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Your Ref  
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Our Ref  
MTP/TGH/207930.0002  
Date  
28 February 2025

Dear Sir or Madam

## **EN070009: H2TEESSIDE DCO EXAMINATION DEADLINE 9 SUBMISSIONS**

On behalf of our client the South Tees Group (**STG**), we are submitting this document at Deadline 9 to set out STG's response to the Applicant's Deadline 8 submission [[REP8-020](#)].

The document is structured in the same way as the Applicant's Deadline 8 submission [[REP8-020](#)] using the same topic headings:

- Topic 1: the Applicant's compelling case for retaining land for Phase 2 of the Proposed Development;
- Topic 2: the impacts of the Health and Safety Executive (**HSE**) consultation zones for hazardous installations on STG's retained land; and
- Topic 3: the Applicant's retention of the Red Main and pipeline corridor land.

### **1 Retained Phase 2 land**

#### Case for the Phase 2 land

- 1.1 STG notes the Applicant's position as stated at CAH1 [[REP4-015](#)] and in paragraph 2 of its Deadline 8 submission [[REP8-020](#)].
- 1.2 It is not STG's contention that absolute certainty about Phase 2 is required for the Applicant to establish a compelling case in the public interest for acquiring the associated land. Rather, as most recently restated at Deadlines 7A and 8 [[REP7A-077](#)] / [[REP8-078](#)], STG considers that the relevant compulsory acquisition tests are not met for two key reasons:

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- 1.3 **Firstly**, STG considers Phase 2 of the Proposed Development to be speculative at most (as evidenced by the late and extensive change request related to Phase 2) and remains highly sceptical about Phase 2 proceeding. This is amply demonstrated by the fact that the Applicant has chosen not to negotiate with STG to acquire the Phase 2 land. The Applicant acknowledges as much at paragraph 2.1.6 of its Deadline 8 submission [[REP8-020](#)]. Recent public announcements from the Applicant's lead partner supporting oil and gas over renewables also suggest that the likelihood of Phase 2 ever being implemented is low.
- 1.4 Even if the Applicant did intend to conduct negotiations for Phase 2 land in the future, it seeks the powers to acquire the land now. It therefore follows that the negotiations should also be now in order to comply with paragraph 25 of the relevant 2013 guidance, which states that "*...authority to acquire land compulsorily should only be sought part of an order granting development consent if attempts to acquire by agreement fail.*" As STG noted at CAH1 [[REP4-056](#)], the Applicant's approach is not compatible with that guidance – which remains the case at the close of Examination. Negotiations have not failed for Phase 2 land; in fact, at the Applicant's preference, they have not even commenced.
- 1.5 **Secondly**, the retained Phase 2 land<sup>1</sup> – along with the proposed use of the Foundry site for construction access, including the Red Main<sup>2</sup>, and for hydrogen pipeline works<sup>3</sup> – conflicts with other development proposals STG is bringing forward for the Foundry site. STG has the right, as private landowner, to develop the site in the way that it considers would best bring benefits to Teesside, and the infringement upon those rights by the Applicant's proposals is not justified.
- 1.6 Although the Applicant justifies its own Phase 2 uncertainty in paragraph 2.1.3 of its Deadline 8 submission [[REP8-020](#)] by opining that it is impossible to predict the future, it proceeds in paragraph 2.1.5 to discount STG's alternative development proposal for the same land on the basis that it is not guaranteed. As STG has noted throughout the Examination, including at Deadlines 7A and 8 [[REP7A-077](#)] / [[REP8-078](#)], it has already obtained outline planning

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<sup>1</sup> Plot numbers 14/1 and 14/9, associated with various elements of Work No.1.

<sup>2</sup> Plot numbers 13/10 and 13/11, forming part of Work No. 10.

<sup>3</sup> Plot numbers 13/12, 13/12a, 13/13, 13/15, 13/17, 13/18, forming part of Work No. 6.



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permission (ref: R/2020/0821/ESM, dated 2 March 2022) for the Foundry site for 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. Pursuant to that permission, STG's negotiations with the third-party developer for the site are well advanced; STG fully intends to bring forward the alternate scheme. Certainty in relation to STG's plans is evidenced by the other planning permissions and reserved matters approvals for development that have already been secured across the Teesworks site since outline planning permissions were granted in 2020 and 2022.

- 1.7 Contrary to the Applicant's comments at paragraphs 3.5.4 to 3.5.7 of [\[REP8-020\]](#) about the timing of STG's alternative development at the Foundry site, STG considers that there is a reasonable prospect, based upon previous approval of reserved matters elsewhere at Teesworks, that reserved matters approval for the alternate development at the Foundry site could be granted within six months from the end of this Examination.
- 1.8 As far as STG can ascertain from the DCO application and the Applicant's submissions made to the Examination, the Applicant's planning and compulsory acquisition case has failed to adequately address and account for the existence of STG's underlying planning permission R/2020/0821/ESM for the Foundry site.

## Implications for Order Limits

- 1.9 The Applicant contends at paragraph 2.2.2 of its Deadline 8 submission [\[REP8-020\]](#) that the Phase 2 land should remain within the Order Limits because it is required for a construction compound. However, this is not the case: STG has explained from early in the Examination at CAH1 [\[REP4-056\]](#) that it has offered the Applicant alternative land for construction laydown purposes. The Applicant has failed to accept STG's offer of a reasonable alternative. STG remains amenable to agreeing alternative construction areas with the Applicant that do not negatively impact its other proposed developments at the main site. STG also finds it odd that the Applicant has failed to negotiate for an interest in this construction compound, given that it is apparently needed for the Proposed Development. The Applicant has had ample opportunity to design its scheme and identify suitable compound areas.



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- 1.10 STG emphasises that alternative routes are also available on the Teesworks estate for construction access, and for pipeline works, which would avoid land earmarked at the Foundry site for alternative development.
- 1.11 STG notes that paragraph 2.2.6 of the Applicant's Deadline 8 submission [[REP8-020](#)] states: *"However, in the event that the ExA or Secretary of State consider that potential delay to STG's preferred construction programme for the future development of the Phase 2 land is a matter that outweighs the benefits of the Proposed Development (which the Applicant does not accept), it is noted that the diversion work process in the Protective Provisions would apply to that compound, by dint of the 'proposed work' definition including Work No 10"*. This statement is incorrect. Firstly, Work No. 10 relates to construction access works, not compounds. Furthermore, the Phase 2 land is not listed as a construction compound in the Works Plans [[REP7-005](#)] – it is only listed under Work No. 1, which is not captured by the "diversion works" procedure in the protective provisions. It is also contradictory for the Applicant to state that compounds can be relocated, when the Applicant's STG PPs Position Statement [[REP7A-027](#)] states at paragraph 3.3.4 that *"Work No. 9 [temporary construction compounds] should be excluded from the diversion work provisions..."*.

## Conclusion

- 1.12 Overall, then, STG's position remains as stated at Deadline 8 [[REP8-078](#)]: an objection, 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. This includes all conflicting land at the Foundry site comprising the Phase 2 land, the construction access routes and the pipeline corridor, all of which STG respectfully requests be recommended for removal from within the Order Limits (and ultimately removed from the Order as made, if development consent is granted).

## **2 HSE consultation zones**

### The timing of STG's escalation of the issue



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- 2.1 The Applicant has made representations about the timing of STG raising the consultation zones issue. This oversimplifies how the issues and discussions have evolved, and in particular how the Applicant's approach has contributed to the issue.
- 2.2 STG noted in its relevant representations [\[RR-003\]](#) that it has raised "*concerns about the extent of land take in its response to statutory consultation, and requested that meaningful discussions be held as a matter of urgency. The Applicant has not subsequently engaged in any such discussions*". Consequently (and contrary to how the DCO process should work), STG has had to use the examination stage process to seek a meaningful understanding of the impact of the proposals on its interests.
- 2.3 Initially, when the Applicant intended to progress its HyGreen project, the consultation zones issue presented a less acute concern to STG 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. STG's retained land now directly abuts the Order Limits as a consequence of:
  - 2.3.1 HyGreen 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; and
  - 2.3.2 the Applicant promoting a change to the Order Limits, late in the examination process, to drastically reduce the extent of the Phase 2 land [\[REP7-011\]](#).
- 2.4 Additionally, STG has been privately seeking more information about prospective consultation zones from the Applicant since well before Deadline 7, at both senior executive and project personnel levels, so the Applicant's alleged concern about the timing in paragraph 3.1.2 of [\[REP8-020\]](#) is disingenuous. STG had been seeking to obtain further information from the Applicant for some time, and it had intended and hoped to resolve the matter through negotiations with the Applicant. It was only when it became apparent that the information which STG had been led to believe would be provided would not in fact be forthcoming, and that no



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compromise position could be reached through negotiation, that STG felt it had no alternative but to raise its concerns at Deadline 7 [\[REP7-062\]](#).

- 2.5 As STG noted at Deadline 8 [\[REP8-078\]](#), the Applicant has still not provided the requested additional information about the potential consultation zones' encroachment onto its retained land, providing instead only perfunctory comments in respect of the HSE's methodology and general approach to these issues, none of which add any colour or further clarity to what STG already knows. STG agrees with the Examining Authority's characterisation of the Applicant's behaviour as a thoroughgoing and longstanding "*failure to engage on substantive issues*" [\[PD-023\]](#), in this case with STG on a matter that it, as the main landowner affected by the Proposed Development, considers to be critical to its interests. It is not acceptable for the Applicant to delay in providing information which results in the timing out of genuine and substantial concerns of affected parties.
- 2.6 In respect of the Applicant's contentions in paragraphs 3.1.3 to 3.1.6 of its Deadline 8 submission [\[REP8-020\]](#) that STG's conduct in Examination has been unreasonable, STG's relevant representations [\[RR-003\]](#) – as well as its submissions to the Examination both before Deadline 7 [\[REP4-056\]](#) / [\[REP6-012\]](#) and since – do expressly refer to its concerns about the Proposed Development's potential sterilisation of its Teesworks site land. STG has been consistent throughout the process that its concern has been to avoid sterilisation of its retained land, and it has continued to press for more information from the Applicant to satisfy itself in this regard.
- 2.7 Given private discussions that the parties were conducting alongside the Examination, and STG's repeated requests for information, the Applicant should not have been surprised by the matter making its way into the Examination. The Examining Authority will note that several other affected parties have complained of the Applicant's unreasonable behaviour (failing to adequately engage, delaying responses, etc.) [\[PD-023\]](#). It is simply not correct to suggest that STG has been acting unreasonably in this context.
- 2.8 For all the reasons noted above in this section 2, STG strongly considers that it did observe the relevant rules and guidance by introducing the HSE consultation zones issue into the



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Examination when it did. This is a matter of serious concern to STG which the Applicant has failed to deal with effectively.

## Application of land use planning methodology to the Proposed Development

- 2.9 STG does not disagree with the Applicant's summary of HSE's land use planning methodology in paragraph 3.2 of its Deadline 8 submission [\[REP8-020\]](#), nor does STG contend that no development could be brought forward on its retained land if future consultation zones encroached upon it.
- 2.10 STG's concerns do not relate solely to the alternative development proposal that has been specifically discussed in the Examination. Its concerns more broadly encompass blight and sterilisation of opportunities for regeneration and development at the Teesworks site, as stated throughout this Examination both generally and specifically in relation to the consultation zones (see, for instance, [\[RR-003\]](#) / [\[REP3-024\]](#) / [\[REP4-056\]](#) / [\[REP6A-037\]](#) / [\[REP7A-077\]](#) / [\[REP8-078\]](#)). Although some development may be possible both within and away from any future consultation zones that encroach onto STG's retained land, such encroachment would heavily constrain and restrict the available options to smaller-scale projects that may not represent the best regeneration options for use of the site. Given STG's statutory remit over development at the Teesworks site, this loss is not simply a private one as the Applicant suggests. As a result, such a constraint is unacceptable and is not simply overcome by any public interest in delivering the Proposed Development as stated at paragraph 3.4.7 of the Applicant's Deadline 8 submission [\[REP8-020\]](#). While STG supports the delivery of hydrogen infrastructure, this should not be at the expense of other critical national infrastructure as currently proposed on the Foundry site within the STG estate.
- 2.11 STG has proposed a protective provision<sup>4</sup> which would address this issue by ensuring that no inner consultation zone falls on STG's retained land. STG rebuts the suggestion of the Applicant that there is no policy basis for this provision; this is provided by paragraph 5.11.23 of EN-1 states that Applicants should "*seek to minimise...the effects on existing or planned uses near the site by the application of good design principles, including the layout of the project...*". STG

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<sup>4</sup> See paragraph 9 of STG's preferred protective provisions [\[REP8-080\]](#)



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has seen no evidence that the Applicant has sought to address this policy requirement to date through commitments as to how it designs and lays out site, and by way of suitable mitigation, and STG would go as far as to suggest that, in fact, the Applicant's reluctance to adhere to this principle is in no small part the result of it preferring the possibility of constraining development on STG's retained land to seeking to address the issue through discussion, consultation and negotiation with its neighbouring Net Zero Teesside project.

- 2.12 STG's preferred protective provisions [\[REP8-080\]](#) include, at paragraphs 3 to 5, a detailed design approval process in favour of STG, which includes the main site (Work No.1). For the avoidance of doubt, this does not obviate the need for STG's specific consultation zones protective provision at paragraph 9. Nevertheless, it is noted in the Applicant's STG PPs Position Statement [\[REP7A-027\]](#) that the Applicant is seeking to exclude Work No. 1 from the works approval process, which STG resists. STG highlights that its position on main site works approval is consistent with the consented Net Zero Teesside DCO.

### **3 Red Main and pipeline corridor land**

- 3.1 STG's position remains that the Applicant has failed to sufficiently negotiate to acquire the Red Main or pipeline corridor land by private agreement [\[REP8-078\]](#). The Applicant should not in STG's consideration be rewarded by obtaining compulsory acquisition powers over these areas any more than it should over the remaining Phase 2 land. Additional comments on the specific areas are set out below.

#### Red Main land

- 3.2 Although the Red Main is an existing access road across the Foundry site and was included in the Order Limits for the Net Zero Teesside project, private agreements were entered into between the parties in that context to avoid conflict. It would be inappropriate to impose powers over this area simply because they were granted for the Net Zero Teesside project, in circumstances where there is no separate agreement in place with the Applicant in respect of the Proposed Development.





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- 3.3 STG has included diversion work proposals in its preferred form PPs [REP8-080], and (as the draft DCO and Order Limits stand) the diversion work process would apply to the Red Main. For the avoidance of any doubt, STG's strong position is that the Red Main should be removed from the Order Limits and should not be resolved through the diversion works procedures. This is for two reasons. Firstly, STG's alternative development proposals are moving forward now, and the conflict cannot await resolution if and when the DCO is granted and becomes law later in 2025 or beyond. Secondly, the diversion process only entitles STG to *request* a diversion, and the decision about whether to accept a diversion is ultimately in the Applicant's hands, acting reasonably.
- 3.4 It is therefore necessary at the current stage of the consenting process for the diversion works process to apply to the Red Main because the Examining Authority's recommendation and the Secretary of State's decision are outstanding. If the Red Main land is removed from the Order Limits, the relevant PPs will become moot in relation to this issue. Since it is not currently known how events will unfold, STG is justified in seeking both protections at this stage.

### Hydrogen pipeline

- 3.5 As restated at Deadline 8 [REP8-078] and as stated at paragraph 1.9 above in relation to the Phase 2 land being sought for construction use, STG has offered the Applicant alternative land away from the Foundry site for pipeline routing. As a result, STG disagrees with the Applicant's contention at paragraph 4.3.1 of its Deadline 8 submission [REP8-020] that the hydrogen pipeline must be retained within the Order Limits as currently envisioned. As in paragraph 1.9 above, the Applicant is not justified in acquiring land for the hydrogen pipeline because an alternative exists and has been made available for private acquisition from STG.
- 3.6 Additionally, although the Applicant may not foresee difficulty for future developers in working around the pipeline corridor [REP8-020], STG has confirmed previously (most recently at Deadline 8 [REP8-078]) that, as the developer of the site under a statutory remit, it disagrees.
- 3.7 Finally, as in relation to the Red Main at paragraph 3.4 above, STG seeks to include Work No. 6 in the diversion process within its PPs [REP8-080] as a backup protection in case the pipeline is ultimately not removed from the Order Limits – but, as noted, the process requires the



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Applicant's agreement to diversion which is a sub-optimal resolution for STG. Accordingly, for the avoidance of any doubt, STG's firm position is that the pipeline should be removed from the Order Limits to prevent it sterilising development at the Foundry site.




## 4 Conclusion

- 4.1 STG's position at the close of Examination remains as stated at Deadline 8 [\[REP8-078\]](#), and its requirements for addressing its objections remain as set out at that time. This position has not been displaced by the Applicant's Deadline 8 response to STG's Deadline 7A submission [\[REP8-020\]](#), which response is unconvincing.
- 4.2 STG reiterates its intention (as noted in section 2 of its Deadline 8 submission [\[REP8-078\]](#) 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.
- 4.3 STG continues to object 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.

Yours faithfully



**For and on behalf of Broadfield Law UK LLP**

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