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The Applicant

Your Ref:

Our Ref: EN070009

Date: 21 August 2024

Dear Sir/ Madam

The Planning Act 2008 – Section 89

Application by H2 Teesside Limited for an Order Granting Development Consent for the H2 Teesside Project

Notice by Applicant of intention to submit a request for changes to the application

Thank you for your letter of 15 August 2024 [PDA-020] giving notice of H2 Teesside Limited's intention to submit a request for changes to the application. The Change Request submission document is entitled 'Change Notification' and has been published on the National Infrastructure Planning website and can be found in our Examination Library reference [PDA-019]. The above mentioned letter and 'Change Notification' document set out:

- The proposed changes requested, including a description of, and the rationale and need for the proposed changes, including justification for making the changes after the Development Consent Order (DCO) Application has been accepted for examination and also identifies the changes to the Order Limits/ Land.
- Confirmation that at this stage, you consider that the findings of the environmental assessments reported in the DCO Application are unlikely to substantially alter as a result of the proposed changes and no materially new or materially different environmental effects are expected to arise.
- Proposed consultation approach details.
- Your approach to compliance with The Infrastructure Planning (Compulsory Powers) Regulations 2010 (Sic).
- An Indicative programme setting out indicative timescales for making the proposed changes, including the expected submission date for the Change Application, and how this can be accommodated within the Examination timetable, thus ensuring the duties

under the relevant Regulations are complied with and that consultees have sufficient time to consider and respond.

The letter has been submitted in accordance with the Planning Inspectorate advice 'Nationally Significant Infrastructure Projects: Changes to an application after it has been accepted for examination', dated 8 August 2024 and is Step 1 of the process. In terms of the Change Request it describes the changes as:

- Changes to the Engineering/ design development, being proposed changes 1, 5, 7 and 9;
- Changes to the construction approach, being changes 3, 4 and 6.
- Changes resulting in reductions to the Order Limits, being changes 2.A to 2.F (inclusive).
- Changes resulting in increases to the Order Limits, being change 8.

The latter Change would result in an additional 1.8 hectares (ha) of land being added to the Order Limits engaging The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (the CA Regulations).

A summary of the Change Requests is set out in the table below:

Summary of Proposed Changes

Change No.	Description.	Work No.	Change Category, as defined by the Applicant.
1	Addition of a second flare stack for Phase 2.	Work No. 1A.2	Category 'A' Change - Engineering/ Design Development.
2.A	Reduction at Cowpen Bewley (2.5 ha removed).	No Work No.	Category 'C' Change - Other Order Limits Reductions.
2.B	Reduction at Venator (2.5 ha removed).	Work Nos. 6A.1 and 6B.1	Category 'C' Change - Other Order Limits Reductions.
2.C	Reduction to the east of the Main Site (50.7 ha removed).	Work No. 3A, 3B.2, 3B.3, 4, 5, 7A and 7B	Category 'C' Change - Other Order Limits Reductions.
2.D	Reduction to the west of the Main Site and at the Main Site access point (27.9 ha removed).	Work No. 6A.1	Category 'C' Change - Other Order Limits Reductions.

2.E	Reduction at Lazenby (4.9 ha removed).	Work Nos. 6A.1 and 9	Category 'C' Change - Other Order Limits Reductions.
2.F	Removal of the Above Ground Installation (AGI) at Northern Gas Networks site off the A178 Seaton Carew Road (5.3 ha removed).	Work No. 6B.3	Category 'C' Change - Other Order Limits Reductions.
3	Removal of temporary construction compound at Redcar Bulk Terminal (8.1 ha removed).	Work No. 9	Category 'B' Change - Changes to Construction Approach.
4	Addition of a temporary construction compound on land at Navigator Terminals (no land added to the Order Limits).	Work No. 9	Category 'B' Change - Changes to Construction Approach.
5	Removal of air separation unit from Phase 1.	Work No. 1A.1	Category 'A' Change - Engineering/ Design Development.
6	Reduction in plant at temporary construction compounds.	Work No. 9	Category 'B' Change - Changes to Construction Approach.
7	Updates to building dimensions at the Main Site.	Work No. 1	Category 'A' Change - Engineering/ Design Development.
8	Inclusion of additional land for the Natural Gas pipeline (new Work. No. 2C) (1.8 ha of land added to the Order Limits).	New Work No. 2C	Category 'D' Change - Order Limits Increases invoking the CA Regulations.
9	Removal of an AGI within the Work No. 2B area (no land removed from the Order Limits).	Work No. 2B	Category 'A' Change - Engineering/ Design Development.

More details of these Change Requests are provided in Section 2.4 of your Change Notification Document [PDA-019]. This document also indicates that the Change Request is intended to be submitted into the Examination on 16 October 2024.

The Examining Authority (ExA) in regard to the above matters would provide the following advice in regard to the Change Requests set out in the Applicants 'Change Notification'

received on 15 August 2024, with a view to allowing the Applicant to finalise and implement their proposed consultation on its Change Request application.

Materiality of the proposed changes

The ExA notes the proposed changes include both:

- i) the reduction of land being taken; and
- ii) the inclusion of additional land, previously outside the Order Limits.

It also notes the inclusion of an additional flare stack, changes to dimensions of structures within the Proposed Development and the removal of the air separation unit from Phase 1, as well as the removal of an above ground Installation from within Work No. 2B.

In terms of the removal and inclusion of additional land, whilst the changes resulting in reductions to the Order Limits (Changes 2.A to 2.F (inclusive)) are noted, some of these changes may mean a variation in the categorisation of acquisition being sought and at this time the nature of any such change is unclear. Irrespective of this it is noted Change 8 will result in the inclusion of additional land, not previously included within the Order Limits, for the Natural Gas pipeline (new Work. No. 2C). This additional land would result in some 1.8 hectares of land being added to the Order Limits.

Whilst the Applicant advises it is endeavouring to obtain consent from all persons with an interest in the Additional Land to the inclusion of the proposed provision within the DCO documentation, it also considers that given the complicated position in and around the relevant land a precautionary approach needs to be taken (ie there is potential that not all consents may be able to be obtained). Therefore, the Applicant has advised it considers the CA Regulations should be applied. Bearing in mind the increase in interference with land and landowners' rights in this regard, the ExA considers the Applicant's approach to consult on these changes to be fair and reasonable, should it be accepted.

As such Regulation 4 of the CA Regulations applies in regard to proposed Change 8 and therefore to the Applicant's Change Requests generally, and the ExA agrees, on the basis of the information supplied in the Applicant's Change Notification [PDA-019], with the Applicant's view that the procedures set out in the CA Regulations in this regard should be applied. However, the ExA would remind the Applicant that ultimately, it is for the ExA to decide whether or not a proposed change is material or not once the formal request is submitted.

The ExA considers the Change Notification [PDA-019] provides a clear description of the proposed changes and sets out the Applicant's rationale and need for making the changes detailed in that document. However, although the Applicant's appraisal of the implications of the Change Requests on the Environmental Assessment submitted with the original Application, as set out in Section 3 of the Change Notification Document [PDA-019], are noted, the ExA considers there to be potential that the proposed changes may give rise to new or materially different likely significant effects but does not at this time have sufficient information to reach an opinion. As such the ExA would seek the submission of adequate information from the Applicant, in this regard, with its formal Change Request to enable the ExA to reach an opinion on this matter. Additionally, the Applicant will need to ensure the

information prescribed by Regulation 5 of the CA Regulations is submitted as part of any formal Change Request made.

With regard to impacts on the examination timetable, the ExA notes the timescales currently set out in the Change Notification [PDA-019], as well as your intended date for submission of the formal Change Request Application. It also notes the reduced timescales you suggest, as set out in Steps 2 to 11 (inclusive) of the above mentioned document. Having carefully considered these timescales/ 'Steps', providing they are complied with, the ExA would be satisfied that, when applying Regulations 5 to 19 of the CA Regulations, enough time would be likely to remain within the statutory six months Examination period. Irrespective of the above, the ExA would stress the importance of sticking to the timescales/ 'Steps', whilst ensuring compliance with the CA Regulations. Furthermore, the ExA would stress the comments made above do not imply acceptance of moving the hearings (if required) due to take place week commencing 6 January 2025 to the following week (week commencing 13 January 2025).

Bearing the above in mind, the ExA would urge the Applicant to give serious consideration and commitment to the timetable, as set out in your Change Notification [PDA-019], as accommodating the proposed changes into the Examination Timetable would be reliant on the Applicant acting with urgency, submitting the formal change request as early as possible and providing the ExA with the Certificates of Compliance, as required by Regulation 9 of the CA Regulations, in line with its commitment of "...by 3 December 2024...", much earlier than the 10 working days allowed.

Consultation

The ExA considers that, in order to ensure fairness, appropriate and proportionate consultation should be carried out. The ExA notes the Applicant's position regarding consultation on the proposed changes in advance of submission (see section 42 (a) to (d) of the Planning Act 2008) as set out in the Change Notification and that the prospective changes are a result of the responses provided to previous consultation and subsequent engagement with Interested Parties. As such the ExA considers the proposed consultations as set out in the Change Notification [PDA-019] will ensure fair, appropriate and proportionate consultation.

Irrespective of the above, when submitting the formal change request the ExA recommends that the Applicant submits a statement which:

- lists the persons (affected by the changes) who it consulted (identifying any new persons ie those who were consulted in relation to the proposed change but not in relation to the original application);
- identifies (within the above list) those persons who are "affected persons", meaning those persons over whose land Compulsory Acquisition powers will be exercised.

If the ExA decides to accept the changes into the Examination, all Interested Parties will have an opportunity to make representations on the changed application in writing or orally at hearings as the Examination progresses.

Next steps

The Applicant is asked to ensure therefore that the change request, which it currently intends to submit by 16 October 2024, responds fully to the points made above.

It should be noted that the ExA does not imply any acceptance of the Change Notification/ Change Request in this letter. Furthermore, please note that should any formal Change Request be accepted by the ExA the proposed Changes would be made on the basis that all the processes can be completed in the required time prior to the close of the Examination and in accordance with any revised Examination Timetable that may be published. Should it not be possible to achieve this, then we would not be in a position to take the change request into account in the ExA's recommendation report to the Secretary of State as it would not have complied with the relevant statutory procedures.

Yours faithfully

Christopher Butler

Lead Panel Member and Examining Inspector (Examining Authority).

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