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: 8.59 Response to Questions raised under Rule 17 letter dated 25 February 2025

The Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended)

Applicant: H2 Teesside Ltd

Date: February 2025

Rev: 0

DOCUMENT HISTORY

DOCUMENT REF	8.59		
REVISION	0		
AUTHOR	BP		
SIGNED	BP	**DATE**	26.02.25
APPROVED BY	BP		
SIGNED	BP	**DATE**	26.02.25
DOCUMENT OWNER	BP		

TABLE OF CONTENTS

1.0 RESPONSE TO QUESTIONS RAISED UNDER RULE 17 LETTER DATED 25 FEBRUARY 2025 4

TABLES

Table 2-1: Applicant’s responses 4

1.0 RESPONSE TO QUESTIONS RAISED UNDER RULE 17 LETTER DATED 25 FEBRUARY 2025

Table 2-1: Applicant's responses

QUESTION	QUESTION TO	QUESTION / MATTER	APPLICANT RESPONSE
1	Applicant	With less than a week remaining in the Examination, the Examining Authority (ExA) would express its disappointment to the Applicant in regard to the apparent lack of progress on a significant number of matters ranging from Protective Provisions (PP) and side/ other agreements to Statements of Common Ground (SoCG). Many Interested Parties (IP), throughout their written submissions have expressed dissatisfaction in regard to many of these matters. In summary allegations include: Annex A negligible progress over a protected period, as well as no substantive changes being made to documents being discussed; Annex B the Applicant's failure to engage on substantive issues with IPs; Annex C the Applicant being inflexible regarding drafting, resulting in IP's having to submit their own draft versions of PPs for consideration and leaving IP's with no opportunity to comment on the Applicant's final draft PPs, should they remain unagreed; Annex D not expecting to conclude negotiations/ no hope of completing side/ other agreements prior to the close of the Examination. Indeed one IP advising "Negotiations were stopped at that time (27 January 2025) because of seemingly irreconcilable differences…" and ceasing progress on any Side Agreements due to "…seemingly irreconcilable points of disagreement."; Annex E Applicant failing to provide the PPs in a form for execution, or a timetable for execution; Annex F Limited progress on SoCG with such progress and further work being undertaken being described as 'redundant'. (This list is not intended to be exhaustive). The ExA would like to express its dissatisfaction and disappointment in regard to being put in this position, despite highlighting the importance of reaching early agreement on all of these matters, including PPs and side/	The Applicant notes that item 1 of the Rule 17 request is directed solely to the Applicant and expresses disappointment with the Applicant alone that Protective Provisions ('PPs') and Side Agreements ('SAs') have not been concluded at this stage of the Examination. Whilst the Applicant appreciates that it is regrettable that a settled position could not be reached with more Interested Parties prior to the end of the Examination and wishes the situation could have been different to assist the Examining Authority, it would strongly disagree with any suggestion that it has not made reasonable and proportionate endeavours to proactively progress negotiations on PPs and SAs. In order for agreement to be reached on PPs and SAs, it is incumbent on <u>all</u> parties to those negotiations to behave reasonably. An approach which suggests or implies that the Applicant alone bears responsibility for ensuring that agreement is reached by the end of the Examination would fail to reflect that essential point, and would be directly at odds with the clear public interest objective of ensuring that Nationally Significant Infrastructure Projects, including Critical National Priority Infrastructure such as that proposed here can be delivered in a timely and cost-efficient manner in accordance with the Government's national policy. An approach which seeks to place the responsibility for a lack of agreement solely on the Applicant, without examining the reasonableness or otherwise of its efforts to reach agreement and of the negotiating positions of the other parties involved, would have the undesirable effect of incentivising Interested Parties in this and other DCO examinations, to maintain unreasonable positions and/or to refuse to engage or compromise, safe in the knowledge that all pressure to reach agreement and risk of failing to do so, will fall solely on the applicant for development consent. This would set a dangerous and unwelcome precedent for the examination of future projects. The Applicant maintains that in every instance where agreement has not been reached, this is because Interested Parties have promoted PPs/SAs to which it could not reasonably agree and which would be likely to give rise to unnecessary and unreasonable delay to the delivery of the Proposed Development and add unnecessarily to its cost. This would be contrary to the Government's expressed intention to facilitate the expeditious delivery of Nationally Significant Infrastructure Projects, and to avoid adding unnecessarily to the cost of energy in the public interest. Given the need for and urgency of the Development, it would be wholly inappropriate for the Applicant to accede to the imposition of controls that would add unnecessary complexity, delay and cost to the delivery of the Development. As explained more fully below, the Applicant has exerted every effort in reaching agreement with Interested Parties on PPs and SAs. All reasonable requests have been responded to and incorporated into the drafting proposed by the Applicant. The Applicant's proposed PPs are largely based on precedents which have been agreed with Interested Parties and/or approved by the Secretary of State in the context of the Net Zero Teesside ('NZT') DCO. They strike an appropriate balance of ensuring adequate protection to Interested Parties while maintaining the Applicant's ability to deliver the Development in a timely and cost-effective manner. The Applicant has deployed all available resources to seek to reach agreement with Interested Parties during the Examination including: • assigning twelve commercial relationship leads within bp to ensure that the negotiations are client-led, and to enable expeditious commercial decisions to be made;

QUESTION	QUESTION TO	QUESTION / MATTER	APPLICANT RESPONSE
		other agreements, at the first Issue Specific Hearing 1 on the 28 August 2024, repeated again at subsequent hearings held in November 2024 and January 2025 and in written questions throughout the examination. Please explain in detail why: i) you have failed to reach agreement with a number of IPs regarding the matters referred to above, with so many IPs appearing to be dissatisfied about engagement with you; and ii) you have placed the ExA in such an unsatisfactory position.	• instructing ten different lawyers from within its legal advisors, Pinsent Masons LLP, to take forward the negotiations specifically on PPs/SAs (this does not include the additional resource deployed for land documentation); • instructing ten different land agents within Dalcour MacLaren to assist in interfaces with landowners and provide necessary support around land agreements and access; • holding daily internal meetings to ensure that instructions are given to the lawyers and commercial decisions made as soon as possible; and • with a number of Interested Parties holding at least weekly meetings, and for many parties more than this, to try and find a way through to a resolution. These negotiations need to be seen in their full context. Firstly, the vast majority of the parties with whom PPs and SAs are being negotiated were also affected NZT. Whilst it is accepted that these projects are different and in some cases the <u>extent</u> of interaction is greater, the <u>nature</u> of the physical interactions between the projects is very similar and in the same location. On that basis, the Applicant made the reasonable assumption (and explained during the Hearings) that negotiations would be able to be move at pace, using the approved position on NZT as a baseline framework. Unfortunately, rather than accepting the position which was agreed between the parties and/or endorsed by the Secretary of State on NZT, many Interested Parties have instead sought to re-open fundamental issues and drafting points to promote alternative principles and drafting which diverge from the position adopted on NZT. This can clearly be seen in the various Protective Provisions Position Statements submitted at Deadline 7A. As is apparent from those Position Statements, the Applicant's position on the PPs is supported by precedent in the NZT DCO. The approach adopted by Interested Parties has led to substantive points of dispute being re-litigated in circumstances where the Applicant had anticipated that those issues had been satisfactorily resolved through the NZT precedents. This includes matters where Interested Parties' substantially identical arguments during the NZT process were considered and ultimately rejected by the Secretary of State. Whilst the Applicant is seeking to reach a settled position with the parties, the ExA will need to take a view on the reasonableness of Interested Parties seeking a different approach to that adopted on NZT, in circumstances where they have provided no technical justification to justify the alternative approaches. Secondly, in that context, the Applicant highlights the sheer number of parties with whom Protective Provisions are sought. The H2Teesside Order, if made, will have more Protective Provisions/Side Agreements than any other DCO, with only NZT coming close. Clearly, if all of those parties are intent on 're-litigating' points that the Applicant had understood to be agreed and resolved through the NZT precedent provisions, the effect is to place considerable demands on the Applicant's resources to ensure that the particular provisions sought by each Interested Party are properly justified and do not impose unreasonable risks and impediments to the timely and cost-effective delivery of the Proposed Development. As discussed above, the Applicant has dedicated considerable resources to engaging with Interested Parties on PPs/SAs, however, the scale of the documentation to be agreed has meant that, particularly in the latter part of Examination, the Applicant has sought to focus its efforts on seeking to resolve matters with parties with whom agreement is realistically achievable during the Examination given that in some instances, there are irreconcilable differences between the Applicant

QUESTION	QUESTION TO	QUESTION / MATTER	APPLICANT RESPONSE
			and Interested Parties as a result of demands which the Applicant considers to be unreasonable, which mean that agreement is unlikely. Thirdly, the Applicant's position in negotiating the PPs/SAs is to support the delivery of critical national priority infrastructure. As such, and as stated at ISH4, the Applicant does not consider that it would be appropriate to acquiesce to demands which it considers to be unreasonable, and which would add unnecessary cost and delay to the delivery of the Development, simply to ensure agreement is reached by a certain point in time. Ultimately, where the Applicant does not accept that the provisions proposed by Interested Parties are reasonable or appropriate, it must maintain and explain its position in respect of those provisions and allow the Secretary of State to determine and resolve any areas of dispute. As explained above, any approach which starts from an assumption that the absence of agreement is the fault of the Applicant would have the harmful effect of placing undue pressure on those promoting new infrastructure to simply acquiesce to unreasonable demands in order to meet a deadline or to avoid criticism from the ExA or Secretary of State about the absence of agreement. This would set a very unwelcome precedent for subsequent DCOs and would have consequences that run directly contrary to established important national policy objectives. Objectors would be incentivised to retain unreasonable and entrenched positions on the assumption that applicants will ultimately be pressured into accepting them in order to secure a positive recommendation from the ExA. Not only would this place the promoters of NSIPs at a commercial disadvantage in their negotiations with Interested Parties, but it would also be contrary to the public interest in securing the rapid delivery of nationally significant and critical national priority infrastructure in a cost-efficient manner. If every Interested Party in this Examination was to secure their preferred PPs, the effect would to be require the Applicant to secure their prior consent for utilising virtually all of the powers authorised in the DCO. That would inevitably result in delay to the delivery of critical national priority infrastructure, and thus the Government's policy priorities, and ultimately an increase to project cost, which affects the taxpayer, given the funding mechanisms for the Proposed Development (and, indeed, most energy projects). In this context, the Applicant notes that: • the matters under discussion with many Interested Parties are complex (including those which have led to the two Change Applications that have been submitted during the course of Examination) and deal with the interplay with not only existing assets, but also future, sometimes overlapping plans of relevant Interested Parties (for example STG with the Main Site; Anglo American, Semborp, PDT and Navigator Terminals for the Tees crossing; and Air Products/Lighthouse Green Fuels). This has meant that in many cases, the Applicant is not able to reach a concluded position on proposals put forward by one party, until it has sought the views of other parties on those proposals. As such, many substantive positions have had to go through an extended communications process for the Applicant to be to take forward a mutually acceptable position for all parties; • the Protective Provisions Position Statements submitted at Deadline 7A and Deadline 8 clearly set out the Applicant's position on the points in dispute. It will ultimately be for the Secretary of State to determine the reasonableness of the Applicant's position, but the Applicant considers that all of its positions are fully justified and that it has appropriately balanced the need to deliver the Proposed Development in a timely and cost-effective manner while ensuring appropriate protections to Interested Parties. Where it has not been possible to reach agreement with Interested Parties, this is not indicative of any unreasonable behaviour on the part of the Applicant. Nor would it be appropriate to start from a presumption to that effect. The Applicant has sought to accommodate and respond to all reasonable requests from Interested Parties. However, it would plainly not be appropriate for any responsible promoter to accept what it considers to be unreasonable requests for the reasons set out above. Where the

QUESTION	QUESTION TO	QUESTION / MATTER	APPLICANT RESPONSE
			Applicant has not been able to reach agreement, its Position Statements clearly set out and justify its proposed approach; • the Protective Provisions Position Statements also set out, where relevant, the unreasonableness of the positions taken by Interested Parties in respect of some of the matters in dispute, both in the context of what was agreed on NZT, and more generally. The ExA can therefore see and appreciate some of the difficulties which the Applicant has faced in seeking to reach agreed positions with Interested Parties. As explained above, it is incumbent on all parties, and not just the Applicant, to act reasonably in seeking to agree PPs/Sas. Where agreement is not reached, both the Applicant and the relevant Interested Party must *equally* accept the risk that their preferred provision(s) will not be regarded as appropriate by the Secretary of State. That mutual risk is essential to incentivise both parties to adopt reasonable positions and to make every effort to reach agreement.; and • the Applicant does not consider it appropriate to enter into a 'tit-for-tat' on the details of specific correspondence, but it can confirm that it does not agree with the characterisation by some parties of the process that has been undertaken to seek to execute agreements for parties where matters are agreed. The Applicant has been in contact multiple times a day with those parties to seek to agree those arrangements and continues to do so. In respect of SoCGs, the Applicant's position is that for land interest/Protective Provisions parties, such statements have limited value for either party or indeed the ExA. They would confirm only that the relevant documentation has been agreed for that party. The Applicant's focus has therefore been on seeking to agree the relevant underlying documentation and presenting its case, rather than updating the SoCGs. The exception to this has been STG, where issues have ranged beyond land effects, and Anglo American, where DCO drafting matters were being considered alongside the PPs. In the latter case, all DCO drafting requests (save for the drafting in article 48 around 'effects' as discussed in the Applicant's Deadline 8 submissions) are now agreed and discussions are continuing on PPs; and any SoCG would say little more than that. To conclude, given the steer in the NZT Decision Letter, and from the ExA both in its Procedural Decisions and at Hearings, the Applicant has been acutely aware throughout the Examination of need to seek to secure agreed sets of PPs for all relevant parties by the end of Examination. It has deployed considerable resources to facilitate agreement and progress has been made on a number of the key issues of concern to those parties (e.g. through the Change Requests, and the agreed elements of the Protective Provisions). Ultimately, however, there are reasonable and robust reasons to support the Applicant's position in relation to the matters which are not agreed, as set out in the submitted Position Statements. As such, whilst the Applicant acknowledges the ExA's disappointment that it has not been possible to agree PPs/SAs by this stage of the Examination, it does not accept that it bears full responsibility for the failure to reach final, agreed positions on PPs/SAs for the reasons summarised above. Post-Examination (and appreciating that this cannot be reported on by the ExA), the Applicant will continue to engage with Interested Parties to seek to reach a resolved position in order that an update can be provided to the Secretary of State and is aiming to do so by the time the ExA's Recommendation Report arrives with the Secretary of State on 28 May 2025.

QUESTION	QUESTION TO	QUESTION / MATTER	APPLICANT RESPONSE
2	Applicant	In response to Question 17 of our Rule 17 letter of 10 February 2025 [PD-020], concerning your 'Technical Note for the Implications of Change 3 on Cultural Heritage' [REP7-013], you provided copies of e-mail exchanges between yourselves and Tees Archaeology. The ExA notes the above mentioned Technical Note appears to suggests a suitable programme of archaeological mitigation has been agreed. However, upon reading the e-mail exchanges (see Appendix A of your response to the Rule 17 dated 10 February [REP7a-040]) it would appear Tees Archaeology advises it is satisfied with the proposed mitigation measures for the 'teacup handle', but seeks further information concerning the 'western corner' near Venator and the need to remove or minimise impacts on the anti-glider posts. Additionally, it appears to indicate that it would be looking to evaluate the mitigation planted area to the north of Cowpen Bewley before other on-site works take place to determine the most appropriate mitigation. Please clarify and advise how you are seeking to address these two matters that appear to be outstanding in terms of agreed mitigation?	The Applicant sought to clarify the mitigation requirements for the glider posts requested by Tees Archaeology in their email dated 03/02/2025 as the location of the asset was represented in the Historic Environment Record (HER) as a single point with few details. Tees Archaeology responded with a plan of the location of the glider posts in an email dated 04/03/2025 shared in confidence to assist the design but noting that the figure could not be reproduced. Through internal discussions it was ascertained that the proposed route of the hydrogen pipeline could be designed to avoid impacting any glider posts. As a result, wording was included Table 8-10: Chapter 17: Cultural Heritage of the Framework Construction Environmental Management Plan (CEMP) [REP7-009] submitted at Deadline 7 to avoid impacts to the assets. The wording states: *"Intrusive works will avoid impacts to the remains of World War II anti-landing glider posts (HER SMR9532). The Final CEMP(s) will set out how this has been achieved through micrositing proposed open-cut trench, HDD drill pits and/or any other intrusive construction activities*". The plan to mitigate the impacts through avoidance were communicated with the Tees Archaeologist on 04/02/2025 and response was received the same day acknowledging receipt of the email. The matters with Tees Archaeology have been resolved, as outlined in the *Statement of Common Ground* between H2 Teesside Limited and Stockton-on-Tees Borough Council – Rev 5, 9.10 [REP8-027]. The area of proposed mitigation planting north of Cowpen Bewley will be subject to a programme of archaeological trial trenching, pursuant to Requirement 13 of the draft DCO, which will determine the design of the mitigation planting and/or archaeological recording that may be required prior to construction.
3	Applicant	Your response to question 10 of the Rule 17 letter dated 10th February 2025 is noted. However, the ExA would be grateful if you could provide some form of timescale regarding your final paragraph which reads "The Crown has confirmed that the Section 135 consenting process will start once the matter has been passed to the Lawyers".	The Applicant is unable to make any comment on the timescales as to when the Section 135 Consent will be issued by the Crown. The Crown do not offer any commitment on timescales however the Applicant has expressed its desire to move all matters forward in a timely manner and remain hopeful that the consent letter will be available prior to the Examination Authority's report arriving with the Secretary of State.
4	Applicant	Question 1 of our Rule 17 letter dated 10 February 2025 [PD-020] is responded to by you in your document entitled 'Response to questions in the Rule 17 Letter dated 10 February 2025' ([REP7a-040]), where you state: "Please note that these documents show changes north from plot 3/6 – which is the 'mainline' pipeline corridor; as it is from that point that the spur would need to be removed, not just north of the Saltholme Substation. This is because in the scenario that the 'spur' is removed, the Applicant	The statement in REP7a-040 was referring to plots 3/18, 3/19, 3/20 and 3/21 on the Land Plans, all of which have been removed from the 'without Cowpen Bewley scenario' plans submitted at Deadline 8 and are to the west (and slightly to the south) of the existing Saltholme Substation. These form 1) the end of the 'trunk' (i.e., Teesworks and Seal Sands segment) pipeline towards a termination point immediately north of the Saltholme Substation which then connects to the pipeline route to Cowpen Bewley and 2) the start of Billingham Industrial Estate spur, heading back towards the Billingham Industrial Estate [as explained in REP7A-015].

QUESTION	QUESTION TO	QUESTION / MATTER	APPLICANT RESPONSE
		would not need to get to or past the Salthome Substation from the mainline corridor **and so plots to the west and south of the substation would also need to be removed**". (use of 'Bold' is the ExA's emphasis) Although no plan clarifying this statement was submitted at DL7a, the ExA understood this to mean that the corridor from the originally proposed Saltholme Substation Above Ground Installation, west and south through to the Billingham Industrial Estate would not be achievable in this scenario. However, your DL8 submissions include a suite of plans and documents you have included in a folder entitled 'Without prejudice without Cowpen Bewley Arm Documents', where the Land Plans and Works Plans show the spur west and south of the Saltholme substation remaining, thus maintaining the spur to Billingham and clearly showing it still to be in place. Please confirm how you have now been able to include the pipeline to west and south of Saltholme Substation when your DL7a submission suggested this would not be possible. Please also ensure, and confirm in response to this question, that all plans and documents submitted in your folder entitled 'Without prejudice without Cowpen Bewley Arm Documents', and/ or as may be submitted at DL9, reflect the answer to this question.	NGET's future expansion is not affected by plots 3/1 – 3/5 and onto Billingham offtakers and NGET has not suggested that it would be (not least as they do not own an interest in these plots), and so the Applicant had never intended, and has no need in any scenario, to remove those plots.

QUESTION	QUESTION TO	QUESTION / MATTER	APPLICANT RESPONSE
5	Applicant	In the light of Natural England (NE) maintaining its position regarding NE Key Point 31, bearing in mind it's DL8 response to the ExA's Rule 17 letter dated 19 February 2025 [PD-022], are there are any measures it could take to further restrict the location of the stacks within the areas defined for Work No. 1A that could further reduce the contribution of the proposed development to nitrogen deposition on the Teesmouth and Cleveland Coast Site of Special Scientific Interest (SSSI)? For example would it be possible to refine the design of the Proposed Development to ensure the locations of the stack(s) are at a greater distance from the SSSI/ relevant habitat? The Applicant also responds to Natural England's Deadline 8 response here.	At this stage, the Applicant cannot commit to refining or limiting the stack location, as the detailed design of the Main Site is on-going and will be primarily guided by process safety considerations—particularly given the presence of the NZT infrastructure to the east of the Proposed Development. Nevertheless, it is noted variations in the main site layout, including Phase 1 and Phase 2 building locations, were assessed through sensitivity testing, as outlined in *Appendix 8B: Air Quality – Operational Phase [APP-191].* The results indicated that stack position and the presence of buildings have a lesser impact on predicted process contributions than meteorological data. The effect of buildings on pollutant dispersal is greatest in the immediate area within the site. While the inclusion of buildings and adjustments to stack position do slightly influence the model outcomes, the sensitivity testing confirms that variations in individual parameters would not lead to material differences in effects to ecological receptors. This includes the SSSI. It is also noted that the Applicant will need to design the Proposed Development in accordance with Best Available Techniques (BAT), building on the Environment Agency's Hydrogen Production with Carbon Capture: Emerging Techniques (2023), in order to obtain an environmental permit. As part of this, the EA will expect the Applicant to include measures to minimise emissions to air, In response to Natural England's Deadline 8 submission in respect of NE31, the Applicant notes that the mitigation examples given by Natural England demonstrate how any response to the cumulative impacts to the SSSI needs to be a strategic one. It would not be appropriate for a DCO Requirement to require the Applicant to modify the design of another parties' facility. That can only be done by those parties. Whilst, as previously stated in the Environmental Position Statement (REP8-019), the Applicant is willing to support strategic approaches, this is a matter for outside of the DCO determination.