

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

By email: NetZeroTeessideProject@planninginspectorate.gov.uk

Our ref: JLW/185618.1

7 November 2022

Dear Sir / Madam

**The Net Zero Teesside Project EN010103 (“the Project”)
Deadline 13 Submission on behalf of Redcar Bulk Terminal Limited (“RBT”)**

We write on behalf of RBT further to their Deadline 12 submission [REP12-139].

Since RBT’s Deadline 12 submission was made, RBT has continued to negotiate the Protective Provisions with the Applicant with the aim of providing an agreed set to the Examining Authority by the end of the Examination.

RBT and the Applicants have now agreed a set of Protective Provisions which are attached to this submission. This has also been updated to reflect the latest numbering in the draft DCO.

These agreed Protective Provisions in effect accept RBT’s requested changes to the indemnity provisions set out in RBT’s Deadline 12 submission [REP12-139] in a form acceptable to both parties.

As of Deadline 13, negotiations are still continuing on the Side Agreement and its associated agreements. It is still the intention of the parties to seek to agree these prior to the end of the Examination.

RBT would restate their position that as previously set out in their Deadline 12 submission [REP12-139], in default of the completion of the Side Agreement and associated legal agreements, RBT’s position is as argued in within its Written Representation [REP2-095] and submissions at the previous ISH3 and CAH2, that the agreement of Protective Provisions is without prejudice to RBT’s position that Temporary Possession and Compulsory Acquisition powers should not be imposed over RBT interests.

Yours sincerely,

Direct Dial: [REDACTED]
Mobile: [REDACTED]
E-mail: [REDACTED]@[russell-cooke.co.uk](mailto:[REDACTED]@russell-cooke.co.uk)

PROTECTIVE PROVISIONS

AGREED BETWEEN RBT AND THE APPLICANT

PART 15

FOR THE PROTECTION OF REDCAR BULK TERMINAL LIMITED

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

172. In this Part of this Schedule—

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

“alternative access” means appropriate alternative road or rail access which enables RBT to access the RBT operations and RBT site in a manner no less efficiently than previously by means of RBT’s existing road or rail accesses;

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

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

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

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

“the RBT site” means land and property within the Order limits, vested in RBT

“works details” means—

(a) plans and sections;

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

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

(d) details of any management measures (including details of access routes for vehicles to undertake) that will be put in place to ensure that road and rail traffic is still able to access the RBT operations and the RBT site (unless it would be unsafe to do so in which case such details must provide details of how alternative access is to be provided);

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

(f) any further particulars provided in response to a request under paragraph 177.

Regulation of powers

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

174. Any approval of RBT required under paragraph 174 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

(a) the continuing safety and operational viability of the RBT operations

(b) the avoidance of commercial losses to the RBT operations;

and

(c) the requirement for RBT to have reasonable access to the RBT operations and the RBT site at all times.

175. Without limiting paragraph 174, it is not reasonable for RBT to give approval pursuant to paragraph 174 subject to requirements which restrict or interfere with the undertaker's access to the RBT site during an offloading procedure.

Interference with Apparatus and Access

176. (1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is removed, interrupted, severed or disconnected, that apparatus must not be removed, interrupted, severed or disconnected until details of the alternative apparatus have been approved by RBT and the alternative apparatus has been constructed at the undertaker's cost and is in operation to the satisfaction of RBT.

(2) The undertaker must ensure that RBT shall hold the same facilities and rights that it holds for the apparatus in respect of the alternative apparatus.

(3) Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), the undertaker shall ensure that the party responsible for any apparatus is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

(4) The provisions of this paragraph do not apply to apparatus in respect of which the relations between the undertaker and the party responsible for the apparatus in question are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(5) If the undertaker uses its powers under the Order to temporarily extinguish or permanently acquire any right of road or rail access which RBT benefits from the undertaker must provide at its own cost an alternative access prior to the extinguishment or acquisition of that right of access and ensure that RBT shall hold the equivalent rights for that access in respect of an alternative access.

Consent under this Part

177. Before commencing—

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

(b) any activities on or to the RBT site,

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

178. No—

(a) works comprising any part of the authorised development which would have an effect on the RBT operations or access to them; or

(b) activities on the RBT site, are to be commenced until the works details in respect of those works or activities submitted under paragraph 177 have been approved by RBT.

179. Any approval of RBT required under paragraph 178 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

(a) the continuing safety and operational viability of the RBT operations

(b) the avoidance of commercial losses to the RBT operations;

and

(c) the requirement for RBT to have reasonable access to the RBT site at all times.

180. Without limiting paragraph 179, it is not reasonable for RBT to give approval pursuant to paragraph 179 subject to requirements which restrict or interfere with the undertaker's access to the wharf and roadways within the RBT site during an offloading procedure.

181.—

(1) The authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the works details approved under paragraph 178 and any requirements imposed on the approval under paragraph 179.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 185 and the arbitrator gives approval for the works details, the authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 185.

Co-operation

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

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

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

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

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

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

183. The undertaker must pay to RBT—

(a) a cost agreed with RBT for the daily use of the RBT site and RBT services in consequence of the construction of any works referred to in paragraph 177 and use of the RBT site by the undertaker; and

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

Indemnity

184.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 177 or by the use of the RBT site by the undertaker any damage is caused to the RBT site (including the wharf, roadways, any RBT buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption in any service provided, or in the provision by RBT or denial of any services, or in any loss of service from apparatus that is affected by the authorised development the undertaker must—

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

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

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

(3) RBT must give the undertaker reasonable notice of any claim or demand that has been made against it in respect of the matters in sub-paragraph (1)(a) and (b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker such consent not to be unreasonably withheld.

(4) RBT must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 184 applies. If requested to do so by the undertaker, RBT must provide a

reasonable explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 184 for claims reasonably incurred by RBT.

Arbitration

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