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Our Ref: 13626

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Dear Sir or Madam

APPLICATION REF: EN010103 – THE NET ZERO TEESIDE PROJECT

NETWORK RAIL INFRASTRUCTURE LIMITED (NRIL) RESPONSE TO SECRETARY OF STATE CONSULTATION 6 LETTER (CON 6 LETTER)

LAND AT AND IN THE VICINITY OF THE FORMER REDCAR STEEL WORKS SITE (TEESWORKS SITE), REDCAR AND IN STOCKTON-ON-TEES

We write further to the representation submitted by Dentons on behalf of Network Rail Infrastructure Limited (**NRIL**, and its **Con 6 Response** which was undated as published) in response to the Secretary of State's consultation letter dated 22 September 2023 (**Consultation 6 Letter**).

The Applicants are aware that the Secretary of State has not invited comments on NRIL's Con 6 Response, but given that it raises new issues the Applicants consider that providing a response is imperative.

We note that NRIL's Con 6 Response provided a preferred set of protective provisions (**PPs**) for inclusion in the development consent order (**DCO**). NRIL's Con 6 Response states that its position "remains" that it seeks to have these PPs in the DCO – given that this is the first time in the process that these have been provided to the Secretary of State, it is misleading for NRIL to suggest that its position "remains" the same. Whilst it is acknowledged that NRIL's Relevant Representation (**RR**) made reference to their preferred set of PPs, none was provided at that stage and in fact a copy of these PPs was not provided to the Secretary of State until NRIL's Con 6 Response.

The onus to provide those to the Secretary of State, in a timely manner, is clearly on NRIL.

As the Guidance¹ on examinations notes, part of the purpose of a RR is to provide "advance warning of arguments which the various participants are proposing to deploy at the examination" (paragraph 24), and a written representation should then set out "each party's detailed case and set out the reasons why they support or oppose the application. It should identify those parts of the application and specific matters with which they agree, and those parts or matters where they do not agree" (paragraph 73).

¹ Guidance for the examination of applications for development consent, March 2015



NRIL has failed to engage in the examination process since submission of its initial RR on 17 December 2021², almost two years ago, and despite having ample opportunity to do so. No written representation was provided, meaning that the Applicants have had no opportunity to consider and respond to NRIL's submissions.

There can be no reasonable explanation for NRIL failing to provide the PPs earlier in the process than October 2023, particularly given that the Applicants' solicitors have been seeking to reach agreement on a separate Framework Agreement and the PPs since at least November 2021³, with little engagement from NRIL's solicitors.

By contrast, the Applicants have made clear their position that they consider the PPs contained in the draft DCO to be sufficient to protect NRIL's interest, both in their response to NRIL's RR **[REP3-012]** (at page 142) and in the Statement of Common Ground with NRIL **[REP1-019]** (para 4.4.1). The Applicants also maintained that position in the End of Examination Negotiation Status document **[REP13-021]** (page 10) submitted at Deadline 13 on 7 November 2022.

Notwithstanding the above, we note that a key point of difference between the form of PPs contained in the Applicants' draft DCO and those put forward by NRIL in its Con 6 Response would appear to be the position on compulsory acquisition powers.

Due to NRIL's lack of engagement in the examination process, the Applicants have not to date provided representations on this matter. However, the Applicants' position is similar to that which has been set out in their response to other parties (see for instance that in respect of South Tees Development Corporation's written representations regarding the use of compulsory acquisition powers **[REP3-012]** (para 3.4)) and can be summarised as follows:

- the Applicants require powers of compulsory acquisition and temporary possession to ensure that the Proposed Development can be built, maintained, and operated, and so that the public benefits of the project can be realised, including supporting the Government's policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets are met.
- The Applicants consider that the balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers, and noting the substantial public benefits that it considers exist for the Proposed Development. The Secretary of State must be satisfied that there is a compelling case in the public interest for the compulsory acquisition. It is the Applicants' case that that exists for the whole of the Order land, including land owned by NRIL.
- The Applicants' position is that the compulsory acquisition powers sought in the DCO are necessary and proportionate and that it must retain the powers to exercise those rights. Accordingly, it does not agree that the protective provisions should be amended to make the exercise of such powers conditional on NRIL's agreement.

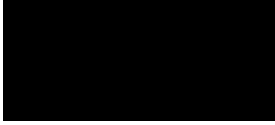
The Applicants remain committed to seeking to acquire the necessary right and interests in third party land by agreement. However it is important that they retain the ability to rely on compulsory acquisition powers to ensure the deliverability of this nationally significant project in the event that

² NRIL did also provide a brief response to the Secretary of State dated 24 March 2023 but which did not provide its preferred form of PPs nor on the differences between those the Applicants included in the dDCO and that which NRIL might seek.

³ When the Applicants' solicitors provided an undertaking to NRIL's solicitors, in relation to the Framework Agreement / PPs work.

agreement cannot be reached. It is considered that the form of PPs included in the draft DCO provide NRIL with adequate protection, including in such circumstances.

Yours sincerely,



Geoff Bullock
Partner – Head of Planning
DWD – on behalf of NZT Power Limited & NZNS Storage Limited