO have exchanged further drafts of the DMLs and held calls on 12th August, 30th August and 2nd September. The Applicants most recently contacted the MMO on 11th October and 17th October seeking a meeting to close out the residual points in the DMLs. The MMO's response is awaited.

	As the Applicants advised at ISH3, the only substantive outstanding issue from the Applicants' perspective related to the inclusion of UXO clearance within the DML, rather than having to apply for a separate ML as and when UXO may be discovered. Good progress has now been made on this issue, with the MMO having confirmed at Deadline 6 that it would not be opposed to UXO clearance being included within the DML providing that this is covered in greater depth within the Habitats Regulation Assessment. This was confirmed in the MMO's response to Question DCO.2.12 of the Examining Authority's Second Written Questions [REP6-136]. An updated HRA was also provided by the Applicants at Deadline 6 [REP6-109] which confirmed that there would be no adverse effects on the integrity of any protected assets. This was because of the distance between the Proposed Development and the Southern Northern Sea SAC, which is 120km. The maximum distance for significant disturbance for high order detonations of UXOs is 26km. The relatively low usage of the Tees Bay by Harbour Porpoise adds to the evidence no significant effect to the integrity of the Southern North Sea SAC or functionally linked habitat, once JNCC guidance on UXO clearance is used. The MMO acknowledged at Deadline 7 [REP7-013] that the HRA had been updated and advised that it would defer to Natural England on its contents. Natural England confirmed they were content with the HRA update on UXO in their SOCG comments submitted on 20 September 2022 [REP8-043]. In its Deadline 7 response, the MMO also included a full set of comments on the drafting of the DMLs, including proposed amendments to condition 23 (the process for the submission and approval of a UXO clearance methodology). The Applicants updated the draft DMLs in the dDCO that was submitted at Deadline 8 [REP8-003] in order to address the MMO's comments at Deadline 7. The Applicants accepted almost all of the MMO's suggested drafting amendments, including all of the MMO's suggested changes to Condition 23. The Applicants also included a table in its Response to the MMO's Deadline 7

	comments at Deadline 8 [REP8-049 - see pages 6 – 11). This set out each of the comments by the MMO on the draft DMLs and how they were addressed in the DMLs submitted at Deadline 8. With the exception of a handful of relatively minor drafting points, the Applicants incorporated all of the MMO's suggested changes. At the same time as making the updates to the DMLs to address the MMO's comments at Deadline 7, the Applicants undertook a full review of the DMLs which resulted in some additional drafting amendments. The MMO has made two further submissions at Deadline 8 and Deadline 9: 1. At Deadline 8 the MMO made a submission commenting on the Applicants' Deadline 7 submissions [REP8-055] i) The MMO asked for the EA and NE to be included as a consultee on Condition 23 (UXO clearance methodology) and that wording be inserted specifying that the MMO could also consult with "any other stakeholder [it] deems necessary". The Applicants confirmed in their Deadline 9 response [REP9-018] that the EA had been added as consultee on Condition 23 in the draft DCO submitted at Deadline 8 [REP8-003]. The Applicants confirmed that Natural England would also be added as a consultee in DMLs to be submitted as part of the finalised DCO at Deadline 12 on 1 November. The Applicants confirmed that they had not added the wording that the MMO may consult with "any other stakeholder it deems necessary". This is purely because the MMO has discretion to do this anyway as part of its role in discharging marine licence conditions, and therefore the wording is unnecessary. ii) The MMO also asked for clarification to be inserted in Condition 23 to make it clearer that the method statement for clearance is written after the identification of any UXOs or anomalies has

	been completed, as the size, number, and location of UXOs would impact the methodology for clearance. The Applicants confirmed in their Deadline 9 response [REP9-018] this update would also be made as part of the finalised DCO at Deadline 12 on 1 November. *Post-Hearing Note: The proposed drafting changes to C23(3) that the Applicants intend to include in the final DMLs at Deadline 12 are set out below. This drafting, with amendments to require the clearance methodology to be submitted based on UXO and magnetic anomalies actually identified, and to include Natural England as a consultee on the clearance methodology scheme, was sent to the MMO on 17th October and again on 25th October. A response is awaited.* *23. —(1) No removal or detonation of UXO can take place until a UXO clearance methodology and marine mammal mitigation protocol has been submitted to and approved in writing by the MMO (following consultation with the Environment Agency **and Natural England**).* *(2) The UXO clearance methodology and marine mammal mitigation protocol must be submitted to the MMO no later than six months prior to the date on which it is intended for UXO clearance activities to begin (unless otherwise agreed in writing by the MMO).* *(3) The UXO clearance methodology submitted pursuant to sub-paragraph (1) must **be based on the nature, location and size of UXO or magnetic anomalies that have been identified and include—*** ***~~(a) a methodology for the identification of potential UXO targets;~~*** ***~~(b)~~ (a)** a methodology for the clearance of magnetic anomalies or otherwise which are deemed a UXO risk;* ***~~(c)~~ (b)** information to demonstrate how the best available evidence and technology has been taken into account in formulating the methodology;* ***~~(d)~~ (c)** a debris removal plan;*

	~~**(e)**~~ ***(d)*** *a plan highlighting the area(s) within which clearance activities are proposed;* ~~**(f)**~~ ***(e)*** *details of engagement with other local legitimate users of the sea; and* ~~**(g)**~~ ***(f)*** *a programme of works"* *The MMO had no further comments on Condition 23 (UXO clearance methodology) at Deadline 9 and therefore this issue should be capable of being resolved by agreeing the updated drafting above (in line with that the MMO have requested).* 2. At Deadline 9, the MMO provided its comments on the draft DMLs submitted by the Applicants at Deadline 8 [REP9-029]. The Applicants have reviewed these points which are all relatively minor, related to the drafting of the DMLs (e.g. duplication or removal of definitions that may still be required, or suggested alterations to timescales for notifying the MMO of events – the latter which the Applicants anticipate they can accept). *Post Hearing Note: the Applicants submitted a table of proposed responses to address each of the D9 comments from the MMO. This was sent to the MMO for final approval on 25 October 2022. A copy of the table has been included in the Applicants' Response to Deadline 9 Submissions and Additional Submissions [Document 9.42]. Along with the table of responses, the Applicants also sent a proposed final version of the DMLs to the MMO on 25 October 2022 for approval. The Applicants await a response from the MMO. As the Applicants have accepted most of the MMO's suggested changes to the DMLs, and explained how the residual matters have been addressed by existing drafting in the DMLs, the Applicants are hopeful that confirmation can be obtained from the MMO that all matters have been resolved and the DMLs are agreed. The Applicants will continue to seek to agree a final SoCG with the MMO for Deadline 12.*

	In summary, the Applicants do not consider that there are any substantive matters of disagreement remaining with the MMO with respect to the DMLs. It will continue to seek a meeting with the MMO to agree the remaining points of drafting ahead of the submission of the finalised DCO at Deadline 12. The Applicants intend to submit a joint SoCG at the same time confirming that the DML drafts are agreed between the parties, or in the event any matters cannot be agreed it will detail the disagreement.
Item 6 **Schedule 12 Part 4 to Part 27 of the dDCO – Protective Provisions** • The Applicants and IPs will be asked to provide an update on progress regarding the bespoke protective provisions set out in Part 4 to Part 27 of Schedule 12, an explanation of any important differences of view and a timescale for resolution.	HPKC for the Applicants confirmed that the Draft DCO submitted at Deadline 8 [REP8-003] includes PPs at Parts 3 to 27 of Schedule 12 for the benefit of the named parties. HPKC explained that PPs have now been agreed with: CF Fertilisers (Part 6); PD Teesport (Part 13); and Ineos SNS UK Limited (Part 20). No comments have been received on the PPs for Marlow Food Limited (Part 9). Where PPs are yet to be agreed, the Applicants are continuing to engage in substantive negotiations. In a number of cases, the draft PPs are substantially agreed but the protected parties wish to remove or limit the Applicants' exercise of compulsory powers. The Applicants' position is that the compulsory acquisition powers are required to ensure the timely delivery of the Proposed Development and that the parties are adequately protected through the PPs. Where matters remain outstanding, the Applicants intend to submit PPs in final proposed form at Deadline 12, together with an explanation of any updates agreed and of why the alternative PPs proposed by affected parties are not necessary or appropriate. The Applicants anticipate that interested parties will submit their own version of the protective provisions, in a similar manner. The Applicants and

	the interested parties will then have an opportunity to comment on the others' submissions. Air Products: Part 4 HPKC explained that the position with Air Products was generally positive. The Applicants provided comments on the protective provisions and asset protection agreement to AP on 12 July 2022. The parties' respective solicitors had a productive call on 7 October 2022, and Air Product's lawyers are due to respond to the Applicants on the outstanding points. The Applicants anticipate being able to reach agreement on the PPs during the Examination. CATS North Sea Limited: Part 5 HPKC explained that the parties continue to negotiate the PPs, with a draft of the PPs and side agreement most recently returned by the Applicants to CATS on 6th October 2022. The PPs in the DCO were updated at Deadline 8 to account for minor changes. Exolum Seal Sands: Part 7 HPKC explained that the PPs in the DCO were updated at Deadline 8 to account for minor changes, and were previously updated earlier in the examination. Exolum submitted their own version of the PPs at D5 [REP5-033]. Exolum's D5 PPs differ from the current draft DCO PPs mainly in restricting the undertaker's exercise of compulsory acquisition powers. The parties continue to negotiate the protective provisions, with a draft of the side agreement most recently returned by the Applicants to Exolum on 19 September 2022. Exolum and the Applicants have had productive technical discussions, and the parties have been seeking to arrange a meeting to discuss and seek to finalise the outstanding issues on the PPs. [*post-hearing note: the*

	Applicants have now had a call with Exolum and are continuing to progress the PPs] Ineos Nitriles: Part 8 The Applicants issued a set of PPs to Ineos Nitriles' solicitors on 4 April 2022, which were revised from the previous version to take account of Ineos' relevant representation. The Applicants have not received a substantive response to the PPs. Ineos Nitriles' solicitor contacted the Applicants on 5 October to confirm that they had received instructions and to request an undertaking. The Applicants provided the undertaking on 6 October and wait to hear from Ineos Nitriles. NPL Waste Management Limited: Part 12 The Applicants have had limited feedback from NPL Waste Management in respect of the PPs. In April and May 2022, the Applicants and NPL exchanged emails and a mark-up of the PPs. On 17 June 2022, the Applicants provided comments to NPL on their amended form PPs, and have not received any further response from NPL despite regular chasing. Redcar Bulk Terminal: Part 14 HPKC confirmed that RBT submitted a set of PPs at Deadline 9 that are agreed in principle, with the exception of the indemnity provisions which are still under discussion. A form of PPs and side agreement is agreed between the parties, however the other property and commercial agreements between the parties remain under negotiation, and it is anticipated that all agreements will be entered into at the same time. The Applicants anticipate being able to reach agreement on the PPs during the Examination. Sabic UK Petrochemicals Ltd: Part 15

	The Applicants have agreed the appropriate form of the PPs with Sabic. An updated version of the PPs will be submitted at Deadline 12. Negotiations on the terms of the PPs and side agreement continue. Sembcorp: Part 16 The principal issue in dispute is the inclusion of compulsory acquisition powers. The parties are not agreed on the inclusion of PPs equivalent to those imposed in favour of Sembcorp in the Dogger Bank DCO decision. The Applicants will provide their proposed final PPs at Deadline 12. Anglo American: Part 17 The Deadline 8 version of the dDCO included updated protective provisions for the benefit of Anglo American in Schedule 12, and for the benefit of the Applicants in the York Potash Order in Schedule 3. These are agreed with Anglo American subject to the following: Negotiations are on-going in relation to the related Property Agreements. If agreement on these documents is not able to be reached by the end of Examination, the parties will make submissions in respect of the appropriateness of controls being placed on the Applicants' compulsory acquisition powers in the PPs. A position is agreed between the parties in relation to indemnities and the process for dispute resolution. These are currently set out in the Side Agreement between the parties that is agreed. Suez Recycling and Recovery UK Limited: Part 18 The Applicants have not received a substantive response on the draft PPs from Suez. The PPs were provided to Suez lawyers on 8 April 2022 (having been provided directly to Suez prior to that date via the Applicants' land agents). The

	PP in the DCO, as drafted, provide protection with respect to Suez land within the Order limits and its proposed energy from waste facility. South Tees Development Corporation: Part 19 Progress is being made on the PPs. The Applicants returned comments on the PPs and side agreement to STDC on 14 October. These are being negotiated alongside the main site option agreement. If agreement cannot be reached, the parties will submit their proposed PPs at Deadline 12. Teesside Windfarm Limited: Part 21 The parties continue to negotiate the protective provisions, with a draft of the PPs and side agreement most recently returned by TWF on 10 October. The Applicants consider the PPs are capable of agreement during the Examination. Huntsman Polyurethanes (UK) Limited: Part 22 As with Sabic, the Applicants have been discussing and have now agreed with Huntsman the appropriate form of the PPs. Negotiations continue on the terms of the PPs and associated side agreement. Navigator Terminals Seal Sands Limited: Part 23 The Applicants received comments on the PPs on 20 July 2022. They responded on 28 July 2022 and have received no further communication on the PPs since then. The protective provisions in the draft DCO are close to being in agreed form. The Applicants will incorporate any amendments agreed with Navigator in the draft DCO. Northumbrian Water: Part 24

	The PPs are based on the Northumbrian Water template. Negotiations continue on the terms of the PPs. Draft PPs were most recently returned by NW on 30 September 2022. The dDCO was amended at Deadline 8 to include some of the agreed amendments and negotiations continue on the remainder. North Tees Group: Part 26 In response to the representations by NTG, HPKC indicated that it was important for NTG to confirm whether it was in fact the owner of any relevant equipment or apparatus (as it had recently asserted it 'might' be). HPKC refuted the suggestion that the Applicants had been slow to engage with NTG. Negotiations opened in April 2021, with Heads of Terms sent to NTG in September 2021. Comments on the Heads of Terms are exchanged between the parties on a weekly or fortnightly basis. NTG has not suggested specific changes to the PPs and the time for doing so is running out. Teesside Gas Processing Plant and Liquids Processing: Part 29 The Applicants are involved in active and productive negotiations with TGPP. The drafting of the PPs has evolved as a result of those negotiations. The Applicants most recently responded with comments on the PPs on 12 October 2022. As to the point of principle concerning access arrangements, the Applicants are seeking to ensure as far as reasonably practicable that access is not impeded while ensuring that the PPs do not adversely affect the delivery of the Proposed Development. There is nothing unusual in seeking powers of compulsory acquisition affecting land occupied by other nationally important infrastructure. The appropriate method of resolving such issues is to include powers of compulsory acquisition but to ensure that interests are protected through PPs.

	*[Post-hearing note – **Action 11** - Update the status of agreements on protective provisions: the Applicants have provided an updated Compulsory Acquisition Schedule at Deadline 11 (Document Ref. 9.5) and which provides the updated position on protective provisions and any associated agreements.]*
Item 7 **Consents, Licences and Other Agreements** • The Applicants will be asked to provide an update of progress and timescales for completion of any other consents, licences and other agreements.	HPKC for the Applicants notes that since the previous hearings BEIS have now disclosed the timeline that it will take for them to achieve the Cluster Final Investment Decision (FID). This Cluster FID date is April 2024. The overall project schedule has been adjusted to align with this Cluster FID date. The plans to achieve some of the licences and consents have also been adjusted to align with the new cluster FID dates, as detailed below. The five main licences, consents or agreements that are required are: • DCO – on track for May 2023 approval. This is unchanged. • The two environmental permits for the low carbon generating station and the directly associated activity (DAA) HP compression – these are unchanged by the cluster FID date changes. Both permit applications were 'duly made' on the 30 June 2022. Statutory public consultation on both permit applications was completed on 30 September 2022, and the Applicants and the EA are engaging on the permit applications. The Applicants are awaiting a 'schedule 5 notice' from the EA with a request for additional information, to then allow the EA to progress to the determination phase. The target is for the permits to be determined and approved in Q1 2023.

	• Offshore ESIA – the submission and approval dates for the offshore ESIA have been adjusted to align with the cluster FID dates. The offshore ESIA will be submitted in Q1 or Q2 2023, with a target approval of the offshore ESIA by OPRED in Q4 2023 or Q1 2024. • The store permit – at the request of the NSTA the submission and approval dates for the Store permit have been adjusted to align with the cluster FID dates. It is planned to submit the Store permit in Q2 or Q3 2023, and to agree the content of the final store permit with no further questions from the NSTA prior to cluster FID. NSTA will then issue the permit once FID has been achieved (this sequence of events has not altered). • Endurance store lease and seabed leases for infrastructure - the Agreement for Lease (AfL) letter has been submitted to The Crown Estate who are processing the request. The target is to achieve the award of the AfL in Q2 2023. *Post-hearing note: the Applicants have considered the potential effects of any delay to the construction schedule and whether this would affect the assessments and conclusions presented in the ES. All environmental effects have been considered and only traffic and cumulative effects with other committed developments require further consideration – all other effects can be screened out as not being potentially impacted by the change in timings.* *For traffic, the potential delay in the peak of construction to a year later does not affect the significance of effects associated with traffic movements south of the Tees, even allowing for the increase in baseline traffic over this period. Similarly, north of the Tees, the moving forward by*

	a year of the construction of the CO2 Gathering Network, while causing a small increase in the number of additional traffic movements, will not change the significance of effects for construction in North Tees given the small size of the change. *A review of the construction timing has been completed by the Applicants and submitted at Deadline 11 - Sensitivity Assessment of Construction Programme (Document Ref. 9.47).* *The above updates have been incorporated into a Deadline 11 update to Other Consents and Licences (Document Ref. 5.10).*
Item 8 **Statements of Common Ground relevant to the DCO**	Jack Bottomley ("JB") for the Applicants confirms that it has submitted 34 unique Statements of Common Ground to the Examination, four of which are now signed, 22 are in draft but submitted as agreed versions, and eight have been submitted but not commented on by the relevant third parties. The Applicants will submit updated versions at Deadline 12 in accordance with the examination timetable, except where the Applicants have still not received any comments on the document from the relevant third party.
Item 9 **Review of issues and actions arising**	*The Applicants' responses to the Action Points from the hearing are set out within the relevant text above.*
Item 10 **Any other business**	N/A
Item 11 **Closure of the Hearing**	N/A