

National Infrastructure Planning
Temple Quay House
2 The Square
Bristol
BS1 6PN

Date: 06 February 2025
Our Ref: ██████████\INDIVIDUAL-76081
Direct: ██████████
Email: ██████████@eversheds-sutherland.com

To Whom It May Concern

Planning Act 2008 – Section 89 and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rules 8 and 9

Application by H2Teesside Limited for an Order Granting Development Consent for the H2Teesside Project

Unique Reference: 20049374

Response to Deadline 7

This letter is sent on behalf of PD Teesport Limited ("PDT"), registered as an Interested Party for the above application, in accordance with Deadline 7.

PDT originally submitted its preferred protective provisions at Deadline 5 in its "Responses to ExA's ExQ2" [REP5-076].

Annexed to this letter are PDT latest proposed Protective Provisions ("Deadline 7 Protective Provisions"). These have been updated from its Deadline 5 Submission. The principal changes are:

- The inclusion of provisions restricting the proposed Tees Crossing works so as to provide a minimum depth for this tunnel infrastructure. This is to ensure that such works do not prevent the development of PDT's proposed container port development, in particular, proposed piling operations which would be within the Order Limits and parameters for the crossing works.

Article 9 - Disapplication of the 1966 Act

- At ExQ2, the ExA directed the Applicant to engage with PDT with a view to reaching a satisfactory resolution in regard to Article 9. The Applicant is yet to reach agreement with PDT as to an appropriate resolution to appropriately manage PDT's concerns. On this basis, PDT continues to object for the reasons previously stated as set out during Oral Submissions made at ISH2.

I trust that the above is clear however please do not hesitate to contact me should you have any queries.

Yours sincerely

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[REDACTED]

Associate
Eversheds Sutherland (International) LLP

ANNEX 1

PD TEESPORT LIMITED PROTECTIVE PROVISIONS

PROTECTIVE PROVISIONS
FOR THE PROTECTION OF PD TEESPORT LIMITED

1. For the protection of PD Teesport, the following provisions have effect, unless otherwise agreed in writing between the undertaker and PD Teesport.

2. In this Schedule:-

"Emergency Access Road"

means any part of the emergency access road at Seal Sands located off the A178 Tees Road to the north of Greatham Creek affected by this Order including land comprising land plots 9/1, 10/17 and 10/29-33.

"PD Teesport"

means PD Teesport Limited (company number 02636007) and any successor in title or function to the PD Teesport operations

the "PD Teesport operations"

means the port operations or property (including all freehold, leasehold, easements, wayleaves, licences and other rights) vested in PD Teesport Limited (or any related company whose assets or operations are impacted by the construction, maintenance and operation of the authorised development), including access to and from those operations or activities via Tees Dock Road and access, use and occupation of the Redcar Bulk Terminal as well as access over Seal Sands Road

"Redcar Bulk Terminal Access"

means any part of the access to Recar Bulk Terminal affected by this Order including land comprising land plots 13/1, 13/4, 13/5, 13/6, 13/7, 13/10 and 13/17.

"Seal Sands Road"

means any part of Seal Sands Road within the Order limits;

"Tees Dock Roundabout Roads"

means any part of both public and private parts of Tees Dock road, Tees Dock Roundabout and a private road running from the Tees Dock roundabout between the BOC Middlesborough site and the railway line affected by this Order including land comprising land plots 16/1, 16/2, 16/3, 16/5.

"works details"

means:-

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 7.

Regulation of powers

3. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the operation or maintenance of the PD Teesport operations or access to them without the prior written consent of PD Teesport.
4. Any approval of PD Teesport required under paragraph 3 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as PD Teesport may require to be made in relation to:-
 - (a) the continuing safety, or operational activity of the PD Teesport operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements);
 - (b) ensuring that there is no commercial loss to PD Teesport (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements); or
 - (c) the requirement for PD Teesport (including its employees, agents, servants and contractors), any, tenants, licencees and occupiers on its land to have reasonable access to, occupation and use of the PD Teesport operations at all times.
5. The undertaker must not construct any tunnel, underground pipeline or similar structure within or below the PD Teesport operations unless its axis is at an elevation no higher than minus sixty metres relative to Ordnance Datum Newlyn (-60m ODN) without the prior written consent of PD Teesport.

Consent under this Schedule

6. Before commencing any part of the authorised development which may have an effect on the operation or maintenance or be located in proximity to the PD Teesport operations or access to them, the undertaker must submit to PD Teesport the works details for the proposed works and such further particulars as PD Teesport may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.
7. No works comprising any part of the authorised development which may have an effect on the operation or maintenance or be located in proximity to the PD Teesport operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 6 have been approved by PD Teesport, such approval to be provided no later than 21 days from the later of the details of the proposed works being provided or the provision of the last such further particulars as may have been requested by PD Teesport in respect of the works.
8. Any approval of PD Teesport required under paragraph 6 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as PD Teesport may require to be made for:-
 - (a) the continuing safety, operational activity or business interests of the PD Teesport operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements); and

- (b) the requirement for PD Teesport to have uninterrupted and unimpeded access (including river access) to PD Teesport operations at all times.
9. The authorised development must be carried out in accordance with the works details approved under paragraph 7 and any requirements imposed on the approval under paragraph 7.
10. Where there has been a reference to an expert in accordance with paragraph 14 and the expert gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the expert under paragraph 14.
11. The undertaker will pay the reasonable costs of PD Teesport incurred in dealing with any approvals, review of documentation, supervision, auditing, safety assessments, engineering advice, lawyers' and other professional fees associated with compliance with any matters set out in these protective provisions within 14 days of a statement of such costs being provided in writing to the undertaker.

Regulation of powers in relation to accesses

12. The undertaker must not exercise the powers granted under this Order so as to obstruct or hinder access or egress for any person across the following areas:

- 12.1 Seal Sands Road;
- 12.2 Tees Dock Roundabout Roads;
- 12.3 The Emergency Access Road; and
- 12.4 Redcar Bulk Terminal Access.

13. Indemnity

- 13.1 Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6, any damage is caused to the PD Teesport operations, or there is any interruption in any service provided, or in the supply of any goods, by PD Teesport, the undertaker must:-

- (a) bear and pay the cost reasonably incurred by PD Teesport in making good such damage or restoring the supply; and
- (b) indemnify PD Teesport for any other expenses, loss (including loss of profits), damages, penalty, claims, investigations, demands, charges, actions, notices, proceedings, orders, awards, judgments, damages, other liabilities and expenses (including legal fees, expenses and fines) or costs incurred of any kind or nature whatsoever by them, by reason or in consequence of any such damage or interruption.
- 13.2 Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of PD Teesport, its officers, employees, servants, contractors or agents.
- 13.3 PD Teesport must give the undertaker reasonable notice of any such claim or demand.
- 13.4 PD Teesport must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 13 applies. If requested to do so by the undertaker, PD Teesport

must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by PD Teesport.

Dispute Resolution

- 13.1 Any difference in relation to the provisions in this part of this schedule must be referred to:-
- (a) A meeting between a senior representative of PD Teesport and a senior representative of the undertaker to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one party to the other; and
 - (b) in the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the undertaker and PD Teesport or, in the absence of agreement identified by the President of the Institute of Civil Engineers, who must be sought to be appointed within 28 days of the notification of the dispute.
- 13.2 The fees of the expert are payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.
- 13.3 The expert must -
- (a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
 - (b) allow each Party an opportunity to comment on the submissions made by the other provided they are received within 21 days of the receipt of the submissions referred to in paragraph (a) above;
 - (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to paragraph (a) above; and
 - (d) give reasons for the decision.
- 13.4 The expert must consider:-
- (a) whether under the Order, the Undertaker's outcomes could be achieved in any alternative manner without PD Teesport's operations or own works being materially compromised; and
 - (b) any other important and relevant considerations.
- 13.5 Any determination by the expert is final and binding except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to the courts of England and Wales.