



The Planning Inspectorate
Temple Quay House
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Your Ref
URN: 20049389
Our Ref
MTP/TGH/207930.0002
Date
24 February 2025

Dear Sir or Madam

EN070009: H2TEESSIDE DCO EXAMINATION DEADLINE 8 SUBMISSIONS

On behalf of our client the South Tees Group (**STG**), we enclose two documents for submission at Deadline 8:

- STG's final preferred form of protective provisions (**PPs**) (clean copy); and
- STG's final preferred form of PPs (highlighted to show where these differ from the Applicant's preferred form as submitted at Deadline 7A [[REP7A-003](#)]).

The remainder of this letter sets out STG's closing submissions to this Examination, which should be read alongside STG's Deadline 7A submissions [[REP7A-077](#)].

1 Background

- 1.1 As set out in STG's Relevant Representations [[RR-003](#)], the Teesworks site comprises approximately 4,500 acres (of which roughly 2,000 comprise developable land) to the south of the River Tees, in the Borough of Redcar and Cleveland. A large proportion of this land was acquired by South Tees Development Corporation (**STDC**) under the *South Tees Development Corporation (Land at the former Redcar Steel Works, Redcar) Compulsory Purchase Order 2019* (the **2019 CPO**). STDC was established as a Mayoral Development Corporation (MDC) in 2017. Under Section 206 of the Localism Act 2011, STDC has powers, and a remit, to regenerate or develop land and bring about the more effective use of land.
- 1.2 All of the land was subsequently transferred to South Tees Developments Limited (**STD**L), which is a subsidiary of STDC, and Teesworks Limited retains significant interests in the land – both in terms of ownership and over which it has the benefit of options – within and around the Teesworks development and which will be affected by the Proposed Development. STDC,

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STDL and Teesworks Limited, in addition to Steel River Power Limited (**SRPL**), which owns the high-voltage substations and runs the private wire network at the Teesworks site, together comprise STG.

- 1.3 In March 2021, as part of the Spring Budget and in recognition of its national significance as a regeneration site, the Teesworks site was announced as one of the first places to receive Freeport status under the new Government policy to create Freeports across the country. The Teesworks site now forms a large part 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 into opportunities for business investment and economic growth.
- 1.4 The Teesworks site's Freeport status means businesses located there 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 avoid them altogether if they bring in goods to store or manufacture on site before exporting them again.
- 1.5 Subsequent to the 2019 CPO, STG has been proactive in initiating redevelopment of the Teesworks site, supporting and coordinating enabling works for redevelopment. The regeneration of the area is being supported by Government, who awarded STDC £123 million in funding to undertake land remediation, paving the way for large-scale industrial investment.
- 1.6 To date, STG has implemented a number of ground preparation projects across the site, 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 for development of 418,000 sqm (gross) of general industrial and storage and distribution uses at the South Bank site.
- 1.7 Throughout 2022, outline planning permission was granted for over 880,000sqm (gross) of floorspace across a further four sites, resulting in planning permission for business/industrial development across much of the Teesworks site, including land within the Order Limits for the Proposed Development.



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- 1.8 Planning permissions for end-user developments have since followed, including for the development of a 100,000sqm facility for SeAH Wind's manufacturing of offshore monopiles at South Bank, which is well advanced, along with the development of a new Quay, the first phase of which is now complete. Reserved matters approval has also been granted for a renewable fuels production facility and separately for the construction of a Sustainable Aviation Fuels facility.
- 1.9 To inform STDC's development strategy and to help ensure the comprehensive and efficient use of its land, it developed a master plan which informed the preparation of supplementary planning policy for the Teesworks site. When STDC was established, it was agreed between Tees Valley Combined Authority (which was established by STDC pursuant to its powers under the Localism Act 2011) (**TVCA**) and Redcar & Cleveland Borough Council (**RCBC**) that RCBC would retain planning powers and continue to act as the local planning authority for the Teesworks site in respect of planning policy and development management, and in the processing of planning applications. All planning applications for development proposals within the Teesworks site must therefore be determined in accordance with the adopted Redcar and Cleveland Local Plan unless material considerations indicate otherwise. The Local Plan should therefore constitute an "important and relevant consideration" for the purposes of examining and deciding the H2T DCO application under section 104 of the Planning Act 2008 (the **2008 Act**).
- 1.10 In accordance with the master plan, STG is working closely with RCBC and major operators across South Tees to ensure the full development potential of the Teesworks site and the South Tees area generally is realised, and that its position as an engine for growth in the economy of the Tees Valley is fully capitalised on.
- 1.11 In order for STG to realise the full development potential of the Teesworks site, it is seeking to bring those developments forward without undue disruption from the Proposed Development.

2 STG's unresolved objections

- 2.1 As summarised at Deadline 7A [[REP7A-074](#)], STG continues to have serious unaddressed objections about the sterilisation of its retained land and the Applicant's unconstrained ability to



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exercise Order powers at the Teesworks site. These objections can be summarised under three heads, as follows.

(i) Objection to Order Land and which clashes with STG Development at the Foundry

- 2.2 As outlined at Deadline 7A [\[REP7A-077\]](#), on 2 March 2022 STG obtained outline planning permission (ref. R/2020/0821/ESM) for land referred to as ‘the Foundry’ on the main Teesworks site. The outline permission area extends to 131 hectares / 323 acres and includes a large part of the land within the Order Limits as well as adjacent land to the immediate west (now removed from the Order Limits with the Applicant's second change request). That outline planning permission approved the development of up to 464,515 sqm (gross) of general industrial (Use Class B2) and storage and distribution facilities (Use Class B8) with office accommodation (Use Class E), HGV and car parking and associated infrastructure works. All matters (appearance, landscaping, layout, access and scale of the development) were reserved for subsequent approval.
- 2.3 STG's imminent intention is to bring forward development of critical national importance on the Foundry site as soon as possible, and to seek reserved matters approval for such.
- 2.4 As set out at Deadline 7A [\[REP7A-074\]](#), STG therefore strongly objects to the inclusion of any land at the Foundry site outside of the Phase 1 land – namely the retained Phase 2 land, the land comprised in the ‘Red Main’ access road, and the proposed pipeline corridor linking the main H2T site to Redcar Bulk Terminal land. The acquisition and/or development of any of that land as proposed by the Applicant conflicts with the critical national infrastructure planned by STG for that site, and the Applicant has not complied with the wider law and guidance that would justify its compulsory acquisition (see further paragraph 3 below).
- 2.5 STG therefore maintains an in-principle objection to the inclusion within the Order Limits of the retained Phase 2 land, the Red Main land, and the proposed pipeline corridor, being plots 13/10, 13/11, 13/12, 13/12a, 13/13, 13/15, 13/17, 13/18, 14/1 and 14/9. STG does not consider that the Applicant has evidenced a compelling case in the public interest for any of this land, and in relation to Phase 2 STG remains extremely doubtful that Phase 2 will ever be implemented.



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STG therefore respectfully requests that the Examining Authority recommend removal of all of these plots from the proposed Order Limits.

(ii) Objection to sterilisation of retained STG land by proximity to hazardous substances

- 2.6 As noted in STG's Deadline 7 and 7A submissions [[REP7-062](#)] / [[REP7A-077](#)], STG has serious concerns about the prospective sterilisation of its retained land as a result of the Health and Safety Executive's (HSE's) consultation zones for hazardous installations that would arise from the Proposed Development.
- 2.7 Condition no. 4 of the above-mentioned outline planning permission at the Foundry requires that development, when designed in detail and brought forward for reserved matters approval, must be in accordance with a parameter plan establishing, among other matters, a maximum development height of 46.2m AOD across the 131 hectares. There are no conditions attached that limit either the number of workers within any one building or the number of storeys within buildings. No such conditions were necessary to impose because the site did not fall within a registered 'inner zone' associated with any hazardous substance installation. If it did fall within a registered inner zone, the HSE as consultee on the application would have advised against the grant of permission without a condition being imposed to restrict occupation of any building to fewer than 100 occupants and three occupied storeys, in line with HSE standard advice.
- 2.8 Since Deadline 7, the Applicant has not provided additional information regarding the anticipated HSE consultation zones for the Proposed Development. It appears from the current works plans [[REP7-005](#)] that the Applicant has not designed the Proposed Development in a way that will ensure that storage / transmission of hazardous substances – and, by extension, the anticipated inner HSE consultation zone – will not affect STG's retained land. The HSE inner consultation zone is the most restrictive, which as a consequence, if it extends into STG's retained land, would serve to significantly restrict STG's ability to develop in line with what is envisaged under the relevant outline planning permission. It would also prejudice the delivery of a critical national infrastructure project that is currently being negotiated with a third party.
- 2.9 That development may well comprise buildings of three or more occupied floors (within the permitted 46.2m AOD height parameter) and potentially accommodate more than 100 workers



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in any one building. The principle of developing at such scale and density is approved without restriction through the outline planning permission. However, according to the HSE's online land use planning methodology¹ such development would be advised against if located within an 'inner zone'.

- 2.10 Initially, when the Applicant intended to progress its HyGreen project, this issue presented a less acute concern because, positioned as had been intended between the Proposed Development and the retained STG land, it would have provided a 'buffer' between STG's retained land at the main site and the Proposed Development, thereby mitigating the risk of future development at Teesworks being heavily restricted by the Proposed Development's inner consultation zone. In view of the fact that HyGreen is no longer proceeding, which is clear by virtue of the Applicant no longer negotiating with STG for the voluntary acquisition of the land previously identified for the HyGreen project, STG's retained land now directly abuts the Order Limits as a consequence. Given the plant locations within the Order Limits shown in the proposed works plans [REP7-005], the only realistic conclusion that can be drawn is that STG's retained land will largely fall within the inner consultation zone.
- 2.11 As set out in STG's Deadline 7A submission at paragraph 2.6 [REP7A-077], notwithstanding the Applicant's failure to share relevant information with STG in a timely manner in spite of requests made of it to do so, STG still proposes to bring forward its planned development for the Foundry site.
- 2.12 STG notes it is the Applicant's intention to pursue a Hazardous Substance Consent (**HSC**) following any consent to the Order and following the detailed design of the Proposed Development, at which time the quantity and ranges of hazardous substances are expected to be known [REP5-009] / [APP-218]. By the time the Applicant makes its HSC application, STG's development on adjacent land at the Foundry is likely to have been brought forward – or at least consented through reserved matters approval pursuant to the existing outline planning permission. That being the case, it is likely that STG's development will cause delivery problems for the Proposed Development as the Applicant will effectively have to avoid this site for HSC purposes. Accordingly, any development involving three or more occupied floors and over 100

¹ Currently viewable at <https://www.hse.gov.uk/landuseplanning/methodology.htm>



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workers would appear to present a significant issue for the delivery of the Proposed Development and the Applicant's ability to obtain an HSC.

- 2.13 STG has proposed that this could be resolved by a new DCO requirement (found at paragraph 9 of STG's preferred protective provisions); however, the Applicant first needs to demonstrate that its works do not involve designating parts of the STG estate as parts of the HSE inner zone. The Applicant's failure to satisfactorily engage on this point calls into question the deliverability of the Proposed Development.
- 2.14 STG separately does not accept the Applicant's suggestion [\[REP7A-047\]](#) that it cannot comment on the programme for HyGreen or its ability to progress, given that STG has on an ongoing basis dealt with the same personnel from the Applicant in relation to both projects. In addition, HyGreen was to be the subject of the same option agreement as the option agreement being negotiated with STG in respect of Phase 1 of the Proposed Development. That HyGreen has, as mentioned above, since been dropped from those negotiations by the Applicant is in and of itself demonstrative of the project not progressing. STG therefore considers any distinction sought to be drawn between the Applicant and HyGreen to be largely artificial given the significant and obvious overlap between the schemes and promoters.
- 2.15 STG must therefore object to the Order being consented without the inclusion of a satisfactory requirement for the Applicant to design and operate the Proposed Development in a way that keeps any HSE inner zone within its Order Limits and away from STG's retained land earmarked for other development. Without this, the Proposed Development will be seriously detrimental to STG's development of the Teesworks estate outside the Order Limits, and it is for this reason that STG has drafted protective provision wording that would address this issue.

(iii) Objection to extent of Order powers across the Teesworks site

- 2.16 STG objects to the broad and general extent of the Applicant's powers under the Order across the Teesworks estate, including in relation to linear works (pipelines, streets) and requires additional controls over these to prevent unacceptable impacts on the Teesworks estate. STG has maintained its concerns throughout the examination process about the extent of corridors for utilities and services, which the Applicant has sought to justify merely on the basis of high



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level, generic information and representative examples, rather than the plot-by-plot justification required in a compulsory acquisition context.

- 2.17 As noted at Deadline 7A [[REP7A-074](#)], STG has sought to limit the Proposed Development's impact on its own development of its retained land by negotiating PPs with the Applicant, but the Applicant has not agreed to important provisions constraining the exercise of its powers and giving STG more of a say in how the Proposed Development proceeds.
- 2.18 Although the Applicant included some restrictions on its powers in its Deadline 7A dDCO [[REP7A-003](#)], paragraph 7 of Schedule 30 does not go far enough and paragraphs 8 and 9 from STG's preferred PPs are excluded entirely. More specifically:
- Regarding paragraph 7, STG also requires limitations on the Applicant's exercise of articles 19 and 20 of the Order, given the nature of the Teesworks site. STG entities own, operate or benefit from options over significant areas of that site, and there are significant third-party interests either already in existence or under development, all of which would be negatively impacted by the Applicant's unconstrained use of powers to carry out protective works to any buildings or enter and survey any land within the Order Limits.
 - Regarding paragraph 8 of STG's preferred PPs, STG requires that the Applicant's ability to appropriate, acquire or possess any STG land must be subject to STG's agreement. This is justified given the special status and statutory remit afforded to STG (via STDC) to facilitate the effective regeneration of the Teesworks site as a whole, which requires it to have proportionate control over the use of the site. In this context it is also highly relevant that STDC was granted a CPO to acquire and regenerate the site in the first place. Furthermore, as discussed under section 3 of this letter below, the Applicant has not made sufficient attempts to acquire and use the retained Phase 2 land (which, based upon discussions with the Applicant, STG believes the Applicant does not need in view of the Phase 2 project likely never coming forward), the Red Main land, or the proposed pipeline corridor.
 - Regarding paragraph 9 of STG's preferred PPs, as set out in paragraph 2.15 above, the Applicant must be required to design the Proposed Development such that STG's development of its own land is not restricted by an HSE inner consultation zone.



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- 2.19 Again, STG insists on the inclusion of PPs that provide appropriate and necessary constraints on the Applicant's powers, in STG's preferred form. As drafted, each of the above provisions require STG's consent for the Applicant's exercise of certain Order powers – but they each specify that such consent shall not be unreasonably withheld or delayed. This appropriately balances STG's need for the Proposed Development to proceed without unduly affecting its own development at Teesworks, and the Applicant's need for reassurance that STG will not unreasonably restrict its plans for the Proposed Development.
- 2.20 Unfortunately, as of Deadline 8, the parties have not agreed a mutually acceptable form of protective provisions. In view of STG's concerns in respect of potentially significant impacts on its ability to develop parts of the Teesworks estate not having been adequately addressed by the Applicant, STG is submitting its final preferred form of PPs at Deadline 8, which it requests the Examining Authority recommend to the Secretary of State for inclusion in the Order. STG has submitted its preferred PPs in both "clean" and "track" version, with the latter highlighting the changes required to the Applicant's PPs and with sidebar commentary explaining why they are needed.
- 2.21 STG notes that, in the final version of the SoCG between the parties [[REP7A-047](#)], the Applicant stated at ID1 of Table 3.1 that "*As the pipeline [across the Foundry site] is development within the ambit of the section 35 Direction, it can only be amended via the DCO regime, as such it is not considered appropriate for it to form part of the 'diversion work' mechanisms in the Protective Provisions*". STG disagrees with this statement, in that there is no reason why the diversion work process cannot accommodate amendments to the DCO through the Planning Act 2008. STG's preferred version of the PPs submitted at Deadline 8 makes provision for this at paragraph 2(1)(d), by adding express reference to "development consent".

3 Applicable law and guidance

- 3.1 STG's objections to the Applicant's compulsory acquisition of land at the main Teesworks site are underpinned by relevant statute and guidance, as STG has noted before [[REP4-056](#)]. This section of the document largely restates those underpinnings for STG's compulsory acquisition objections, as they remain relevant.



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- 3.2 Section 122(2)(a) of the 2008 Act provides that land must be required for the development to which the development consent relates. The 2013 Compulsory Acquisition Guidance from DCLG (*Guidance related to procedures for the compulsory acquisition of land*), as applicable at the time the Applicant submitted the Order application, elaborates on this:
- Para 9 – “*The applicant must have a clear idea of how they intend to use the land which it is proposed to acquire.*”
- Para 11 – “*...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.*”
- 3.3 Throughout the examination period it has been unclear to STG how the Applicant intended to use the proposed Phase 2 land, particularly given that the Applicant had not actually negotiated with STG for the acquisition of this land. This culminated in the Applicant's major change request (Change Request 2) which removed the majority of the Phase 2 land originally included in the DCO application [[REP7-011](#)]. STG is firmly of the view that the Applicant is, in fact, not committed to construct and operate Phase 2 and has no intention or ability in practice to bring it forward.
- 3.4 The Applicant has pursued an option to acquire land by agreement only in relation to Phase 1. STG also considers it concerning that the Applicant has managed to promote a scheme so far into the DCO process without actively negotiating for the acquisition of land for an apparently significant phase. The Examining Authority's Rule 17 letter dated 19 February [[PD-022](#)] also queries whether the Applicant has sufficiently justified its acquisition of the remaining main site land. STG welcomes the opportunity to respond to the Applicant's comments. STG notes that the Applicant's approach is not compatible with the CA guidance at para 25 – “*...authority to acquire land compulsorily should only be sought part of an order granting development consent if attempts to acquire by agreement fail.*” In this case, the Applicant has failed even to commence attempts to acquire the land by agreement. In STG's view, this is because the Applicant is not committed to the construction of Phase 2.



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- 3.5 It is not satisfactory (nor compliant with law and guidance) for the Applicant to seek to justify the acquisition of 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 (i.e., the ‘Red Main’ land) will only be needed temporarily. Because it forms part of a wider proposal to acquire land permanently, it must be justified in that context.
- 3.6 Turning to section 122(3) of the 2008 Act, STG’s position remains that a “compelling case in the public interest” has not been made out in relation to the main site land. In considering this test, it is worth emphasising five preliminary principles established in law and guidance:
- **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).
 - **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.
 - **Third** – The existence and nature of alternative critical national infrastructure proposals for the same site which avoid the need to compulsorily acquire is relevant to whether the test is met.
 - **Fourth** – The existence of alternative land to deliver the proposed scheme is also a relevant consideration.
 - **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 case².
- 3.7 STG’s submission is that the “compelling case in the public interest” test is not met in the case of the main site land as proposed. These points are set out in detail in paragraphs 2.2 – 2.10 of

² 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)



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STG's Deadline 7A response [\[REP7A-077\]](#) and are based upon concerns raised by STG at Compulsory Acquisition Hearings 1 and 2 [\[REP4-056\]](#) / [\[REP6A-037\]](#). In summary:

- **First** – The particular status of STG: STG has a special status as a landowner in the sense that STG's statutory purpose (through STDC) is to facilitate the regeneration of the Teesworks 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 compulsory acquisition of the retained Phase 2 land, the 'Red Main' land and the proposed pipeline route to RBT land will prevent STG from developing the Teesworks site in ways which it considers will best maximise economic development and job creation.
- **Second** – The uncertainty over public benefits as result of Phase 2: 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 and STG has no confidence that the land will ultimately be utilised by the Applicant.
- **Third** – The existence of alternative development, preferred by the private landowner and with very significant public benefits, which would be prevented by the Proposed Development as it stands: as recently outlined [\[REP7A-077\]](#), 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, with negotiations ongoing, detailed designs being worked up and lawyers instructed. The Applicant's acquisition of the retained Phase 2 land, the Red Main land, and the proposed pipeline corridor would seriously, and in STG's submission unnecessarily and unfairly, jeopardise the viability of this development. It also remains unclear what Teesworks land would fall within the eventual inner HSE consultation zone. This would mean that the vast majority, if not all, of STG's land abutting the Proposed Development would be blighted and sterilised if the DCO is consented as drafted – preventing other critical national infrastructure development coming forward on the land. As set out in STG's Deadline 7A response [\[REP7A-077\]](#) at paragraph 2.6, STG intends to bring forward that development on the land, likely before the Applicant



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has obtained its HSC. This will create delivery issues for the Applicant which, in STG's view, reduce any potential public benefits of the Proposed Development.

- **Fourth** – Alternative land available for H2T: alternative land, which would not clash with the Foundry site, is available for construction access and pipeline routing instead of those included in the Order Limits. STG has also offered to make 50 acres of separate land available as laydown space for the Proposed Development, should it be needed – this land is in close proximity to the Phase 1 site of c. 90 acres. 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. The Applicant's lack of consideration of alternatives to STG's land is clear from its Explanatory Memorandum [[REP7A-009](#)]. Despite being updated at Deadline 7A, this document, as well as the Applicant's Statement of Reasons [[APP-024](#)], fail either to adequately address the Proposed Development's interactions with STG's alternative development, or to justify the compulsory acquisition of STG land. If the land offered by STG is not accepted by the Applicant, the Applicant should make arrangements to use parts of the main application site itself – and design it appropriately – so as to ensure no developable land is sterilised.

4 Conclusion

- 4.1 STG's position at the close of Examination remains essentially as stated at Deadline 7A [[REP7A-074](#)]. STG objects in the strongest possible terms to the Proposed Development proceeding at all insofar as it has any sterilising or limiting effects on STG's ability to develop and regenerate its retained land at the main Teesworks site.
- 4.2 To address these objections, STG would require the following, and respectfully requests that they are addressed in the recommendation and decision (if development consent is to be granted):
 - 4.2.1 removal from the Order Limits of the retained Phase 2 land, the Red Main land, and the proposed pipeline corridor linking the main site to RBT land, so that there is no



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physical conflict with STG's alternative, critical national development for the Foundry Site;

- 4.2.2 confirmation and evidence from the Applicant that no part of STG's retained land, outside of the Phase 1 site, will form part of an HSE inner consultation zone, with a clear commitment in the DCO to guarantee this – STG has included such a provision in its preferred PPs submitted at Deadline 8;
- 4.2.3 inclusion of STG's preferred form of PPs as submitted at Deadline 8 on the face of the Order, which (in addition to addressing the consultation zones issue) ensure that the impact of the Proposed Development on the wider Teesworks estate can be appropriately managed.
- 4.3 STG reiterates its intention (as noted in section 2 of these submissions, and at Deadline 7A [\[REP7A-074\]](#)) to bring forward its planned development for the Foundry site, with consequent implications for both the Applicant's compulsory acquisition case and its ability to deliver the Proposed Development.

Yours faithfully



For and on behalf of Broadfield Law UK LLP

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