



The Planning Inspectorate

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

Customer Services: 0303 444 5000
E-mail: NetZeroTeessideProject@planninginspectorate.gov.uk

The Applicants
Environment Agency
Natural England

Our Ref: EN010103

Date: 2 November 2022

Dear Sir / Madam

Planning Act 2008 and The Infrastructure Planning (Examination Procedure) Rules 2010 – Rule 17

Application by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited for an Order Granting Development Consent for the Net Zero Teesside Project.

Request for further information and written comments

The Examining Authority (ExA) has reviewed recent submissions, notably at Deadline (D)9 and D11 as well as asking questions at Issue Specific Hearing (ISH)6, regarding the water environment and specifically the issue of nutrient neutrality. We note that the Applicants, Natural England (NE) and the Environment Agency (EA) acknowledge that there are various matters still to resolve in respect of these issues and that a meeting is to be held between the Applicants and the EA on Friday 4 November. The Applicants have already undertaken to provide a summary of the outcome of that meeting at D13 (7 November). In this context, to ensure that matters are progressed as completely as possible before the Examination closes on 10 November the ExA has identified a range of matters which it requests that the Applicants, NE and the EA consider and **respond to by D13, Monday 7 November 2022**. These are set out below.

Yours faithfully

Kevin Gleeson

Lead Member of the Examining Authority

This communication does not constitute legal advice.
Please view our [Privacy Notice](#) before sending information to the Planning Inspectorate.

Questions for the Environment Agency

1. An updated Water Framework Directive (WFD) Assessment was submitted at D11 [REP11-009]. The Applicants have concluded [REP11-009] that to prevent deterioration of the WFD Water Bodies, mitigation measures must be implemented. These include those outlined in the CEMP (the latest version of which is at REP9-007). Details of the proposed Requirement and an outline of a 'Effluent Nutrient Neutrality Safeguarding Scheme' are provided in [REP11-017].
 - a) Does the EA agree with the conclusions of this report? If not, why not?
 - b) Is the EA now in a position to confirm that, allowing for mitigation, there would be no deterioration of any WFD Water Bodies and that the development would not permanently exclude or compromise achievement of the WFD objectives?
 - c) If not, has the potential for derogation from the WFD been discussed between the parties? If so, does the EA want to submit any comments to the ExA in this respect?
2. The EA's letter at D11 [REP11-031] suggests that discharge via the effluent outfall has the potential to improve the WFD status of the Tees Estuary by designing infrastructure such that an excess of Bran Sands effluent above what is required by the proposal is re-routed to the North Sea and away from Dabholm Gut.
 - a) Is this something that the EA advises should be controlled via the DCO?
 - b) In the first bullet on page 3 of the EA's D11 letter, it says '*However, overall DIN reductions on the baseline are required to achieve these objectives*'. Please could you explain what this means?
3. The Applicants reference local enhancement projects around the Tees Estuary that they could potentially support [REP11-009] and have expressed a willingness to explore outside of the DCO application process.
 - a) Does the EA have any comments that it would like to submit to the ExA on the potential for the Applicants to contribute to enhancement projects outside of the DCO process?
4. With reference to the latest water quality monitoring [REP9-016], the EA's letter of D11 [REP11-031] and the recent meeting(s) between the EA and the Applicants, we would appreciate the EA's response to the following questions:
 - a) The background concentrations in the River Tees and Tees Estuary could improve in the future, or future monitoring and/or modelling could show that the concentrations from the outfall need to be reduced. Has this been sufficiently accounted for in the current modelling and the 'Effluent Nutrient Neutrality Safeguarding Scheme' referred to in [REP11-017]? If not, how would you recommend that this is done?
 - b) It is assumed in the Nutrient Nitrogen Briefing Paper [REP9-016] that the surface water runoff from the site does not contain DIN. Do you consider this a reasonable assumption? If not, please explain your position.
 - c) The Applicants conclude that given the direction of the prevailing current there would be no pathway from Marske-on-Sea Waste Water Treatment Works to the Teesmouth and Cleveland Coast SPA/ Ramsar. Does the EA agree with this conclusion? If not, why not?

- d) The EA's letter [REP11-031] asks whether atmospheric emissions of nitrogen have been included in the modelling of impacts on Seal Sands. What is your understanding of this following your discussions with the Applicants? Are there implications from this that the ExA should be aware of?
5. In its response of D11 [REP11-031], the EA welcomes the Applicants' commitment to installation of a new purpose-built outfall or alternative measures that achieve the same outcome.
- a) Have alternative designs been discussed between the EA and the Applicants? If so, please outline what these are.
- b) If not, what confidence does the EA have that alternative designs are deliverable?
6. At ISH6, the ExA requested further details of the 'Effluent Nutrient Neutrality Safeguarding Scheme', which the Applicants have proposed is secured via a Requirement in the DCO. Details of the Requirement and an outline of the scheme are provided in [REP11-017]:
- a) Is the EA satisfied that the Requirement as written would ensure that adverse effects on the integrity of the Teesmouth and Cleveland Coast SPA/ Ramsar would not be caused?
- b) Is the EA satisfied that the '*net increase in total nitrogen concentrations*' is easily definable? Would you advise that this is defined as part of the Requirement?
- c) Is the EA satisfied that the Requirement as written is enforceable? If not, what amendments should be made?
- d) Is the EA satisfied that the Requirement secures any mitigation measures that would be required to ensure no deterioration of WFD Water Bodies or adverse effects on the integrity of Teesmouth and Cleveland Coast SPA/ Ramsar.
- e) Would the EA recommend that it is necessary for the Scheme to include provision for regular review linked to monitoring and future changes in water quality?
- f) Does the EA have any other comments that it would like to submit to the ExA regarding the Scheme and the Requirement?
7. Part 3b) of the Requirement for an Effluent Nutrient Neutrality Safeguarding Scheme is that it should be demonstrated that effluent would not 'impact on the WFD status of the Tees Coastal Water, Tees Transitional Waterbody or Tees Estuary'.
- a) Is the EA satisfied that this wording is appropriate? If not, how would it recommend it is changed?
- b) How does the EA envisage that this part would be measured and enforced against?

Questions for Natural England

1. In its response at D11 [REP11-031], the EA outlines several outstanding questions regarding the water quality modelling outlined in [REP9-016]. In light of these questions:
 - a) Is NE still satisfied that nutrient neutrality would be achieved as stated in [REP11-036]?
 - b) Does NE want to otherwise update its Representation?
 - c) Are the potential impacts of nitrogen in water on the Teesmouth and Cleveland Coast SPA/ Ramsar normally assessed in terms of loading, concentration or both? Please explain why?

2. In its response of D11 [REP11-036], NE states that it is content that nutrient neutrality would be achieved if either 'Option A' is implemented, or a different design that would result in an equivalent or lower amount of nitrogen reaching Seal Sands.
 - a) Have alternative designs been discussed between NE and the Applicants? If so, please outline what these are.
 - b) If not, what confidence does NE have that alternative designs are deliverable?

3. At ISH6, the ExA requested further details of the 'Effluent Nutrient Neutrality Safeguarding Scheme', which the Applicants have proposed to secure via a requirement of the DCO. Details of the proposed Requirement and an outline of the scheme are provided in [REP11-017]:
 - a) Is NE satisfied that the Requirement as written ensures that adverse effects on the integrity of the European Site would not be caused, either if the final design is Option A or an alternative?
 - b) Is NE satisfied that the '*net increase in total nitrogen concentrations*' is easily definable? Should this be defined as part of the Requirement?
 - c) Is NE satisfied that the Requirement is enforceable? If not, what amendments should be made?
 - d) Should the Scheme include provision for regular review linked to monitoring and future changes in water quality?
 - e) Does NE have any other comments that it would like to submit to the ExA regarding the proposed Scheme and Requirement?

4. We understand that the Applicants have volunteered to undertake nitrogen monitoring at Seal Sands [REP11-017] and that this proposal was discussed with NE on the 14 October 2022.
 - a) Does NE have any comment that it would like to submit to the ExA on the voluntary monitoring scheme?

Questions for the Applicants

1. We note the ongoing discussions with the EA, including on 4 November 2022 [REP11-017]. The Examination ends on 10 November 2022.
 - a) Given the short timescale, it is possible that by the end of the Examination there may be unresolved matters in respect of the water quality modelling outlined in [REP9-016]. In this case, would the Applicants still be able to conclude that there would be no adverse effects on the integrity of the European Site?
 - b) In the event that agreement is not reached between the EA and the Applicants in respect of the WFD Assessment by the end of the Examination, would the Applicants still be able to conclude that the Proposed Development would not lead to deterioration of any WFD Water Body?
 - c) Has the potential for derogation from the WFD been discussed between the parties? If so, do the Applicants want to submit any comments to the ExA in this respect?

2. A draft Requirement for an 'Effluent Nutrient Neutrality Safeguarding Scheme' is detailed in [REP11-017]. We have the following questions and comments on the wording of this draft Requirement:
 - a) Please insert the full reference for Appendix B in part 2b).
 - b) In respect of 3a), how and where is it proposed that a '*net increase in total nitrogen concentrations in water within the Tees Estuary at the Seal Sands mud flats*' is going to be defined?
 - c) How is it anticipated that 3a) is monitored and enforced against? Is this something that should be secured in more detail via the DCO?
 - d) Should the Scheme include provision for regular review linked to monitoring and future changes in water quality?
 - e) Part 3b) states that it should be demonstrated that effluent would not 'impact on the WFD status of the Tees Coastal Water, Tees Transitional Waterbody or Tees Estuary'. How do the Applicants envisage that this would be measured and enforced against? Is this something that should be secured in more detail via the DCO?