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# DWD

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By email: [H2Teesside@planninginspectorate.gov.uk](mailto:H2Teesside@planninginspectorate.gov.uk)

Dear Ms Robbins,

## THE H2TEESSIDE PROJECT

### APPLICATION BY H2 TEESSIDE LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE H2TEESSIDE PROJECT

### WRITTEN SUBMISSIONS ON THE EXAMINATION PROCEDURE – PROCEDURAL DEADLINE A (15 AUGUST 2024)

We write on behalf of the Applicant, H2 Teesside Limited, in response to the Examining Authority's ('ExA's') letter (The Infrastructure Planning (Examination) Rules 2010 – Rules 6, 9 and 13) (the 'Rule 6 letter') dated 31 July 2024.

The Applicant's written submissions in respect of Procedural Deadline 'A' are set out below.

#### Notification of wish to speak at the Preliminary Meeting (Annex F, Item 1)

The Applicant will participate in the Preliminary Meeting. It is anticipated that the following representatives of the Applicant may need to speak at the Preliminary Meeting and thus should be sent a Teams invitation to participate:

- Hereward Philpot KC – Francis Taylor Building [REDACTED]
- Isabella Tafur – Francis Taylor Building [REDACTED]
- Nick McDonald – Pinsent Masons [REDACTED]
- Matthew Fox – Pinsent Masons [REDACTED]
- Elnur Ibrahimzade – bp [REDACTED]



**Notification of wish to speak at Issue Specific Hearing 1 (ISH1) (Annex F, Item 1)**

The Applicant will participate in ISH1. It is anticipated that the following representatives of the Applicant may need to speak at the Preliminary Meeting and thus should be sent a Teams invitation to participate:

- Hereward Philpott KC – Francis Taylor Building [REDACTED]
- Isabella Tafur – Francis Taylor Building [REDACTED]
- Nick McDonald – Pinsent Masons [REDACTED]
- Matthew Fox – Pinsent Masons [REDACTED]
- Elnur Ibrahimzade – bp [REDACTED]
- Richard Lowe – Arup [REDACTED]
- Tamara Percy – AECOM [REDACTED]
- Joshua Peat – Dalcour Maclaren [REDACTED]

**Statements of Common Ground (Annex F, Item 2)**

The Applicant notes that the ExA has requested that Statements of Common Ground ('SoCG') are prepared between the Applicant and 44 separate parties. A significant number of the parties listed are landowners whom the Applicant is already in discussions in respect of their landownership interests within the Order Limits.

In order to ensure efficiencies, the Applicant would respectfully suggest that discussions with the landowners listed are tracked within the Land Rights Tracker (see below). This would be done on the basis that the Applicant would seek to agree with the relevant landowner the content of the relevant columns of the Land Rights Tracker reporting on the status of negotiations on Protective Provisions, Heads of Terms and/or Side Agreements (elements).

This would have the benefit of showing an agreed position between the parties as to progress of ongoing negotiations with landownership interests, thereby helping to limit the number of SoCGs required for the Examination. It is considered that the SoCGs would otherwise simply be recording that same information across a large number of different documents, rather than the efficiency of one consolidated position.

The Applicant considers that this approach would be appropriate for SoCG numbers 1-6, 9-10, 13-16, 18-20, 23-34, 36-39 and 44 listed under this item in the Rule 6 letter.

The Applicant notes the other parties within the SoCG list and can confirm that they will be liaising with those parties to prepare SoCG.

**Land Rights Tracker (Annex F, Item 3)**

The Applicant has provided a Land Rights Tracker (Application Document Ref. 8.3) for Procedural Deadline A. The Land Rights Tracker has been based upon the example shown at Annex F (page F5) of the ExA's Rule 6 letter.

This tracker has been filled out on the following basis:

- Column T (Status of Objection) has focussed on parties who have submitted Relevant Representations and confirms that none have yet withdrawn their objections.
- A new Column U has been added as a ‘Status at Procedural Deadline A’. This provides updates on the discussions that have been held by the Applicant with Affected Parties with whom the Applicant is in contact. This takes as a starting point that the ExA has read the submitted Schedule of Negotiations and Powers Sought and provides an update on the position since submission in March 2024. The Applicant will provide additional columns to update the Examining Authority at Deadline 2, Deadline 5 and Deadline 7 as requested in the Rule 6 letter.
- Updates have focused on Category 1 parties, as that is where the Applicant has focussed its engagement efforts, given that impacts to Category 2 parties will follow that which has been agreed with Category 1 parties.
- There are a number of plots across the red line boundary which include unregistered/unknown parties. The Applicant has attempted to identify these parties and will continue to do so. If new parties are identified, these will be updated in the Book of Reference [APP-023] and the Land Rights Tracker.
- In respect of mines and minerals freehold interests, none of these interests are parties who are not otherwise freehold interests elsewhere within the Order Limits whom the Applicant is already engaging with. To the extent that those parties wish to negotiate a position on mines and minerals (noting the position in the dDCO[APP-027]) the Applicant would welcome this, but this has not arisen to date. As such, no separate update is provided.
- No update has been given or is anticipated to be given moving forward in respect of subsoil interests, as these are assumed interests who would be eligible to make negligible compensation claims if the rights were required to be used in subsoil.
- The Applicant does not intend to fill out the ‘Duration of Temporary Rights’ column, as at this stage of project development, this is not known. Any temporary possession will be dependent on the detailed construction programme, which will not be known until post-consent.
- In the tracker, where there is reference to negotiation of protective provisions, this should be taken as including negotiations in relation to a side agreement where relevant.

Additionally, the Applicant has provided further detail on its approach to each column in the Land Rights Tracker in the text below:

- **Book of Ref. Plot No.** – The Plot numbers provided within the Book of Reference [APP-023] and identified on the Land Plans [APP-008].
- **Plan Ref. No.** – The Examination Library reference for the Land Plans.
- **Description of Land and Rights Requested** – The description of land and rights requested within the Book of Reference.
- **Category 1** – Provides a schedule of Owners, Lessees or Tenants and Occupiers as identified within the Book of Reference.
- **Category 2** – Provides a schedule of persons that have an interest in the land as identified within the Book of Reference.

- **Agent/Representative** – The agent or legal representative that act for the persons with an interest in the land.
- **IP / AP Ref No.** – Interested Party / Affected Party No.
- **RR Ref No.** – The Examination Library reference for the Relevant Representations submitted to the Planning Inspectorate.
- **WR Ref No.** – To be the Examination Library reference for the Written Representations submitted during Examination.
- **Other Doc Ref No.** – Any additional Examination Library document references attributed to the Affected Party.
- **Applicants Response Refs.** – This will be the Table Numbers for each Party within the Applicant’s Response to the Relevant Representations once submitted.
- **Duration of Temporary Rights** – Not filled out – as discussed above.
- **Special Category and Crown Land** – This is land within the Order Limits which is Special Category Land or Crown Land shown on the Special Category Land and Crown Land Plans [APP-009].
- **Special Category- other information including confirmation of status** – Not yet needed to be completed.
- **Is the AP a SU and is the land operational?** – Provides information if the Affected Party is a Statutory Undertaker and if, to the best of the Applicant’s knowledge, the land is currently in operational use.
- **Protective Provision status** – Provides the status of Protective Provision negotiations:
  - Not required:
    - Protective Provisions are not required for the Affected Party
  - Requested:
    - Protective Provisions have been requested by the Affected Party but the Applicant has not yet been provided with details of requirements or legal contacts
  - Required, negotiating:
    - The Applicant is negotiating Protective Provisions with the Affected Party
  - Required, agreed:
    - Protective Provisions have been agreed between the Applicant and the Affected Party
  - Standard PP’s applicable:
    - Where the Applicant considers the Affected Party’s interests are appropriately protected by protective provisions contained in Parts 1 to 3 of Schedule 12 to the dDCO [APP-027]. If the Applicant is advised by an Affected Party that bespoke protections are needed, then this column entry will be updated accordingly.
- **Side Agreements Status** – The Side Agreement column is not populated unless an Affected Party has provided consent to populate it prior to this Deadline.
  - Not required:
    - A side agreement is not required with the Affected Party

- Drafting:
  - A side agreement is being drafted by the Applicant or the Affected Party
- Negotiating:
  - A side agreement is being negotiated with the Affected Party
- Completed:
  - A side agreement has been completed with the Affected Party
- **Status of objection** – Provides the status of objection from the Affected Parties.
- **Update for Procedural Deadline A** – The written update of the current status of negotiations in relation to land agreements at the time of Procedural Deadline A.
- **Heads of Terms** – Provides a status of Heads of Terms Negotiations:
  - Issued:
    - A set of Heads of Terms have been issued to the Affected Party
  - Drafting:
    - Heads of Terms are being drafted by the Applicant or the Affected Party
  - Negotiating:
    - Heads of Terms are currently in negotiation with the Affected Party
  - Agreed:
    - Heads of Terms have been agreed with the Affected Party
  - Not required:
    - Heads of Terms are not required for the Affected Party.
- **Complete** – Will provides the completion status of Voluntary Agreements:
  - Yes
  - No
- **Last Update [DD/M/YYYY]** – Date of last update provided for the affected order plot outlined in column [a].

Whilst the Applicant commits to updating the Land Rights Tracker throughout the Examination and in line with the Examination Timetable requirements, it notes that the submitted tracker is of substantial size. As such, it would welcome a discussion at the Preliminary Meeting as to the best approach moving forward so that the information provided to the ExA is of the most utility.

In particular, the Applicant notes that it would be possible for it to, in the alternative, add key columns to its pre-existing Schedule of Negotiations and Powers Sought [APP-026] for the matters so as to provide an update on discussions with Affected Parties. It is acknowledged that this would have a ‘per party’, rather than ‘per plot’ focus, but in the context of the Examination, the focus of the submitted Relevant Representations and the likelihood of it being of much smaller size, this may be of greater use to the ExA.

#### **Policy Trackers (Annex F, Item 4)**

The Applicant notes the ExA’s request to provide a NPS tracker, a new policy intentions tracker for critical infrastructure, a draft NPPF tracker and a NDMP tracker.

At the time of writing, the new Government has only issued a consultation draft of the NPPF (dated 30 July 2024) with an associated consultation on a selection of other planning issues.

The NPPF is not the primary policy basis for decisions by the Secretary of State (SoS) on applications for Nationally Significant Infrastructure Projects ('NSIPs'), although it can be important and relevant to the SoS's decision-making.

Many of the proposed changes within the consultation draft NPPF relate to housing and housing delivery and are not therefore relevant to the Proposed Development. The changes made in respect of infrastructure delivery and low carbon development would provide further policy support to projects such as H2Teesside, but the Applicant does not consider that these changes would materially alter the assessment of the Proposed Development against relevant policy as set out in the Planning Statement [APP-031] or the Planning Policy Assessment Tables [APP-032]. The Applicant also notes that the document remains a consultation draft. The Applicant has not therefore provided a draft NPPF Tracker at Procedural Deadline A.

The Applicant will monitor changes to relevant policy during the Examination and will submit policy trackers as required.

### **Initial Assessment of Principal Issues (Annex C)**

The Applicant notes that under 'Assessment of Alternatives' the ExA is seeking to examine *"The need for this type of energy infrastructure, and specifically for the Proposed Development"* and similarly under 'Needs Case and the proposals relationship with other development in the area' *"...the needs case for the development."* Relatedly, the Applicant notes that there is reference to the need *'specifically for the Proposed Development'* in an 'Alternatives' context.

The Applicant wishes to query the scope of these issues at Annex C. Matters settled by national policy statements should not be revisited or re-opened in the development consent process and to that end, Section 106 of the Planning Act 2008 provides that the Secretary of State may disregard representations that relate to the merits of national policy.

Paragraphs 3.2.11 and 3.2.12 of National Policy Statement ('NPS') EN-1 confirm that where an energy infrastructure project is not covered by Sections 15 to 21 of the Planning Act 2008, but is considered to be nationally significant and is subject to a direction under Section 35 (which is the case here for both the Hydrogen Production Facility and the Hydrogen Distribution Network, as neither are a NSIP, contrary to the position set out in Annex B of the Rule 6 Letter), then the application for development consent would need to be considered in accordance with NPS EN-1:

*"In particular: ...*

*where the application is for hydrogen infrastructure not covered by sections 15-21 of the Planning Act, the Secretary of State should give substantial weight to the need established at paragraphs 3.4.12 to 3.4.22 of this NPS ..."*

Part 3 of NPS EN-1 confirms the need for a range of different types of energy infrastructure in the UK and that it is not appropriate for planning policy to set limits on different technologies (EN-1, paragraph 3.2.2 to 3.2.3). Notably, paragraph 3.4.12 of EN-1 confirms that *"There is an urgent need for all types of low carbon hydrogen infrastructure to allow hydrogen to play its role in the transition to net zero."*

Footnote 27 and paragraph 3.4.15 of NPS EN-1 makes clear that low carbon hydrogen includes blue hydrogen. Furthermore, paragraph 3.4.15 of NPS EN-1 states that *‘The government’s view is that a twin track approach of developing both green and blue hydrogen production will be needed to achieve the scale of low carbon hydrogen production required for net zero’*. EN-1 further states at paragraph 3.2.8 that *“The Secretary of State is **not required** to consider separately the specific contribution of any individual project to satisfying the need established in this NPS.”*

Furthermore, whilst specifically dealing with HRA considerations, it is noted that paragraph 4.2.21 of NPS EN-1 states that:

*“... starting from the position that energy security and decarbonising the power sector to combat climate change....requires a significant number of deliverable locations for CNP Infrastructure and for each location to maximise its capacity. This NPS imposes no limit on the number of CNP infrastructure projects that may be consented. Therefore, the fact that there are other potential plans or projects deliverable in different locations to meet the need for CNP Infrastructure is unlikely to be treated as an alternative solution.”*

As set out in the Planning Statement [APP-031], the Hydrogen Production Facility and Hydrogen Distribution Network are ‘CNP infrastructure’ pursuant to the third and fourth bullet points of paragraph 4.2.5 of NPS EN-1.

The Applicant is therefore clear that there is not a question in relation to need for this type of infrastructure as it is established through national policy in EN-1 and that the merits of such policy are not a matter that can properly be questioned through the development consent process.

The Applicant would therefore welcome discussion at the Preliminary Meeting on the scope of these items, in this context.

#### **Draft Examination Timetable (Annex D, Item 13)**

In the draft Examination Timetable, the week commencing 6 January 2025 is reserved for hearings. The Applicant would suggest that the hearings are scheduled for week commencing 13 January 2025 for the following reasons:

- the hearings taking place immediately after the Christmas holiday period will pose challenges in terms of meaningful preparation for the hearings by the Applicant’s team and Interested Parties (this would need to be complete by mid-December, which is close to Deadline 5), while it is possible that some people may still be on holiday in early January;
- there will be a requirement for the Applicant to publicise the hearings at least 21 days in advance in local newspapers, meaning that notices would need to be published on 14 December (as the relevant newspapers publish on a Friday). The effectiveness of this publicity is likely to be significantly reduced by its proximity to Christmas, with people not working and being on holiday, meaning that they may not be aware of the hearings. Whilst the Applicant would still, in its preferred scenario, have to publicise on 14 December, moving the Hearings a week later would still give Interested Parties more time after Christmas to prepare; and
- in light of the proposed timetable for its proposed Change Request, discussed below.

The Applicant suggests that, as a consequence:

- Deadline 6 be moved to 20 January 2025;
- Publication of the ExA's schedule of changes to the dDCO be moved to 23 January 2025; and
- Deadline 7 be moved to 12 February 2025.

This will mean that it is only the gap between the publication of the ExA's schedule of changes to the dDCO [APP-027] and Deadline 7, and the gap between Deadline 7 and Deadline 8 that would be shorter than are currently timetabled, but it is considered that at that stage in Examination, shorter deadline gaps may be acceptable (as matters should have been able to be closed out by that point).

### **Change Request**

The Applicant wishes to advise the ExA of its intention to submit a Change Request in respect of the Proposed Development.

This letter is accompanied by a Change Notification document, which has been completed in accordance with Step 1 of the PINS Advice Note on 'Changes to an application after it has been accepted for examination', including setting out the scope of the proposed changes to be included within the Change Request; the implications for the EIA of the Proposed Development; the application of the Compulsory Acquisition Regulations; and also a programme for the Change Request (including changes to the Examination timetable were relevant, above and beyond those discussed above), including proposals with regards to consultation in respect of the proposed changes.

### **Other Submissions**

The Applicant has undertaken an Errata check of its Application documentation to consider if there are any changes that need to be highlighted which could affect understanding of the submitted documents (rather than minor typographical comments).

The results of this check are contained within the 'Errata Report' (Application Document Ref. 8.2) submitted alongside this letter. Alongside this, clean and tracked changed updates (as noted in the following documents) have been submitted as the errata identified related to tables, where it was felt it would be clearer to submit updated documents:

- The Important Hedgerows to be Removed Plan (Application Document Ref. 2.15, Rev 2).
- ES Chapter 4: Proposed Development (Clean and tracked versions) (Application Document Ref. 6.2.4, Rev 1).
- ES Chapter 11: Noise and Vibration (Clean and tracked versions) (Application Document Ref. 6.2.11, Rev 1).
- ES Appendix 11A: Construction Noise Levels and Assumptions (Clean and tracked versions) (Application Document Ref. 6.4.15, Rev 1).
- ES Appendix 11C: Baseline Sound Monitoring Survey Information (Clean and tracked versions) (Application Document Ref. 6.4.17, Rev 1).
- ES Non-Technical Summary (Clean and tracked versions) (Application Document Ref. 6.1, Rev 1).



- ES Figure 5-1: Construction Access, Compounds and Temporary Construction Compounds (Application Document 6.3.14, Rev 1).
- ES Figure 9-3: Tidal and Fluvial Flood Risk (Application Document Ref. 6.3.29, Rev 1).
- ES Figure 12-4: Phase 1 Habitats Survey Results (Sheet 5 of 59) (Application Document Ref. 6.3.69).
- ES Figure 16-1: Landscape Context (Application Document Ref. 6.3.86, Rev 1).
- ES Figures 16-6-1a to 16-6-15a: Winter Viewpoint Photography (Application Document Ref. 6.3.91, Rev 1).
- ES Figures 16-6-1b to 16-6-14b: Summer Viewpoint Photography (Application Document Ref. 6.3.92, Rev 1).

This errata process has not considered the documents certified in the dDCO [APP-027], the dDCO and Explanatory Memorandum or the HRA documentation, as these documents will be updated during the Examination process, with any identified errors being corrected as part of that updating process.

The Applicant has also provided an updated Application Guide for Procedural Deadline 'A' (Application Document Ref. 1.2) to reflect the above document.

### **Section 51 Advice and Section 55 Checklist**

With reference to Application Document Ref. 1.7 'Applicant's Response to S51 Advice and S55 Checklist' [AS-002], Section 2.0, Table 2-1, the Applicant wishes to update/clarify in relation to Nos. 1, 2, 3 and 6 as follows:

- In No. 1, the Applicant responded that the visualisations of the Proposed Development will be further developed and updated, and additional plans submitted prior to the start of the Examination; and in No. 2, the Applicant responded that typical elevations of the above ground pipelines will be submitted prior to the start of the Examination.

Further to this, the Applicant advises that these updated visualisations (No.1) and typical elevations of the above ground pipelines (No. 2) are being prepared and will be submitted to the Examining Authority by 23 August 2024.

- In No. 3 related to Photomontages, the Applicant responded to, and provided updates to Figures 16-7-1a to 16-7-4f: Photomontages' (Application Document Ref. 6.3.93, Revision 1) [AS-019].

The Applicant wishes to clarify in relation to No. 3 that further updates of Figures 16-7-1a to 16-7-4f are being prepared and will be submitted to the Planning Inspectorate by 23 August.

- In No. 6 related to Bird Surveys, the Applicant advised that a Supplementary Ornithology Baseline Report presenting 2024 data will be submitted prior to the start of the Examination.

Further to this, the Applicant confirms this will be undertaken. However, in light of Natural England's (NE) Relevant Representations [RR-026], it wishes to discuss the results of its 2024 surveys with NE first, so they can be considered as part of the wider discussions on their comments relating to matters, and updates that may be required to the Report to Inform HRA [APP-040 & 041]. These discussions are on-going and the Applicant is working to submit an updated Report to Inform HRA, with the Supplementary Ornithology Baseline Report, by Deadline 3, so they can be considered together.

I would be grateful if you could confirm receipt of this letter and the accompany documents.

In the meantime, should you have any questions please do not hesitate to contact Geoff Bullock ([REDACTED]@dwd-ltd.co.uk [REDACTED] Mia Scaggiante ([REDACTED]@dwd-ltd.co.uk [REDACTED] [REDACTED]) or Nathan Cheung ([REDACTED]@dwd-ltd.co.uk [REDACTED])).

Yours sincerely,

[REDACTED]

**Geoff Bullock**  
**Joint Managing Director & Head of Planning - DWD**

Encl.

- Application Guide (Application Document Ref. 1.2, Rev 2)
- The Important Hedgerows to be Removed Plan (Application Document Ref. 2.15, Rev 2).
- ES Non-Technical Summary (Clean and tracked versions) (Application Document Ref. 6.1, Rev 1).
- ES Chapter 4: Proposed Development (Clean and tracked versions) (Application Document Ref. 6.2.4, Rev 1).
- ES Chapter 11: Noise and Vibration (Clean and tracked versions) (Application Document Ref. 6.2.11, Rev 1).
- ES Figure 5-1: Construction Access and Temporary Construction Compounds (Application Document 6.3.14, Rev 1).
- ES Figure 9-3: Tidal and Fluvial Flood Risk (Application Document Ref. 6.3.29, Rev 1).
- ES Figure 12-4: Phase 1 Habitats Survey Results (Sheet 5 of 59) (Application Document Ref. 6.3.69).
- ES Figure 16-1: Landscape Context (Application Document Ref. 6.3.86, Rev 1).
- ES Figures 16-6-1a to 16-6-15a: Winter Viewpoint Photography (Application Document Ref. 6.3.91, Rev 1).
- ES Figures 16-6-1b to 16-6-14b: Summer Viewpoint Photography (Application Document Ref. 6.3.92, Rev 1).
- ES Appendix 11A: Construction Noise Levels and Assumptions (Clean and tracked versions) (Application Document Ref. 6.4.15, Rev 1).
- ES Appendix 11C: Baseline Sound Monitoring Survey Information (Clean and tracked versions) (Application Document Ref. 6.4.17, Rev 1).
- Change Notification Document (Application Document 7.1, Rev 0)
- Errata Report (Application Document Ref. 8.2, Rev 0).
- Land Rights Tracker (Application Document 8.3, Rev 0).