



OUR REF T2783.4-01/CWI/FCG
YOUR REF EN010103
26 October 2022

The Planning Inspectorate
National Infrastructure Planning
Temple Quay House
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Dear Planning Inspectorate

**The Proposed Net Zero Teesside Project (EN010103) (the “Project”)
Deadline 11 Submission – Cover Letter**

1. Introduction

- 1.1 As set out in our previous submissions, we act on behalf of Teesside Gas Processing Plant Limited (“**TGPP**”) and Teesside Gas & Liquids Processing (“**TGLP**”) in relation to the development consent application by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (together the “**Applicants**”) for the Project (the “**Application**” or the “**DCO**”). TGLP and TGPP’s interests are managed by North Sea Midstream Partners (“**NSMP**”) and they will hereafter be referred to for ease of reading as NSMP.
- 1.2 We refer to the Planning Inspectorate’s Rule 8(3) letter dated 16 September 2022 (the “**Rule 8 Letter**”). In accordance with the deadlines at Annex A of the Rule 8 Letter, we append the following in response to the 26 October 2022 Deadline:
- 1.2.1 Appendix 1 - Written Summary of Oral Case for Issue Specific Hearing 5;
- 1.2.2 Appendix 2 - Written Summary of Oral Case for Compulsory Acquisition Hearing 3; and
- 1.2.3 Appendix 3 - Response to the Examining Authority’s third written questions.

2. Update on Protective Provisions and Side Agreement

- 2.1 In response to Hearing Action Point 14 from Issue Specific Hearing 5, the Protective Provisions and side agreement have not yet been agreed with the Applicants. NSMP have provided detailed drafting; however NSMP have had a similar experience to other affected persons and have not received a substantive response to the drafting from the Applicants who are also not committing to timeframes to turn around a detailed mark-up of the drafts. Should these remain outstanding at Deadline 12 on 1st

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November 2022, NSMP will submit their preferred form of Protective Provisions at this deadline as provided for by the Examining Authority at Issue Specific Hearing 5.

Yours faithfully

A solid black rectangular redaction box covering the signature of the sender.

For and on behalf of Shepherd and Wedderburn LLP

APPENDIX 1
Written Summary of Oral Case for Issue Specific Hearing 5

1. Introduction

- 1.1 Issue Specific Hearing 5 (“**ISH5**”) for the Application took place in person and virtually simultaneously on 18th October 2022. The hearing ran through the items listed in the agendas published by the Examining Authority (“**ExA**”) on 11th October 2022. NSMP gave substantive oral submissions at ISH5 on a number of these items and these submissions are set out within this note.
- 1.2 Speaking on behalf of NSMP was Mr Colin Innes, partner at Shepherd and Wedderburn LLP.

2. Agenda Item 3 – Articles of the draft DCO

- 2.1 Mr Gleeson asked whether NSMP are content with the definition of “TG entities” as currently drafted in Article 2 of the draft Development Consent Order (“**dDCO**”), to which Mr Innes confirmed that he would have to take client instructions on this point.
- 2.2 NSMP can confirm that successors should be included in the definition of “TG entities” in Article 2 of the dDCO.

3. Agenda Item 6 - Schedule 12 Part 4 to 27 of the dDCO – Protective Provisions

- 3.1 NSMP have been in active and positive discussions with the Applicants with regards to the voluntary land agreement and Protective Provisions and associated side agreement. NSMP welcome the acknowledgement from the Applicants that there is a need for specific Protective Provisions for NSMP, but the Protective Provisions as currently drafted in Part 27 of Schedule 12 of the dDCO (REP8-003) lack the detail necessary and do not come close to addressing NSMP’s key concerns in relation to the Project. Mr Hereward Philpott KC for the Applicants stated that Protective Provisions are the solution to problematic issues; however, these are completely inadequate as drafted. There are three key points which NSMP raised in ISH5:

Protection of access

- 3.1.1 As set out in NSMP’s written submissions to date (REP5-041, REP6-142 and REP9-035), NSMP have substantial concerns over potential impacts to the access road to its site (parts of which road runs through plots 108, 103 and 106) and the potential risk to NSMP’s ability to maintain safe and continuous operation of its facilities, as well as potential damage to the same. Any disruption in smooth and unimpeded use of this road for even a short window would have severe and immediate consequences to NSMP’s continued ability to safely operate the Teesside Gas Processing Plant facility (the “**Plant**”) and maintain a stable flow of gas into the national supply. This road is the sole access road serving the NSMP site. As the Plant is classified as an Upper Tier Control of Major Accident Hazards site, any hindrance of access could have very serious adverse consequences.
- 3.1.2 Under Paragraphs 313 to 315 of the Protective Provisions in Part 27 of Schedule 12 of the dDCO, NSMP are able to withhold authorisation to proposed works if they will significantly adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations. However, as currently drafted, the onus is on NSMP to demonstrate that such significant adverse effect would occur. This is a reversal of the proper burden of proof and is not adequate to protect NSMP’s interests. Indeed, as set out previously and at length, any interruption or impediment on the sole access road to the NSMP site has the potential to significantly adversely affect NSMP operations. There is a whole range of eventualities that might come to bear as a result of the proposed works and it is the Applicants’

responsibility to examine all potential risks and identify how they are to be managed and mitigated. This is the approach that is required given the importance of the NSMP's site and the potential risks involved.

Definition of NSMP operations

- 3.1.3 The definition of NSMP operations under paragraph 312 of the Protective Provisions in Part 27 of Schedule 12 of the dDCO is not consistent and does not provide NSMP with adequate protection. While the Project is likely to be effected largely within the Order limits, the close proximity to key pipelines and infrastructure of NSMP and the interconnectedness of Teesside mean that the effects will be felt outside the Order limits. Some of the NSMP operations are defined in Paragraph 312 as limited to being within the Order limits (such as NSMP rights, NSMP property and NSMP pipelines); whereas the Applicants have acknowledged the Plant as a whole, part of which is situated outside of the Order limits. Therefore, the wider Plant outside of the Order limits is acknowledged but not the ancillary equipment or key connected infrastructure such as pipelines. As an example, there are a number of pipelines owned, operated or utilised by NSMP which are situated immediately adjacent or very close to the Order limits and would not be captured and protected under the current drafting of the definition.
- 3.1.4 NSMP propose that all of the definitions relating to NSMP operations, rights, property, pipelines, etc should be not be limited to within the Order limits. The drafting should recognise the facts on the ground and the layout of the assets and ensure NSMP's nationally significant infrastructure is protected. It is evident from the evidence given to the Examination and in NSMP's discussions with the Applicants that the project design is at a fairly early stage. This reinforces the need to manage the uncertainty that arises from such a position.
- 3.1.5 A related issue is the indemnity protection in the Protective Provisions. If NSMP suffer losses as a result of the proposed works, their primary losses are likely to be economic in nature and therefore not covered by the Protective Provisions as currently drafted. At present the indemnity provisions are a straw man.

Compulsory Acquisition of rights

- 3.1.6 Given the complexity of the arrangements here, it is NSMP's position that the Applicants should not have compulsory acquisition rights and instead have to seek the rights voluntarily, with the usual proviso that such consent will not be unreasonably withheld. This is to ensure the protection of rights which are crucial to the operation and maintenance of a site which is of national significance. The Applicants know how important these assets are nationally and the Applicants should not have a trump card over all of the other nationally important infrastructure projects in the vicinity of the Project.
- 3.1.7 NSMP and the Applicants are unlikely to enter into a voluntary land agreement, or even Heads of Terms, before the close of examination in just over 2 weeks. However, NSMP remain open and willing to agree a voluntary land agreement after the close of the Examination and are optimistic that, with the Applicants continued collaboration, negotiations will continue and this can be achieved.

APPENDIX 2
Written Summary of Oral Case for Compulsory Acquisition Hearing 3

1. Introduction

- 1.1 Compulsory Acquisition Hearing 3 (“**CAH3**”) for the Application took place in person and virtually simultaneously on 19th October 2022. The hearing ran through the items listed in the agendas published by the Examining Authority (“**ExA**”) on 11th October 2022. NSMP gave substantive oral submissions at CAH3 on agenda item 4 (Compulsory Acquisition) and these submissions are set out within this note.
- 1.2 Speaking on behalf of NSMP was Mr Colin Innes, partner at Shepherd and Wedderburn LLP.

2. Agenda Item 4 – Compulsory Acquisition

- 2.1 NSMP agree with the Applicants’ oral submissions that the negotiations on the Protective Provisions and side agreement have been extensive and productive to date and that they are ongoing with the hope that these can be agreed before the close of the Examination. However, as indicated in NSMP’s update on the Protective Provisions and side agreement, NSMP have provided detailed drafting; however NSMP have had a similar experience to other affected persons and have not received a substantive response to the drafting from the Applicants who are also not committing to timeframes to turn around a detailed mark-up of the drafts.
- 2.2 Draft heads of terms have been exchanged between the respective solicitors for NSMP and the Applicants in relation to a voluntary land agreement but, with the focus being on agreeing the Protective Provisions and side agreement and given the complex land issues, NSMP do not anticipate that the heads of terms, and ultimately the voluntary land agreement, will be concluded before the end of the Examination. However, NSMP remain open and willing to agree these after the close of the Examination and are optimistic that, with the Applicants’ continued collaboration, negotiations will continue and this can be achieved.
- 2.3 Part of TGLP’s freehold land is situated within the Order limits under plots 103, 105 and 106. As set out in NSMP’s Examination submissions to date (REP5-041, REP6-142 and REP9-035), NSMP have substantial concerns over potential impacts to the access road to their site (parts of which run through plots 108, 103 and 106) and the potential risk to NSMP’s ability to maintain safe and continuous operation of Teesside Gas Processing Plant facility (the “**Plant**”) and other facilities, as well as potential damage to the same. Any disruption in smooth and unimpeded use of this road for even a short window would have severe and immediate consequences to NSMP’s continued ability to safely operate the Plant and maintain a stable flow of gas into the national supply. This road is the sole road serving the NSMP site as a whole. As the Plant is classified as an Upper Tier Control of Major Accident Hazards site, any hindrance of access could have very serious adverse consequences.
- 2.4 The Applicants have confirmed that they are liaising with the holders of the adjacent Cats North Sea Limited (“**CATS**”) site (parts of which fall within plots 110,112, 113 and 114) to procure access via the main CATS terminal road; however as far as NSMP are aware, this has not yet been agreed and indeed the Applicants stated in CAH3 that they do not expect to conclude the heads of terms with CATS before the close of the Examination. It remains NSMP’s position that a voluntary agreement with CATS for all construction and operational access to plots 110, 112, 113 and 114 to be taken via the main CATS terminal road would be the best way of accessing plots 110,112, 113 and 114 given the nature and scale of the construction traffic required to construct these facilities.
- 2.5 Without this voluntary agreement with CATS, NSMP understands from the Applicants that they intend to access plots 110,112, 113 and 114 over plot 108 and part of plot 103 at which point access would then branch out to the east into plot 110 and would continue to plots 112, 113 and 114. However, under the draft DCO as currently drafted (REP8-003), all traffic seeking access to plots 110,112, 113 and 114

can access via plots 108 and 103, then subsequently through plots 106 and 105. The explanation of this and NSMP's position are set out in full in response to the Examining Authority's' third written questions at CA.3.5 at Appendix 3.

- 2.6 For clarification, NSMP acknowledge that access over plots 108, 103 and 106 to carry out Work No. 2A on plot 105 is needed by the Applicants and that would be the appropriate route subject to necessary controls and management through the Protective Provisions. NSMP made oral submissions on the inadequacies of the Protective Provisions at Issue Specific Hearing 5 ("**ISH5**") on 18th October 2022 and a summary of these submissions can be found in NSMP's written summary of oral case for ISH5 at Appendix 1.



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APPENDIX 3

Response to the Examining Authority's third written questions

ExQ2	Question to:	Question:	NSMP's Response:
COMPULSORY ACQUISITION, TEMPORARY POSSESSION and OTHER LAND AND RIGHTS CONSIDERATIONS			
CA.3.5	Teesside Gas Processing Plant/ Teesside Gas and Liquids Processing (TGPP)	<p>TGPP in their D9 submission [REP9-035] references the potential deletion of plot 106.</p> <p>Could TGPP:</p> <ul style="list-style-type: none"> i) Provide further explanation for this request and why a new Work number should be created in order to grant access rights over plot 106 at this late stage in the process; and ii) Provide an update on the voluntary agreement with a likely timescale for it to be finalised. 	<p>i) Part of TGLP's freehold land is situated within the Order limits under plots 103, 105 and 106. Plots 103 and 106 contain part of the site access road and plot 105 is due to be subject to substantive works related to Work No. 2A, being the high pressure gas pipeline. This high pressure pipeline connects within plot 105 and then travels to plots 110 and ultimately to the above ground installation in plot 112 which is Work No. 2B.</p> <p>As set out in NSMP's submissions to date (REP5-041, REP6-142, REP9-035 and the written summaries of oral case for Issue Specific Hearing 5 ("ISH5") and Compulsory Acquisition Hearing 3 ("CAH3") submitted at this deadline), NSMP have substantial concerns over potential impacts to the access road to the site (parts of which run through plots 108, 103 and 106) and the potential risk to NSMP's ability to maintain safe and continuous operation of its facilities, as well as potential damage to the same. The access road is the sole access to NSMP's Teesside Gas Processing Plant facility which is an Upper Tier Control of Major Accident Hazards site and important to maintain a stable flow of gas into the national supply.</p> <p>NSMP's position remains that a voluntary agreement should be made with Cats North Sea Limited ("CATS") for all construction and</p>

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ExQ2	Question to:	Question:	NSMP's Response:
			<p>operational traffic to use the main CATS terminal road to access plots 110,112, 113 and 114. NSMP understand that the Applicants are currently exploring this but as stated in CAH3, the Applicants do not expect to achieve a voluntary agreement with CATS by the close of the Examination.</p> <p>Without this voluntary agreement with CATS, NSMP understands from the Applicants that they intend to access plots 110,112, 113 and 114 over plot 108 and part of plot 103, at which point access would then branch out to the east into plot 110 and would continue to plots 112, 113 and 114. Therefore, the Applicants do not intend to continue on the access road through the entirety of plot 103 and into plots 106 and 105 to access plots 110,112, 113 and 114. However, under Table 7 in Schedule 7 of the draft DCO as currently drafted (REP8-003):</p> <ul style="list-style-type: none"> a) The rights sought over plot 105 include, but are not limited to, <i>“for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2A infrastructure and Work No. 2B infrastructure”</i>. The new rights sought over plot 5 relates to the high pressure pipeline to be connected to within plot 105 (Work No. 2A) but it also includes the additional rights for construction and future maintenance of Work No. 2A infrastructure located within plots 110, 113 and 114 and Work No. 2B infrastructure located in plot 112 as well. b) The rights sought over plot 106 include, but is not limited to, <i>“for and in connection with the Work No. 10 access and highway improvements, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the authorised development”</i>. The new rights sought under Work No. 10 are very broad and as currently drafted they create a general right of access for the undertaker for all purposes in connection with the laying, installation and maintenance of the authorised development.

ExQ2	Question to:	Question:	NSMP's Response:
			<p>When these sets of powers are taken together, the rights under the draft DCO effectively mean that plot 105 could be used for the construction and maintenance of not only works in that plot but also the adjoining land to the east (plots 110,112, 113 and 114) in relation to Work No. 2A and Work No. 2B. NSMP's understanding is that the Applicants do not intend to carry out or use the rights in that manner and therefore it is not necessary for the Applicants to take such broad rights over plots 105 and 106. This is a clear overreach of rights and goes further than the Applicants need. There is no compelling reason in the public interest for the acquisition of those rights.</p> <p>Additionally, as stated in our Deadline 9 submission (REP9-035), the infrastructure currently in place on plot 105 precludes any access by construction vehicles from plot 105 into plot 110. In the circumstances the rights sought are unjustified, not necessary and disproportionate. There is no compelling public interest to justify the acquisition of the rights.</p> <p>NSMP propose that a new Work No. created granting new rights of access over plot 106 which are restricted to the construction, use and maintenance of the works on plot 105.</p> <p>Mr Hereward Philpott KC for the Applicants stated at ISH5 and CAH3 that the Protective Provisions are the solution to any issues such as this. However, the Protective Provisions as currently drafted in Part 27 of Schedule 12 of the draft DCO (REP8-003) are inadequate and lack the detail necessary.</p> <p>NSMP acknowledge that access over plots 108, 103 and 106 to carry out Work No. 2A on plot 105 is needed by the Applicants and that would be the appropriate route subject to necessary controls and management through the Protective Provisions. NSMP made oral submissions on the inadequacies of the Protective Provisions at ISH5 and a summary of these submissions can be found in NSMP's written summary of oral case for ISH5 at Appendix 1.</p> <p>Before Deadline 6, plot 106 was not included in Schedule 7 of the draft DCO and NSMP pointed this out to the Applicants. Once the draft DCO was updated by the Applicants at Deadline 6 to include plot 106 and it was identified what rights the Applicants sought to take over plot 106, NSMP made specific submissions about this at</p>

ExQ2	Question to:	Question:	NSMP's Response:
			<p>Deadline 6 (REP6-142) and Deadline 9 (REP9-035). This is not a new point which has only just been raised by NSMP.</p> <p>ii) As stated at Compulsory Acquisition Hearing 3, draft heads of terms have been exchanged between the respective solicitors for NSMP and the Applicants in relation to a voluntary land agreement. However, the focus of both NSMP and the Applicants has been on agreeing the Protective Provisions and side agreement and given the complex land issues, NSMP do not anticipate that the heads of terms, and ultimately the voluntary land agreement, will be concluded before the end of the Examination.</p> <p>However, NSMP remain open and willing to agree these after the close of the Examination and are optimistic that, with the Applicants' continued collaboration, negotiations will continue and this can be achieved.</p>