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Our ref: JLW/185618.1

6 October 2022

Dear Sir / Madam

**The Net Zero Teesside Project EN010103 (“the Project”)  
Deadline 9 Submission on behalf of Redcar Bulk Terminal Limited (“RBT”)**

We write on behalf of RBT further to their Deadline 5 submission [REP5-040] and submissions at ISH3 & CAH2, to report on progress made between RBT and the Applicant towards the settlement of the Side Agreement and agreement of Protective Provisions.

Attached to this letter is an updated set of Protective Provisions to those provided by RBT at Deadline 5. These have been agreed in principle between RBT and the Applicants with the exception of the indemnity provisions (paragraph 170) which are still under negotiation.

RBT’s agreement in principle is without prejudice to RBT’s position as explained in ISH3 and CAH2 that powers sought within the DCO should not be granted over the RBT interests and that the Side Agreement still requires completion.

RBT has continued since ISH3 and CAH2 to negotiate the Side Agreement and its accompanying legal agreements with the Applicants. RBT and the Applicants both intend to complete the Side Agreement prior to the close of the Examination.

Please also accept this letter as notification from RBT to speak at ISH5 and CAH3 on 18 and 19 October 2022.

Yours sincerely

[REDACTED]

[REDACTED]

## **PART 14**

### **FOR THE PROTECTION OF REDCAR BULK TERMINAL LIMITED**

157. For the protection of RBT, the following provisions have effect, unless otherwise agreed in writing between the undertaker and RBT.

158. In this Part of this Schedule—

“apparatus” means any mains, pipes, cables or other apparatus within the Order limits which provide water, electricity or electronic communications to the RBT operations together with any replacement of that apparatus pursuant to the Order;

“alternative access” means appropriate alternative road or rail access which enables RBT to access the RBT operations and RBT site in a manner no less efficiently than previously by means of RBT’s existing road or rail accesses;

“alternative apparatus” means appropriate alternative apparatus which enables water, electricity and electronic communications supply to be provided to the RBT operations in a manner no less efficiently than previously by existing apparatus;

“offloading procedure” means the procedure whereby the undertaker, its employees, contractors or sub-contractors are offloading materials, plant or machinery required for the authorised development at the wharf within the RBT site, such procedure to commence when the undertaker, its employees, contractors or sub-contractors have commenced docking the relevant vessel at the wharf for the purposes of such offloading;

“RBT” means Redcar Bulk Terminal Limited (Company number 07402297) and any successor in title or function to the RBT operations;

“the RBT operations” means the port business and other operations of RBT carried out upon the RBT site;

“the RBT site” means land and property within the Order limits, vested in RBT

“works details” means—

(a) plans and sections;

(b) details of the proposed method of working, management measures and locations on the RBT site;

(c) details of the timing of execution of works and any interference this may cause to the RBT operations;

(d) details of any management measures (including details of access routes for vehicles to undertake) that will be put in place to ensure that road and rail traffic is still able to access the RBT operations and the RBT site (unless it would be unsafe to do so in which case such details must provide details of how alternative access is to be provided);

(e) details of lifting and scheduling activities on the RBT site, including the programming and access requirements for any offloading procedures; and

(f) any further particulars provided in response to a request under paragraph 163.

## **Regulation of powers**

159. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the RBT operations, or access to the RBT site without the prior written consent of RBT.

160. Any approval of RBT required under paragraph 159 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

(a) the continuing safety and operational viability of the RBT operations

(b) the avoidance of commercial losses to the RBT operations;

and

(c) the requirement for RBT to have reasonable access to the RBT operations and the RBT site at all times.

161. Without limiting paragraph 160, it is not reasonable for RBT to give approval pursuant to paragraph 160 subject to requirements which restrict or interfere with the undertaker's access to the RBT site during an offloading procedure.

## **Interference with Apparatus and Access**

162. (1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is removed, interrupted, severed or disconnected, that apparatus must not be removed, interrupted, severed or disconnected until details of the alternative apparatus have been approved by RBT and the alternative apparatus has been constructed at the undertaker's cost and is in operation to the satisfaction of RBT.

(2) The undertaker must ensure that RBT shall hold the same facilities and rights that it holds for the apparatus in respect of the alternative apparatus.

(3) Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), the undertaker shall ensure that the party responsible for any apparatus is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

(4) The provisions of this paragraph do not apply to apparatus in respect of which the relations between the undertaker and the party responsible for the apparatus in question are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(5) If the undertaker uses its powers under the Order to temporarily extinguish or permanently acquire any right of road or rail access which RBT benefits from the undertaker must provide at its own cost an alternative access prior to the extinguishment or acquisition of that right of access and ensure that RBT shall hold the equivalent rights for that access in respect of an alternative access.

## **Consent under this Part**

163. Before commencing—

(a) any part of the authorised development which would have an effect on the RBT operations or access to them; or

(b) any activities on or to the RBT site,

the undertaker must submit to RBT the works details for the proposed works or activities and such further particulars as RBT may, not less than 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

164. No—

(a) works comprising any part of the authorised development which would have an effect on the RBT operations or access to them; or

(b) activities on the RBT site, are to be commenced until the works details in respect of those works or activities submitted under paragraph 163 have been approved by RBT.

165. Any approval of RBT required under paragraph 164 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

(a) the continuing safety and operational viability of the RBT operations

(b) the avoidance of commercial losses to the RBT operations;

and

(c) the requirement for RBT to have reasonable access to the RBT site at all times.

166. Without limiting paragraph 165, it is not reasonable for RBT to give approval pursuant to paragraph 165 subject to requirements which restrict or interfere with the undertaker's access to the wharf and roadways within the RBT site during an offloading procedure.

167.—

(1) The authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the works details approved under paragraph 164 and any requirements imposed on the approval under paragraph 165.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 171 and the arbitrator gives approval for the works details, the authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 171.

## **Co-operation**

168. Insofar as the construction of any part of the authorised development or activities on the wharf and roadways within the RBT site, and the operation or maintenance of the RBT operations or access to them would have an effect on each other, the undertaker and RBT must—

(a) co-operate with each other with a view to ensuring—

(i) the co-ordination of activities and programming to allow the authorised development, the undertaker's activities on the wharf and the roadways within the RBT site (including offloading procedures) and the RBT operations to continue;

(ii) that reasonable access for the purposes of constructing the authorised development and the undertaker's activities on the wharf and the roadways within the RBT site (including offloading procedures) is maintained for the undertaker, its employees, contractors and sub-contractors; and

(iii) that operation of the RBT operations and access to the RBT site is maintained for RBT at all times; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the RBT operations, the construction of the authorised development and the undertaker's activities on the wharf and roadways within the RBT site (including offloading procedures).

169. The undertaker must pay to RBT—

(a) a cost agreed with RBT for the daily use of the RBT site and RBT services in consequence of the construction of any works referred to in paragraph 163 and use of the RBT site by the undertaker; and

(b) the reasonable costs and expenses incurred by RBT in connection with the approval of plans, inspection and approval of any works details.

### **Indemnity**

170.—(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 163 or by the use of the RBT site by the undertaker any damage is caused to the RBT site (including the wharf, roadways, any RBT buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption in any service provided, or in the provision by RBT or denial of any services, or in any loss of service from apparatus that is affected by the authorised development the undertaker must—

(a) bear and pay the cost reasonably incurred by RBT in making good such damage or restoring the provision by RBT of any services; and

(b) make compensation to RBT for any other expenses, loss, damages, penalty or costs reasonably incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or denial of any service provided by RBT.

(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 RBT, its officers, employees, servants, contractors or agents.

(3) RBT must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which must not be unreasonably withheld.

(4) RBT 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 170 applies. If requested to do so by the undertaker, RBT must provide a reasonable 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 170 for claims reasonably incurred by RBT.

### **Arbitration**

171. Any difference or dispute arising between the undertaker and RBT under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and RBT, be referred to and settled by arbitration in accordance with article 47 (arbitration).