

PLANNING ACT 2008

**THE INFRASTRUCTURE PLANNING (APPLICATIONS: PRESCRIBED FORMS AND
PROCEDURE) REGULATIONS 2009**

H2Teesside

EN070009

Unique Reference: 20049374

Oral Submissions of PD Teesport Limited made at ISH2

1. Introduction

1.1 This written summary of oral submissions is submitted in accordance with Deadline 4 of the examination timetable for the development consent application made by H2 Teesside Limited (the "Applicant") for the H2Teesside project (the "Project").

1.2 This summary of oral submissions relates to submissions made at Issue Specific Hearing 2 ("ISH2") on 14 November 2024 on behalf of PD Teesport Limited ("PDT").

2. PDT

2.1 PDT is the statutory harbour authority for Teesport under the Teesport Acts and Orders 1966 to 2008, the local legislation relating to the Port. PDT is responsible for safe use and maintenance of the river.

2.2 PDT's status as a harbour authority means that it is a Statutory Undertaker for the purposes of section 127 of the Planning Act 2008. A plan was submitted with response to WQ1 (REP2-094) showing PDT's authority area.

2.3 A relevant representation (ref. RR-014) was submitted on behalf of PDT.

2.4 PDT supports the Applicant's project in principle but is concerned to ensure that the construction and operation of the proposed works do not adversely affect its harbour undertaking or other harbour users/surrounding occupiers and businesses.

3. Application and modification of statutory provisions

3.1 Article 9 of the draft Development Consent Order (CR1-015) provides as follows:

"9.—(1) ...

(2) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

(a) byelaws and directions made under the 1966 Act, the 1974 Order or the 1994 Order which prevent, restrict, condition or require the consent of the Tees Port and Hartlepool Authority or the harbour master to any such works;

(b) requirements of section 22 (licensing of works) of the 1966 Act;..."

3.2 The Applicant has been requested to identify which directions or byelaws it considers should not apply to its development. PDT submits it is not for it to justify each and every byelaw or direction; these are publicly available. These powers are required for the management of the jurisdictional area of the port. This is not just to ensure the Harbour Master can ensure safe navigation but also for the conservancy, maintenance and improvement and safety of the harbour and the facilities afforded therein or in connection therewith.

3.3 Directions and byelaws also assist PDT in complying with this statutorily imposed "open port duty" imposed by s.33 of the Harbours, Docks and Piers Clauses Act 1847. This duty requires PDT to ensure that Teesport is open to anyone for the shipping and unshipping of goods on payment of rates and other conditions set by PDT for Teesport. Any port user therefore has a right enforceable in courts to access and use Teesport subject to those rates and conditions.

- 3.4 With respect to s.22 of Tees and Hartlepoons Port Authority Act 1966, this requires the harbour authority to grant a works licence for any works on, under or over the river. It will be appreciated why this is necessary - since there are various potentially conflicting activities in the river, for example sub surface infrastructure and river dredging which need to be considered comprehensively; there are different important interests to balance. As well as being informed of the full range of competing activities in the river, PDT also holds the as built drawings of infrastructure crossing the river and is therefore uniquely placed to discharge this function.
- 3.5 The Applicant made refence to other precedents which disapplied these provisions, noting in particular NZT, but this was in the context of a different scheme, which sought to take advantage of existing tunnels under the river. The Project proposes an entirely new tunnel and pipeline, which has very different implications in terms of conflicts with existing and proposed infrastructure as well as activities such as dredging.
- 3.6 It is therefore requested that Article 9 of the draft Development Consent Order is amended to remove the disapplication of these provisions.

Eversheds Sutherland

20 November 2024