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

17 December 2024

Dear Christopher Butler,

Planning Act 2008, H2 Teesside Limited, Proposed H2 Teesside Order Deadline 5 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 reference: DCO/2024/00007; PINS reference: 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.



Marine
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...ambitious for our
seas and coasts



Yours sincerely,

[REDACTED]

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Marine Licensing Case Officer

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1. Responses to Examiners Questions (ExQ2)

1.1 General comments

1.1.1 No questions were directed to the MMO, however, the MMO notes that the Examining Authority (ExA) has directed questions to other Interested Parties based on our comments. Please see point 1.2 and 1.4 below.

1.2 Q2.4.9 Horizontal Directional Drilling (HDD) Operations

'The ExA notes the comments of the Marine Management Organisation (MMO) in its DL4 submission [REP4-026], where it notes that to reduce the impact to the Teesmouth and Cleveland Coast SPA for Horizontal Directional Drilling (HDD) operations any pipe stringing area for HDD operations will be established a minimum of 30 metres away from the boundary of the SPA. The MMO defers to NE on whether this is an appropriate distance. As such the ExA would ask NE whether 30 metres is an acceptable distance from the SPA for such operations and if not what distance NE considers is acceptable, together with evidence justifying its position.'

1.2.1 The MMO welcomes the ExA question directed to NE in reference to our previously mentioned comment as stated in our Deadline 4 submission (point 1.2.4, REP4-026) regarding the reduction of impact to the Teesmouth and Cleveland Coast SPA for HDD operations as noted within the Framework Construction Environmental Management Plan (CEMP) (REP03-004).

1.3 Q2.10.3 Drill Routes and Methods

'The EA advise that final drill routes and methods should be included in the Construction Environment Management Plan or other relevant document and shared with them for approval. Please confirm how you will comply with this request from the EA and how it will be secured in the draft DCO.'

1.3.1 The MMO notes that the Applicant has been requested to confirm how they will comply with the Environment Agency's (EA's) request for final drill routes, methods or other relevant documentation to be included in the Construction Environmental Management Plan (CEMP) and subsequently shared with EA. The MMO looks forward to the Applicant's comments on how this will be secured in the draft DCO. The MMO will keep a watching brief on his matter.

1.4 Q2.10.5 Response/Clean Up Plan

'The MMO in its DL4 submission [REP4-026] advises any remedial action required below Mean High Water Springs, will need to be communicated to the MMO. It also advises that the following should be included in the Response Plan to ensure that any spills are appropriately recorded and managed to minimise the risk to sensitive receptors and the marine environment:

"Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team within 12 hours.

Within office hours: 0300 200 2024

Outside office hours: 07770 977 825

At all times if other numbers are unavailable: 0345 051 8486

Email: dispersants@marinemanagement.org.uk"

Additionally, the MMO advises there may be licence implications for any clean-up works undertaken below Mean High Water Springs if there is no Deemed Marine Licence as part

of the Project. Please could the Applicant advise how it intends to address these comments and ensure that any oil, fuel or chemical spill within the marine environment is notified to the MMO and appropriate licences are sought from them, especially in the absence of a Deemed Marine Licence.'

1.4.1 The MMO welcomes the ExA question directed at the Applicant reiterating our DL4 submission (point 1.2.3, REP4-026) that any remedial action required below Mean High Water Springs (MHWS), will need to be communicated to the MMO. As well as including pollution reporting within the CEMP to ensure that any spills are appropriately recorded and managed to minimise the risk to sensitive receptors and the marine environment:

1.4.2 It is noted that the ExA has asked how the Applicant intends to address these comments and ensure that any oil, fuel or chemical spill within the marine environment are notified to the MMO, and appropriate licences are sought in the absence of a Deemed Marine Licence for any clean-up works, if required. The MMO look forward to the Applicant's response.

2. Comments on Submissions Received at Deadline 4 (DL4).

2.1 H2 Teesside Limited – Draft Development Consent Order (dDCO) (REP4-005)

2.1.1 Schedule 1 Article 2 of the dDCO lists all “authorised development” (Works 1-11) of which it is noted that possible impacts are being assessed with the Environmental Statement (ES), however, it is noted that the final paragraph of Schedule 1 states “further ancillary development” other works or operations for the purposes of or in connection with the construction or maintenance of the authorised development within the order limits. The text further states “they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the ES”. The MMO would like to remind the Applicant that any of the “further ancillary development” works of which occur below MHWS may require regulatory approval and as such a marine licence. The MMO requests that the Applicant provides clarification on the items listed occurring or not occurring below MHWS. Notably, but not limited to (a) surface water drainage systems, (n) piling.

2.2 H2 Teesside Limited – (REP4-013)

2.2.1 The MMO notes the position of South Tees Group (STG) ExQ1 No 1.1.8 regarding the definition of ‘permitted preliminary works’ (PPW) whereby it is considered by STG to be more extensive than the equivalent in the Net Zero Teesside (NZN) DCO and generally “too broad” and the Applicant's response. The definition wording is as follows:

“permitted preliminary works” means works consisting of environmental surveys (including archaeological investigations), geotechnical surveys, surveys and protection of existing infrastructure, and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors, the provision of temporary means of enclosure and site security for construction, temporary access roads, paving, diversion of existing services and laying of services (but not including the laying of any of Work Nos. 2, 3, 4, 5, 6, 7 and 8), the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement; ‘ at this time we agree that a definitive list of works to be undertaken should

be produced and we request that it is made clear which if any of the works are below MHWS

The MMO would like to stress that any PPW below MHWS may be subject to a marine licence, or may be covered by an exemption under The Marine Licensing (Exempted Activities) Order 2011, of which a notification to the MMO may be required.

2.3 Environment Agency (REP4-025)

2.3.1 In reference to the MMO's previous comment (point 1.1.1, REP4-026). The MMO notes the approach concerning corridor width and raised potential flood risk implications has been accepted by the EA. The MMO notes that the Applicant has stated that most above ground pipeline corridors are pre-existing and therefore would not be able to be raised but will be assessed for flood resilience design. It is the MMO's understanding that the narrower corridor width related to the location of the HDD path stated to be preferred by the EA. Can this be confirmed/verified to be the case by the Applicant for MMOs clarification.

2.4 Natural England (NE) (REP4-028)

2.4.1 The MMO welcomes the matters agreed by NE that are in relation to the HDD works are as follows:

- Direct Loss of SPA habitat – 'Risk of HDD Collapse/Leakage of Drilling Fluid to SPA Sites
- Noise disturbance during construction and operation on qualifying SPA / Ramsar bird species. Use of IECS toolkit.
- River Tweed SAC and Tweed Estuary SAC Impact on Atlantic Salmon and Sea Lamprey.

2.4.2 The MMO notes that the remaining matters that are still in discussion identified by Natural England that are a result of the HDD works are as follows:

- Teesmouth and Cleveland Coast SPA – Assessment of significance of impacts on SPA bird populations – noise and visual disturbance impacts during construction.
- North Northumberland Coast SAC, The Humber Estuary SAC and the Wash and North Norfolk Coast SAC). Noise disturbance – Seals.

2.4.3 The MMO notes that NE have requested the need for specific 'M' (mammal) weighted noise assessment data in order to inform suitable mitigation for noise impacts at Greatham Creek, and that NE has offered further information to inform the preparation of a seal monitoring programme for the HDD works at this location.

2.5 Statement of Common Ground (SoCG) between H2 Teesside Limited and the MMO (REP4-020)

HDD Entry and Exit Pits

2.5.1 The MMO would like to reiterate for clarity that we are now satisfied that the launch and reception pit locations are above MHWS. The distances of which the Applicant has provided (REP4-013, ref MMO2) for the distances between MHWS boundary and the launch and reception pits are satisfactory. The MMO therefore considers the matter raised response regarding distances to marine receptors as resolved/agreed.

Use of Exemption

2.5.2 The MMO welcomes the progress made to date regarding minimising impacts from the HDD works on designated sites and features for which they are designated.

2.5.3 The MMO's original comment (RR-021) regarding the use of an exemption noted that the design work for all crossings is ongoing, and that the Applicant considers the activities presented within the DCO to not require a Marine Licence, and as such, has not produced a draft DML. The River Tees crossing and the Greatham Creek crossing, at this stage, are proposed to be undertaken via trenchless techniques. These techniques include micro bored tunnel (MBT) or HDD or a combination of the two.

Article 35 'Bored Tunnels' exemption within The Marine Licensing (Exempted Activities) Order 2011 is as follows:

'Bored tunnels

35.—(1) Article 4 applies to a deposit or works activity carried on wholly under the sea bed in connection with the construction or operation of a bored tunnel.

(2) Paragraph (1) is subject to conditions 1 and 2.

(3) Condition 1 is that notice of the intention to carry on the activity must be given to the licensing authority before the activity is carried on.

(4) Condition 2 is that the activity must not significantly adversely affect any part of the environment of the UK marine area or the living resources that it supports.

(5) But article 4 does not apply to any such deposit carried on for the purpose of disposal.'

2.5.4 The MMO stressed that this exemption is subject to conditions, most importantly Condition 2. The conclusion of which can only be drawn during the Examination process. Should any of the conditions above not be met, then the exemption no longer applies, and a marine licence (or DML) would be required for this activity. The applicant will need to satisfy themselves that an exemption is applicable, and no marine licence is required.

2.5.5 The MMO notes that there are still some issues remaining which are to be agreed with Natural England. However, the MMO is confident that because of the progress made so far, and that the remaining issues in relation to the HDD works are RAG rated Amber, meaning that NE does not agree with the Applicant's position or approach and considers that this could make a material difference to the outcome of the decision-making process. However, this Amber rating means that matters may be resolved through:

- additional evidence or justification to support conclusions; and/or
- revisions to impact assessment methodology and/or assessment conclusions; and/or impact modelling; and/or draft plans
- well-designed mitigation measures that are adequately secured through the draft DCO.

2.5.6 In relation to the possible rectification of issues relating to the HDD works, the Applicant will need to consider the resolution, noting that if these issues remain and are not addressed or resolved by the end of the Examination, then they may become a Red risk. The Applicant must, therefore, satisfy themselves that the exemption is

Applicable. Since the Examination is at Deadline 5, the MMO wants to make it clear to the ExA that the MMO will not be requesting a DML to be added.

Risk of Bentonite Breakout

2.5.7 Point 1.2.2 of our previous deadline 4 submission (REP4-026) stated that we welcomed that the final CEMP will include site-specific Hydraulic Fracture Risk Assessment following further investigation of specific ground conditions at the crossing locations, and that any further appropriate mitigation will be developed in line with best construction practice. Furthermore, the MMO welcomed that the final CEMP will include a Pollution Prevention Plan and an Emergency Response Plan.

2.5.8 Measures to reduce risk of hydraulic fracture (and through this bentonite breakout) are included in Tables 7-2 and 7-5 of the Framework CEMP including the need for a Hydraulic Fracture Risk Assessment. The MMO are satisfied that this is secured within the DCO in Requirement 15 which ensures that final versions of the Hydraulic Fracture Risk Assessment are developed in accordance with this framework. ES Chapter 9: Surface Water, Flood Risk and Water Resources (APP-061) discusses bentonite management and the mitigation measures for minimising risk of hydraulic fracture. With the controls identified above, the risk of bentonite breakout is considered minimal.

2.5.9 The MMO notes that NE are satisfied that the mitigation measures within the CEMP and that NE noted the following to be secured in the final CEMP:

- A review of the HDD works undertaken for Net Zero Teesside will be undertaken to assess the effectiveness of site procedures and whether any 'lessons learned' would be beneficial to HDD operations of the Proposed Development;
- A Clean-up plan (to deal with any pollution impacts arising from any HDD collapse) will be produced as part of the Final CEMP;
- NE would be consulted on the effectiveness of the proposed measures in reducing effects on designated sites.

2.5.10 The MMO are content that the risk of bentonite breakout has been considered and welcome the commitments outlined above to the final CEMP. The MMO considers this point now agreed.

Yours sincerely,

[Redacted Signature]

[Redacted Name]

Marine Licensing Case Officer

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