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All Interested Parties and Statutory Parties

Your Ref:

Our Ref: EN070009

Date: 21 October 2024

Dear Sir/ Madam

Planning Act 2008 – sections 89 and 123; and The Infrastructure Planning (Compulsory Acquisition) Regulations 2010 – Regulation 6

Application by H2 Teesside Limited for an Order Granting Development Consent for the H2Teesside Project

Procedural Decision following request to make changes to the application

We are writing to inform you of the Procedural Decision made by the Examining Authority (ExA) following the Change Request made by the Applicant dated 17 October 2024. All documentation referred to herein have been published under the 'Documents' tab on the [project webpage](#) of the National Infrastructure Planning website.

The Applicant's document entitled 'Change Application Cover Letter' provides a brief description of each of the changes proposed, with more detailed description of each change together with the related justifications being found in the 'Change Application Report'. This document indicates the proposed changes result from the Applicant's continued detailed design development and refinement, whilst also engaging with Interested Parties with a view to addressing their comments and agreeing common ground. The Applicant indicates the results of work/ engagement identify a number of changes to the proposed development, which it has placed into the following four categories:

Category A: Engineering/ design development – Changes 1, 5, 7 and 9.

Category B: Changes to construction approach – Changes 3, 4 and 6.

Category C: Other Order Limits reductions – Changes 2.A to 2.F.

Category D: Order Limits increases – Change 8.

A summary of each of the individual proposed changes is set out in Table 2-1 of the 'Change Application Report', whilst a more detailed description and rationale for each of these proposed changes is set out in Section 2.3 of the same document. This document also acknowledges proposed Change 8, related to 'Order Limit Increases', invokes the



Infrastructure Planning (Compulsory Acquisition) Regulations 2010 (CA Regulations), as highlighted in the ExA's response to the Change Notification, dated 21 August 2024, [PD-006], and sets out how it envisions Regulations 5 to 19 of the CA Regulations being complied with, including consultation under those Regulations.

The ExA has reviewed the information provided and assessed the Applicant's Change Request in line with the Government guidance 'Nationally Significant Infrastructure Projects: Changes to an application after it has been accepted for examination', dated 8 August 2024. The ExA notes the Applicant's approach to the submission of the proposed changes and the further proposed consultation it intends to undertake should the Change Request be accepted and notes the steps proposed by the Applicant, including in regard to consultation, which aligns with the steps set out in the guidance.

The Applicant's adopted approach to the proposed changes are considered to be correct. Whilst only one of the proposed changes result in additional land being required, a number of the other changes alter the nature of the acquisition type (ie change from new rights to temporary use or change of permanent acquisition to temporary use (This list is not exhaustive)).

The ExA notes two new Affected Persons (NSMP Operations Limited and Storelectric Limited), have been added, but with this exception the consultation will largely remain the same as those notified of the acceptance of the DCO Application pursuant to Section 56 of the PA2008. As such, the proposed changes increase interference with land ownership and landowners' rights, with new ownership interests being affected, as well as existing Affected Persons identified against the additional land being included, as a result of changes to the Order limits, already appearing in the Book of Reference.

With this in mind, the ExA agrees with the Applicant and considers the proposed changes trigger Regulations 5 to 19 (inclusive) of the CA Regulations.

With regard to assessment of likely significant effects of the proposed changes, the ExA notes the Applicant's document 'Change Application Report', together with its Appendices. These documents provide information regarding the likely impacts of the proposed changes and the implications of those proposed changes in relation to the DCO Proposed Development assessments undertaken in the relation to the original Environmental Statement.

The screening assessment, as set out in Table 4-1 of the 'Change Application Report', identifies areas where further consideration of the likely environmental effects arising from the proposed changes was required. The Appendices to that document (Appendices 1A to 5A, covering Air Quality, Noise and Vibration, Ecology and Nature Conservation, Ornithology and Landscape and Visual Amenity) contained those assessments.

The above mentioned Appendices, as well as the 'Change Application Report' were prepared to ensure that the environmental impacts of the proposed changes have been appropriately assessed, with any likely significant environmental effects identified. It also notes that these documents are intended to be read in conjunction with the Original Environmental Statement submitted as part of the DCO Application. The 'Change Application Report' and related Appendices conclude that none of the changes assessed

by the applicant in the above mentioned table/ Appendices were considered to result in significant effects or new effect for any topics assessed in the Environmental Statement.

Bearing all of the above in mind, the ExA noted the Applicant's findings but does not consider any of the proposed changes are so substantial that they would constitute a materially different project. The proposed changes are not considered, individually or cumulatively, to lead to the project being different in nature or substance to that which was originally applied. However, given the proposed changes include extending the Order limits, as well as alters the type of compulsory acquisition sought, both would have the potential to increase interference with landowners' rights. As such, the ExA considers this would trigger Regulations 5 to 19 of the CA Regulations. Irrespective of this, in accordance with Regulation 6 of the CA Regulations, the ExA considers the proposed changes can be accepted into the Examination. In reaching this decision the ExA is satisfied that it complies with the requirements of Regulation 5 of the CA Regulations.

The ExA is also satisfied that there is sufficient time within the Examination for the proposed changes to be properly and fairly examined including the opportunity for written submissions and any oral representations to be made at any hearings that are required, along with the procedural requirements of the CA Regulations. In accepting the proposed changes into the Examination, despite consent of all those with an interest in the land not been obtained, the ExA notes the Applicant submitted documents in compliance with Regulation 5 of the CA Regulations. However, the ExA would remind the Applicant of its obligations to notify the Affected Persons in accordance with the requirements of Regulations 7, 8 and 9 of the CA Regulations.

The ExA requests that this is carried out in accordance with the timescales contained within paragraph 5.1.8 of the Applicant's 'Change Application Report' with the CA Regulations consultation concluding no later than **29 November 2024** and the CA Regulations Regulation 9 certificate being submitted no later than **3 December 2024**.

The ExA cannot stress enough the importance of meeting the above-mentioned timescales and, whilst ensuring the consultation still comply with the CA Regulations, the importance of submitting the Certificates of Compliance, as required by Regulation 9 of the CA Regulations, promptly after the close of the consultation period (ie as early as possible the day after the close of the consultation period) and significantly earlier than the 10 working days allowed.

Failure to submit the Certificates of Compliance promptly following the close of the consultation period is likely to result in the Hearings, currently scheduled in the Examination timetable for the 9 and 10 January 2025 and week commencing 13 January 2025 having to be cancelled and rescheduled. Should this occur, such rescheduled Hearings would be likely to result in the remaining Examination timetable having to be significantly reviewed.

Next steps

It is now the Applicant's responsibility to publicise the proposed changes that incorporate additional land in accordance with the CA Regulations. The Applicant must advise the Case Team of its proposed schedule as soon as possible, so that an appropriate form for making Relevant Representations about the proposed provision for the Compulsory



Acquisition of additional rights over land can be made available on the [project webpage](#) of the National Infrastructure Planning website.

Following completion of the Relevant Representation period, and if required, a revised Examination timetable, which addresses the Change Request, will be issued under Rule 8(3) of the Infrastructure Planning (Examination Procedure) Rules 2010. The revised Examination timetable, if required, will be issued after the close of the Relevant Representation period related to this Change Request. Such a revised Examination timetable would be likely to include relevant deadline(s) for Written Representations to be submitted, periods within which responses should be submitted and an indication of any necessary hearings.

Please note that the acceptance of the proposed changes is 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 in due course. If this is not achieved, then we will not be in a position to take the Change Request into account in our recommendation report to the Secretary of State as it will not have complied with the relevant statutory procedures.

Yours faithfully

Christopher Butler

Christopher Butler
Lead Member of the Examining Authority

This communication does not constitute legal advice.

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