

**WRITTEN REPRESENTATION  
ON BEHALF OF REDCAR BULK TERMINAL LIMITED**

**APPLICATION BY H2TESSIDE LIMITED FOR AN ORDER GRANTING DEVELOPMENT  
CONSENT FOR THE H2 TESSIDE PROJECT (REF.: EN070009/APP/4.1)**

**THE H2TESSIDE ORDER 202\***

**Introduction**

1. This Written Representation (“WR”) is submitted on behalf of Redcar Bulk Terminal Limited (Company Registration Number 07402297) of Time Central, 32 Gallowgate, Newcastle Upon Tyne, Tyne And Wear, NE1 4BF (“RBT”) in respect of the application for a development consent order (“the DCO”) made by H2Teesside Limited (“the Applicant” or “H2T”) to authorise the construction, maintenance and operation of a hydrogen production plant of up to 1,200 megawatt thermal capacity, pipelines and associated infrastructure with carbon capture and storage and including powers to compulsorily acquire land and rights over land (“the Project”).
2. This WR builds upon RBT’s Relevant Representation **[RR-022]**.

**RBT**

3. RBT is the operator of the deep-water marine terminal situated on the East Bank of the River Tees (the “Terminal”). The terminal was originally built to service the adjacent steelworks. The Terminal offers the deepest loading and unloading facility on the east coast of Britain and the only one capable of handling Cape Size vessels with draughts up to 17 metres. As such, it is a vital facility for the UK’s participation in the international

trade in bulk and processed raw materials and is a regionally significant facility in its own right.

4. The Terminal operates a 320-metre-long quay equipped with 2 rail mounted gantry cranes used for loading and unloading bulk sized cargo, with a capacity of up to 18.5 mtpa. The Terminal is capable of operating 24-hours a day, 365 days a year.
5. In addition to the Terminal, land owned by RBT also includes a c.130-hectare area, currently used for short and long-term storage and processing of bulk cargos. Part of this land is leased to Aggregate Industries UK Limited (“Aggregate Industries”) who import to, process on and distribute aggregates from the land. Aggregate Industries are also a Interested Party to the Examination (see **[RR-001]**).
6. The Terminal has separate rail access and handling facilities for rapid loading and off-loading of rail freight traffic and direct access to the UK rail and road networks with links to the A66, A19 and A1(M). The Terminal (and in turn its lessees) have the benefit of easements over neighbouring land which allow for onward road connections to the highway.
7. Following the closure of the steelworks, RBT has been in a period of transition. It already has a long-term handling agreement with Anglo American Woodsmith to export the annual output of polyhalite from the Woodsmith mine through the Terminal by the shore-to-ship transfer for the ‘York Potash’ (polyhalite) conveyor scheme under the York Potash Harbour Facilities Order 2016, which will become operational on completion of the mine.
8. RBT is also engaged in confidential negotiations with another party for a long-term lease of up to 140 acres of RBT’s land on which will be sited a processing facility for raw materials to be used as feedstock for a green production process to be located in Europe. The expectation is that up to 12.5 million tonnes of such material will be imported and exported. Subject to the receipt of appropriate consents, part of this development would also see an extension to the existing wharf.

9. As a consequence of these developments, numerous job opportunities will also be created, both in building the plant and quay and then subsequently through operating them both. To give an idea of the economic importance of these developments, the value of these developments alone to RBT will be £40m per annum (rising with inflation) over a period of 40 years.
10. The Terminal itself is vital to both the local and national economies and comprises a key element of the national economic and planning objectives for the region.

### **Net Zero Teesside**

11. Land immediately adjacent to the Terminal is also proposed to be redeveloped for a project known as Net Zero Teesside (“NZN”), a carbon capture and sequestration scheme including off-shore deep strata carbon sequestration for which the on-shore facilities for which development consent has been granted (see the Net Zero Teesside Order 2024).
12. There is a close relationship between NZT and the Project. The Project proposes to use natural gas extracted from the NZT off-shore deep strata to produce its Hydrogen and then return the resulting carbon dioxide byproduct for sequestration in the NZT facility.
13. RBT has entered into agreements with NZT which include priority access for NZT to use the Terminal for offloading large construction materials that are incapable of being delivered by road or rail (i.e., abnormal indivisible loads (“AILs”)). The Terminal has finite capacity, and it is possible that NZT’s requirements will amount to exclusive use of the Terminal facilities at particular times.
14. H2T propose to use the Terminal as well. Chapter 5 of the Environmental Statement, “Construction Programme and Management” [APP-057], indicates that the Terminal is sought to be used for AILs. The exact routing of these AILs is not known at this stage, but H2T assume that they will be delivered by ship to the Terminal and transported to

the H2T main site via the private road network. There are anticipated to be in the order of 80-100 individual AILs to be delivered [APP-057, p.9, §5.3.17].

15. Whilst there is a degree of commercial interrelationship between NZT and H2T (BP is a major stakeholder in both projects), RBT is concerned that it not be placed in a position where it cannot fulfil the two projects' competing demands. RBT cannot be placed in a position where it is subject to obligations to one project which do not allow it to comply with its obligations to the other.
16. As will be set out further below, there is limited detail in relation to the design, construction and timing of the Project within the application documents which inhibits a clear assessment of potential incompatibilities between NZT and H2T and their use of the Terminal.
17. The relationship between these two projects and their hierarchy and use of the Terminal remains one of the important points to be resolved in respect of the use of the Terminal.

#### **Other development**

18. There is a further project on the adjacent land known as "HyGreen" which is a green hydrogen plant that is currently the subject of an application for planning permission. It is proposed to utilise energy derived from renewable sources, primarily offshore wind and solar power for hydrogen production.

#### **RBT's overarching positions**

19. RBT does not object to the principle of the underlying Project in terms of the benefits it seeks to deliver to Teesside and region beyond.
20. However, RBT is concerned that the Project will detrimentally affecting RBT's (as well as its customers and lessees') ability to operate the Terminal to its potential, particularly

from the use of compulsory acquisition powers if sufficient protections are not put in place.

21. RBT therefore objects to the inclusion of the compulsory powers and any other powers affecting RBT and/or the Terminal in the DCO.

22. In order for RBT to be in a position to withdraw its objection RBT requires:

(i) H2T to enter into a satisfactory agreement with RBT that will at the least (“the Side Agreement and Protective Provisions”):

a) Regulate the manner in which rights over certain plots are granted to and the relevant works are carried out; and

b) Confirm that compulsory acquisition powers will not be exercised in relation to such land;

(ii) Remove from the Order Plots 13/8 and 13/9 (which, in part, answers the Examining Authority’s First Written Question Q1.6.54 **[PD-008, p.45]**). The Applicant confirms that 13/8 is to be removed as part of the change application (Parcel 3) **[PDA-019, p.41 (PDF)]** (and see **[REP1-007, p.131]**). RBT understands that Plot 13/9 is also to be removed (see Parcel 2.D to be removed on Sheet 7 and 8 of the change application **[PDA-019, p.41 and 42 (PDF)]**);

(iii) The inclusion of Protective Provisions which safeguard the Terminal's continued operation, including in relation to current and prospective customers and lessees; and

(iv) Provisions which regulate any competing use of the Terminal by NZT.

### **Land interests**

23. The Book of Reference (“BoR”) identifies 178 plots which are listed in RBT’s relevant representation **[RR-022]** (“the Plots”) (and see **[APP-026, p.19]**), across 266 entries in Parts 1, 2 and 3 of the BoR (and which can be seen on Sheets 11 to 17 of the Land Plans) as land that RBT owns or has an interest in and in respect of which powers to acquire land or to create or extinguish rights are sought.
24. The Plots include land in the registered freehold ownership of RBT as well as significant areas of third parties’ land over which RBT has the benefit of easements for road and rail access and essential utilities.
25. As many of the interests affected by the Order relate to rights of access, pipelines and utilities the impact of any interruption of those rights could be grossly disproportionate to the size of the parcels concerned.
26. Any actions which interfere with RBT's land and easement rights that compromise the business continuity of RBT would be unacceptable in both commercial and planning terms, given the vital economic role that the Terminal plays in the local and national economies and in regional planning objectives.

### **Negotiations to date**

27. As the Applicant’s Schedule of Negotiations indicates (see **[APP-026, p.19]**), there was an introductory meeting between RBT and H2T in November 2023 at which the Project was introduced and the prospect of voluntary agreements discussed.
28. A further technical meeting was held in March 2024 to further outline the requirements of the Project, review changes made to the Project following consultation and to seek to agree timescales for the drafting and issue of side agreements and protective provisions.

29. Since then H2T has issued a draft side agreement and protective provisions. RBT is in reviewing these and negotiations are on-going.
30. RBT has also been in commercial discussions with H2T in relation to the Applicant's proposed commercial use of the Terminal as a paying customer, for the unloading of materials during construction. These discussions are, however, distinct from those in relation to the side agreement and protective provisions which relate to the proposed compulsory acquisition powers within the DCO.

### **Lack of Justification for Compulsory Acquisition**

31. By virtue of section 122 of the Planning Act 2008 a development consent order may only include powers of compulsory acquisition where, inter alia, the land the subject of the compulsory purchase powers is required for the development to which the development consent relates or to facilitate or is incidental to that development and there is a compelling case in the public interest for the land to be acquired compulsorily.
32. These conditions must be fulfilled as a matter of law before compulsory purchase powers may be included in a development consent order.
33. The 'Planning Act 2008 Guidance related to procedures for the compulsory acquisition of land' (September 2013, DCLG) ("the Guidance") provides some elucidation of these statutory requirements. The following should be noted:
  - (i) The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored (paragraph 8);
  - (ii) The applicant should demonstrate that the proposed interference with the rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and *proportionate* (paragraph 8);

- (iii) The applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. The Secretary of State will need to be satisfied that the land to be acquired is *no more than is reasonably required* for the purposes of the development (paragraph 11);
  - (iv) The Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss that would be suffered by those whose land is to be acquired. Parliament has always taken the view that land should only be taken compulsorily where there is clear evidence that the public benefit will outweigh the private loss (paragraph 13).
34. It is very clear from the Guidance that any power of compulsory purchase must be proportionate and no more than is reasonably required for the purposes of the development proposed.
35. There is insufficient detail in the Statement of Reasons [**APP-024**] and the application as a whole for RBT to assess properly whether or not the powers sought are proportionate.
36. The Statement of Reasons does not provide a plot by plot explanation as to why the plot is required and why the extent of the power sought is proportionate.
37. It is not clear to RBT why, for example, it is proposed to acquire the freehold of Plot 13/21 which is a private road over which it may be sufficient only to acquire rights.
38. Nor does H2T seek to justify the use of temporary possession powers in relation to the Terminal area where such powers would have the effect of excluding RBT and its customers. Further it does not seek to justify the extent of Plots 13/3 and 13/2 for the unloading and transport of the AILs, noting that the Applicant now accepts it does not need Plot 13/8 at all.



39. A particular concern of RBT's is draft Article 26 of the DCO which provides H2T the ability to extinguish private rights. There is no public highway access to the Terminal. Accordingly, access and utilities are afforded via private rights (there are other relevant rights such as for pipelines). These rights are essential to the operation of the Terminal. No justification has been provided as to the inclusion of compulsory powers which could effectively terminate the business at the Terminal, being in itself a regionally significant business.
40. Importantly, the application fails to assess this potential economic harm, which is clearly material to the overall balance when determining the application for development consent. It is clearly material given that the destruction of the business would be a consequence of the use of the compulsory powers sought without additional protections. No such additional protections are currently in place. As such, this worst case ought to be assessed and factored into the planning balance.
41. It is also relevant to the question of whether or not H2T has properly explored reasonable alternatives to compulsory acquisition. Although there have been discussions with RBT, given the importances of its business and the seriousness of the potential effects upon it – in the words of the Guidance, the potential gravity of the 'private loss' – there is a heightened need for H2T to seek access to the Terminal/ RBT's land through agreement.
42. Given the lack of information as to how the powers are to be exercised and the detail of the construction and operation of the Project, it is not possible to assess properly the impact on RBT and its customers' ongoing operations at the Terminal and whether the proposed powers are proportionate and no more than necessary. Nor can the benefits of the Project be properly weighed against private loss, given the failure to articulate in detail the impacts of the Project.

43. As such, the Secretary of State cannot be satisfied that the Plots in which RBT holds an interest are required for or to facilitate or are incidental to the Project, or, at the very least, the extent of the powers sought are required and whether they are proportionate and, as such, the Secretary of State cannot be satisfied that there is a compelling case in the public interest for inclusion of the powers sought.

### **Summary**

44. There is a substantive problem with the application in that the detail does not enable the assessment of whether or not the compulsory purchase powers sought are proportionate and no more than is reasonably required.
45. Given the economic importance of the Terminal itself what is required, prior to RBT being able to consider the withdrawal of its objection, is a completed Side Agreement and Protective Provisions that will: prevent H2T exercising any compulsory purchase powers against its interests, protect RBT access to the terminals through the network of private roads; ensure that no disruption to the supply of utilities to the Terminal during both construction and operation of H2T; minimise disruption to the operation of the Terminal during construction of H2T; ensure that RBT can comply with its existing obligations to NZT, including in particular for prioritisation of Terminal access for NZT's AILs and to ensure that RBT (and its existing and future customers) can continue to exploit the commercial potential of the Terminal.

**REDCAR BULK TERMINAL LIMITED**

**3 October 2024**