

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: 9.5: Statement of Common Ground between H2 Teesside Limited and the Marine Management Organisation

The Planning Act 2008



Applicant: H2 Teesside Ltd

Date: December 2024

The Planning Act 2008
**The Infrastructure Planning (Applications:
Prescribed Forms and Procedure)
Regulations 2009**
The H2Teesside Order 202[]

**Statement of Common Ground between H2 Teesside Limited and the
Marine Management Organisation**

Planning Inspectorate Reference	EN070009
Application Document Reference	9.5
Author	AECOM
Approved By	

Revision	Date	Status
0	17.09.24	Draft
1	20.11.24	Deadline 4
2	18.12.24	Deadline 5

STATEMENT OF COMMON GROUND

This Statement of Common Ground has been prepared and agreed by (1) H2 Teesside Ltd. and (2) the Marine Management Organisation

Signed.....
[Name]
[Position]
on behalf of H2 Teesside Ltd.
Date:

Signed.....
[Name]
[Position]
on behalf of the Marine Management Organisation
Date:

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1.0 INTRODUCTION AND PURPOSE

1.1 Introduction

1.1.1 This Statement of Common Ground ('SoCG') relates to an application (the 'Application') made by H2 Teesside Limited (the 'Applicant'), to the Secretary of State for Energy Security and Net Zero for a Development Consent Order ('DCO') under Section 37 of the Planning Act 2008 (the 'PA 2008') for the H2Teesside Project.

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

1.1.3 The Examining Authority's ('ExA') Rule 8 letter (Annex B) dated 30 August 2024 confirms that the Applicant should prepare a SoCG with the Marine Management Organisation ('MMO') in respect of the Proposed Development.

1.2 Parties to the SoCG

The Applicant and the Proposed Development

1.2.1 The Applicant is a private limited company aiming to develop and operate the H2Teesside project, which is an approximately 1.2-Gigawatt Thermal ('GWth') Carbon Capture & Storage ('CCS') enabled Hydrogen Production Facility (the 'Production Facility') and associated connections ('the Proposed Development') on land in Redcar and Cleveland, Stockton-on-Tees, and Hartlepool (hereafter referred to as the 'Proposed Development Site'). The Proposed Development will support the decarbonisation of UK-produced natural gas in Teesside for use in industrial applications, thus helping to achieve national targets in relation to net zero. It will also be a key contributor to restoring manufacturing jobs in the Tees Valley.

1.2.2 The Proposed Development Site covers an area of approximately 508 hectares ('ha') and is located primarily within the administrative boundaries of Redcar and Cleveland Borough Council (RCBC) and Stockton-on-Tees Borough Council ('STBC'). The Hydrogen Pipeline Corridor (refer to Figure 4-4 of the ES [APP-087]) extends further north-west to also include land within the administrative boundary of Hartlepool Borough Council ('HBC').

1.2.3 The Hydrogen Production Facility will be located at the Main Site within the Teesworks development site, as shown in Figure 4-1 of the ES [APP-084].

The Role of the MMO

1.2.4 The Marine Management Organisation (MMO) was established by the Marine and Coastal Access Act 2009 (MCAA 2009) to contribute to sustainable development in the marine area and promote clean, healthy, safe, productive and biologically diverse oceans and seas. The MMO are responsible for licencing construction works, deposits and removals in English inshore and offshore waters. In the case of

NSIPs, the Planning Act 2008 (the 2008 Act) enables DCOs for projects which affect the marine environment to include provisions which deem marine licences. As a prescribed consultee under the 2008 Act, the MMO advises developers during pre-application on those aspects of a project that may have an impact on the marine area or those who use it. In addition to considering the impacts of any construction, deposit or removal within the marine area, this also includes assessing any risks to human health, other legitimate uses of the sea and any potential impacts on the marine environment from terrestrial works.

1.2.5 The MMO is an executive non-departmental public body sponsored by the Department for Environment, Food and Rural Affairs (DEFRA) whose purpose is to protect and enhance the UK marine environment and support economic growth by enabling sustainable marine development. The MMO is an interested party for the examination of DCO applications for Nationally Significant Infrastructure Projects in the marine area.

1.2.6 In more general terms the MMO is responsible for;

- managing and monitoring fishing fleet sizes and quotas for catches;
- ensuring compliance with fisheries regulations, such as fishing vessel licences, time at sea and quotas for fish and seafood;
- managing funding programmes for fisheries activities;
- planning and licensing for marine construction, deposits and dredging that may have an environmental, economic or social impact;
- making marine nature conservation byelaws;
- dealing with marine pollution emergencies, including oil spills;
- helping to prevent illegal, unregulated and unreported fishing worldwide; and
- producing marine plans to include all marine activities, including those we don't directly regulate.

1.3 The Purpose and Structure of this Document

1.3.1 The purpose and possible content of SoCGs is set out in paragraphs 58 to 65 of the Ministry of Housing, Communities and Local Government guidance entitled 'Planning Act 2008: examination of applications for development consent' (April 2024). Paragraph 58 of that guidance explains the basic function of SoCGs as follows:

"A statement of common ground is a written statement prepared jointly by the applicant and another party or parties, setting out any matters on which they agree. As well as identifying matters which are not in real dispute, it is also useful if a statement identifies those areas where agreement has not been reached. The

statement should include references to show where those matters are dealt with in the written representations or other documentary evidence.”

- 1.3.2 SoCGs are therefore a useful and established means of ensuring that the evidence at the DCO examination phase focuses on the material differences between the main parties, and so aim to help facilitate a more efficient examination process.
- 1.3.3 The purpose of this SoCG is therefore to summarise the agreements reached between the parties on matters relevant to the Examination of the Application and to assist the ExA. It also explains the matters which remain unresolved at the time of writing, but which both parties are working positively toward resolving. As such, it is expected that further iterations of the SoCG will be submitted to the ExA throughout the Examination and prior to the making of any DCO for the Proposed Development.
- 1.3.4 The SoCG has been prepared with regard to the above guidance and is structured as follows:
- Section 2 – sets out the engagement and related discussions held between the parties.
 - Section 3 – sets out the matters discussed and agreed to date.
 - Section 4 – sets out the matters that are under discussion and to be agreed and the proposed way forward, where relevant.
 - Section 5 – sets out the matters, if any, where there is disagreement.

2.0 ENGAGEMENT WITH THE MARINE MANAGEMENT ORGANISATION

2.1 Summary of Engagement

2.1.1 A summary of the key engagement that has taken place between the Applicant and the MMO is detailed in **Table 2.1** below.

Table 2.1: Engagement between the Applicant and the MMO

DATE	FORM OF ENGAGEMENT	DOCUMENT REF. (IF ANY)	DETAILS
14 September 2023	First Consultation (statutory consultation) in accordance with Section 42 of the PA 2008.	See Consultation Report [APP-030]	<p>The Applicant issued a Section 42 letter to the MMO on 14 September 2023 consulting it on the Proposed Development.</p> <p>The MMO provided a range of technical feedback to help inform the DCO Application. Key topics raised in the Statutory Consultation response included:</p> <ul style="list-style-type: none"> • Discussion on potential licensing requirements. • Notification of the requirement of a Marine Policy Assessment.
13 December 2023	Second Consultation (statutory and non-statutory) in accordance with Section 42 of the PA 2008.	See Consultation Report [APP-030]	<p>The Applicant issued a Section 42 letter to the MMO on 13 December 2023 consulting it on a number of changes to the Proposed Development as a result of further design development and technical work undertaken and also responses received to the First Consultation.</p>

DATE	FORM OF ENGAGEMENT	DOCUMENT REF. (IF ANY)	DETAILS
			<p>The MMO provided a range of technical feedback to help inform the DCO Application. Key topics raised in the Statutory Consultation response included:</p> <ul style="list-style-type: none"> • Discussion on potential licensing requirements. • Highlighting relevant legislation. • Notification of the requirement of a Marine Policy Assessment.
21 August 2024	Virtual Technical Meeting	n/a	This meeting was arranged to discuss Examination programme and actions, collaboration going forward and specific detail on MMO Relevant Representations regarding the water and marine environments.
4 September 2024	Consultation on proposed changes to the DCO Application.	n/a	A letter was issued to the MMO on 4 September 2024 consulting them on a number of proposed changes to the DCO Application.
Deadline 1 – 17 September 2024	Statement of Common Ground	n/a	The Marine Management Organisation and the Applicant engaged in discussions to agree the contents of this document, submitted into Examination at Deadline 1 [REP1-016].
Deadline 4 – 20 November 2024	Statement of Common Ground	n/a	The Marine Management Organisation and the Applicant engaged in discussions to agree the contents of this document, updated and submitted into Examination at Deadline 4.

DATE	FORM OF ENGAGEMENT	DOCUMENT REF. (IF ANY)	DETAILS
Deadline 5 – 18 December 2024	Statement of Common Ground	n/a	The Marine Management Organisation and the Applicant engaged in discussions to agree the contents of this document, updated and submitted into Examination at Deadline 5.

3.0 MATTERS AGREED

3.1.1 Table 3.1 below sets out the matters agreed between the parties.

Table 3.1: Matters Agreed between the Applicant and the MMO

MATTER AGREED	AGREED POSITION
Details of trenchless crossing trial pits	It is agreed that the proposed locations of entry and exit pits for the two trenchless crossings are above MHWS.
MMO queries whether the risk of Bentonite Breakout is assessed within the ES.	It is agreed between the two parties that the risk of Bentonite Breakout has been adequately considered within the ES. The MMO welcomes the commitments on this matter to be included within the Final CEMP.

4.0 MATTERS UNDER DISCUSSION

4.1.1 This section sets out the matters under discussion between the parties and the proposed way forward. **Table 4.1** provides a summary of the issues raised between the parties.

Table 4.1: Summary of Matters under Discussion between the Applicant and the MMO

SOCG ID	MATTER	APPLICANT POSITION	MMO POSITION
1.	MMO discussing the use of Article 35 ‘Bored Tunnels’ exemption within The Marine Licensing (Exempted Activities) Order 2011.	<p>The Applicant will be engaging with the MMO to seek to reach an agreed position on this.</p> <p>For clarity, as outlined in Section 5.3 of Chapter 5: Construction Programme and Management of the ES [APP-057] the proposed trenchless crossings will be installed at a minimum depth of 25m below the beds of the River Tees and Greatham Creek at the deepest point of the crossings and a maximum depth of 60m. The launch and reception pits for the proposed trenchless crossings are inland of Mean High Water Springs (MHWS) and hence outside the jurisdiction of the Marine Licencing process. That said works at these locations will be controlled through the Construction Environmental Management Plan (CEMP) to be prepared by the contractor in accordance with the Framework CEMP [APP-043].</p>	<p>MMO notes 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.</p> <p>MMO notes that the Applicant aspires to use Article 35 ‘Bored Tunnels’ exemption within The Marine Licensing (Exempted Activities) Order 2011. The MMO stresses that this exemption is subject to conditions, most importantly Condition 2. The conclusion of which can only be drawn during the Examination process.</p> <p>MMO states that 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.</p>

SOCG ID	MATTER	APPLICANT POSITION	MMO POSITION
		<p>The Applicant is content to fulfil Condition 1 of the exemption and commits to notifying the licensing authority in advance of the works being undertaken in each case.</p> <p>D4 update: The Applicant is awaiting feedback from the MMO on this matter.</p> <p>D5 update: The Applicant is confident the outstanding issues with Natural England regarding the methodology and content of the Report to Inform HRA will be resolved through continued discussions with Natural England and further updates to the Report to Inform HRA. The Applicant has submitted an updated Report to Inform HRA at Deadline 5.</p> <p>The Applicant is confident the Proposed Development will be able to rely on an exemption in place of a Deemed Marine Licence and will be able to fulfil the conditions of this exemption, particularly Condition 2 and is in discussions with</p>	<p>D4 update: The MMO are awaiting Deadline 4 submissions before reporting an updated position with regards to impacts to habitats and species.</p> <p>D5 update:</p> <p>The Applicant has been copied in by the MMO on its Deadline 5 submission into Examination. In relation to the use of an Exemption from Marine Licensing for trenchless crossings, the MMO states the following:</p> <p>“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.</p> <p>Article 35 ‘Bored Tunnels’ exemption within The Marine Licensing (Exempted Activities) Order 2011 is as follows: <i>‘Bored tunnels</i></p>

SOCG ID	MATTER	APPLICANT POSITION	MMO POSITION
		<p>NE on this point – noting that the Condition relates to the activities to which the Exemption applies, namely only the drilling activity directly below the river bed (MHWS), not any other aspect of the Proposed Development.</p>	<p><i>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.</i></p> <p><i>(2) Paragraph (1) is subject to conditions 1 and 2.</i></p> <p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(5) But article 4 does not apply to any such deposit carried on for the purpose of disposal.'</i></p> <p>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.</p>

SOCG ID	MATTER	APPLICANT POSITION	MMO POSITION
			<p>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:</p> <ul style="list-style-type: none"> • 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. <p>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,</p>

SOCG ID	MATTER	APPLICANT POSITION	MMO POSITION
			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.”

5.0 MATTERS NOT AGREED

5.1.1 Table 5.1 provides a summary of the matters not agreed between the parties.

Table 5.1: Summary of Matters Not Agreed

SOCG ID	MATTER	THE APPLICANT POSITION	MMO POSITION