



Christopher Butler
H2 Teesside Lead Panel Member
H2 Teesside Case Team
Planning Inspectorate
h2teesside@planninginspectorate.gov.uk
(Email only)

MMO Reference: DCO/2024/00007
Planning Inspectorate Reference: EN070009
Identification Number: 20049273

03 October 2024

Dear Christopher Butler,

**Planning Act 2008, H2 Teesside Limited, Proposed H2 Teesside Order
Deadline 2 Submission**

On 18 June 2024 the Marine Management Organisation (the “MMO”) received notice under section 56 of the Planning Act 2008 (the “PA 2008”) that the Planning Inspectorate (“PINS”) had accepted an application made by H2 Teesside Limited (the “Applicant”) for determination of a development consent order (DCO) for the construction, maintenance and operation of the proposed H2 Teesside hydrogen production plant and associated infrastructure (the “DCO Application”) (MMO ref: DCO/2024/00007; PINS ref: EN070009).

The Applicant seeks authorisation for the construction, operation and maintenance of DCO Application, comprising of the construction, operation and decommissioning of an up to 1.2-Gigawatt Thermal (GWth) Lower Heating Value (LHV) Carbon Capture (CC) enabled Hydrogen Production Facility located in Teesside and all associated development (“the “Project”).

The development includes pipeline infrastructure and utility connections. Carbon dioxide (CO₂) captured by the facility will be transported by pipeline to the separately consented Northern Endurance Partnership infrastructure on the adjacent Net Zero Teesside site.

This written representation is submitted without prejudice to any future representation the MMO may make about the DCO Application throughout the examination process. This representation is also submitted without prejudice to any decision the MMO may make on any associated application for consent, permission, approval or any other type of authorisation submitted to the MMO either for the works in the marine area or for any other authorisation relevant to the proposed development.



Yours faithfully,



Yvonne Golightly
Marine Licensing Case Officer

D [REDACTED]
E [REDACTED] [@marinemanagement.org.uk](mailto:[REDACTED]@marinemanagement.org.uk)

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1. MMO Response to MMO Relevant Representation, Applicant Comments

1.1 The Marine Licensing Exempted Activities Order, Article 35 Bored Tunnels

- 1.1.1 The MMO welcomes the clarification that the proposed trenchless techniques will be installed at a minimum depth of 25m below the Tees river bed and Greatham Creek at the deepest point of the crossing and a maximum depth of 60m, and for the signposting to Section 5.3 of Chapter 5: Construction Programme and Management of the ES (APP-057).
- 1.1.2 The MMO acknowledges the commitment that the Applicant is content to fulfil Condition 1 of the exemption and commits to notifying the MMO in advance of the works being undertaken in each case (both for the River Tees crossing and the Greatham Creek crossing).
- 1.1.3 The MMO thanks the Applicant for the plan showing the proposed locations of entry and exit pits for the two trenchless crossings. The MMO queries at Deadline 1 (REP1-034), the dataset used to inform of the location of MHWS, along with the distances of the pits to MHWS, to note the distance from marine receptors.

1.2 The Construction Environmental Management Plan

- 1.2.1 The MMO welcomes the Applicant's commitment to finalising the Construction Environmental Management Plan (CEMP) to include a hydraulic fracture risk assessment. The MMO notes the mitigation measures proposed, which include:
- Undertaking geotechnical investigations in advance of bore profile design,
 - Drilling fluid hydrofracture analysis for each drilling operation,
 - Maintaining downhole pressures within recommended limits,
 - Use of downhole pressure monitoring equipment,
 - Using an appropriate drilling fluid,
 - Monitoring drilling fluid parameters during drilling
 - Regular monitoring of the ground above the bore alignment for drilling fluid leaks.
- The MMO welcomes that the CEMP and hydraulic fracture risk assessment is secured in the draft DCO under Requirement 15 (APP-027) in Schedule 2.
- 1.2.2 The MMO notes that if a leak of drilling fluid is suspected, the '*drilling/boring operation will be suspended, remediation action implemented, and subsequently the methodology for that crossing re-evaluated.*' The MMO welcomes the signposting to the Framework Construction Environmental Management Plan (APP-043), and specifically Tables 7-2 to 7-5 in this plan.

2. MMO Response to ISH1 Action Points

- 2.1.1 The MMO notes that the Applicant has been requested to produce a note explaining the varying widths of the pipeline corridors, a note detailing the overlaps between the Proposed Development and other Nationally Significant Infrastructure Projects and 'Major Development(s)', copies of the Net Zero Teesside Development Consent Order 2024 and caselaw mentioned by the Applicant in ISH1. The MMO has no comments to make regarding the Action Points for ISH1.

3. MMO Response to the Statement of Common Ground (SoCG)

- 3.1.1 The MMO attended a meeting with the applicant on 21 August 2024 in which the categorisation of issues listed in the Statement of Common Ground were discussed. There was no disagreement between the MMO and the Applicant as to the status of any listed issues. Confirmation of the MMO's position on outstanding issues is listed below.
- 3.1.2 The MMO notes that the applicant has added that there is an agreed position between the Applicant and MMO on the location of the crossings entry and exit pits being above MHWS. Although the maps provided show that the pits are above MHWS, the MMO queried the data set used to inform the MHWS line. The MMO also sought the distances from the pits to MHWS, to ensure that they are a sufficient distance away from marine receptors. The MMO requests that this topic is changed from 'agreed' to 'ongoing discussion' until this clarification is provided.

4. Comments/responses to the Applicant Examination Progress Tracker Submitted at Deadline 1

- 4.1.1 The MMO notes that the Examination Progress Tracker reports on what the Applicant considers are the principle, and other notable issues in the Examination. Point 7 details that the MMO are considering whether the Article 35 exemption within the Marine Licensing Exempted Activities Order 2011, can be applied. The MMO agrees with the 'RAG' rating of Amber, meaning that it is subject to further/ongoing discussion.
- 4.1.2 The MMO noted at Deadline 1 (REP1-034) that, as the competent authority (Conservation of Habitats and Species Regulations 2017), Natural England is not satisfied that it can be excluded beyond reasonable scientific doubt that the project would have an adverse effect alone or in-combination on the integrity of the:
- Teesmouth and Cleveland Coast Special Protection Area (SPA)/Ramsar
 - North York Moors SPA/Special Area of Conservation (SAC)
 - Northumbria Coast SPA/Ramsar
 - Durham Coast SAC

The MMO notes that the Applicant will be submitting an updated HRA in due course, to take into account discussions held with Natural England regarding these sites. The MMO will maintain a watching brief.

5. MMO Comments on Applicant Responses to Relevant Representations

- 5.1.1 The MMO has reviewed the Applicant's comments (REP1-007) on the Relevant Representations of the following interested parties:
- Natural England
 - Environment Agency

5.2 Natural England

- 5.2.1 Natural England raised concerns regarding direct loss to sites in the event of Horizontal Direction Drilling (HDD) collapse and advised of commitments within the Framework Construction Environmental Management Plan (FCEMP) and a consideration of HDD collapse / Leakage of drilling fluid, within the HRA. The MMO notes the Applicant's commitment to producing a 'clean-up plan' in line with further discussions with Natural England and incorporating this into an updated FCEMP at Deadline 2. The MMO defers to Natural England on all matters relating to the HRA.
- 5.2.2 Natural England advised (RR-026) that the impacts on individual bird species are assessed for the project site as a whole rather than on a sector-by-sector basis. The MMO notes the Applicant's response and reasoning for not adding peak counts of birds for the Proposed Development as a whole. The MMO defers to Natural England for matters relating to Ornithology.
- 5.2.3 The MMO notes the Applicant's response to Natural England not supporting the use of ICES 2013 toolkit. Natural England advised (RR-026) a precautionary approach to assessing disturbance to waterbirds and advised that further work is required to inform impacts on Special Protected Area (SPA) populations. The MMO notes that the Applicant will discuss this further with Natural England and progress will be reported within the SoCG over the course of the Examination.
- 5.2.4 The MMO notes that the Applicant disagrees with Natural England regarding the production of a pre-construction monitoring plan to assess the behaviour of seals in the area under "normal" conditions. Natural England advised that further monitoring should be carried out during construction to assess the efficacy of mitigation measures. If behaviour indicating disturbance is noted, further mitigation must be put in place. The Applicant considers that the mitigation (acoustic barriers and visual screening) is sufficient.

The MMO defers to Natural England on all matters relating to the HRA. The MMO will maintain a watching brief on these matters and will ensure we are included/are provided updates on any discussions in relation to the HRA. The MMO highlights that any mitigation secured through the HRA will need to be included within the conditions on the DCO.

5.3 Environment Agency

- 5.3.1 The MMO notes the Applicant's response to functionally linked land, and their reasoning that they do not consider any amendments to the assessment are required as assemblages of species that are qualifying features of designated sites that occur within functionally linked land are valued separately. The Applicant considers that functionally linked land has been appropriately assessed within the ES and the HRA. The MMO defers to Natural England on all matters relating to the HRA.
- 5.3.2 The MMO welcomes the clarification that the crossing of the River Tees and Greatham Creek (and adjacent water features at Seal Sands) will be underground via trenchless technologies, such as HDD or Micro Bored Tunnelling (MBT). The MMO notes the worst-case depth below the bed is assumed to be 10 metres (m) for Greatham Creek. For the Tees Crossing this is expected to be in the range of 40 to 50m depth and will be determined following the Ground Investigation at the detailed design phase.
- 5.3.3 The Environment Agency (EA) originally highlighted (RR-009) the risk of either introducing invasive non-native species (INNS) to site or spreading INNS off site and suggested that there is consideration and assessment of INNS in relation to animals

including freshwater invertebrates and amphibians, within the FCEMP. The MMO welcomes the Applicant's commitment to producing an Invasive Plant Species Management Plan, and that both the FCEMP and Outline biodiversity Management Plan (OLBMP) will be updated to include reference to INNS animals, and subsequently submitted to ExA during examination.

5.3.4 The MMO welcomes the clarification from the Applicant that no abstraction from the estuary is proposed for the scheme and therefore no Eels Regulations compliance issues have been identified. The MMO defers to the EA as the regulatory body under the Eels (England and Wales) Regulations 2009.

Yours faithfully,

[Redacted signature]

Yvonne Golightly
Marine Licensing Case Officer

D [Redacted]
E [Redacted] [@marinemanagement.org.uk](mailto:[Redacted]@marinemanagement.org.uk)

