

**South Tees Group (20049389)**

**H2Teesside DCO Examination**

**Deadline 4 Submission: Written Summary of Submissions at Compulsory Acquisition Hearing 1 held on 13 November 2024**

<b>No.</b>	<b>Agenda Item</b>	<b>Submissions</b>
4(ii)	Individual objections, issues and voluntary agreements	<p>Tom Henderson (TH), Partner at BDB Pitmans LLP, represented the South Tees Group (STG), comprising the three bodies set out in <a href="#">RR-003</a> and <a href="#">REP1-049</a>.</p> <p><b><u>Introduction</u></b></p> <p>STG's land interests are as listed in rows 51, 52, 58 of the Schedule of Negotiations [<a href="#">APP-026</a>], being those parts of the Teesworks site within the Order Limits.</p> <p>STG's fundamental concern is to ensure that the Teesworks site is regenerated and developed in a way which maximises the benefits it can bring, in terms of economic growth and job creation.</p> <p>As the examination has progressed, STG has sought to increase its understanding of the proposals through examination submissions and through negotiation with the Applicant. In this vein STG welcomes the recent change application to reduce the Order Limits [<a href="#">CR1-010</a>].</p> <p>However, STG maintains that the Order Limits are too extensive and will adversely impact on the ability to bring forward other critical national infrastructure within the Teesworks site.</p> <p>STG's representations at this hearing were divided into two areas: (1) the main site, and (2) corridors for services to and from the main site.</p> <p><b><u>(1) Main site</u></b></p> <p>TH began by setting out the relevant factual circumstances and STG's current position on what it would take to resolve its objections, before turning to the compulsory acquisition tests:</p>

		<ul style="list-style-type: none"> <li>- This area is known as “the Foundry”. Approximately 90 acres of the site proposed by the Applicant for Phase 1 of H2T, and most of the remainder of the Foundry for Phase 2. This division is roughly reflected in drawings 1/44 and 2/44 of the Works Plans <a href="#">[CR1-007]</a>.</li> <li>- The Applicant has been in negotiations with STG for an option agreement to secure the main site area. Over the course of those negotiations the Applicant has limited the extent of the option to the 90 acres equating essentially to Phase 1 of the Proposed Development. This does not include the rest of the main site, which comprises land originally earmarked for the HyGreen project which STG understands will not be proceeding and an (at this point hypothetical) phase 2 area. There is therefore no option or lease agreement being negotiated by the Applicant with STG for the remaining 150 acres comprising the Foundry (including the Phase 2 land).</li> <li>- In view of these circumstances, STG has been in active negotiations (and is progressing legal documentation) with another developer in respect of the development and disposal of all of the Phase 2 land at the Foundry area of the Teesworks site sitting outside the c. 90 acres in respect of which the Applicant is in dialogue with STG for Phase 1<sup>1</sup>.</li> <li>- The identity of the party negotiating with STG for the acquisition of the remaining land is strictly confidential, but the project will involve the development of critical national infrastructure that will bring billions of pounds’ worth of inward investment to the region.</li> <li>- Under this third-party proposal, the Phase 2 land would come forward for remediation in spring 2025 with the development then taking place shortly after remediation is completed. Commercial terms are agreed in principle, and lawyers are instructed on both sides.</li> <li>- The level of certainty provided by the other project is not being afforded by the Applicant in respect of even its first phase of H2T, which the Applicant proposes to acquire under option, let alone in respect of Phase 2, in respect of which the Applicant has offered no assurances or certainty.</li> </ul>
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<sup>1</sup> I.e. part or all of plots around 13/10, 13/12, 13/13, 13/14, 13/15, 13/16, 13/17, 13/18, 13/19, 13/20, 13/21, 13/23, 14/1, 14/2, 14/3, 14/9.

		<ul style="list-style-type: none"> <li>- STG's position is therefore that Phase 2 of the proposals should be removed from the Order Limits, absent which STG would not be able to maintain in-principle support for H2T.</li> </ul> <p>TH turned to the relevant CA tests in law and guidance. STG's position is that these are not made out in relation to the proposed c. 150 acres for Phase 2 of H2T on the remainder of the Foundry. Starting with section <b>122(2)(a)</b> of the 2008 Act:</p> <ul style="list-style-type: none"> <li>- This provides that land must be required for the development to which the development consent relates. The 2013 CA Guidance from DCLG (<i>Guidance related to procedures for the compulsory acquisition of land</i>) elaborates on this: <ul style="list-style-type: none"> <li>o Para 9 – “<i>The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire.</i>”</li> <li>o Para 11 – “<i>...the applicant should be able to demonstrate to the satisfaction of the Secretary of State that the land in question is needed for the development for which consent is sought. 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.</i>”</li> </ul> </li> <li>- These tests are not met in relation to the proposals for Phase 2 – in support of this conclusion: <ul style="list-style-type: none"> <li>o <b>Firstly</b> - The Applicant's interrelationship document <a href="#">[REP2-038]</a> shows that the Phase 2 land also overlaps significantly with land for the proposed HyGreen development. The interface between the two projects is unclear, but the Applicant should not (of course) be using this DCO to secure land for another project – it must be consented separately. The fact that the Phase 2 land is extensive and flexible enough to deliver not only Phase 2 of H2T, but also the main site an entirely separate project and very significant in scale in its own right, causes us to question the extent of flexibility being sought.</li> <li>o <b>Secondly</b> - The Phase 2 design information accompanying the application shows that no substantive information is available to support inclusion of Phase 2, including in the main site indicative layout appended to the Design and Access Statement and Indicative Hydrogen Production Facility &amp; Above Ground Installations Plan <a href="#">[AS-028]</a>, which shows no works across a large swathe of the Phase 2 land). It appears that approximately two thirds of the Phase 2 land are not currently identified for required development.</li> <li>o <b>Thirdly</b> – As noted earlier, the Applicant is pursuing an option to acquire land by agreement only in relation to Phase 1. STG notes that this approach is not compatible with the CA guidance at para 25 – “<i>...authority to acquire land compulsorily should only be sought part of an order granting development consent if attempts to acquire by agreement fail.</i>”</li> </ul> </li> </ul>
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		<ul style="list-style-type: none"> <li>○ Drawing this together, it is clear that the extent of land being sought is not justified and there is no clear idea how it would be used. It is not satisfactory (nor compliant with law and guidance) for the Applicant to seek to justify the Phase 2 land based on generalised statements about flexibility or “first of a kind technology”. It is also not a satisfactory answer to say that some of the land will only be needed temporarily, because it is all subject to full acquisition and so must be justified in that context.</li> </ul> <p>Turning to <b>section 122(3)</b> of the 2008 Act, STG’s position is that a “compelling case in the public interest” has not been made out in relation to the proposed Phase 2 land. In considering this test, it is worth emphasising five preliminary principles established in law and guidance:</p> <ul style="list-style-type: none"> <li>○ First – The Secretary of State will need to be persuaded that there is compelling evidence that the public benefits that would be derived from the compulsory acquisition will outweigh the private loss (para 13 of the Guidance).</li> <li>○ Second – Proving a compelling case requires a significant degree of justification, given that the private property interest in question carries substantial force as a human right.</li> <li>○ Third – The existence and nature of alternative critical national infrastructure proposals for the same site which avoid the need to CA is relevant to whether the test is met.</li> <li>○ Fourth – The existence of alternative land to deliver the proposed scheme is also a relevant consideration.</li> <li>○ Fifth - There may be an urgent need in policy terms for a type of project, but that it may still fail to demonstrate a compelling case<sup>2</sup>.</li> </ul> <p>- STG’s submission is that the “compelling case” test is not met in the case of Phase 2 of H2T as proposed, noting in particular the circumstances in this case:</p> <ul style="list-style-type: none"> <li>○ <b>First - The particular status of STG:</b> it has a special status as a landowner in the sense that STG’s statutory purpose (through STDC) is to facilitate the regeneration of the site, in pursuit of which it was granted a CPO to take ownership of the site in 2019. The Teesworks site is a several thousand-acre brownfield development site, with a multitude of major developments coming forward across a number of key industry sectors. The proposed CA for Phase 2 will prevent STG from developing the site in way in which it considers will best maximise economic development and job creation.</li> </ul>
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<sup>2</sup> FCC Environment (UK) Ltd, R (on the application of) v The Secretary of State for Energy and Climate Change & Anor [2015] EWCA Civ 55 (05 February 2015)

		<ul style="list-style-type: none"> <li>○ <b>Second - The uncertainty over public benefits as result of Phase 2:</b> As noted above, the option to acquire land under negotiation is limited to Phase 1 and does not encompass Phase 2. There is insufficient certainty that Phase 2 will come forward (STG understands based on the Interrelation Report <a href="#">[REP2-038]</a> that it would not until 2028 at the earliest), nor any certainty over the form that it would take. This would mean that the vast extent of land that Phase 2 covers would be blighted and sterilised if the DCO is made as applied for – preventing other critical national infrastructure development coming forward on the land.</li> <li>○ <b>Third - The existence of alternative development:</b> as outlined above, STG is pursuing another critical national infrastructure development for the Foundry Site that will bring billions of pounds' worth of inward investment to the region, and it is at an advanced stage of negotiation.</li> <li>○ <b>Fourth - Alternative land available for H2T:</b> STG has offered to make 50 acres of separate land available as laydown space for HS2, should it be needed. <ul style="list-style-type: none"> <li>▪ This land is in close proximity to the Phase 1 site of c. 90 acres. That offer was seemingly rejected by the Applicant, although dialogue remains ongoing.</li> <li>▪ STG's position is that it is happy to make land available to the Applicant but only where other proposed development schemes are not adversely impacted.</li> <li>▪ If the land offered by STG is not accepted by the Applicant, it should make arrangements to use parts of the main application site itself so as to ensure no developable land is sterilised.</li> </ul> </li> </ul> <p><b><u>(2) Corridors for utilities / services</u></b></p> <ul style="list-style-type: none"> <li>- Whilst STG welcomes the recent reduction in the change application, concerns remain about the extent of the corridors and their impact on developable land. TH raised two key points:</li> </ul>
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		<ul style="list-style-type: none"> <li>- <b>Firstly</b>, STG brings to the ExA's attention a development coming forward from Nat Power. This is a battery storage project, details of which are already in the public domain, which will be located on roughly 50 acres of land at the Long Acres part of the Teesworks site.</li> </ul> <p><b><i>Post-hearing note: as requested by the Examining Authority, STG has provided as an annex to this post-hearing submission a plan published by Nat Power showing this area, and other publicly available information about the proposal. According to Nat Power's website<sup>3</sup>, consultation has been completed for Teesside Gigapark project. The planning application has not yet been submitted.</i></b></p> <ul style="list-style-type: none"> <li>○ STG expects negotiations for the land required for the proposal to be concluded over the course of the next month or so. Once that is settled, STG will remediate the site to a pre-agreed specification and the tenant will enter into a 40-year lease.</li> <li>○ The Applicant's plans indicate that the Applicant intends to run services through part of the Nat Power site (see for instance plots 15/36, 15/39 and 15/40 [CR1-004]), which would be incompatible with the proposed battery storage project.</li> <li>○ The red line boundary of the Nat Power site was plotted deliberately so as to lie outside the proposed Net Zero Teesside easement corridors. STG considers that the proposed H2T easement corridor is too wide, and that the Applicant should amend its plans so as not to disrupt a well-advanced project.</li> <li>○ STG has raised the matter with the Applicant and would welcome further constructive dialogue with so that due regard can be given to the safeguarding of this and other development projects.</li> </ul> <ul style="list-style-type: none"> <li>- <b>Secondly</b>, STG continues to query more generally the extent of the corridors for utilities across the Teesworks site. <ul style="list-style-type: none"> <li>○ Easement agreements have recently been negotiated for the NZT services and utility corridors. STG reiterates that the H2Teesside service corridors should be integrated with the NZT ones wherever possible. By way of example, STG notes the width of the water corridor running away from the main site and south via plot 15/243 [CR1-004] which it considers can be reduced to align with the easement corridor already agreed for what is understood to be the same work connecting to the NZT project.</li> </ul> </li> </ul>
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<sup>3</sup> <https://www.natpower.uk/project/teesside2/>

		<ul style="list-style-type: none"> <li>○ To address this, STG requests two things:</li> <li>○ <b>First</b> – As STG requested in its Deadline 3 submissions <a href="#">[REP3-024]</a>, the Applicant should provide: <ul style="list-style-type: none"> <li>▪ An updated version of the Order Width Limit Explanatory Note <a href="#">[REP2-037]</a> that addresses corridor widths at a plot-by-plot level, rather than at a high level. This should also address how the assets / corridors agreed for NZT will be used for H2, or, where they cannot, why not.</li> <li>▪ An updated version of the Interrelation Report <a href="#">[REP2-038]</a> with additional detail STG has requested in its Deadline 3 submissions <a href="#">[REP3-024]</a> (as well as an update that reflects the change application Order Limits).</li> </ul> </li> <li>○ <b>Second</b> – STG will be bringing forward protective provisions (PPs) to protect its interests in relation to the site, including the service corridors. <ul style="list-style-type: none"> <li>▪ Amongst other things, the PPs will need to adequately protect STG’s current and future site assets utilising the same corridors as NZT, and (in line with NZT) require STG’s prior approval for any works on the Teesworks site. STG also needs to be assured that its existing and future rights will not be overridden.</li> </ul> </li> <li>○ STG’s focus has been on removing excessive land from DCO, far more effective a remedy than any PPs could achieve, noting the blight that exists prior to any DCO decision from the SoS and any blight that may endure after that.</li> <li>○ STG has set out headline terms for the scope of its PPs at paragraph 4.13 of its relevant representations <a href="#">[RR-003]</a> and anticipates putting forward its preferred drafting at Deadline 5 on 18 December 2024.</li> </ul>
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## ANNEX – NATPOWER PROPOSAL





**EMBARGOED UNTIL 12 June 2024**

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**Plans for Teesside energy storage scheme to go on display.**

- **NatPower will shortly be consulting on plans for a new 1GW battery energy storage system (BESS) on the Teesworks site ahead of submitting a full planning application to Redcar and Cleveland Borough Council.**
- **A public exhibition for the Teesside Gigapark will take place at the St Hildas Church, Roseberry Road (TS10 4AW) on Wednesday 26th June (2pm-7.30pm).**

NatPower, one of the UK's leading developers of clean energy generation and distribution, is seeking community feedback on its plans to build a new BESS in Redcar.

The proposed Teesside Gigapark will be constructed on a 50-acre section of the 4500-acre Teesworks site on a parcel of land known as Long Acres.

Battery storage is crucial to guaranteeing a secure, affordable and clean energy supply for the UK in the future. As more electricity generated from renewables comes onto the grid, batteries are needed to store electricity for use during times of peak demand, or when renewable electricity does not meet demand. This will ensure grid resilience as renewable generation becomes more prominent as part of the UK's energy mix.

As well as the detailed plans for the BESS proposal, NatPower will be sharing details of its Community Energy Transition Foundation, which will support communities to become the most sustainable in the UK. Should the project go ahead, the Foundation will invest in local initiatives that support the transition to net zero, ensuring local benefits from the delivery of national infrastructure.

Following the consultation, NatPower will consider all the feedback received before submitting a full planning application to Redcar and Cleveland Borough Council who will also undertake their own consultation of the proposals before determination.

John Sturman, Managing Director at NatPower, said:

*"We are very much looking forward to meeting with the local community in Redcar and talking them through our exciting plans as part of the Teesworks site.*

*The NatPower team will be on hand to answer questions and explain the essential role that battery storage will play in clean energy delivery. We will also be discussing our Community Energy Transition Foundation, through which we plan to invest in local initiatives that drive sustainable living. Our ambition is to leave a positive legacy, investing locally while we deliver nationally.*

*I would encourage everyone to come along and have their say. We're particularly keen to hear about what the community needs to become more sustainable and how we could help.*

*We look forward to speaking with residents, local groups and councillors as we develop our proposals further."*

Local residents are invited to the public event which will take place at the St Hildas Church, Roseberry Road, Redcar TS10 4AW on Wednesday 26th June (2pm-7.30pm).

For more information, visit the website [natpower.uk/project/Teesside](http://natpower.uk/project/Teesside) or contact the project team on 0204 599 7991 or email [teesside.bess@natpower.uk](mailto:teesside.bess@natpower.uk).

**Ends**

**For further information, please contact:**

**Perry Miller**

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## **NOTES**

1. NatPower has the largest energy transition development programme in the UK, aiming at integrating large scale smart clean energy generation and distribution with large scale intermittent clean energy demand.
2. We are part of the NatPower Group, an independent, well-capitalised energy enabler, with 25 years' experience and 30GW of assets developed across 20 countries and six continents.
3. Battery storage plays a critical role in supporting the transition to net zero, given that renewables do not generate energy consistently. Using batteries, we can store electricity at times of high production, and release it to the grid at times of peak demand.
4. NatPower uses lithium-Ion batteries – a tried and tested technology that is commonly used in our day-to-day lives, such as in smartphones.
5. All of our BESS projects are designed to be safe and to avoid impacts on our neighbours. To understand potential impacts, we carry out assessments during the planning phase. These inform the measures we build into our proposals – including using landscaping to screen homes from noise or views of the BESS.
6. Our Community Energy Transition Foundation invests in local communities to help them become more sustainable. Through funding local projects, we aim to leave a positive legacy locally as we support the national transition to net zero.



- Notes
1. All dimensions in metres (m) unless otherwise stated.
  2. All levels in metres above Ordnance Datum (mAOD) unless otherwise stated.
  3. All coordinates in metres relative to flat earth national grid unless otherwise stated.
  4. All dimensions, levels and coordinates should be checked on site.
  5. DRAWING MUST BE READ IN COLOUR.
  6. This drawing is to be read in conjunction with all relevant drawings.
  7. Active Battery Enclosures - Base Case  
(219 PCS & MV Skid)  
(878 MC Cube ESS)  
(MC Cube ESS x 5.25 MWh) = 4599 MWh
  8. Augmentation Area Battery Enclosures.  
(69 PCS & MV Skid)  
(278 MC Cube ESS)  
(MC Cube ESS x 5.25 MWh) = 1449 MWh
  9. Additional Capacity Area Battery Enclosures.  
(71 PCS & MV Skid)  
(284 MC Cube ESS)  
(MC Cube ESS x 5.25 MWh) = 1491 MWh
  10. Maximum Battery Enclosures.  
(359 PCS & MV Skid)  
(1438 MC Cube ESS)  
(MC Cube ESS x 5.25 MWh) = 7539 MWh
  11. Developable Area: 32.09 acres (Access Tracks and BESS Plots)
  12. Landscape Area: 10.21 acres (Landscape, Green Areas and Water Bodies)
  13. Substation Area: 2.99 acres

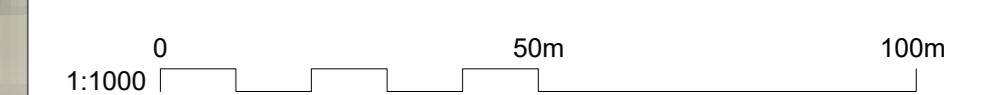
Key to symbols

Red line	Site Boundary	Permeable crushed aggregate base
Green rectangle	MC Cube ESS	400kV HV Substation
Orange rectangle	PCS & MV Skid	HV Transformer
Yellow rectangle	MV Switch Room	LV Transformer
Purple rectangle	Auxiliary Transformer	
Black rectangle	LV Switch Room	
Black rectangle	Control Room	

Reference drawings

Reference models

EA0009-EMS-PA-BE00-M2-ED-0003-S1-P01.11\_OS-Mastermap  
 EA0009-NPLUK-PA-BE00-M2-ED-0001-S1-P01.11\_Red Line Boundary  
 EA0009-NPLUK-PA-BE00-M2-ED-0021-S1-P01.11\_Proposed Development (Opt 2-2)



Rev	Date	Drawn	Description	Chk'd	App'd
P01.11	14/10/2024	CJE	Preliminary Issue	DF	JS
P01.10	10/10/2024	CJE	Preliminary Issue	DF	JS
P01.09	30/08/2024	CJE	Preliminary Issue	DF	JS
P01.08	05/08/2024	CJE	Preliminary Issue	DF	JS

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Title  
**Teeside**  
**BESS**  
**Proposed Development Block Plan**

Designed	J. Gandhi	JG	Dwg check	D. Fu	DF
Drawn	C. J. Eason	CJE	Approved	J. Sturman	JS


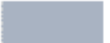
Originator  
**NatPower Ltd**

Suitability Code	Suitability Description
<b>S1</b>	<b>Suitable for coordination</b>
SPV	Work Stage
—	PA
	Status
	PRE
	Rev
	P01.11

Drawing Number  
**EA0009-NPLUK-PA-BE00-DR-ED-0021**

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 C:\Users\Conan.Eason\OneDrive\NatPower\UK - 13 Hancock Square\Teeside (E340) (Teesside)\01\Drawings\Working Drawings\Civil\DrawingS1\_P01.11\EA0009-NPLUK-PA-BE00-DR-ED-0021-S1-P01.11\_Block Plan (Opt 2-2).dwg Oct 16, 2024 - 4:28PM Conan.Eason

**KEY**

-  **Site**
-  **Teesworks**

