

APPLICATION BY TRANSPORT FOR LONDON (“TfL”) FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE PROPOSED SILVERTOWN TUNNEL (REF. TR010021)

DEADLINE 3 WRITTEN SUBMISSIONS ON BEHALF OF BRENNTAG UK LIMITED AND BRENNTAG INORGANIC CHEMICALS LIMITED

We write on behalf of our client, Brenntag UK Limited (also representing the interests of Brenntag Inorganic Chemicals Limited), in order to summarise the oral submissions made at the Compulsory Acquisition Hearing on 20 January 2017 and to provide an update to the Examining Authority in relation to item 2 in the list of action points issued following that hearing.

Summary of Oral Submissions: Compulsory Acquisition Hearing on 20 January 2017

Land and Works Agreement and Non-Material Change 1 (NMC1)

In its written submissions to the Examining Authority to date, our client has raised a number of very significant concerns in relation to the interface between the construction of the Silvertown Tunnel scheme (“the Scheme”) and the operation of the Brenntag chemical storage and distribution facility at 215 Tunnel Avenue, Greenwich (“the Site”).

Engagement, through a series of face to face meetings, has taken place between our client and Transport for London (“TfL”), the principal objective of which has been to agree a set of mitigation measures in order to address the permanent land take and temporary possession proposals for which consent is being sought through TfL’s application for development consent. Positive progress has been made in this regard and negotiations in relation to the detailed terms of a Land and Works Agreement are ongoing. There remain one or two points of principle which are still to be resolved, but in the main, there is broad agreement between the parties.

Furthermore, our client is supportive of TfL’s application to make non-material changes to the Scheme (Document ref. AS-046, submitted into the Examination on 12 January 2017), in particular, a change to the Order Limits in order to facilitate the execution of accommodation works at the Site (NMC1). Formal consent to this change has been given on behalf of our client, and we confirm that we concur with TfL’s conclusions in respect of the nature of the change proposed – having regard to the environmental appraisal undertaken by TfL and the Wheatcroft principles, we consider the change to be non-material.

Request for an Additional Storage Area

Notwithstanding the above-mentioned support, our client has a residual, serious concern, which will not be addressed by the accommodation works, the subject of the proposed non-material change affecting the Site. This concern relates to the ability of our client to continue to receive and dispatch vehicles from and out onto Tunnel Avenue in order to replenish stock and to meet outbound delivery commitments during the construction period for the Scheme.

The effective management of inventory and the supply chain is critical in ensuring that our client is able to meet its contractual commitments and to supply product to the Brenntag UK and Ireland customer base. This presents a particular challenge in respect of the Site and the Greenwich facility given the logistical difficulties in operating in and around the capital and the emphasis, in terms of local business, on water treatment and our client’s service level performance under a number of major contracts with several of the regulated water utility companies based in the South East, including Thames Water, Affinity Water and Anglian Water.

The products required to service the above-mentioned water utility companies are, in the main, received into the Site and then ‘drummed off’ the back of large articulated vehicles, many of which have been loaded in mainland Europe and operate on very tight timescales. The inflexibilities inherent in this ‘just in time’ delivery model, combined with short lead in times between product receipt and customer supply (usually between 24 hours and 3 days), and the products in question being less commoditised and not

readily available from other Brenntag UK sites, means that a level of comfort is required in order to insulate and protect the supply chain during the Scheme construction period.

It is imperative to our client that a 'pre-project' solution is identified which affords them some control over the concern identified. Accordingly, it is considered that the only commercially prudent option is for stockholding/inventory levels at the Site to be increased to ensure that the relevant products are available at all times in order to meet customer demand and outbound delivery commitments. In this scenario, in the event of heavy congestion, a traffic incident or the imposition of traffic management measures during the Scheme construction period, all with the potential to adversely impact upon and disrupt operations at the Site, our client would have immediate access to the necessary product and, with that, the ability to abandon the above-mentioned "just in time" delivery model and to appropriately and efficiently flex its customer delivery schedules.

In order to increase stockholding/inventory levels at the Site, an additional product storage area is required to accommodate approximately 200 intermediate bulk containers ("IBCs") - calculated with reference to existing customer product requirements. This additional stockholding/inventory would be managed in such a way as to ensure ongoing regulatory compliance from a hazardous substances planning and COMAH perspective – the Site will continue to operate as a 'Lower Tier' COMAH facility. In reality this will necessitate a balancing exercise which our client, as a major chemicals distribution business, is very familiar with and accustomed to managing successfully on a daily basis.

Potentially suitable areas for additional storage within the Site have been considered. Whilst the accommodation works proposed to be undertaken by TfL will result in an increased car parking area, no part of that area could be used for the storage of product; the drainage arrangements in this part of the Site are simply unsuitable (it should be noted that whilst part of the existing car park is used for the storage of IBCs, the containers (and any associated packaging) are redundant (having been emptied and washed) and awaiting disposal). Therefore, an operational area within the Site, suitable for the storage of product (i.e. drained and tertiary bunded), would need to be identified.

Preliminary discussions around possible options have taken place between the parties, however, disappointingly, TfL has since confirmed that it does not intend, nor does it consider it necessary, to provide an additional product storage area in line with our client's request.

Whilst our client notes the repeated assurances given by TfL as regards active management of access arrangements to Tunnel Avenue, plus the maintenance of existing delivery and servicing arrangements for businesses during the construction period for the Scheme, these assurances, and the traffic modelling and transport assessments on which they're based (which we note have and continue to be the subject of severe criticism by a number of affected parties), may be woefully inadequate and found wanting in practice. The ability to make a claim for compensation after the event is scant consolation to our client, as by this stage its operations will have been disrupted and the damage to its reputation will have been done. Therefore, securing an acceptable 'pre-project' solution remains a matter of the utmost importance to our client.

Application for Hazardous Substances Consent (ref. 12/1247/H)

As the Examining Authority will be aware, our client is awaiting the determination of an application for Hazardous Substances Consent relating to the storage of up to 199 tonnes of sodium hypochlorite at the Site (ref. 12/1247/H), submitted to the Hazardous Substances Authority, the Royal Borough of Greenwich ("RBG"), in 2012 ("the 2012 application"). The submission of the 2012 application was necessitated by the reclassification of sodium hypochlorite as a COMAH product (i.e. a product which is considered dangerous for the environment).

The Site already benefits from a deemed Hazardous Substances Consent secured in 1999 (when our client was operating as Hays Chemicals) for the storage of a number of toxic substances (17 tonnes in total) including hydrofluoric acid, sodium cyanide, potassium cyanide, sodium dichromate and potassium dichromate (stored only in moveable containers).

The 2012 application was validated on 2 August 2012 and subsequently consulted upon. Copies of the responses received from statutory consultees (save for a letter received from the Environment Agency

dated 7 August 2012 – see below) are not available on RBG’s website, including a response received from the Health and Safety Executive (“HSE”) (dated 7 November 2012) in which we understand the HSE informed RBG that it did “Not Advise Against” the granting of the 2012 application.

Our client was provided with a copy of the Environment Agency’s consultation response in respect of the 2012 application in the autumn of last year. With this came a request for our client to submit an updated flood risk assessment. An updated assessment has been prepared, however, in order for it to be submitted to RBG, some further information from the Environment Agency is required, specifically core data relating to flooding events on the Greenwich Peninsula. At the time of the compulsory acquisition hearing on 20 January 2017, this information was still awaited. Confirmation of the current position is set out below.

U and I Group Plc: Written Submission dated 16 January 2017

As the Examining Authority will be aware, a written submission made on behalf of U and I Group Plc on 16 January 2017 puts forward an alternative proposal for tackling the “Advise Against” position of the Health and Safety Executive in respect of the Scheme. Specifically, the submission discusses the storage of hydrofluoric acid at the Site and moots the possibility of the imposition of restrictions on both the size of container in which this product can be stored and the strength of concentration/dilution of the hydrofluoric acid itself.

The above-mentioned restrictions are entirely unacceptable to our client and, if imposed, would have a detrimental and limiting effect on our client’s business, particularly with regard to size of customer base for the sale and purchase of hydrofluoric acid and the range of commercial opportunities available in respect of this product. Furthermore, it would not be appropriate, or indeed lawful, for any development consent order granted in respect of the Scheme to include a requirement which is aimed at controlling the use of adjacent land and the operations being undertaken upon it, where that land is outwith the Order Limits.

Application for Hazardous Substances Consent (ref. 12/1247/H): Update

We understand that the Environment Agency has committed to providing our client with the further information referred to earlier in these written submissions by close of play today. Provided this information is received by the stated deadline, our client will be in a position to submit its updated flood risk assessment to RBG during the course of next week.

SHOOSMITHS LLP

27 January 2016