H2Teesside Project

Planning Inspectorate Reference: EN070009

Land within the boroughs of Redcar and Cleveland and Stockton-on-Tees, Teesside and within the borough of Hartlepool, County Durham

The H2Teesside Order

Document Reference: 8.22: Summary of Applicant's Oral Submissions at the Issue Specific Hearing 2 (ISH2)

The Infrastructure Planning (Examination Procedure) Rules 2010

Applicant: H2 Teesside Limited

Date: November 2024

Rev. 0

WRITTEN SUMMARY OF APPLICANT'S ORAL SUBMISSIONS AT ISSUE SPECIFIC HEARING 2 (ISH2)

Agenda Item	Applicant's Response
3. Articles and Schedules of the draft DCO	
The Applicant will be asked to provide a very brief overview of each part of the draft DCO. The Examining Authority (ExA) will then ask questions in respect of DCO powers, seeking responses where appropriate from the Applicant, the Local Authorities and other Interested Parties (IP), who have registered to speak. These IPs will also be invited to ask questions of clarification in relation to DCO Articles and Schedules.	Mr Phillpot KC, on behalf of the Applicant, provided a brief overview of the components of the draft DCO. He explained: The latest version of the draft DCO is rev. 2 submitted at Deadline 2 [**REP2-004 (clean)]** and **[REP2-005 (tracked)]**, although the Applicant has subsequently submitted a revised version as part of its Change Request Application [**CR1-015 (clean)** and **CR1-016 (tracked)**], and which includes only amendments to give effect to the relevant Changes. The Schedule of Changes to draft DCO [**REP2-006**] summarises amendments that have been made to the dDCO since submission of the DCO application. The dDCO has been drafted having regard to PINS' guidance in Advice Note 15, practice and precedents established in other made DCOs. It would confer development consent for construction, operation and maintenance of the authorised development comprising the works described in Schedule 1 to the dDCO. The dDCO submitted at D2 includes 48 articles, grouped into 6 parts, and then 22 Schedules, which are given effect by, and tie into, the articles. The dDCO must be read alongside various submitted plans and documents that are secured through the dDCO and listed in Schedule 14 (this would be considered in agenda item 5 below). **Articles** Part 1 – Preliminary Articles 1 to 3 – cover preliminary matters such as what the Order may be cited as, definitions of terms used in the DCO and the position in respect of the use of electronic communications for purposes relating to the Order. Part 2 – Principal Powers

	Articles 4 to 9 – set out the main powers required to construct, operate and maintain the authorised development; determine which entity has the benefit of these powers (and how that can be transferred if required) and disapplies other statutory provisions to enable the construction, operation and maintenance of the authorised development. Part 3 – Streets Articles 10 to 16 provide powers to enable carrying out works to and within streets, creating or improving accesses, temporarily closing streets and rights of way and regulating traffic to enable the authorised development. Part 4 – Supplemental Powers Articles 17 to 21 provide powers to assist with the construction, operation and maintenance the authorised development including those relating to: discharge of water, felling or lopping of trees and removal of hedgerows, carrying out protective works to buildings, authority to survey and investigate the land and removal of human remains. Part 5 – Powers of Acquisition Articles 22 to 37 provide powers for the compulsory acquisition and temporary possession of land for the purposes of the authorised development. They also deal with land-related matters such as providing the procedure for the provision of Replacement Special Category Land for the Cowpen Bewley Special Category Land. The manner in which these powers can be exercised and in relation to which land is controlled by the drafting of these articles. The starting point is that CA powers can be used on all land, unless they fall within the ambit of articles 25 and 32. Article 25 (compulsory acquisition of rights etc) sets out how for Order land specified in Schedule 9 to DCO and shown shaded blue on the Land Plans, the powers are limited to acquisition of new rights or restrictive covenants that the undertaker may require for the authorised development as set out in Schedule 9. Similarly, article 32 provides for temporary possession powers in relation to land specified in Schedule 11 to the DCO. The detail of which Order land is subject to which power is set out in the Land Plans [AS-003] and the Book of Reference [REP1-004] which are both listed as certified documents in Schedule 14 to DCO. It should be noted that the DCO is drafted so that lesser powers can be used prior to greater powers – for example, temporary possession being used first to access land, and carry out the works, followed by CA/CAR which reflects the development 'as built'. This is common practice in DCO projects.

	Part 6 – Miscellaneous and General Articles 38 to 48 set out various general provisions which do not fit into the categories of the other parts above but are required for the authorised development to proceed. This includes provision for where there are overlapping planning permissions (article 39), the protection of interests to give Protective Provisions effect (article 41), protection of Crown rights (article 42), setting out the procedure in relation to approvals (article 43), certification of plans (article 44). The most recent addition added at D2 is article 48 (Interface with Anglo American permit) was inserted to address Anglo American's (AA) concern (paragraph 4.3 of its Relevant Representation [RR-010]) that their environmental permit covers land that could be compulsorily acquired by the Applicant and that AA would still be responsible for the operation of the permit. The new article 48 ensures that an authorised activity does not constitute a breach of their permit. **Schedules** Schedule 1 – provides description of the authorised development (i.e. what the Order provides development consent for). Schedule 2 – Requirements – controls which are akin to planning conditions which apply to the authorised development. Schedule 3 – A placeholder for Modifications to and amendments of the York Potash Harbour Facilities Order 2016 which will be in a form similar to the approved NZT DCO. Schedules 4 to 7 – Details of works to streets, access, temporary closures of streets and public rights of way and traffic regulation measures required for the project. Schedule 8 – Sets out details of the important hedgerows to be removed. Schedules 9 to 11 – Provide details of land affected by the powers of compulsory acquisition and temporary possession under the DCO (Schedule 9 – new rights and Schedule 11 temporary possession), while Schedule 10 sets out modifications for compensation and compulsory purchase enactments that are appropriate for the DCO regime. Schedule 12 – Sets out process for the undertaker to appeal to the Secretary of State regarding certain local authority approvals post-DCO consent.

	Schedule 13 – Procedure to obtain approvals from relevant planning authority for the discharge of requirements to enable, depending on the context, construction works to commence or elements of the development to be brought into operation. Schedule 14 – Documents and plans to be certified. Schedule 15 – sets out the relevant design parameters which tie into the maximum form of development that has been assessed in the ES. Schedules 16 to 22 – Protective Provisions for a number of statutory undertakers and other relevant parties. These were in Schedule 12 in the DCO Application version of the dDCO but given the number of PPs the Applicant moved the PPs to the end of the DCO and split them into individual Schedules. *The ExA confirmed that a significant number of questions had been raised at first written questions and thanked parties for responses to those. This reduced the number of questions remaining. The ExA would proceed to go through each of the Articles and Schedules inviting individual parties to speak.* *Before this, the ExA wanted to touch on the response received from Climate Emergency Planning and Policy represented by Dr A Boswell at Deadline 3 who asked whether it was possible to secure a minimum carbon capture rate in the DCO to reflect the assumption in the Environmental Statement and whether a similar provision concerning natural gas supply (to be compliant with the low carbon hydrogen standard (LCHS)? Dr Boswell expanded on this to explain his proposal was for a definition of each of those to be included in Article 2 with a corresponding requirement in Schedule 2.* In first instance, Mr Phillpot KC, on behalf of the Applicant, recalled that Dr Boswell's representations referenced similar provisions being included in the Net Zero Teesside and Keadby 2 DCOs and this would be addressed. However, in relation to the questions posed, the Applicant does not consider that any additional or different drafting or controls are required in the DCO in relation to carbon capture. A 95% design capture rate will be required under an Environmental Permit and is technically achievable. Turning to the precedents that Dr Boswell seeks to pray in aid, Mr Phillpot KC on behalf of the Applicant considered that CEPP had mischaracterised how the Net Zero Teesside and Keadby 3 deal with carbon capture. The issue was also considered on the Drax Bioenergy Carbon Capture and Storage (following similar submissions by CEPP) which also based its assessment on a 95% capture rate. In relation to Keadby 3 and NZT, the only reference to a capture rate within the DCO was contained within the definition of 'carbon capture and compression plant'. It is a definition of the development being designed to achieve that rather than requiring a particular capture rate. In neither of these DCO is there a provision requiring a capture rate to be achieved. In Drax, there is no

	reference at all to a 90% or 95% capture rate. The Secretary of State granted consent to these projects without a requirement for a 95% capture rate to be achieved and the drafting here is consistent with this. The mechanism for achieving the capture rate is the Environmental Permit and the ExA will have regard to the February 2023 Hydrogen Production with Carbon Capture: Emerging Techniques guidance. Section 3.3 of the guidance states *"You should design plant to maximise the carbon capture efficiency. As a minimum, you should achieve an overall CO2 capture rate of at least 95%, although this may vary depending on the operation of the plant".* The Environment Agency will consider whether this has been achieved in determining the permit application. The clear policy direction is that it should be assumed that the permitting regime will operate effectively and the DCO should not duplicate controls that can be imposed through that alternative regime (Section 4.12 of the Energy NPS). Requirement 27 of the draft DCO requires the permit to be in place before the authorised development can commence. It is also important to note that the 95% capture rate is used as an assumption of the ES not, a parameter. There is no legal requirements for all EIA assumptions to be secured in a DCO In relation to the request that a provision so that the natural gas supply to the H2Teesside plant must be compliant with the Low Carbon Hydrogen Standard, this is neither necessary nor required as it is a requirement of the Low Carbon Hydrogen Agreement that producers only receive support payments for volumes of hydrogen that meet the standard. This is to ensure that only genuinely low carbon hydrogen is supported by the government and provides the mechanism by which the Applicant will be paid for the hydrogen it produces. The Proposed Scheme will therefore need to enter into that Agreement. There is therefore no need to duplicate the requirement in the DCO. The Applicant maintained that this is entirely unnecessary. In response to comments from Dr Boswell that the DCO should provide that the scheme cannot operate until carbon storage facilities are in place, Mr Philpot KC noted that requirement 27 provides that no authorised development may commence until evidence of a carbon storage licence and an environmental permit had been granted so there is no opportunity to operate the development without these. The Applicant does not yet have an environmental permit, however NZT have an environmental permit (the next best thing) which explains what happens if capture rate drops below 95% and the actions that have to be taken, including a fail-safe position. Without the storage facilities in place, the carbon would need to be released, and so could not be said to be 'captured' to meet permitting or LCHS Requirements. To duplicate the requirements of those regimes would create the very problems that policy seeks to avoid. *The ExA proceeded to go through each Article and Schedule and asked for clarification, or questions from other parties, on various elements.*

	Part 1 – Preliminary *Article 2, should the Application Guide and Design and Access Statement be included?* Mr Phillpot KC explained that the only reference to the DAS could be found in Schedule 14. It is proposed that Schedule 14 is removed, so it removes any mention. In relation to the Application Guide, this will be a certified document so means it is not necessary to include in Article 2, however the Applicant would review and respond in writing. *The ExA raised a similar question regarding the Indicative Lighting Strategy (Construction) which is detailed in Article 44 but not in Article 2.* Mr Phillpot KC explained that it sits as an appendix to the Framework Construction Environmental Management Plan which is a certified document and defined. In relation to the Indicative Lighting (Construction) and the two outline management plans referred to in discussion by the ExA, this is the same approach and so no consistency issues. **Post-hearing note (and in response to ISH2-AP2)**: *In respect of the ExA's query about whether "Application Guide" and "Design and Access Statement" should be included in Article 2 (interpretation) and Schedule 14 (Documents and Plans to be Certified), the Applicant confirms that there should be no reference to "Design and Access Statement" in the draft DCO and the "Application Guide" is a certified document and so should be defined in article 2 and listed in Schedule 14. The Applicant notes that amendments were made in the Change Request Application DCO [CR1-016] to reflect this position and have been carried forward into the DCO submitted at Deadline 4.* *Mr Henderson, on behalf of STG, asked that STG be added as consultee for the preliminary works CEMP.* Mr Phillpot KC, on behalf of the Applicant, agreed to this. **Post-hearing note:** *Requirement 15(1) of the draft DCO submitted at Deadline 4 has been amended to include South Tees Development Corporation (STDC) to be a consultee when the Permitted Preliminary Works Construction Environmental Management Plan is submitted to the relevant planning authority for approval.* *Part 2 – Principal Powers* *In relation to Article 8, Mr Henderson, on behalf of STG, explained the Applicant had agreed in exchange to amend Article 8 to include South Tees Development Corporation as a body to be notified in relation to any transfer of powers under that Article and asked what the interface was between this provision and Article 25 (compulsory acquisition of rights)?* Mr Matthew Fox, on behalf of the Applicant, explained that the articles work together. Essentially, if the Applicant wants a Statutory Undertake to acquire rights, they will need Secretary of State's consent, but Article 8 provides exceptions. Mr Fox explained that

	there had been issues in implementation in previous DCOs on this point, hence the separate provision within Article 25. The Applicant to go away and consider whether any further amendments were needed to Article 25 to provide clarity in respect of notifications. **Post-hearing note**: *Article 8(7) of the draft DCO submitted at Deadline 4 has been amended to reflect the agreed position that STG should be notified alongside the Secretary of State where the benefit of the Order is transferred to an entity where Secretary of State's consent is not required under article 8(6). The Applicant has also amended articles 25(2) and 25(3) to provide greater clarity about the interrelationship between articles 8 and 25, so that if statutory undertakers were to exercise the power to compulsorily acquire rights pursuant to this DCO, then they would need to have had the benefit of the Order in relation to that power transferred to them pursuant to article 8 of the DCO (including invoking the necessary notifications) before they could exercise that power.* *Mr Nesbitt, on behalf of PD Teesport Limited, explained they had responded to the ExA's FWQs regarding the proposed disapplication of parts of the 1966 Act, 1874 Order and 1994 Order. The Applicant is being asked to identify which directions/byelaws it wishes to disapply. PDT submits it is not for them to identify. They are required for the jurisdictional management of the port, and they assist PDT in complying with statutory imposed open harbour duty. With respect to the proposed disapplication of section 22 of the 1966 Act, this provision requires harbour authority to grant consent for works under or over the risk and therefore this should not be disapplied.* Mr Phillpot KC, on behalf of the Applicant, explained that a response was provided in REP3-006 but provided a summary of this. The Applicant was aware with and understands the role PDT plays, and the purpose served by the various legislation and orders. The purpose of disapplication in this case, as is common in other DCOs, is to ensure that the DCO provides a 'one stop shop', that means everything that is needed to be authorised and controlled is contained in the one order and where a development has been considered/ tested/ subjected to appropriate controls and mitigation, the Applicant does not have to go through a parallel process with another authority. Therefore, the way to approach this scenario is to disapply and substitute protective provisions to ensure that the harbour authority is not left in a position where it does not have an appropriate degree of control over the management of the works that might affect the carrying out of its statutory duties. This process is precedented on many DCOs including the Net Zero Teesside DCO. However, recognising PDT's concern, the Applicant is working on updating the DCO (after Deadline 4) to provide more specificity within this article, and negotiating with PDT in respect of its protective provisions. *Part 3 – Streets*

	There was discussion at the Hearing in relation to the status of Huntsman Drive in the DCO and on the Access and Rights of Way Plans. Given the response of South Tees Council at the Hearing that this is a private road, the Applicant does not intend to update any of its documentation in respect of this road **(dealing therefore with Action Point ISH-AP3).** *Part 4 – Supplemental powers* *The ExA raised concern with the relevance of Article 21 relating to the removal of human remains, and questions regarding the drafting. The ExA suggest that paragraph 10 contradicts paragraph 9(d) and in addition, paragraph 11(b) references paragraph 9.* Mr Phillpot KC, on behalf of the Applicant, asked for the ExA's queries are put into the next written questions and the Applicant would respond in writing when appropriate. *Part 5 – Powers of action* *The ExA raised a query that Article 32 (temporary use of land) and Article 33 (temporary use for maintaining) were written slightly differently and asked whether there should be some similarity?* Mr Matthew Fox, on behalf of the Applicant, confirmed a review of this would be undertaken and updated as appropriate. **Post-hearing note (and in response to ISH2-AP4)**: *The Applicant has amended article 32(14) of the draft DCO submitted at Deadline 4 so that the end of the article aligns with the wording in article 33(13).* *Part 6 – Miscellaneous and general provisions* *Mr Dagg, on behalf of SABIC, wanted to better understand Article 47, in relation to how the Secretary of State decides the level of security is accurate in the context of incidental suspension.* Mr Phillpot KC, on behalf of the Applicant, indicated this looked to be an entirely new point, so it would be helpful for the Applicant if a detailed query could be put in writing so that it could respond accordingly. It notes however that article 26 is included in the ambit of article 47.

	The ExA noted what was said about the protective provisions being split into separate schedules and asked the Applicant to point the ExA in the direction of any other DCOs where that approach had been taken. Mr Philpot KC stated that the Applicant would take this point away and share previous examples if there are any but added that there was no difference on the legal effect. **Post-hearing note**: *In response to the ExA's request for examples of where other DCOs have presented Protective Provisions (PPs) as separate schedules at the back of their Order, the Applicant notes that this approach was adopted in both The York Potash Harbour Facilities Order 2016 (with PPs set out in Schedules 7 to 11 at the back of the DCO) and The East Midlands Gateway Rail Freight Interchange and Highway Order 2016 (with PPs set out in Schedules 15 to 21).* *While the Applicant acknowledges that the approach is not standard and is contrary to the approach in AN15 8.2 (which says that Schedules should be presented in article order), these two precedents set out above indicate that the Secretary of State is prepared to accept this structure for a DCO. The Applicant would also note that AN15 states at 4.5 that separate Schedules for Protective Provisions can be acceptable. The Applicant also believes that the approach is justified in this case because of the large number of PPs expected to be added to the face of the DCO.* *This administrative amendment was made in order to simplify the administrative process of updating the draft DCO when PPs have been agreed with individual parties. By moving them to the end of the draft DCO and separating into separate Schedules the new PPs just need to be added as a new Schedule and an amendment made to contents page and reference in article 41. If the PPs had remained at Schedule 12 and in separate Parts, then each time updated or new PPs are inserted requires the Schedule paragraphs to be renumbered as well as contents page being added to.* *Finally, in relation to the Articles, Ms Tabitha Knowles, on behalf of Anglo American, confirmed that it was not happy with the wording of Article 48.* Mr Phillpot KC, on behalf of the Applicant, confirmed the Applicant was intending to respond in detail at Deadline 4. The provision was inserted in order to address Anglo American's concerns they have identified. The Applicant acknowledges that Anglo America are not satisfied at this point but the Applicant does not see it necessary to transfer the permit given the limited overlap of the Proposed Development with the permit extents. The Applicant understands Anglo American's practical points and will be proposing wording to Anglo American for inclusion in their Protective Provisions/the CEMP (to be decided). Please see the Applicant's Response to Deadline 3 Submissions for more detail on this point. *The ExA moved on to the Schedules.* *Schedule 3*

	The ExA raised Schedule 3 which relates to the modifications and amendments to the York Potash Facility Order, which is blank and the ExA is not content with this as it is unclear on progress. Mr Phillpot KC, on behalf of the Applicant, explained that the starting point is effectively what is contained in the approved Net Zero Teesside DCO. This was included in part to help understand the nature of the approach and the likely content. The Applicant has provided draft protective provisions (and the Schedule 3 equivalent) to Anglo American which involve adjustments to that NZT DCO starting point. The approach is that contained in the NZT DCO but with some differences/ adaptations for the purpose of this Order. *Schedule 16 – Protective Provisions* In response to the ExA's concerns raised at the Hearings as to the approach to information being provided in respect of Protective Provisions in the Examination and the discussions as to the approach to be taken, the Applicant can confirm as follows: • the draft DCO submitted at Deadline 5 will include draft PPs for relevant parties where appropriate, this will include also Schedule 3 (ISH2-AP6 and 7); • (and in response to ISH-AP5) the table below sets out the parties where the Applicant is negotiating a side agreement, land agreement and/or protective provisions for their benefit. At this time, there is not a definitive list as to which parties will have PPs on the face of the DCO as taking that step may not be necessary. As discussed at the hearing, at Deadline 5 the Applicant will put into the DCO drafts of PPs where it has been agreed between the parties that these can appropriately be included on the face of the DCO; • in light of the above and as the Applicant has been focussed on discussions with third parties, it has not provided headings in the DCO submitted at Deadline 4, which will also give Interested Parties time to raise if they consider there should be additional headings/topics that should be included in the Protective Provisions. To provide reassurance to the ExA that progress is being made, the table below sets out which parties have received or, where preferred, have provided, draft Protective Provisions/Side Agreements/Land Agreements as at Deadline 4 (such that there are currently draft documents under negotiation between the Applicant and the third party); and • where possible the Applicant will still look to develop joint position statements on Protective Provisions by Deadline 6.

Party	Side Agreement/Protective Provisions Sent
Anglo American Woodsmith Limited, Anglo American Woodsmith (Teesside) Limited and Anglo American Crop Nutrients Limited	*Yes*
BOC Limited	*Yes*
CATS North Sea Limited and Kellas Midstream Limited	*Yes*
SABIC UK Petrochemicals Limited	*Yes*
Northern Powergrid (North East) Public Limited Company	*Yes*
Natara Global Limited	*Yes*
Venator Materials UK Limited	*Yes*
Air Products Public Limited Company, Air Products (BR) Limited, Air Products Renewable Energy Limited	*Yes*
Navigator Terminals Seals Sands Limited and Navigator Terminals North Tees Limited	*Yes*
Sembcorp Utilities (UK) Limited	*Yes*
INEOS Nitriles (UK) Limited	*Yes*
CF Fertilisers UK Limited	*Yes*
Suez Recycling and Recovery UK Limited	*Yes*
PD Teesport Limited	*Yes*
National Grid Electricity Transmission Public Limited Company	*Yes – drafts provided by third party and comments returned by the Applicant.*
National Gas Transmission Public Limited Company	*Yes – drafts provided by third party. The Applicant's technical and legal teams are reviewing.*
Redcar Bulk Terminal Limited	*Yes*
Network Rail Infrastructure Limited	*Yes – protective provisions included in Schedule 21 and the Applicant is engaging with NRIL to confirm whether these are acceptable to NRIL.*
Tees Gas & Liquids Processing, Teesside Gas Processing Plant Limited and Northern Gas Processing Limited	*No - the parties have agreed the principles for such Protective Provisions and the Applicant's solicitors are preparing a draft accordingly.*
INEOS UK SNS Limited and One-Dyas UK Limited	*Yes*
Northumbrian Water Limited	*No – preferred form protective provisions due to be received from NWL.*

	ConocoPhillips (U.K.) Teesside Operator Limited	*Yes – the third party has provided a draft. The Applicant's legal and technical teams are reviewing.*
	Environment Agency	*Yes - Protective Provisions are contained in Schedule 22 of the draft DCO. Any comments from the EA are awaited.*
	South Tees Group – Teesworks Limited, South Tees Development Corporation, South Tees Developments Limited	*Yes.*
	Northern Gas Networks Limited	*Yes – the third party shared their preferred form of Protective Provisions with the Applicant on 20.11.24 and the Applicant's legal and technical teams are reviewing.*
	Industrial Chemicals Limited	*No – a technical meeting is being arranged to discuss interactions.*
	Lighthouse Green Fuels Limited	*No – please see Annex 1 to Written Summary of the Applicant's Oral Submission at Compulsory Acquisition Hearing 1 for current status.*
	H2Northeast Limited	*No - The Applicant is drafting an Interface Agreement.*
	Net Zero Teesside Power	*No - commercial discussions on principles are proceeding.*
	Net Zero North Sea Storage	*No - commercial discussions on principles are proceeding.*
4. Schedule 2 of draft DCO – Requirements		
The Applicant will be asked to provide an overview of the Requirements. The ExA will then ask questions, seeking responses where appropriate from the Applicant, the Local Authorities, and any other IPs who have registered to speak. These IPs will also be invited to ask questions of clarification in relation to the draft DCO requirements.	Mr Phillpot KC, on behalf of the Applicant, gave an overview of the Requirements. There are 33 Requirements in Schedule 2 to dDCO. These are akin to planning conditions, where necessary they secure the mitigation set out in the ES and require to be discharged by the relevant planning authority pursuant to the procedure in Schedule 13. The point in the authorised development by when each must be discharged is specific and appropriate to the matter being secured. There are a number of requirements (3, 6, 7, 9, 10, 11, 15, 16, 18, 20, 21, 22, 24, 25, 26 and 27) which allow for permitted preliminary works (PPW) to take place prior to their discharge. The rationale for this approach is to enable the Applicant to undertake advanced works which are considered to be minor and therefore should be able to be undertaken prior to the discharge of pre-commencement DCO requirements (paragraphs 5.3.7 and	

	5.3.8 of ES Chapter 5: Construction Programme and Management [APP-057]), e.g. in order to mobilise the construction workforce, undertake surveys, etc. The types of works encompassed within PPW are clearly set out in the definition of PPW in article 2 of the DCO. There are a number of controls on this flexibility and the DCO prevents a range of site preparation works (such as demolition or de-vegetation) from taking place before the relevant planning authority has approved measures to protect the environment. For example, in Requirement 4 no part of the authorised development may commence until a Landscape and Biodiversity Management Plan has been submitted and approved by the relevant planning authority. This does not include an exception for PPW and therefore must be discharged before those can take place. Also, Requirement 15 states that no part of the PPW may be carried out until a PPW Construction Environmental Management Plan for that part has been submitted to and approved by the relevant planning authority (and the plan submitted must be in substantial accordance with the Framework CEMP to the extent it is relevant to PPW). Some of the requirements allow for their discharge in relation to a 'part' of the authorised development to provide the Applicant with flexibility, so that elements of the development can be brought forward as they are ready to be discharged rather than having to wait for all the elements to be brought forward together to be discharged. The Order land falls within the administrative boundaries of Redcar and Cleveland BC, Stockton-on-Tees Borough Council and Hartlepool Borough Council, and the Order provides that for Works falling across different boundaries (such as Work No. 6 and related development under Works Nos. 9 and 10), requirements would need to be discharged by each authority, for the relevant part within their respective areas. *The ExA raised a comment by STG in relation to 'missing requirements' that were included in the NZT consent order, specifically requirements 7,19,21,24,26,37 and 38.* In response to this, Mr Phillpot KC, on behalf of the Applicant, agreed to provide a table in writing which identifies each of the missing requirements and explains the position. **Post-hearing note (and responding to ISH2-APP8)**: *The Applicant has reviewed the 'missing requirements' referred to during the hearing and has set out in the table below, details of each of the NZT requirements that are relevant to this review and an explanation about either (i) why it has been omitted from the H2T DCO or (ii) whether amendments have been made to the draft DCO submitted at Deadline 4 as a result of the review.*

NZT Requirement	Effect of the NZT Requirement	Applicant's response
Requirement 7 (Highway accesses)	Approval required from relevant planning authority for details of siting, design and layout (including visibility splays and construction specification) of any new or modified temporary means of access between Order limits and public highway as well as a programme for reinstating access after construction. Approval required from relevant planning authority before the date of final commissioning of each relevant Work No. for details of siting, design and layout of any new or modified permanent means of access to a highway.	While article 12 does make it clear that means of access to be constructed under the Order must be completed to the "reasonable satisfaction" of either the highway authority or street authority, the Applicant acknowledges the point made by Mr Tom Henderson on behalf of STG during the hHaring that this does not expressly cover details relating to design. In NZT this was covered by the NZT requirement 7 and there was no equivalent provision in the H2T draft DCO. As a result of the above, the Applicant has updated the draft DCO at Deadline 4 to include a new Requirement 34 (Highway accesses) which is set out in the same form as the equivalent NZT provision. STDC have been included as a consultee for this new requirement.
Requirement 19 (Construction workers travel plan)	No part of the authorised development may commence save for permitted preliminary works until a construction workers travel plan for that part has been approved.	The Construction Workers Travel Plan is secured by Requirement 18 (Construction Traffic Management Plan) (at Req. 18(3)(h)). It forms part of the Construction Traffic Management Plan and STDC is a consultee in the process of getting approval for this document. Consequently, there is no need for a separate requirement to secure the Construction Workers Travel Plan in the DCO.
Requirement 22 (Control of noise – operation)	No part of Work Nos. 1 or 7 may be brought into commercial use following commissioning until a scheme for the management and monitoring of noise during operation of those parts of the authorised development and which is consistent with the principles set out in Chapter 11 of the environmental statement	No operational noise Requirement is needed for H2T as the ES has concluded that no likely significant effects are expected to arise during the Operational phase, with embedded measures that will be secured through the Environmental Permit considered. As such, no additional mitigation needs to be secured via the DCO.

		has been submitted to and approved by the relevant planning authority.	
	Requirement 24 (Waste management on site – construction wastes)	No part of the authorised development may commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and, after consultation with STDC, approved by the relevant planning authority.	There is no need for a separate requirement for this as this is secured by H2T DCO Requirement 15(7)(a) (Construction environmental management plan) which provides that no part of the authorised development may commence, save for the permitted preliminary works, unless a site waste management plan is approved by the relevant planning authority after consultation with the Environment Agency and STDC.
	Requirement 26 (Combined heat and power)	Work No. 1A must not be brought into commercial use following commissioning until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.	This requirement is relevant to the NZT project because it is an electricity generating station, but it has not been included because it is not of relevance to the H2T project. The Planning Statement [APP-031], from paragraphs 6.2.155 to 6.2.161, sets out National Policy Statement EN-1's considerations about combined heat and power and how the policy clearly applies to the provision/consideration of this in relation to thermal generating stations. It does not refer to other forms of energy infrastructure or place a requirement on applicants for development consent for such infrastructure (other than for thermal generating stations) to consider combined heat and power. As H2T is a hydrogen production facility and hydrogen distribution network and not a thermal generating station, there is no need for a requirement to consider combined heat and power.
	Requirement 37 (Effluent nutrient	No part of the authorised development other than the permitted preliminary works may commence until an effluent nutrient nitrogen	The results of the Water Quality Modelling Report in Environmental Statement Appendix 9B [APP-193] demonstrates that there are no issues arising as result of

nitrogen safeguarding scheme)	safeguarding scheme has been approved by the relevant planning authority.	discharges as a result of the H2T scheme, including cumulatively with NZT. Consequently, there is no need to include this requirement in the draft DCO.
Requirement 38 (Consultation with Sembcorp and TG entities)	Provides definitions for Sembcorp and TG entities in relation to their presentation in the Protective Provisions.	As the Applicant has added NSMP entities (which are the TG entities listed in this NZT requirement) as a consultee to parts of Requirement 3 in the draft DCO submitted at Deadline 4, a corresponding definition of the entity has been added to article 2 (interpretation) rather than creating a specific requirement to define them. If Sembcorp were to be added as a consultee to some of the requirements following a review of their request for inclusion, then the Applicant would add a definition to article 2 rather than an additional requirement to Schedule 2.

Further, Mr Peter Nesbitt, on behalf of Sembcorp, suggested it would be helpful if he could set out which requirements Sembcorp would like to be consulted on. This was agreed, he would aim to do this early enough that the Applicant could respond by Wednesday 20 November.

Post-hearing note: *Shortly prior to Deadline 4, the Applicant received from Sembcorp a list of the requirements that it would like to be consulted upon as part of the discharge of requirements procedure. The Applicant will review and respond to the request in time for Deadline 5.*

<u>Requirement 3 – Detailed Design</u>

The ExA explained that paragraph 8 relates to work number 6 but makes no reference to the nature of the works.

Post-hearing note: *Following the ExA's comments during the hearing, Requirement 3(8)(a) and Requirement 3(10)(a) have been amended in the draft DCO submitted at Deadline 4 to include reference to the above ground installations to provide more context in the drafting.*

<u>Requirement 15 – Construction and Environmental Management Plan</u>

	Mr Dagg, on behalf of SABIC, raised a query in relation to horizontal directional drilling. The Applicant makes reference to using this method, but they could not find where that was secured or what requirements will be in place? Mr Phillpott KC, on behalf of the Applicant, explained that the Construction and Environmental Management Plan (CEMP) contained provisions that deal with horizontal directional drilling and identifies the process of engagement with landowners and managing practical and environmental issues. It isn't a matter of being pinned down in the DCO. The CEMP and the protective provisions would govern the choice of construction method. Mr Matthew Fox, on behalf of the Applicant, confirmed that the CEMP does talk about trenchless and explained that horizontal directional drilling is only one method of trenchless, as well as microbore tunnelling. The CEMP does make commitments to using trenchless technologies at the larger crossing due to specific environmental constraints. In relation to Grafton Creek and under the River Tees the only options mentioned are horizontal directional drilling and microbore tunnelling. <u>Requirement 17 – Extended planned shutdown period</u> Mr Matthew Fox, on behalf of the Applicant, added that National Highways had raised issues concerns on this Requirement (and other traffic related Requirement). The latest position on this is set out in the SoCG with National Highways submitted at Deadline 4. <u>Requirement 18 – Construction and traffic management plans</u> *Ms Tabitha Knowles, on behalf of Anglo American, confirmed that Anglo American seeks to be included as a specified party to be engaged with in respect of managing cumulative traffic impacts.* Mr Phillpot KC, on behalf of the Applicant, confirmed that the Applicant had chosen to put forward a specific commitment to work with NZT and HyGreen as these are three projects all very close by that happen to be promoted by bp entities so there is a need for a mechanism to ensure they are co-ordinating to manage the impact. The Protective Provisions with Anglo American will ensure that their development or operations are protected from traffic impacts. <u>Requirement 22- Restoration of land used temporarily for construction</u> *Ms Tabitha Knowles, on behalf of Anglo American, confirmed that Anglo American seek to ensure the interface between operations is consulted on.*

	Mr Phillpott KC, on behalf of the Applicant, confirmed that this matter would be better dealt with in protective provisions where Anglo American's more specific requirements will be able to be dealt with. <u>Requirement 25 – Local Liaison Group</u> *Ms Tabitha Knowles, on behalf of Anglo American, referred to Anglo American's wanting to be involved in the Local Liaison Group.* Mr Phillpot KC confirmed that the working group would be for local residents and organisations (e.g. Councils and those with public interest roles) as opposed to commercial neighbours which would be dealt with in protective provisions. Mr Phillpot KC acknowledged that the Applicant had in its Deadline 3 submissions, incorrectly stated that Anglo American would be invited. <u>Requirement 28 – Decommissioning</u> *Ms Tabitha Knowles, on behalf of Anglo American, suggested this was similar to Requirement 22 and would be considered in protective provisions.* Mr Phillpot KC agreed. <u>Requirement 33</u> Mr Phillpot KC, on behalf of the Applicant, explained the rationale for this Requirement: that, because there are overlaps in the Site of NZT and H2T, some elements of what is required under NZT DCO deal with the same subject matter that has to be included in this Order. If, in the judgment of the relevant planning authority, they are satisfied there is nothing more to be done following the discharge under NZT, they may at their discretion choose to disapply the need to satisfy the requirements under this order. This is limited and under the control of a responsible public authority so if it is not satisfied in any respect, it can simply refuse to disapply. It not only reduces resources and time required on the Undertaker's side to discharge a requirement where it may be unnecessary, but similarly it reduces the burden otherwise placed on the relevant planning authority. Mr Phillpot KC confirmed that if the decision maker considered that they came to the wrong decision, then the appeal process allows a mechanism to overcome that obstacle. The Applicant considers that this is not an additional burden per se, as if there is a dispute as to whether a scheme is approved under NZT is adequate to the requirement in this situation, there would be an underlying dispute as to the adequacy of the underlying detail.

	***Post-hearing note**: The Applicant has amended the drafting of Requirement 33 of the draft DCO submitted at Deadline 4 to address the concerns raised by the ExA. The scope of the requirement has been narrowed so that the requirement can only apply to the discharge of the relevant parts of Requirement 3 (Detailed Design) or Requirement 10 (Surface and Foul Water Drainage).* *The new drafting makes it clear that in order for a relevant part of a H2T requirement to be discharged pursuant to the discharge of a NZT requirement that the following must be satisfied:* *a) that the relevant part of the NZT requirement (either Requirement 3 or 11 depending on the circumstances) has been discharged pursuant to the NZT Order;* *b) that the discharge of the relevant part of the NZT requirement satisfies all of the relevant obligations in relation to the relevant part of the H2T requirement being discharged; and* *c) the discharge of the relevant part of the H2T requirement is in respect of infrastructure that is to be constructed, maintained and operated in the form as discharged under the NZT Order and is to be utilised for the purposes of the H2T authorised development.* *The Requirement is subject to the approval of the relevant planning authority and, where relevant, a third party that would be consulted about the discharge of the relevant part of the H2T requirement must also be consulted under this Requirement 33. The Applicant believes this amended drafting provides more certainty and controls about what can and cannot be discharged as a result of this provision.* *The Applicant has removed Requirement 25 (Local Liaison Group) and Requirement 26 (Employment, skills and training plan) from the scope of Requirement 33. In the case of Requirement 25, the Applicant has inserted additional drafting to make it clear that the requirement can be discharged if the undertaker becomes part of an existing local liaison group that has been established pursuant to Requirement 29 of the NZT Order. This prevents the Applicant being in a situation where NZT has set up a local liaison group and finds it is unable to discharge this condition because it makes no practical sense for it to establish a separate group in this context. In the case of Requirement 26, on reflection, the Applicant considers that it would be more straightforward for it to produce and submit its own Employment, Skills and Training Plan or do so jointly with NZT and/or HyGreen to discharge this requirement.*
5. Article 44 of draft DCO – Certification of Plans	

To review the plans and documents to be certified and seek views as to whether the list is complete and if not, what additional documents would need to be included.	Mr Phillpot KC, on behalf of the Applicant, confirmed that the Design and Access Statement was to be removed from the list of certified documents, and the application guide should be within it. There were no issues with the remaining documents listed.
6. Consents, licences and other agreements	
The Applicant is asked: 1. to provide an overview of consents, licences and other agreements that would be required in order to undertake the Proposed Development; 2. to provide an update of progress and timescales for completion of such consents, licences and other agreements; 3. how the draft DCO will interact with other DCOs, Planning Consents and emerging developments, including the York Potash DCO, Net Zero Teesside DCO, HyGreen, etc.	Mr Ross Nickson, Environmental and Social Manager on behalf of the Applicant, provided an overview on these matters. Other consents and licences required for the development are outlined in Other Consents and Licenses statement as updated at **Deadline 2 (REP2-007)**. The Applicant utilises an online software tool to manage the 'PLANC' Register, which stands for Permits, Licences, Authorisations, Notifications and Consents. All necessary consents are identified within the tool, including timelines for submission and regulatory review and approval. Some key consents that may be of interest to the Examining Authority are the Environmental Permit submitted to the Environment Agency, the COMAH (Control of Major Accident Hazards) application submitted to the Health and Safety Executive and the Hazardous Substances Consent submitted to the Local Planning Authority. **Environmental Permit -** The Environmental Permit application under the Environmental Permitting (England and Wales) Regulations 2016 was submitted on the 14 June 2024. The Environment Agency requested some additional, supplementary information. This was submitted 11th October 2024 and the EA are now reviewing this information and the Applicant is hopeful that the application will be 'Duly Made' in the near future. Once duly made the Applicant expects the permit determination period and consultation to take several months with a decision expected in 2025. The Applicant has been in communication with the Environment Agency Permitting team and maintain a good working relationship. **COMAH -** The site will be a Tier 1 COMAH site and as such a COMAH notification and Safety Report must be submitted under the Control of Major Accident Hazards Regulations (COMAH) 2015 3-6 months prior to the start of construction. This will be informed by the Front End Engineering Design (FEED). As per the schedule given in Chapter 5 Construction Programme and Management **(APP-057)** the earliest construction is anticipated to start on Phase 1 is Q4 2025. As such submission of the COMAH notification would be anticipated in Q2 2025. The Applicant has held numerous discussions with the HSEx regarding the East Coast Cluster

Following the above responses, the ExA may ask questions, including whether any Planning Obligations/ Section 106 agreements are proposed and if so whether there are any indicative timescales for finalising such documents.	more broadly and these are outlined in the draft Statement of Common Ground that has been prepared (REP1-015). The Applicant intends to discuss the timeline for submission the COMAH Application with the HSEx in the near future. **Hazardous Substances Consent -** An application for Hazardous Substances Consent for the site is to be submitted under the Planning (Hazardous Substances) Regulations 2015 6-12 months prior to the hazardous substances being present on site i.e. prior to commissioning of the plant. In response to the ExA's query as to whether the Applicant intends to put forward a section 106 agreement, Mr Phillpot KC confirmed that the Applicant was not relying on any section 106 agreements, but that it was investigating opportunities to deliver wider bio-diversity enhancements and habitat benefits within Teesside. The Applicant was seeking to target what it provides in order to deliver multiple benefits for both habitats and species. Once suitable opportunities had been identified, it was likely going to require some form of agreement. Mr Phillpot KC confirmed that the Applicant was aware that BNG would not apply to this project (and was not seeking to make any commitments on that basis) and stated that the Applicant was simply acting as a responsible developer and but would not be asking the ExA to rely upon securing the enhancements referred to above (or any agreement which secures them) in their report. Mr Phillpot KC also confirmed that the Applicant had not been asked for any planning performance agreements nor had it given any.
7. Any Other Business	
Any other business and actions arising	Mr Phillpot confirmed on behalf of the Applicant that all points had been made in line with the agenda.