

SOUTH TEES DEVELOPMENT CORPORATION (STDC)

THE PROPOSED NET ZERO TEESIDE DEVELOPMENT CONSENT ORDER (THE PROJECT)

SUMMARY OF OUTSTANDING OBJECTIONS AND CLOSING SUBMISSIONS (DEADLINE 12)

1 Introduction

- 1.1 STDC continues to object to the Net Zero Teesside DCO in its current form. While STDC retains in principle support for the Project, in line with STDC's objective of furthering the economic development and regeneration of the South Tees area (see STDC's constitution [REP2-025]), without sufficient controls in the DCO, the proposals in their current form could have significant impacts on the STDC area and risk disrupting other developments of economic importance (see Appendix 1 to STDC's written representation [REP2-097a] for a visual representation of the overlap between the Project and other proposals for the Teesworks site).
- 1.2 STDC has been progressing negotiations with the Applicants to grant an option for a lease for the main site, on the expectation that this would have concluded well in advance of the close of the examination. Similarly the intention has been that mutually acceptable protective provisions and a side agreement relating to the DCO would be concluded in tandem with main site option.
- 1.3 Regrettably, this has not come to pass. Attempts have been made to close negotiations via all parties' meetings. Most of the key commercial principles for the main site option have been agreed (e.g. rent and term of lease), but the Applicants have sought to introduce a condition precedent in relation to the take-up of the lease elements, pending resolution of funding discussions with BEIS, and discussions have not yet reached a conclusion in relation to environmental matters in view of the fact an "environmental matrix" promised by the Applicants for STDC to consider has not yet materialised. The majority of the key outstanding points therefore currently sit with the Applicants for a response, and STDC noted that the Applicants stated at Compulsory Acquisition 3 (CAH3) on 19 October 2022 that they did not anticipate reaching an agreement with STDC before the end of the examination. STDC is concerned that the shadow of compulsory acquisition powers being sought in the draft DCO will result in commercial principles being reopened beyond the close of the DCO examination.
- 1.4 STDC has therefore set out below its outstanding objections and the amendments it requires to the draft DCO to protect satisfactorily its interests. As part of these closing submissions, STDC also appends its preferred form of protective provisions which STDC invites the Examining Authority to include in its recommended form of the DCO.

2 Background

- 2.1 For ease of reference, this section outlines again the relevant background and context for STDC's representations, drawing upon what was outlined in STDC's relevant representations [RR-035], its written representation [REP2-097a], and its responses to the Examining Authority's first written questions [REP2-097b] and second written questions [REP6-144].
- 2.2 STDC is a Mayoral Development Corporation and was set up under Section 198 of the Localism Act in August 2017 to promote the economic growth and commercial development of the Tees Valley by converting assets in the Mayoral Development Corporation Area (Teesworks) into opportunities for business investment and economic growth. STDC was the first Mayoral Development Corporation established outside of London, being established pursuant to the powers devolved to the Tees Valley Mayor under the Tees Valley Combined Authority (Functions) Order 2017.
- 2.3 The object of a development corporation is to secure the regeneration of the land in respect of which it is designated. The Teesworks site is the largest regeneration opportunity in the UK. STDC is responsible for approximately 4,500 acres (1,820 hectares) of land to the south of the River Tees, in the Borough of Redcar and Cleveland
- 2.4 Under powers devolved to it upon creation of the Mayoral Development Corporation, STDC may do anything it considers appropriate for the purposes of its object or for purposes incidental to those purposes (section 201 of the Localism Act 2011). Section 206 of the 2011 Act states that STDC may carry out or facilitate:
- 2.4.1 regeneration or development of land;
 - 2.4.2 the more effective use of land;
 - 2.4.3 provision of buildings or other land;
 - 2.4.4 the acquisition, holding, improvement, management, reclaiming, repair or disposal of buildings, other land, plant, machinery;
 - 2.4.5 the carrying out of building and other operations (including converting or demolishing buildings); and
 - 2.4.6 the creation of an attractive environment.
- 2.5 Under Section 207 of the Localism Act, STDC exercised its powers of compulsory acquisition, and successfully promoted the South Tees Development Corporation (Land at the former Redcar Steel Works, Redcar) Compulsory Purchase Order 2019 to acquire over 700 hectares of land, including much of the land now required by the Applicants. The Secretary of State has therefore recently endorsed STDC's acquisition of the site for the purposes of its object.
- 2.6 The land was acquired via a CPO upon a principle that STDC would retain freehold ownership and grant tenancies to businesses occupying the site to avoid the pre-CPO situation where fragmented ownerships across the site resulted in a lack of control and uniformity across the

estate. This leasehold approach formed one of the key principles of the masterplan presented at the CPO.

- 2.7 Subsequent to the 2019 CPO, STDC has been proactive in initiating redevelopment of the Teesworks area, supporting and coordinating enabling works for redevelopment. The regeneration of the area is being supported by Government, who awarded STDC £123 million of funding to begin land remediation, paving the way for large-scale industrial investment.
- 2.8 To date, STDC has implemented a number of site preparation projects across Teesworks, clearing derelict structures and remediating land so as to provide development plots and infrastructure to attract and support end-user developments. In December 2020, outline planning permission was granted to STDC for development of 418,000 sqm (gross) of general industrial and storage & distribution uses at the South Bank site. Throughout 2021, further permissions were granted including for the development of an 80,000sqm facility for LM Wind's manufacturing of offshore wind turbines at South Bank, as well as the construction of a new quay. The LM Wind transaction is currently in abeyance, with SeAH Wind having recently broken ground on the site for its monopile manufacturing facility on the South Bank.
- 2.9 In March 2021, as part of the Spring Budget and in recognition of its national significance as a regeneration site, Teesworks was announced as one of the first places to receive Freeport status under the new Government policy to create freeports across the country. Teesworks is now the site of the UK's largest freeport and has been set up to promote the economic growth and commercial development of the Tees Valley by converting assets in STDC's control into opportunities for business investment and economic growth.
- 2.10 Teesworks' Freeport status means businesses will benefit from a wide package of tax reliefs, simplified customs procedures, streamlined planning processes and government support to promote regeneration and innovation. For example, companies operating within the Freeport area can benefit from deferring the payment of taxes until their products are moved elsewhere or can avoid them altogether if they bring in goods to store or manufacture on site before exporting them again. It is estimated that the regeneration of the overall Teesworks area could create around 20,000 new employment opportunities and provide a £3.2 billion boost to local communities. It is important to stress that the benefits of the Freeport are time limited.
- 2.11 The overlay plan included at Appendix 1 to STDC's Written Representation [REP2-097a] set out the existing outline planning permissions at the Foundry, Long Acres and Steel House sites, which risk being impeded by the Applicant's scheme. The Teesworks site spans over 2,500 acres of which the NZT project sits substantially within The Foundry and Long Acres sites. Those planning permissions were granted in March 2022 for the development of up to 5 million sq. ft. (464,515 sqm (gross)) of general industrial (Use Class B2) and storage & distribution facilities (Use Class B8) on the Foundry site and up to 2 million sq. ft (185,806sqm (gross)) on the Long Acres site.
- 2.12 Along with the NZT project, STDC is currently advancing discussions with several major companies who are looking to develop and manufacture on these sites. One project, on the land directly adjoining the NZT site to the north, within the Foundry, proposes development of manufacturing facilities spanning over 5 million sq. ft. on 300 acres of the site, employing over 5,000 people. The project is subject to a NDA agreement with the prospective tenant.

- 2.13 Despite reductions to the NZT Order Limits during the course of the examination, the Order Limits still overlap (and potentially conflict with) with the sites outlined above.

3 Development Consent Order

Article 2 'permitted preliminary works'

- 3.1 As set out in STDC's Deadline 11 submissions [REP11-041], STDC requires the protective provisions to be updated to reflect that they apply to the permitted preliminary works. STDC understands that the Applicants are amending the protective provisions at Deadline 12 to make this change.
- 3.2 However, in the Applicant's version of the protective provisions, permitted preliminary works are not controlled across all of STDC's site (it is understood that the PCC site is excluded). Given that the option agreement for the PCC site has not been settled, STDC's version of the protective provisions submitted at Deadline 12 contains a drafting amending to ensure that the exercise of permitted preliminary works across all of STDC's land in the Order Limits is subject to prior approval by STDC.

Article 8 Consent to transfer benefit of the Order

- 3.3 As set out in STDC's Deadline 11 submissions [REP11-041], STDC requires the prior notification of any transfer of the benefit of the DCO. For ease of reference, STDC's Deadline 11 submissions on this point are repeated below.
- 3.4 STDC understands that the Applicant maintains its proposal to notify STDC within ten working days of a transfer taking effect. However, additional drafting is to be inserted in the Applicants preferred form of DCO at Deadline 12 to require that STDC must be notified where there is a transfer and powers are to be exercised sooner than the ten working day period post the transfer.
- 3.5 STDC considers that the Applicants' proposal is unnecessarily complicated, and in any event it does not resolve STDC's concern. STDC proposes simply that article 8(14) and (15) are deleted, and article 8(9) is amended as follows:

(9) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the following persons ~~Secretary of State~~ in writing before transferring or granting a benefit referred to in paragraph (1) or (2)–

(a) the Secretary of State; and

(b) STDC and Teesworks Limited, in respect of any transfer or grant affecting the STDC area.

- 3.6 STDC's position is that it is entirely reasonable for the Applicants to provide STDC with advance notice of any transfer of powers affecting STDC's land. STDC's justification for seeking this change is four-fold:

- 3.6.1 Firstly, the amendment proposed by STDC is in line with other DCOs such as article 8(5) of the Thurrock Flexible Generation Plant Development Consent Order 2022.
- 3.6.2 Secondly, the Examining Authority should note that the current drafting proposed by the Applicants, where a transfer may be made without Secretary of State consent is significantly more flexible than on several other DCOs which do not permit transfers to unnamed parties without Secretary of State approval. For example, see article 8 of the Southampton to London Pipeline Development Consent Order 2020 and article 9 of the M25 Junction 10 / A3 Wisley Interchange Development Consent Order 2022. In this context, the additional level of assurance being sought by STDC is reasonable.
- 3.6.3 Thirdly, given the scale of the development within the STDC landholding area and the level of cooperation required between the parties, it is reasonable for STDC to be informed of transfers of powers to third parties that affect STDC's land and interests, prior to the transfer being made. It is important that any such notification takes place regardless of whether powers are due to be exercised so that STDC may take necessary steps to notify its tenants and manage its wider estate. The Examining Authority will also note that the Applicants' justification for these powers in the Explanatory Memorandum [REP8-006] does not account for STDC's unique position as owner of the site required for the main facility and connection corridors, while also managing various other tenants and projects of significant economic importance to the region (see further section 2, above).
- 3.6.4 Fourthly, STDC's request does not impose an unnecessary burden on the Applicants. It is not seeking an approval role, and the administration associated with providing advance notification will have been undertaken in any event for the purposes of notifying the Secretary of State. STDC merely wishes to be notified at the same time as the Secretary of State, and in the same terms.

Schedule 2 – Requirements

- 3.7 STDC continues to seek an approval role over the following requirements (as opposed to the consultee role offered by the Applicants):
- 3.7.1 Requirement no. 3 – Detailed design
- 3.7.2 Requirement no. 4 – Landscaping and biodiversity protection management and enhancement
- 3.7.3 Requirement no. 7 – Highway accesses
- 3.7.4 Requirement no. 8 – Means of enclosure
- 3.7.5 Requirement no. 11 – Surface and foul water drainage
- 3.7.6 Requirement no. 12 – Flood risk mitigation
- 3.7.7 Requirement no. 13 – Contaminated land and groundwater

- 3.7.8 Requirement no. 16 – Construction environmental management plan
 - 3.7.9 Requirement no. 18 – Construction traffic management plan
 - 3.7.10 Requirement no.19 – Construction workers travel plan
 - 3.7.11 Requirement no. 23 – Piling and penetrative foundation design
 - 3.7.12 Requirement no. 24 – Waste management on site – construction wastes
 - 3.7.13 Requirement no. 25 – Restoration of land used temporarily for construction
- 3.8 The justification for this approval role was set out in STDC’s Deadline 5 submissions [REP5-042]. STDC is distinguishable from a “typical” landowner, by reason of its status as a public body with statutory functions to secure the regeneration of Teesside, the largest regeneration opportunity in the UK. STDC’s objectives include “*To attract private sector investment and secure new, additional, good quality jobs, accessible to the people of the Tees Valley*” and “*To transform and improve the working environment of the Corporation area, providing good quality, safe conditions for the workforce and wider community*” and STDC’s powers include “*the power to regenerate or develop land*” and “*to bring about the more effective use of land.*” (see STDC’s constitution [REP2-025]).
- 3.9 STDC’s considers that an approval role will ensure that the achievement of its objectives is not compromised. For example, STDC’s ability to attract private sector investment risks being undermined if the Applicants are able to implement elements of detailed design within the STDC area to construct “*the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian routes*” (requirement 3(1)(e)) without appropriate STDC control. This is because such works could have impacts on other STDC tenants. As noted in section 2 above, STDC is currently progressing multiple commercial leasehold agreements of significant size and economic importance, with commitments in place on existing estate infrastructure and management – all of which require a uniform approach under the control of the estate owner.
- 3.10 Should the Examining Authority / Secretary of State agree that STDC should have an approval role, instead of the consultee role proposed by the Applicants, then (in addition to the requirements listed at paragraph 3.7 above) requirement 36 should also be amended to reflect that STDC’s approval role only applies to the extent that the matters submitted for approval relate to the STDC area.

Schedule 5 - Access

- 3.11 For the reasons set out at paragraph 4.12 onwards below of this submission (Tees Dock Road access), the first entry in Table 3, Part 2 of Schedule 5 to the DCO [REP8-003] relating to Tees Dock Road should be deleted, if the access is to be removed from the Order Limits. The access and rights of way plans [REP6-018] will need to be updated to delete point “BO” and “X”

Protective Provisions – Justification for amendments

- 3.12 Appended to this document is STDC’s preferred version of the protective provisions. This has been produced as a mark-up of the most recent version of protective provisions submitted to STDC by the Applicants on Friday 14 October (“the 14 October PPs”). The following should be noted:
- 3.12.1 At the date of writing, the most recent version of the protective provisions submitted to STDC by the Applicants was not the same as the version contained in the draft DCO submitted at Deadline 8 [REP8-003].
- 3.12.2 STDC has assumed that the 14 October PPs will, substantively, be contained in the Applicants’ final version of the DCO submitted at Deadline 12. Hence it was considered expedient to mark-up changes against the 14 October PPs, to assist the Examining Authority in understanding where the differences lie.
- 3.12.3 However STDC awaits to see if, at Deadline 12, the Applicants have adopted any of the drafting amendments proposed by STDC, or made further changes. If so STDC will provide a further update of its preferred protective provisions at Deadline 13, against the dDCO as submitted at Deadline 12.
- 3.13 STDC’s position is that the following amendments should be made to the 14 October PPs in order to result in protective provisions that are acceptable to STDC:
- 3.13.1 Para 226:
- (a) “adequacy criteria”: STDC does not consider this definition necessary given the detailed “diversion condition” criteria already applicable.
 - (b) “discharge outfall land” and “discharge outfall works”: these terms would need to be removed if the Applicants’ proposed change request removing Work No. 5A from the scope of the DCO (which STDC strongly supports) is accepted by the Examining Authority. Should the change not be accepted, these terms will need to remain.
 - (c) “diversion condition” (a) and (b): removal of “complies with the adequacy criteria” – for the reasons cited at (a) above.
 - (d) “diversion condition” (i), “Lackenby Gate”, “southern access route land”, “southern access route works”: these definition will need to be removed if either:
 - (i) the Examining Authority / Secretary of State agree with STDC that the Applicants have not made out a case for this access (by failing to adopt the reasonable alternative offered by STDC to temporary possession of plots 274/279) and accordingly remove it from the scope of the DCO; or

- (ii) the Applicants decide to remove the access in the post-examination phase.

If neither of these circumstances arise, these definitions will need to be retained.

- (e) “diversion condition” (j): STDC recommends the removal of the following wording relating to the parking diversion works: “...and that in the reasonable opinion of the undertaker the car parking spaces would be available for use by the undertaker at all times during the periods specified, and that the land demonstrated for use as car parking spaces is suitable for such use” as these caveats have not been agreed as part of equivalent drafting in the main site option. STDC also notes that if the parking spaces are available to / available for use by the Applicants (see (i)-(iv) of diversion condition(j)) then this additional wording is not required.
- (f) “identified power”: STDC has inserted a catch-all to capture any other powers exercised in the STDC area as there are various miscellaneous land and works powers within the DCO that could cause significant disruption to STDC or its tenants (e.g. article 11 street works or article 17 discharge of water), and which should also be subject to the protective provisions.
- (g) “proposed work”: subject to the outcomes in respect of the outfall change request and the Tees Dock Road access (see above), the following terms may need to be omitted from this definition – “the discharge outfall works”; “the southern route access works”.
- (h) “red main criteria”: STDC’s position is that the criteria in its version of the protective provisions (appended) should be adopted. In tandem with the rest of the diversion conditions, this provides the Applicant which sufficient certainty that any diversion of red main will be compatible with the delivery of the authorised development.
- (i) “Tees Dock Road”: STDC’s position is that this definition is not required and should be removed, but if it is retained it should be amended as set out STDC’s preferred form of protective provisions, because the plots listed do not actually form part of Tees Dock Road.
- (j) “the Teesworks site”: the Applicants’ preferred form of wording excludes the PCC site from the scope of the protective provisions. STDC requires the Teesworks site definition to apply to all works within the scope of the DCO which take place on land owned by STDC. It is reasonable for STDC, as landowner, to have protective provisions that apply to all of the Applicants’ works on its land, particularly in circumstances where an option for PCC site has not been agreed.

- 3.13.2 Para 226A: The purpose of para 226A is simply to expressly acknowledge that diversions etc. can be longer in distance / duration and still meet the diversion condition (or conversely cannot be rejected simply on grounds that it is longer). It is not reasonable or necessary for the Applicants to add further qualifications to matters which are already addressed by the “diversion condition”.
- 3.13.3 Para 227 and 228: see the commentary above on the definition of “the Teesworks site”. It is reasonable for the protective provisions to apply to all of the works taking place on STDC’s land. Without such protection, and in the absence of agreement on an option for the PCC site, the Applicants can carry out work without STDC oversight, posing a risk to STDC’s ability to manage its land for other tenants.
- 3.13.4 Para 230A: STDC has set out its case for the removal of plots 274/279 from the Order Limits (see below). Paragraph 230A is required only if either of the following circumstances take place:
- (a) the Examining Authority / Secretary of State agree with STDC that the Applicants have not made out a case for this access (by failing to adopt the reasonable alternative offered by STDC to temporary possession of plots 274/279) and accordingly remove it from the scope of the DCO; or
 - (b) the Applicants decide to remove the access in the post-examination phase.
- If this paragraph is included, STDC’s position is that it should read: “*The undertaker must not under any circumstances exercise powers conferred by article 14 or other provision of this Order to create a means of access between the Tees Dock Road and plots 274 and 279 as shown on the land plans*”. These amendments are designed to protect STDC from the use of miscellaneous in the DCO to form a means of access over these plots.
- 3.13.5 Para 230B: STDC has provided its preferred form of drafting to control the use of compulsory acquisition and temporary possession powers over its land and interests. The provision is intended to allow STDC to either require acquisition by agreement, or alternatively for STDC to consent to the use of compulsory acquisition and temporary possession powers over its land. STDC is not seeking to impede the implementation of the scheme, and such control is therefore drafted as subject to STDC not unreasonably withholding or delaying its consent.
- 3.13.6 Para 234: Expenses: STDC considers it appropriate that costs for arbitration are included within the recoverable expenses. STDC is entitled to serve diversion notices under the protective provisions and should not be subject to costs where arbitration is necessary to pursue resolution of the diversion works process. STDC’s further changes reflect the negotiations between the parties, where it is understood that the Applicants have agreed to be wholly responsible for the costs of any “pre-installation” diversion of authorised works subject to the procedures in the protective provisions.
- 3.13.7 Para 236: STDC has made amendments here to establish a positive obligation on the Applicants to provide programme information directly to the relevant Teesworks

entity. Without an agreement in place between the parties, and given the scale of impact of the authorised works on its other interests, STDC considers this to be a reasonable request.

3.13.8 Para 238, 245, 246: STDC requires 60 days to issue a diversion notice. The “lift and shift” process is technical in nature and requires considerable preparatory work by SDTC and, given the scale of the works concerned, it is not considered reasonable to require STDC to serve a notice within 30 days, particularly given the stringent diversion conditions imposed by the Applicants. Similarly, in line with this extension the 150 day period is also amended to extend to 180 days. The term “revised works notice” has also been inserted at para 245 to reflect and align with para 237.

3.13.9 Para 247: STDC is not prepared to commit to “all reasonable endeavours” here. “Reasonable endeavours” is an appropriate level of commitment given the practical steps STDC could actually take (i.e. prepare and submit an application). STDC notes the Applicants’ mutual obligation in this paragraph is “reasonable endeavours”.

4 Compulsory Acquisition and Temporary Possession

4.1 In order to successfully deliver the regeneration of the Teesworks site, STDC must ensure all proposed developable land is safeguarded so as not to hinder other projects which will bring significant economic benefits. Development of the Teesworks site risks being impeded if the Applicants are granted powers of compulsory acquisition without sufficient controls in place for STDC.

4.2 In balancing the public benefit of the Authorised Development, STDC submits that the Examining Authority should consider and give substantial weight to the potentially significant loss to STDC’s interests and objectives, and the wider public impacts of this loss, if the Net Zero Teesside project prevents STDC from bringing forward other developments of national economic importance.

4.3 In this context STDC is not an “ordinary” landowner, for the reasons outlined in section 2 of this paper – it holds the land for the purposes of its statutory objective to regenerate the South Tees area.

Permanent Acquisition of Land

4.4 As per STDC’s Deadline 11 response [REP11-041], the Applicants have confirmed that an agreement on the main site option is not likely to be reached by the close of examination. Attempts have been made to close negotiations via all parties’ meetings. Most of the key commercial principles for the main site option have been agreed (e.g. rent and term of lease), but the Applicants have sought to introduce a condition precedent in relation to the take-up of the lease elements, pending resolution of funding discussions with BEIS and discussions have not yet reached a conclusion in relation to environmental matters in view of the fact an “environmental matrix” promised by the Applicants for STDC to consider has not yet materialised. The majority of the key outstanding points therefore currently sit with the Applicants for a response STDC therefore requires adequate controls in the protective provisions to prevent the STDC area from being sterilised.

- 4.5 The Examining Authority should note that the Applicants are pursuing a lease agreement with STDC. The Applicants therefore do not require permanent acquisition of the land. The Applicants are unable to compulsorily acquire a lease under the terms of the DCO, and STDC is willing to offer such a lease on suitable terms – indeed the vast majority of terms, including the main commercial terms cover rent, term and indexation, have already been agreed.
- 4.6 As set out in section 3 above, STDC has submitted its preferred protective provisions with a proportionate and reasonable control over the exercise of compulsory acquisition and temporary possession powers. STDC has included a provision within the drafting to further assure the Examining Authority and Secretary of State that there would not be impediment to the scheme, since the drafting confirms that STDC's consent to acquisition may not be "*unreasonably withheld or delayed*".
- 4.7 The Applicants already offer similar wording to Anglo American in the draft DCO [REP8-004] at paragraphs 202(2)-(5), at Part 17 of Schedule 12. It is also noteworthy that the Applicants are seeking the same level of protection from Anglo American at Schedule 3 to the DCO [REP8-004] (see paragraphs 6(2)-(5), which would secure amendments to Schedule 12 to the York Potash Harbour Facilities Order 2016). Given the impact of the Order on STDC's interests, it is reasonable and proportionate for STDC to receive the same level of protection from compulsory acquisition powers that the Applicants have afforded to another interested party, and which it has sought itself in respect of another Order.
- 4.8 Lastly on that point, STDC observes that whilst many NSIPs obtain compulsory acquisition powers via a DCO, this is not a prerequisite to obtaining consent. Indeed the seeking of compulsory acquisition powers in a DCO is not itself mandatory, and it is legitimate for consent to be obtained on the basis that certain rights in land require agreement with the affected landowner. This is common-place for statutory undertakers, and indeed NSIPs affecting Crown Land may proceed notwithstanding that land agreements have not yet been settled, provided that it is demonstrated that agreement can reasonably be expected to be secured and is not an impediment to implementation. Hence the compulsory acquisition restriction being sought by STDC is not novel, nor is it unprecedented.

Permanent Acquisition of Rights

- 4.9 STDC requires the Applicants to enter into separate option agreements for easements for the CO2 pipelines (Work Nos. 6 and 8), electricity lines (Work No. 3) and gas pipeline (Work No. 2) connections running through Teesworks. As noted several times throughout the examination (see for example STDC's written representation [REP2-097a] or STDC's Deadline 5 post hearing submissions [REP5-042]) the Applicants have not yet progressed draft agreements for these easements. The Applicants have taken a commercial decision to agree to these easements following conclusion of the main site option. However, STDC considers it a reasonable expectation that agreements could have progressed in parallel for all land interests, in accordance with the Planning Act 2008, Guidance related to procedures for the compulsory acquisition of land (DCLG, Sept 2013) (the CA Guidance).
- 4.10 Negotiations on the main site option have become protracted (for the reasons cited above) and STDC has been left in the unfortunate situation where the connection corridors risk sterilising STDC's future development proposals, and interfering with STDC's ability to manage and

develop its estate. It is vital that the connection corridors for Net Zero Teesside are integrated with the multiple upgrades to communal shared estate infrastructure which are currently in the design process, and which are necessary to accommodate the density of development across the Teesworks estate.

- 4.11 This further supports STDC's request that the Examining Authority recommends a control in the protective provisions over the exercise of compulsory acquisition powers, as set out above.

Temporary Possession – Tees Dock Road

- 4.12 STDC remains strongly opposed to the Applicants' exercise of temporary possession powers over the Tees Dock Road access (plots 274/279). The Applicants have accepted that Tees Dock Road can be removed from the Order limits and the reasonable alternative can be adopted (see the latest SoCG between the parties submitted at Deadline 12 at part 3, row 28). However, the Applicants have made a commercial decision to attach the removal of Tees Dock Road to the wider option which the Applicants have failed to conclude.
- 4.13 For the reasons set out in STDC's Deadline 11 letter [REP11-041], plots 274/279 are not necessary for the Project in light of the reasonable alternative. For completeness, the submissions are repeated below.
- 4.14 Article 1 of the First Protocol provides that no one should be deprived of their possessions except in the public interest and subject to law, and while the State can enforce laws as necessary to control the use of property in the general interest, it does need to show that this imposition is necessary and proportionate. Those considerations apply equally to both compulsory acquisition and temporary possession.
- 4.15 In relation to compulsory acquisition, that test manifests itself in domestic law as the requirement for a "compelling case in the public interest", and this is set out in s122 of the Planning Act 2008. Whilst section 122 is concerned with compulsory acquisition and not temporary possession, nevertheless temporary possession interferes with private property rights and may do so over a significant extent and period of time.
- 4.16 Applying Article 1 to temporary possession therefore, it must be "necessary" and in the public interest, and there must be no disproportionate or unjustified interference with property rights. In practice therefore, the same considerations are engaged for temporary possession as for the "compelling case in the public interest" test – albeit that the balance of proportionality may change given the temporary nature of the imposition.
- 4.17 STDC became aware of Net Zero Teesside's proposal to create a means of access at Tees Dock Road during pre-application, and since that point STDC has consistently reiterated its objection to this proposal, due to an ongoing legal dispute with PD Ports over this point of access. STDC has identified that a reasonable alternative means of access exists, which importantly avoids the detrimental impact on its private interests that would be incurred if the Tees Dock Road access is used.
- 4.18 The alternative means of access at Lackenby Gate has been assessed and confirmed as reasonable and acceptable by the Applicants, including in submissions the Applicants made at

Compulsory Acquisition Hearing 2 (CAH2) on 13 July 2022. See also the SoCG between the parties submitted at Deadline 8 [REP8-037] at part 3, row 28 of the table. It was open to the Applicants to take up the option of adding this route into the Order Limits, as suggested by STDC at CAH2 – see STDC’s summary of oral evidence [REP5-042] – but this was not pursued, and no substantive reasons were advanced to justify why. Nevertheless, STDC is willing and able to grant the necessary rights to the Applicants to utilise the access by agreement, and so it is not an impediment to delivery of the NZT project.

- 4.19 It is therefore not “necessary” (employing the wording of Article 1) for the Applicants to use temporary possession to take STDC’s land to form a means of access at Tees Dock Road, and accordingly the case for temporary possession in respect of this land has not been made out. It is established that the Applicants can proceed with their project without temporary possession of this land. The Applicants have prepared the necessary changes to the DCO and associated plans to remove the Tees Dock Road access, and agreed these with STDC. STDC had understood from correspondence with the Applicants that they would be informing the Examining Authority of the decision to remove the access from the DCO proposals, and that the Applicants were to submit formally the amended Order Limits boundary that reflected this at Deadline 8. However, this change was subsequently held back by the Applicants pending conclusion of negotiations with STDC in relation to the PCC site option agreement.
- 4.20 This is a wider commercial decision taken by the Applicants. Agreement over a means of access is not inextricably bound up with the main site option, and it is therefore not an adequate justification for failing to adopt the reasonable alternative available to the Applicants, in view of the infringement on STDC’s Article 1 rights associated with the Tees Dock Road access.
- 4.21 STDC strongly recommends to the Examining Authority that these plots be removed from the scope of temporary possession in light of the reasonable alternative the Applicants have failed to adopt.
- 4.22 If the Examining Authority disagrees with STDC and recommends the inclusion of these plots within the DCO despite the reasonable alternative, STDC recommends the inclusion of lift and shift provisions in the protective provisions to reduce the impact on STDC’s interests. STDC has included drafting to this effect in its preferred protective provisions.

Specific Plots

- 4.23 The Examining Authority will be aware that since the start of examination, a number of plots have either been removed or reduced in size by the Applicants. STDC has welcomed these changes – as powers should not be sought where land is not required – although the progressive reduction in the Order Limits in response to STDC representations has validated STDC’s original concerns on whether all of the land retained in the Order Limits is genuinely required. STDC has set out below its outstanding comments on specific plots.

Plots 290, 291, 299 – Construction access from Redcar Bulk Terminal

- 4.24 These plots form part of the Teesworks Freeport. STDC provided a plan of the Teesside Freeport East tax site in its response to GEN.2.6 [REP6-144]. STDC is satisfied that the

interface can be dealt with via “lift and shift” provisions. STDC’s preferred form of the protective provisions sets out how it considers this should be regulated.

Plots 289, 292, 293, 298 and 300 – Construction laydown / parking

- 4.25 As above, this land also formed part of Teesworks Freeport. However, provisions for alternative parking have been agreed in principle between the parties. STDC’s preferred form of protective provisions sets out how it considers this should be regulated.

Plots 297, 304, 306, 307, 308, 310, 311, 312, 326 – Existing outfall

- 4.26 STDC understands that the Applicants have selected Work No. 5B for discharge of water rather than Work No. 5A. STDC supports this change request as it significantly reduces the impact of the Project on STDC’s land. STDC recommends that the change is accepted and the plots removed from the scope of the DCO.
- 4.27 If the Examining Authority elects to reject the change request, STDC has provided its preferred form of protective provisions which grant STDC “lift and shift” provisions, reducing the impact on STDC’s land.

Plot 409, 425, 427, 464 - Connection corridors

- 4.28 STDC notes that the Applicants reduced the size of plot 409 via a change request accepted by the Examining Authority in September 2022 [PD-017]. STDC welcomed the reduction in size.
- 4.29 STDC also notes the Applicants’ Deadline 8 submission ‘Justification of Corridor Widths’ [REP8-051]. This document confirms that the Applicants are seeking a wider corridor across STDC’s land than for other land owners. The Applicants state that they require “*flexibility to enable optimisation during detailed design to adjust where challenges arise and potentially to adapt the detailed design or siting so as to reduce the sterilisation of land*”. If the Applicants were keen to reduce the sterilisation of land, STDC would expect them to take temporary possession over part of the 85m width of plots 409 and 425 rather than seek to sterilise the entire corridor.
- 4.30 It is unclear to STDC why the Applicants require such a high level of flexibility when other pipeline DCOs have committed to easement widths as part of their DCO application. For example, paragraph 6.5 of the Secretary of State’s decision letter for the Southampton to London Pipeline Development Consent Order 2020 states:

“The ExA also noted that the working width of the pipeline element of the proposed development would be around 30 – 36 metres although it might be slightly more than that in some circumstances and down to around 10 metres in others. However, the Applicant would require permanent rights to access and maintain the pipeline over a maximum corridor width of 6.3 metres (0.3 metres for the pipeline itself and 3 meter easement strips on either side of it) [ER 8.4.4 et seq].”

- 4.31 This level of detail remains absent from the DCO application despite STDC’s requests (see STDC’s response to CA.2.6 (ii) [REP6-144] where STDC requested a table setting out expected easement widths).

4.32 Section 122(2) of the Planning Act 2008 makes clear that where compulsory acquisition of land is sought, that land must be “*required for the development to which the development consent relates*”. For this requirement to be met, the CA Guidance states that “*The Secretary of State will need to be satisfied that the land to be acquired is no more than is reasonably required for the purposes of the development.*” STDC is not satisfied that the Applicants have fully made out their case for the width of all of these easement corridors.

4.33 STDC has therefore requested control over exercise of compulsory acquisition powers in the protective provisions, to ensure the Net Zero Teesside project does not risk sterilising development elsewhere on the Teesworks site. STDC remains willing to grant easements and therefore the restriction over compulsory powers is not expected to be an impediment to the implementation of the Project, which STDC supports in principle.

4.34 Separately, STDC also note that plot 409 is subject to Work Nos. 2A, 3A, 5C, 6 & 10 (see Guide to Land Plan Plots [REP6-011]). However, the DCO [REP8-004] grants rights in connection with Work No. 2B infrastructure over plot 409 (see Table 7, Schedule 7). In making the DCO, the Secretary of State will need a clear idea of what powers are required. This should therefore be clarified by the Applicants.

Part of plots 473, and plots 409a, 425a, 458, 461, 463, 467, 470, 472, 498, 509, 512, 515, 516, 518, 519, 521, 522, 524, 525, 531, 532, 533, 534, 535, 536, 537, 538 – Water connection

4.35 STDC is satisfied that the interface with other developments can be dealt with via “lift and shift” provisions. STDC’s preferred form of the protective provisions sets out how it considers this should be regulated.

Plots 377, 378

4.36 The Guide to Land Plan Plots [REP6-011] state that new rights are required by the Applicants over these STDC plots for Work Nos. 5B, 8 and 10. While STDC supports the Applicants’ choice of Work No. 5B over 5A, there is currently insufficient control for STDC within the DCO to prevent the Applicants from sterilising the rights of STDC’s other tenants in this area. STDC again recommends that this is regulated via a general control over compulsory acquisition in the protective provisions.

5 Other matters

Other Agreements

- 5.1 The Statement of Common Ground submitted at Deadline 12 sets out the latest position in respect of the remediation agreement, interface agreement and private wire network.

Funding Statement

- 5.2 Notwithstanding the stated intentions to enter into a lease for the site, STDC notes that the Applicants have failed to provide a separate estimate for land acquisition costs in their funding statement [APP-009 / AS-201]. This raises further concern in relation to land negotiations being progressed under the shadow of compulsory acquisition powers. STDC submits that the Applicants should be required to set out an estimate for land acquisition costs, having regard to the CA Guidance which requires the Applicants to “*provide as much information as possible about the resource implications of both acquiring the land and implementing the project for which the land is required*”.