

Response to Examining Authority's First Written Questions - Kellas Midstream Limited and CATS North Sea Limited



1 INTRODUCTION

- 1.1 This representation has been prepared on behalf of Kellas Midstream Limited (“Kellas”) and CATS North Sea Limited (“CNSL”) in relation to the application for a Development Consent Order (“DCO”) for the H2Teesside Project (the “Project”). This document is submitted in response to Q1.9.67 of the Examining Authority’s first written questions, which were issued on 4 September 2024.
- 1.2 Kellas is the parent company of CNSL. CNSL is an owner and the operator of the Central Area Transmission System (“CATS”), which transports natural gas from the Central North Sea to a terminal at Teesside. Further information on the CATS infrastructure and the potential impacts of the Project can be found in Kellas and CNSL’s relevant representation [RR-037]. Kellas and CNSL do not wish to expand on their relevant representation with a full written representation at this stage.
- 1.3 For context, Q1.9.67 is addressed to IPs and Statutory Undertakers and asks for clarification on:

‘Schedule 12 (PPs) – Please provide details of discussions and progress regarding PPs (if applicable). If you are in agreement with PPs relevant to you, please confirm this, if not, either provide copies of preferred wording for PPs, or if you have provided it elsewhere (such as in a SoCG), signpost where it can be found and explain why you do not want the wording as currently drafted to be used. Note, if this is provided in the requested Land Rights Tracker please signpost this to the ExA.’

- 1.4 This representation provides details of the progress of the protective provisions which are requested for the protection of CATS.

2 REQUEST FOR PROTECTIVE PROVISIONS

- 2.1 As detailed in Kellas and CNSL’s relevant representation [RR-037], it is essential that there is no adverse impact on the CATS infrastructure caused as a result of the Project. Therefore, it is requested that protective provisions for the protection of CATS are included in the DCO. This request has been raised previously:
- (a) in Kellas’ response to the Applicant’s second consultation for the Project, where Kellas provided template protective provisions to the Applicant and asked that any draft DCO submitted for the Project would include protective provisions for CATS; and
 - (b) in Kellas and CNSL’s relevant representation [RR-037], where the request for the protective provisions and their importance was re-iterated.
- 2.2 The draft DCO [AS-013] does not currently include any protective provisions for the protection of CATS.
- 2.3 Kellas and CNSL’s preferred form of protective provisions are included at Appendix 1 to this document. Amongst other things, the proposed protective provisions include:
- (a) Prior approval of plans and drawings for works within close proximity to CATS.
 - (b) A requirement to adhere to CNSL’s published guidance documents for parties undertaking works near CATS:
 - (i) CATS Wayleaves Guidance for Landowners and Third Parties, Doc Number: CAT-PPI-PRC-019;

- (ii) CATS Conditions and Restrictions for Work Activities in Close Proximity to CATS Pipelines, Doc Number: CAT-PPI-PRC-020; and
 - (iii) CATS Procedures for the Excavation and Backfill of CATS Pipelines, Doc Number: CAT-PPI-PRC-021
- (c) Restrictions on use of explosives for blasting.
 - (d) Consultation on proposed access to construction site.
 - (e) Requirements to monitor for any damage to the CATS pipeline while works are ongoing and detailing steps that must be taken if damage occurs.
 - (f) Requirements for performing pre and post construction surveys in and around the Project's construction areas.
 - (g) Restrictions on the use of compulsory acquisition power over any land or rights in land that are used by CNSL for the operation of CATS.
- 2.4 It is requested that the Applicant includes these protective provisions in the draft DCO at the next available opportunity.
- 2.5 The Applicant has now contacted Kellas and CNSL who will engage with the Applicant with a view to resolving their concerns and objections, including in respect of the necessary protective provisions. At this stage agreement has not yet been reached with the Applicant on this issue. As such, Kellas and CNSL maintain their objection to the Project.

Burges Salmon LLP

On behalf of Kellas Midstream Limited and CATS North Sea Limited

30 September 2024

Appendix 1 – Protective provisions for the protection of CATS North Sea Limited

SCHEDULE [●] Protective provisions

PART [●] For the protection of CATS North Sea Limited

Application

1. For the protection of CATS as referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and CATS.

Interpretation

2. In this Part of this Schedule:

“acceptable credit provider” means: (a) a Bank which has a corporate credit rating or rating for its unsecured and unsubordinated senior long term debt of A- or better awarded by Standard & Poor's or A3 or better awarded by Moody's; or (b) a company or corporation (other than a Bank) which has a corporate credit rating or rating for its unsecured and unsubordinated senior long term debt of A- or better awarded by Standard & Poor's or A3 or better awarded by Moody's; or in the event either of such rating agencies ceases to publish, an equivalent rating awarded by another rating agency approved by all of the Parties, such approval not to be unreasonably withheld, conditioned or delayed;

“acceptable insurance” means general third party liability insurance effected and maintained by the undertaker with a combined property damage and bodily injury limit of indemnity of not less than ONE HUNDRED MILLION POUNDS (£100,000,000) Sterling per occurrence or series of occurrences arising out of one event. Such insurance shall be maintained (a) during the construction period of the authorised works; and (b) after the construction period of the authorised works in respect of any use and maintenance of the authorised development by or on behalf of the undertaker which constitute specified works and arranged with an insurer whose security/credit rating meets the same requirements as an “acceptable credit provider”, such insurance shall include (without limitation)—

(a) a waiver of subrogation and an indemnity to principal clause in favour of CATS, and

(b) pollution liability for third party property damage and third party bodily damage arising from any pollution/contamination event with a (sub)limit of indemnity of not less than TEN MILLION POUNDS (£10,000,000) Sterling per occurrence or series of occurrences arising out of one event or TWENTY MILLION POUNDS (£20,000,000) Sterling in aggregate;

“acceptable security” means either—

(a) a parent company guarantee from a parent company in favour of CATS to cover the undertaker's liability to CATS to a total liability cap of ONE HUNDRED MILLION POUNDS (£100,000,000) Sterling (in a form reasonably satisfactory to CATS and, where required by CATS, accompanied with a legal opinion confirming the due capacity and authorisation of the parent company to enter into and be bound by the terms of such guarantee), or

(b) a bank bond or letter of credit from an acceptable credit provider in favour of CATS to cover the undertaker's liability to CATS for an amount of not less than TEN MILLION POUNDS (£10,000,000) Sterling per asset per event up to a total liability cap of ONE

HUNDRED MILLION POUNDS (£100,000,000) Sterling (in a form reasonably satisfactory to CATS);

“authorised works” has the same meaning as is given to the term “authorised development” in article [2(1)] of this Order and includes any associated development authorised by the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“Bank” means a regulated and authorised institution under the Financial Services and Markets Act 2000 organised under the laws of a member country of the Organisation for Economic Co-operation and Development with a branch within the United Kingdom and which carries out deposit taking activities;

“CATS” means CATS North Sea Limited (company number 09250798), whose registered office is at Suite 1, 7th Floor, 50 Broadway, London, SW1H 0BL, acting in its capacity as operator of the CATS system for and on behalf of the CATS Owners and any successor in title or function to the CATS pipelines;

“CATS Owners” means any company that from time to time owns an interest in the CATS system namely, as at the date of the granting of this Order, (i) CATS North Sea Limited (company number 09250798); (ii) Kellas CATS Limited (company number 08021886); (iii) Eni UK Limited (company number 00862823); and (iv) Chrysaor Petroleum Company U.K. Limited (company number 00792712); and the interests of the CATS Owners in this Part of this Schedule shall be limited to their interest in the CATS system;

“CATS pipeline(s)” means the following pipelines, owned by the CATS Owners and operated by Wood UK Ltd—

(a) The 36” CATS pipeline (PL-774) transporting high pressure natural gas 411.84km (404km subsea, 7.84km onshore) from the CATS Riser Platform, located in the Central Graben Development of the North Sea, to processing facilities at the CATS Terminal in Teesside;

(b) Onshore 6” Condensate export pipeline (PL-937) transporting natural gas condensate 2.87km from the CATS Terminal to Sabic, North Tees plant;

(c) Onshore 6” Condensate export pipeline (PL-938) transporting natural gas condensate 2.45km from the CATS Terminal to the Navigator Terminals storage site;

(d) Onshore 6” Propane pipeline (CAT-Pipeline-04) transporting Propane 1.09km from the CATS Terminal to ConocoPhillips storage site;

(e) CAT-Pipeline-05 6” Butane pipeline transporting butane 1.09km from the CATS Terminal to Conoco Phillips storage site;

“CATS requirements” means the requirements applicable for works undertaken within 50 metres of the CATS pipelines as set out in the—

(a) CATS Wayleaves Guidance for Landowners and Third Parties, Doc Number: CAT-PPI-PRC-019;

(b) CATS Conditions and Restrictions for Work Activities in Close Proximity to CATS Pipelines, Doc Number: CAT-PPI-PRC-020; and

(c) CATS Procedures for the Excavation and Backfill of CATS Pipelines, Doc Number: CAT-PPI-PRC-021,

or any updates or amendments thereto as notified to the undertaker in writing;

“CATS system” means the facilities commonly known as the Central Area Transmission System gas pipeline and processing plant, as commonly abbreviated and known as the CATS pipeline and

CATS processing plant, as the same may exist from time to time including, without limitation, the CATS pipeline;

“commence” and “commencement” in this Part of this Schedule shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the CATS pipelines in a manner consistent with the terms of this Part of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by CATS (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus or infrastructure which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for CATS' approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by CATS (acting reasonably);

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage to or interference with the CATS pipelines or the CATS system that may be caused by the carrying out, maintenance or use of the authorised development;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated within 50 metres in any direction of the CATS system, or
- (b) may in any way adversely affect the CATS system;

Consent under this Part

3.—

(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to CATS a plan and, if reasonably required by CATS, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to CATS under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;

- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc.;
 - (d) the position of all apparatus;
 - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
 - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any specified works until CATS has given written approval of the plan so submitted (and the ground monitoring scheme if required).
- (4) Any approval of CATS given under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5); and
 - (b) must not be unreasonably withheld or delayed and CATS must meaningfully engage with the undertaker within 28 days of the date of submission of the plan under sub-paragraph (1).
- (5) CATS may require such modifications to be made to the plan as may be reasonably necessary for the purpose of securing the CATS pipelines or the CATS system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to the CATS pipelines or the CATS system.
- (6) Specified works must only be executed in accordance with—
- (a) the plan submitted under sub-paragraph (1) (and ground monitoring scheme if required), as approved or as amended from time to time by agreement between the undertaker and CATS; and
 - (b) all conditions imposed under sub-paragraph (4)(a), and CATS will be entitled to watch and inspect the execution of those works.
- (7) Where CATS reasonably requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to CATS's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required prior to commencement.
- (8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.
- (9) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development (including such an event attributable to its maintenance)—
- (a) the undertaker must implement an appropriate ground mitigation scheme; and
 - (b) CATS retains the right to carry out any further necessary protective works (in CATS's reasonable opinion) for the safeguarding of its apparatus and can recover any such costs associated with the further protective works in line with paragraph 11.
- (10) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to CATS notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraph (4)(a) insofar as is reasonably practicable in the circumstances.
- (11) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.
- 4.** Where formal consent is required under the CATS requirements for works within the wayleave of the CATS pipelines, approval given by CATS under paragraph 3 constitutes formal consent for the purposes of the CATS requirements.

Compliance with CATS requirements

5. In undertaking any specified works, the undertaker must comply with such conditions, requirements or regulations as are set out in the CATS requirements.
6. No explosives for blasting are to be used within 400 metres of any part of the CATS system, unless and until the details in respect of those works have been submitted to and approved by CATS, such approval not to be unreasonably withheld or delayed.

Monitoring for damage to pipelines

7.(1) When undertaking any specified works, the undertaker must monitor the CATS pipelines to establish whether damage has occurred.

(2) Where any damage occurs to the CATS pipelines as a result of the works, the undertaker must immediately cease all work in the vicinity of the damage and must notify CATS to enable repairs to be carried out to the reasonable satisfaction of CATS.

(3) If damage has occurred to the CATS pipelines as a result of the works the undertaker will, at the request and election of CATS—

(a) afford CATS all reasonable facilities to enable it to fully and properly repair and test the CATS pipelines and pay to CATS its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or

(b) fully and properly repair the affected pipeline as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the reasonable satisfaction of CATS to have effectively repaired the affected pipeline before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where CATS agrees otherwise in writing) provide CATS with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of any specified works, if damage is found to have occurred to any of the CATS pipelines as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph shall apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then CATS is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

8.(1) If any damage occurs to a CATS pipeline causing a leakage or escape from a pipeline, the undertaker must cease all work in the vicinity and notify CATS immediately.

(2) Where there is leakage or escape, the undertaker must immediately—

(a) evacuate all personnel from the immediate vicinity of the leak;

(b) inform CATS;

(c) prevent any approach by the public;

(d) shut down any machinery and other sources of ignition within at least 350 metres from the leakage; and

(e) assist emergency services as may be requested.

Protective works to buildings

9. The undertaker, in the case of the powers conferred by article [●] (*protective work to buildings*), must exercise those powers so as not to obstruct or render less convenient the access to the CATS system without the written consent of CATS.

Acquisition of land

10. (1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not appropriate or acquire from CATS any interest in land or appropriate, acquire, extinguish, interfere with or override any easement or other interest in land of CATS otherwise than by agreement.

(2) As a condition of agreement between the parties in sub-paragraph (1), prior to the carrying out or maintenance of any part of the authorised development (or in such other timeframe as may be agreed between CATS and the undertaker) that is subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of CATS or affect the provisions of any enactment or agreement regulating the relations between CATS and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as CATS reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between CATS and the undertaker acting reasonably and which must be no less favourable on the whole to CATS unless otherwise agreed by CATS, and it will be the responsibility of the undertaker to procure or secure the consent to and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development or maintenance thereof.

(3) Any agreement or consent granted by CATS under paragraph 3 or any other paragraph of this Part of this Schedule, is not to be taken to constitute agreement under sub-paragraph (1).

Indemnity

11.(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by him) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to the CATS system or property of CATS or the CATS Owners, or there is any interruption in any service provided, or in the supply of any goods, by CATS or the CATS Owners (whichever party experiences the interruption in the circumstances), or CATS or the CATS Owners become liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably incurred by CATS or the CATS Owners in making good such damage or restoring the supply; and

(b) indemnify CATS and the CATS Owners for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from CATS or the CATS Owners, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by CATS or the CATS Owners on behalf of the undertaker or in accordance with a plan approved by CATS or in accordance with any requirement of CATS or under its supervision will not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless CATS or the CATS Owners fail to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan(s).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of CATS or the CATS Owners (as appropriate), or their respective officers, servants, contractors or agents.

(4) The liability of the undertaker to each of CATS and the CATS Owners shall be limited to their respective share of the loss suffered by each of CATS and the CATS Owners in relation to the CATS system.

(5) Any claim to be made by the CATS Owners against the undertaker will be made via CATS acting on behalf of the CATS Owners.

(6) CATS must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(7) CATS or the CATS Owners (as appropriate) must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within the reasonable ability and control of CATS or the CATS Owners (as appropriate) to do so, and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the control of CATS or the CATS Owners (as appropriate). If reasonably requested to do so by the undertaker, CATS must provide an explanation of how the claim has been minimised.

(8) The undertaker shall not commence construction (and shall not permit the commencement of such construction) of the authorised works on any land owned by CATS or the CATS owners or in respect of which CATS has an easement or wayleave for apparatus or infrastructure associated with the CATS system until the following conditions are satisfied:

(a) unless and until CATS is satisfied (acting reasonably) that the undertaker has first provided the acceptable security (and provided evidence to CATS that it shall maintain such acceptable security for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and CATS has confirmed the same to the undertaker in writing; and

(b) unless and until CATS is satisfied (acting reasonably) that the undertaker has first procured acceptable insurance (and provided evidence to CATS that it shall maintain such acceptable insurance for the construction period of the authorised works from the proposed date of commencement of construction of the authorised works) and CATS has confirmed the same in writing to the undertaker.

(9) In the event that the undertaker fails to comply with sub-paragraph (8), nothing in this Part of this Schedule shall prevent CATS from seeking injunctive relief (or any other equitable remedy) in any court of competent jurisdiction.

Costs and Expenses

12. Save where otherwise agreed in writing between CATS and the undertaker, the undertaker must pay to CATS all fees, costs, charges and expenses reasonably incurred by CATS in relation to its functions under this Part of this Schedule, including without limitation—

(a) authorisation of works in accordance with paragraphs 3 to 6 (inclusive);

(b) the engagement of an engineer and their observation of the specified works and the provision of safety advice in accordance with the CATS requirements;

(c) any reasonable costs incurred by CATS in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary;

(d) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and

(e) the survey, inspection and monitoring of any land, apparatus or infrastructure associated with the CATS system or the installation or removal of any temporary works reasonably necessary in consequence of the execution of the works referred to in this Part of this Schedule.

Access

13. If in consequence of any agreement reached in accordance with paragraph 10 or the powers granted under this Order the access to any of the CATS pipelines or the CATS system is materially obstructed, the undertaker must provide such alternative means of access as will enable CATS to maintain or use the CATS pipelines and the CATS system no less effectively than was possible before such obstruction. For the avoidance of doubt, where the undertaker cannot grant such alternative rights and means of access to such apparatus by virtue of not being in possession of the requisite land rights, the undertaker shall use reasonable endeavours to assist in the securing of the requisite rights and means of access.

Arbitration

14. Any difference or dispute arising between the undertaker and CATS under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and CATS, be referred to and settled by arbitration in accordance with article [●] (*arbitration*).