

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 H2 Teesside Order

Document Reference: 8.25.7 Response to ExQ2.9 Draft Development Consent Order

Planning Act 2008



Applicant: H2 Teesside Ltd

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1.0 INTRODUCTION

1.1 Overview

1.1.1 This document has been prepared on behalf of H2 Teesside Limited (the 'Applicant'). It relates to an application (the 'Application') for a Development Consent Order (a 'DCO'), that was submitted to the Secretary of State for Energy Security and Net Zero ('DESNZ') on 25 March 2024, under Section 37 of 'The Planning Act 2008' (the 'PA 2008') in respect of the H2Teesside Project (the 'Proposed Development').

1.1.2 The Application has been accepted for examination. The Examination commenced on 29 August 2024.

1.2 The Purpose and Structure of this document

1.2.1 The purpose of this document is to set out the Applicant's responses to the Examining Authority's ExQ2.9 on Draft Development Consent Order, which were issued on 28 November 2024 [PD-015]. This document contains a table which includes the reference number for each relevant question, the ExA's comments and questions and the Applicant's responses to each of those questions.

Table 1-1: Applicant’s Responses to ExQ2.9 Draft Development Consent Order

EXQ2	QUESTION TO:	QUESTION:	RESPONSE
Q2.9.1	Applicant/ PD Teesport Ltd (PDT)	<p>Article 9 (Application and Modification of Statutory Provisions)</p> <p>PDT in its DL4 submission [REP4-048], provides a summary of its oral submissions related to ISH2. These submissions primarily related to concerns regarding Article 9 (Application and Modification of Statutory Provisions) of the draft DCO (Current version [REP4-004]). The Applicant’s document of its oral submissions concerning ISH2 are also noted. However, PDT are maintaining its request that Article 9 of the draft DCO be amended to remove the disapplication of the provisions as set out in Article 9(2)(a) and (b).</p> <p>The Applicant is asked to engage with PDT with a view to reaching a satisfactory resolution to PDT’s concerns in regard to Article 9 of the draft DCO and advise the ExA as to what it is doing to resolve this matter.</p>	<p>The Applicant has been engaging with PD Teesport (PDT) to try to address concerns and reach agreement about the extent of the disapplication or modification of the statutory provisions, as provided for by article 9 of the draft Development Consent Order (Document Ref: 4.1), relating to the PDT’s undertaking as a statutory harbour authority, and how this is dealt with in the Protective Provisions for PDT’s benefit. Negotiations are ongoing between the parties, however the Applicant has updated the draft DCO at Deadline 5 to specify which Works Numbers are the subject of the disapplication.</p>
Q2.9.2	Anglo American	<p>Article 48 (Interface with Anglo American permit)</p> <p>The ExA noted Anglo Americans oral submissions during ISH2 related to the above mentioned Article and the fact that it considers the Environmental Permit (EP) (Number FB3601GS) should be transferred to the Applicant (as noted in Annex 2 of Anglo American’s Oral submissions made at ISH2, made at DL4 [REP4-031]). These concerns and observations were also set out in Anglo-American’s DL3 submissions ([REP3-012]. The Applicant in its response to DL3 submissions [REP4-013] has responded to Anglo Americans concerns in this regard in Table 2-1 and the ExA would ask Anglo American for its considered response, especially in regard to whether an additional groundwater and landfill gas monitoring point would adequately address Anglo-Americans concerns in this regard.</p>	N/A
Q2.9.3	Applicant	<p>Schedule 1 – Authorised Development</p> <p>The draft DCO [CR1-015]*, submitted with the change application, appears to retain both Work Nos.6A.3 and 6B.3 despite Change No. 2F in the Change Application [CR1-044] clearly indicating that Work Nos. 6A.3 “...is proposed to be removed...” (Paragraph 2.3.27) and Work Nos. 6B.3 “...is no longer required...” (Paragraph 2.3.28). Furthermore, Table 1 in your Change Application Cover Letter [CR1 043] and Table 2-1 in your Change Application Report [CR1-044] only refer to Work No. 6B.3.The ExA considers there needs to be consistency across the Examination documentation, especially the draft DCO [CR1-015]*, and as such the ExA requests:</p> <p>i) Confirmation that Change No 2F removes both Work Nos. 6A.3 and 6B.3; and</p>	<p>The Applicant confirms that Change No. 2F removes both Work Nos. 6A.3 and 6B.3.</p> <p>The Applicant has checked the draft Development Consent Order (both clean [CR1-015] and tracked [CR1-016] versions) submitted as part of the Change Application.</p> <p>All references to Work Nos. 6A.3 and 6B.3 were removed throughout the draft DCO submitted as part of the Change Request Application, which is most evident in the tracked version of this document [CR1-016]. Consequently, no changes are required to the draft DCO as it is consistent with the other documents submitted in the Change Application.</p>

EXQ2	QUESTION TO:	QUESTION:	RESPONSE								
		ii) All relevant Examination documents, submitted to date, are reviewed by you to ensure there is consistency with the Change Application. * Note: The most recent version of the draft DCO [REP4-004] was submitted at DL4.									
Q2.9.4	Applicant	Schedule 1 – Authorised Development The ExA notes the Applicant’s responses to Q1.9.40 in [REP2-027] and Q1.11.11 and Q1.11.12 in [REP2-029] regarding why the dDCO [REP4-004] does not specify parameters for the Main Site electrical substations and administration, control room and stores. The Applicant is requested to explain how the ExA can be confident that the final built dimensions of these infrastructure components would be within the limited scale indicated by the responses as what has been used as the basis for assessment in the ES, when these are not subject to control within the dDCO?	<p>It is the Applicant’s position that the electrical substations under Work No. 1E would be ancillary infrastructure within and adjacent to the Main Site and of a small-scale. The administration, control room, and stores are also anticipated to be small-scale relative to the other elements of the Main Site and it is not considered practically likely that the buildings would be extensive in height or mass when compared to the rest of the Proposed Development.</p> <p>It is not in the Applicant’s interests from a commercial or a technical perspective for the Main Site’s electrical substations, administration and control buildings and gatehouse, and workshop and stores buildings when constructed to be anything other than small-scale.</p> <p>Consequently, the Applicant does not consider that it is necessary for controls to be included in the DCO on their parameters.</p> <p>The Applicant also notes that the Secretary of State also did not consider it necessary to add such controls to the equivalent buildings in The Net Zero Teesside Order 2024, and there is nothing particularly unusual or different about the buildings proposed for the H2T project that would set them apart for a different approach compared with the NZT project.</p> <p>However, if the ExA, having considered the point, determines that an explicit parameter is required, then the Applicant has provided the following drafting on a without prejudice basis below which would be added to Schedule 15 (Design Parameters) of DCO (additional text is shown in italics).</p> <table border="1" data-bbox="1754 1287 2813 1835"> <thead> <tr> <th data-bbox="1754 1287 2021 1486">Component</th> <th data-bbox="2021 1287 2282 1486">Length (m)</th> <th data-bbox="2282 1287 2546 1486">Width / diameter (including platforms, ladders and walkways if present) (m)</th> <th data-bbox="2546 1287 2813 1486">Height (m) (Above Ordnance Datum (AOD))</th> </tr> </thead> <tbody> <tr> <td data-bbox="1754 1486 2021 1835">Other production plant (<i>including electrical substations, administration and control buildings and gatehouse, workshop and stores building</i>)</td> <td data-bbox="2021 1486 2282 1835">-</td> <td data-bbox="2282 1486 2546 1835">-</td> <td data-bbox="2546 1486 2813 1835">36</td> </tr> </tbody> </table>	Component	Length (m)	Width / diameter (including platforms, ladders and walkways if present) (m)	Height (m) (Above Ordnance Datum (AOD))	Other production plant (<i>including electrical substations, administration and control buildings and gatehouse, workshop and stores building</i>)	-	-	36
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Q2.9.5	Applicant	<p>Schedule 2, Requirement 3 (Detailed Design)</p> <p>The ExA notes the Applicant’s response to Q1.9.44 in [REP2-027] stating that the Design and Access Statement (DAS) [APP-034] does not set out design principles and therefore it would not be appropriate for Requirement 3 of the draft DCO [REP4-004] to refer to it. The ExA considers that this response contradicts the Applicant’s responses in Q1.11.1 and Q1.11.2 of [REP2-029], which refer to design principles and state that Section 7.0 of the DAS sets out how the Proposed Development would achieve a high quality of design. The ExA also notes that ES Chapter 16 [APP-069], section 16.4.2 lists design principles within the DAS as forming impact avoidance measures for landscape and visual effects. The ExA is therefore not satisfied with the Applicant’s response to Q1.9.44 and requests that it submits further justification for its position and proposed revised wording on a without prejudice basis for Requirement 3 that would link approval of the detailed design to relevant components of the DAS.</p>	<p>The Applicant acknowledges that the Design and Access Statement (DAS) [APP-034] refers to “design principles” in section 6.2 and that these are referred to in the responses to Q1.11.1, Q1.11.2 and in section 16.4.2 of ES Chapter 16 [APP-069]. However, there is a significant difference between the type of “design principles” that are in the DAS and design principles used on other projects which are capable of being linked to the approval of detailed design in a Requirement to a DCO. It is the latter type of design principle which was envisaged in the Applicant’s response to Q1.9.44 in REP2-027.</p> <p>The “design principles” in section 6.2 of the DAS are not principles for securing elements of detailed design but are high-level and thematic based on design themes of climate, environmental and safety, and place and value which have informed and shaped the design at a high-level and, to the extent that any elements of them require securing in the DCO, these are already secured. Taking each one in turn:</p> <p>Climate – The first element of this principle is the reference to the project’s primary purpose to generate low carbon hydrogen which goes to the purpose rather than the design of the project. The other element of this principle is that the project is “<i>designed so as to be resilient to climate change through the selection of an appropriate platform and choice of construction materials</i>” and ES Chapter 19 Climate Change [APP-072] sets out in paragraphs 19.6.48 to 19.6.54 how mitigation for climate change has been embedded and secured in the design of the Proposed Development through mechanisms such as the Construction Environmental Management Plan.</p> <p>Environment and safety – Sets out that “<i>the design, sizing and orientation of plant structures should minimise environmental impacts on off-site receptors and be safe</i>”, but this is already secured by requirements in the DCO which have been drafted to mitigate any potential likely significant effects on the environment as assessed in the Environmental Statement (Document Ref: 6.2), or will be managed under a separate regime such as the environmental permitting regime.</p> <p>Place and value – The DAS states that “<i>the Proposed Development should be sited so as to maximise opportunities for provision of low carbon hydrogen to a range of potential industrial users on Teesside and also to connect most efficiently with the proposed NEP carbon dioxide capture network to enable captured CO2 to be secured with the Endurance storage site and other nearby CO2 stores</i>”. The authorised development as submitted provides for this already and it is difficult to see how a requirement could be made from this.</p> <p>These principles are in contrast to design principles which consist of specific design guidance (envisaged in the Applicant’s response to Q1.9.44) which can then be linked to specific elements of detailed design such as, for example, Mallard Pass Solar Farm Order 2024 where Requirement 6 (Detailed design approval) requires details submitted to the planning authority to be in accord with “design guidance”, which is defined as section 4.5 of the DAS and which sets out design principles which can inform detailed</p>

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			<p>design including detailed, specific offsets for fencing, location of solar stations and other elements of the project.</p> <p>As well as being unable to identify either anything that is not already covered by a requirement in the DCO or anything else capable of being secured by requirement in the “design principles” in section 6.2, having reviewed sections of the DAS, the Applicant believes the same is true for the remainder of the DAS itself. The table below sets out the section of the DAS and a brief explanation about why a requirement relating to that section cannot be added to the draft Development Consent Order (Document Ref: 4.1).</p> <table border="1" data-bbox="1754 657 2810 1871"> <thead> <tr> <th data-bbox="1754 657 2030 758">DAS chapter or section reference</th> <th data-bbox="2030 657 2810 758">Applicant’s comment</th> </tr> </thead> <tbody> <tr> <td data-bbox="1754 758 2030 1125"> Chapter 1 (Executive Summary) Chapter 2 (Introduction) Chapter 3 (Site Description) Chapter 4 (Legislative and Policy Context) </td> <td data-bbox="2030 758 2810 1125"> These are introductory and narrative by nature and do not provide parameters or design guidance that could be translated into a Requirement and linked to approval detailed design. </td> </tr> <tr> <td data-bbox="1754 1125 2030 1350"> Chapter 5 (Design Flexibility and Information) </td> <td data-bbox="2030 1125 2810 1350"> 5.2 – Design Flexibility sets out the maximum scale of parameters for the Main Site which are already secured in Requirement 3(12) and Schedule 15 the draft DCO. The Design Information section is a narrative about where different design information is located. </td> </tr> <tr> <td data-bbox="1754 1350 2030 1738"> Chapter 6 (Design Principles, Approach and Development) </td> <td data-bbox="2030 1350 2810 1738"> Section 6.2 – Design Principles - as discussed above these do not contain any additional specific design points that are not already catered for by the existing DCO Requirements or are capable of being translated into a Requirement that could be linked to detailed design approval. Section 6.3 Design Approach – is a narrative about how the approach to design has developed pre-application. Section 6.4 Design Development – is a narrative of how the design has developed pre-application. </td> </tr> <tr> <td data-bbox="1754 1738 2030 1871"> Chapter 7 (Design Components) </td> <td data-bbox="2030 1738 2810 1871"> Section 7.2 – Use – is a narrative setting out the function of authorised development which is not appropriate to form a Requirement. </td> </tr> </tbody> </table>	DAS chapter or section reference	Applicant’s comment	Chapter 1 (Executive Summary) Chapter 2 (Introduction) Chapter 3 (Site Description) Chapter 4 (Legislative and Policy Context)	These are introductory and narrative by nature and do not provide parameters or design guidance that could be translated into a Requirement and linked to approval detailed design.	Chapter 5 (Design Flexibility and Information)	5.2 – Design Flexibility sets out the maximum scale of parameters for the Main Site which are already secured in Requirement 3(12) and Schedule 15 the draft DCO. The Design Information section is a narrative about where different design information is located.	Chapter 6 (Design Principles, Approach and Development)	Section 6.2 – Design Principles - as discussed above these do not contain any additional specific design points that are not already catered for by the existing DCO Requirements or are capable of being translated into a Requirement that could be linked to detailed design approval. Section 6.3 Design Approach – is a narrative about how the approach to design has developed pre-application. Section 6.4 Design Development – is a narrative of how the design has developed pre-application.	Chapter 7 (Design Components)	Section 7.2 – Use – is a narrative setting out the function of authorised development which is not appropriate to form a Requirement.
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			<p>Section 7.3 – Layout – provides a narrative about the indicative layout of the project as well as the routing and extent of connection corridors and works on the Works Plans. The information shown on the Works Plans is secured by article 4 and Schedule 1 to the draft DCO.</p> <p>Section 7.4 – Amount – narrative list of the amount of area taken up by the components rather than design principles.</p> <p>Section 7.5 – Scale – sets out parameters which are already secured in Schedule 15 to the DCO.</p> <p>Section 7.6 – Appearance – sets out how the decision on appropriate external finishes, colours and materials to buildings will be made at detailed design and submitted for relevant planning authority’s approval under Requirement 3.</p> <p>Section 7.7 – Landscaping – provides a narrative on the approach taken to the design pre-application. It states that internal access roads and other hardstanding areas will be of concrete or tarmac, areas between buildings and structure may need to be kept free of planting for safety and security reasons. It also flags that the perimeter of Main Site and AGIs provide opportunities for some planting in line with Outline Landscape and Biodiversity Management Plan (secured Requirement 4) while the Main Site will be securely fence with appropriate fencing (secured by Requirements 7 and 8).</p> <p>7.8 – Lighting – this explains how Indicative Lighting Strategy (operation) will provide for lighting to be up to standard as secured by Requirement 6 to the draft DCO.</p>
			<p>Chapter 8 (Access Arrangements) Provides a narrative on operational access arrangements for the Main Site but these are already subject to controls under articles 10 to 13 as well as Requirement 34 of the DCO.</p>
			<p>Chapter 9 (Securing Detailed Design) Describes the detailed design process and sets out the Requirements in the DCO which need to be discharged as part of the process.</p>
			<p>Chapter 10 (Conclusions) This section summarises the previous chapters.</p>
			<p>Further to the analysis provided in the table above, the Applicant is unable to provide drafting on a without prejudice basis in response to the ExA’s request because having reviewed the DAS section by section there is nothing further in the DAS that is capable</p>

EXQ2	QUESTION TO:	QUESTION:	RESPONSE
			of being secured by requirement, or which is not already secured by a different requirement or mechanism.
Q2.9.6	Applicant	<p>Schedule 2, Requirement 25 (Local Liaison Group)</p> <p>During ISH2 the Applicant clarified the Local Liaison Group, that would be secured under this Requirement was intended to be a forum is for local residents, rather than corporate parties. However, it is clear from Anglo American’s DL4 submission [REP4-031] that it also wishes to be included in some form of Local Liaison Group even if this is separate from a local residents forum. Please advise what is being done to satisfy Anglo American in this regard and whether the applicant is intending to discuss and agree an alternative arrangement that would include Anglo American?</p>	<p>As noted at page 19 of the Summary of Applicant’s Oral Submissions at Issue Specific Hearing 2 (ISH2) [REP4-016] with regard to Requirement 25, the Local Liaison Group would be for local residents and organisations (e.g. Councils and those with public interest roles) as opposed to commercial neighbours that would be addressed by protective provisions.</p> <p>The protective provisions being negotiated by the Applicant and Anglo American contain cooperation provisions with respect to:</p> <ol style="list-style-type: none"> 1) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; 2) maintaining access for Anglo American and its representatives for the purposes of the construction, operation and maintenance of the York Potash project; and 3) avoiding conflicts between the two projects. <p>The Shared Area is defined as such land in the Order Limits for the Proposed Development that is within the York Potash Order Limits.</p> <p>There are also a number of other protections in the protective provisions for the benefit of Anglo American, including a process for obtaining the prior written consent of Anglo American of details of the authorised development within the Shared Area. Approval of which may be provided subject to such reasonable terms and conditions as Anglo American may require.</p> <p>Anglo American will therefore have a continuing forum to provide comments/communicate concerns pursuant to the protective provisions.</p>
Q2.9.7	Applicant	<p>Schedule 2, Requirement 27 (Carbon dioxide transport and storage)</p> <p>The ExA notes the Applicant’s response to Q1.9.59 and Q1.9.60 in [REP2-027] regarding the operation of Requirement 27 (Carbon dioxide transport and storage) in the draft DCO [REP4-004]. However, the ExA remains concerned that there is no control on phasing within the draft DCO. The Applicant is therefore requested to submit proposed revised wording on a without prejudice basis for Requirement 27 that would prevent operation of either Work No.1A.1 or Work No.1A.2 before connection to a carbon capture and storage facility is available.</p>	<p>The Applicant still considers that this is not necessary and has expanded on this further in its response to CEPP’s Deadline 4 submission also submitted at Deadline 5. However, further to the ExA’s request, the Applicant has provided revised drafting on a without prejudice basis below to amend Requirement 27 of the draft Development Consent Order (Document Ref: 4.1) so that neither Work No. 1A.1 or Work No. 1A.2 can commence operation on a commercial basis before connection to a carbon capture and storage facility is available. For ease of reference, the full requirement is set out below with the additional without prejudice text set out in italics.</p> <p>In bringing this forward, the Applicant notes that the carbon storage licence for the Endurance store that the Proposed Development will connect to, has been granted.</p> <p>“Carbon dioxide transport and storage</p> <p>“27.—(1) No part of the authorised development, other than the permitted preliminary works, may commence until evidence of the following (or such licence or consent as may replace those listed) has been submitted to and approved by the relevant planning authority—</p>

EXQ2	QUESTION TO:	QUESTION:	RESPONSE
			<p>(a) that the carbon dioxide storage licence has been granted; and</p> <p>(b) that an environmental permit has been granted for Work No. 1A.1.</p> <p><i>(2) No part of Work No. 1A.1 may be brought into commercial use following commissioning of Work No. 1A.1 without Work No. 7 also being brought into commercial use following commissioning and Work No. 7 being connected to an operational carbon dioxide storage site.</i></p> <p><i>(3) No part of Work No. 1A.2 may be brought into commercial use following commissioning of Work No. 1A.2 without Work No. 7 also being brought into commercial use following commissioning and Work No. 7 being connected to an operational carbon dioxide storage site."</i></p>
Q2.9.8	Applicant	<p>Schedule 2, Requirement 33 (Disapplication of requirements discharged under the NZT Order 2024)</p> <p>A number of IPs have raised concerns regarding this Requirement. Indeed the nature of this Requirement, its precision, enforceability and whether it would be reasonable in all other respects were touched on in the Issue Specific Hearing related to the DCO (ISH2). It is clear to the ExA that the proposed draft DCO seeks powers to construct and operate a Scheme which, although connected, is separate and distinct from the NZT development. As such the ExA would question whether it is legitimate for a Requirement to be discharged by virtue of actions to discharge a Requirement under a separate DCO. It would also ask how such a Requirement would comply with Section 120(1) of the Planning Act 2008, which states the draft DCO must be "in connection with the development for which consent is granted".</p>	<p>The Applicant noted the concerns raised by the ExA about Requirement 33 during Issue Specific Hearing 2 and amended the draft Development Consent Order submitted at Deadline 4 [REP4-004] in response. The Summary of Applicant's Oral Submissions at Issue Specific Hearing 2 [REP4-016] sets out the amendments made to the DCO, namely:</p> <ul style="list-style-type: none"> • 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: <ul style="list-style-type: none"> 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 has removed Requirement 25 (Local Liaison Group) and Requirement 26 (Employment, skills and training plan) from the scope of Requirement 33.

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			<p>The Applicant believes this amended drafting provides more certainty and controls about what can and cannot be deemed to be discharged under this provision and that the times it can be used are narrow and focused.</p> <p>As NZT and H2T have some areas of overlap, the purpose of including this requirement in the DCO is to try to avoid duplication of work by the Applicant and the relevant planning authority, where a relevant requirement has been discharged for NZT and has also effectively been discharged for H2T as well. For example, if NZT has discharged requirement 11 and obtained approval for details of one of its permanent surface and foul water drainage systems and, given the location of the projects, H2T would share that same permanent surface and foul water drainage system – it would be in this scenario that Requirement 33 could be used and H2T would approach the relevant planning authority (who would need to consult the EA, lead local flood authority STDC) for its approval that its requirement 10 in relation to that system is deemed to have been discharged because it was discharged under NZT, it satisfies the relevant obligations that need to be met for discharge under H2T's requirement and the system is to be used in the form as discharged under the NZT Order and used for H2T.</p> <p>If the relevant planning authority did not give its approval under Requirement 33(2) then the decision could be appealed under the process set out in paragraph 5 of Schedule 13 (Procedure for Discharge of Requirements), which is the same position as for any other requirement. The Applicant notes that the re-drafting of Requirement 33 submitted at Deadline 4 [REP4-004] has focused the scope of the Requirement so that the Secretary of State considering an appeal would need to consider if the undertaker had shown that all the points in Requirement 33(1) had been met.</p> <p>While there are no direct precedents for this drafting in other DCOs, the Applicant has considered the position set out in The South Humber Bank Energy Centre Order 2021 as made by the Secretary of State on 10 November 2021. In that case, the DCO enabled the undertaker to serve a notice under article 5 to:</p> <ul style="list-style-type: none"> • Stop further development under the South Humber Bank Energy Centre planning permission; • Effectively replace the conditions in the planning permission with requirements under the DCO; • Where an application for discharge of a condition is outstanding, it was to be treated as an application for discharge of the corresponding requirement (with a DCO Schedule mapping the relationship between the conditions in the planning permission and the requirements in the DCO); and • Where a condition had already been discharged prior to the notice being served, the condition was deemed to have been approved for the purpose of the corresponding requirement (as mapped out in the DCO Schedule). <p>As such, the Secretary of State has approved a DCO with the principle that a condition, in this case, under one planning permission can be deemed to have discharged under a</p>

EXQ2	QUESTION TO:	QUESTION:	RESPONSE
			<p>requirement of a DCO. The scope of Requirement 33 is much narrower and smaller-scale in comparison to this.</p> <p>The ExA's final point queries how the requirement complies with section 120(1) of the Planning Act 2008. For ease of reference, section 120 states: "An order granting development consent may impose requirements in connection with the development for which consent is granted". The Applicant notes that Requirement 33 complies with section 120 because it could only be used where those parts of the Net Zero Teesside Project were to be used for H2Teesside Project and is not imposing a requirement on anything other than "development for which consent is granted".</p>
Q2.9.9	Applicant	<p>Schedule 2, Requirements - Control of Noise - Operations</p> <p>The Applicant's responses regarding 'missing requirements' when comparing the Requirements in the NZT DCO and the Applicant's proposed draft DCO, as set out in the Applicant's 'Summary of Applicant's Oral Submissions at ISH2' [REP4-016] are noted. However, the ExA notes that Anglo American in in Annex 2 of its Oral submissions made at ISH2, also submitted at DL4 [REP4-031] maintains that an additional requirement in respect of Control of noise - operation should be contained within Schedule 2 of the dDCO.</p> <p>Anglo American considers that such a Requirement should be included to the effect that the authorised works should not be brought into use until such time as a scheme for management and mitigation of noise during operation is consistent with principles of the Environmental Statement. It argues that such a Requirement is relevant particularly in the current absence of an assessment of the cumulative environmental effects of the Proposed Scheme taking Anglo American's operations into account.</p> <p>Whilst noting the Applicant's response, as stated above, and the use of such a Requirement in the NZT DCO, the ExA would ask the Applicant to provide, on a without prejudice basis, a form of wording for inclusion within the draft DCO for a Requirement that relates to the Control of Noise - Operations, should the ExA consider such a Requirement to be necessary.</p>	<p>The Applicant maintains that it is not necessary to include an operational noise requirement in the draft DCO (Document Ref: 4.1) as it has previously set out in the Applicant's Summary of Applicant's Oral Submissions at Issue Specific Hearing 2 [REP4-016]. This is because Chapter 11: Noise and Vibration of the Environmental Statement [PDA-007] concluded that there are no likely significant effects expected to arise during the operational phase.</p> <p>The Applicant has submitted an updated Report to inform Habitats Regulations Assessment (HRA) (Document Ref 5.10; and Document Ref 5.10A) at Deadline 5 which includes an updated cumulative and in-combination assessment. This assessment has also found that there are negligible (not significant) effects due to noise and vibration during operation.</p> <p>Finally, operational noise will be regulated by the Environment Agency through the environmental permit, so duplicate operational controls set by a requirement in the draft DCO are not required.</p> <p>However, further to the ExA's request, the Applicant has prepared the following drafting on a without prejudice basis for an operational noise requirement should the ExA consider that, notwithstanding the Applicant's position set out above, one is necessary:</p> <p><i>Control of noise - operation</i></p> <p><i>(1) No part of Work No. 1 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 has been submitted to and approved by the relevant planning authority.</i></p> <p><i>(2) The scheme submitted by the undertaker under sub-paragraph (1) may be the same scheme for the management and monitoring of noise during operation submitted to the Environment Agency by the undertaker in its application for an environmental permit.</i></p> <p><i>(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.</i></p>

EXQ2	QUESTION TO:	QUESTION:	RESPONSE
Q2.9.10	Applicant	<p>Schedule 14 - Documents and Plans to be Certified.</p> <p>The draft DCO [CR1-015]* submitted with the change application does not include eg the Change Application Report [CR1-044] or Appendices [CR1-045] in the list of Documents to be Certified in Schedule 14. As these documents have information of relevance to the Environmental Impact Assessment, can the Applicant confirm that they will be added to the list of documents forming the ES in Table 10 of Schedule 14.</p> <p>* Note: The most recent version of the draft DCO [REP4-004] was submitted at DL4.</p>	<p>The Applicant can confirm that the Change Application Report and the Change Application Report Appendices have been included in the list of Documents to be Certified in Schedule 14 of the draft Development Consent Order (Document Ref: 4.1) submitted at Deadline 5.</p>
Q2.9.11	IPs/ APs	<p>PPs/ Side, or other, Agreements</p> <p>The ExA would ask any IPs/ APs with whom PPs are being sought whether they are satisfied with the PPs included within the draft DCO [REP4-004] to date and whether any side, or other form of legal agreement is required by the IP/ AP? In the event an IP/ AP is not satisfied, please explain why you are not satisfied and what is required to be undertaken to make the PPs and any side/ other agreement acceptable.</p>	N/A
Q2.9.12	IPs/ APs	<p>PPs/ Side, or other, Agreements</p> <p>The ExA would ask any IP/ AP who wish to have PPs, who haven't already submitted their preferred PPs, to submit a copy of their preferred PPs into the ExA for its consideration.</p>	N/A