

spH2Teesside Project

Planning Inspectorate Reference: EN070009

Land within the boroughs of Redcar and Cleveland and Stockton-on-Tees, Teesside and within the borough of Hartlepool, County Durham

The H2 Teesside Order

Document Reference: 8.63 Applicant's Response to STG's Deadline 8 Submissions

Planning Act 2008



Applicant: H2 Teesside Ltd

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TABLE OF CONTENTS

1.0	INTRODUCTION	2
2.0	APPLCANT’S RESPONSE TO STG’S SUBMISSION	3
3.0	STG PROTECTIVE PROVISIONS	10
4.0	CONCLUSION	11
	APPENDIX 1: PLOT PLAN LAYOUT FOR HYGREEN AT FOUNDRY	12

1.0 INTRODUCTION

1.1 Background

1.1.1 This document has been prepared on behalf of H2Teesside Limited (the 'Applicant'). It relates to an application (the 'Application') for a Development Consent Order (a 'DCO'), that was submitted to the Secretary of State for Energy Security and Net Zero ('DESNZ') on 25 March 2024, under Section 37 of the Planning Act 2008 (the 'PA 2008') in respect of the H2Teesside Project (the 'Proposed Development').

1.1.2 The Application has been accepted for examination. The Examination commenced on 29 August 2024.

1.2 The Purpose and Structure of this Document

1.2.1 This document responds to the D8 closing submissions of the South Tees Group [REP8-078].

2.0 APPLICANT'S RESPONSE TO STG'S SUBMISSION

2.1 The Applicant's Position

2.1.1 STG's closing submissions identify its outstanding objections to the Proposed Development under three heads, namely:

- i. Its objection to the inclusion of land at the Foundry site comprising the land required for the delivery of Phase 2 of the Proposed Development; the land comprised in the Red Main access road; and the proposed pipeline corridor linking the main H2T site to Redcar Bulk Terminal's land;
- ii. The alleged impacts of the Proposed Development on STG retained land as a result of HSE consultation zones for hazardous installations; and
- iii. The extent of the powers sought by the Applicant across the Teesworks Site, which STG suggest should be subject to additional controls through its preferred Protective Provisions.

2.1.2 In the context of those areas of objection, STG alleges that the Applicant has not established a compelling case in the public interest to justify the exercise of compulsory acquisition powers and, in particular, that alternative land is available for construction access and pipeline routing related to Phase 1 of the Proposed Development.

2.1.3 The principal components of STG's outstanding objections remain as set out in its D7A submissions [REP7A-074], to which the Applicant responded at D8 [REP8-020].

2.1.4 Properly understood, the objections expressed by STG in REP7A-074 and REP8-078 amount to a thinly disguised, in-principle objection to the nationally significant critical national priority infrastructure comprised in Phase 2 of the Proposed Development. The Applicant has demonstrated the need, benefits and compelling case in the public interest to justify Phase 2 and the necessary compulsory acquisition powers to facilitate its delivery at REP8-020, paragraphs 2.1.1 – 2.1.7.

2.1.5 In short, STG invites the Secretary of State to refuse development consent for Phase 2, and/or the powers required to deliver that development, on the basis of an unevicenced assertion that it could prejudice the delivery of an unspecified alternative development proposal, no details of which have been provided to the examination. There is no evidence at all of what that development is said to comprise; what the characteristics of that development are likely to be; whether it would constitute a nationally significant infrastructure project; the likely timescales for its delivery; who the developer is; what the land requirements of the development would be or how that potential alternative development would be affected, if at all, by Phase 2. Nor is there any evidence at all from the proposed developer of that alternative scheme to indicate that it has any concerns that Phase 2 would prejudice its delivery, and if so the nature and significance of any concerns.

2.1.6 In light of the total absence of any detail (let alone evidence) on those matters, there has been no opportunity for the Applicant or the ExA to test or explore the credibility of STG's assertions as to the impacts of Phase 2 and there is no evidential basis on which the ExA or Secretary of State could reasonably conclude that the

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- impacts of Phase 2 on that potential alternative scheme would be such as to justify refusal of consent or associated compulsory acquisition powers to facilitate the delivery of 5% of the Government's hydrogen production target for the UK to 2030.
- 2.1.7 STG's closing submissions repeat (at paragraphs and 3.3 and the second bullet point on page 12) the assertion made in REP7A-074 that there is "*insufficient certainty*" that Phase 2 will come forward to justify its inclusion in the Order Limits. As explained by the Applicant in REP8-020, paragraph 1.2.3, there is no basis in law, policy or guidance to establish that "*certainty*" must be achieved in order to justify the exercise of compulsory acquisition powers. Furthermore, the only basis for STG suggesting there is "*insufficient certainty*" appears to be the allegation that the Applicant has not engaged in meaningful attempts to acquire the Phase 2 land through voluntary agreement. That allegation does not reflect or grapple with the factual position as explained to the examination by the Applicant. The Applicant has explained repeatedly the nature of and reasons for its voluntary acquisition strategy in respect of the Phase 1 and 2 land, most recently in REP8-020, paragraph 2.1.6. The Applicant has made considerable efforts to accommodate STG's requests in respect of the Phase 2 land throughout its negotiations, including through the removal of 34.02ha of land in its Second Change application.
- 2.1.8 Furthermore, the approach of undertaking a phased approach to acquisition by concluding the negotiations in respect of the Phase 1 land and then using the agreed principles as the basis for Phase 2 negotiations was *agreed* by STG.
- 2.1.9 The Applicant, with full approval of STG, has undertaken preliminary ground investigations to obtain data on the Phase 2 area in late 2023. The Applicant incurred the costs for this work.
- 2.1.10 In those circumstances, there is no proper basis for suggesting that the approach to negotiations indicates that the delivery of Phase 2 is insufficiently certain or that the Applicant has failed to demonstrate a compelling case in the public interest to justify use of compulsory acquisition powers.
- 2.1.11 With that context in mind, the Applicant turns to address the specific points of objection raised by STG.
- (i) **STG's objection to Order Land which allegedly "*clashes*" with STG's intended development at the Foundry**
- 2.1.12 At paragraph 2.3 of its closing submissions, STG asserts an "*imminent intention*" by an unspecified developer to bring forward an alternative development at the Foundry site. As explained above, STG has provided no evidence as to the nature of, or likely timescales for bringing forward, that alternative scheme. Unsurprisingly, therefore, it has also provided no evidence as to the likely environmental impacts of any such scheme (which would of course need to be assessed and taken into account before any such "*subsequent application*" is determined) and whether those impacts are likely to be acceptable.
- 2.1.13 STG first raised the prospect of a potential alternative scheme at CAH1 in November 2024. The Applicant pointed out that this represented a fundamental change to STG's position given it had raised no objection to Phase 2 in its Relevant
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Representation. In response to the belated suggestion that Phase 2 should be removed from the Order Limits to allow for an alternative scheme to come forward, the Applicant explained that in the absence of any details as to the developer or proposed alternative development, it was not possible for the Applicant to respond to the suggestion that such alternative development should take priority over Phase 2 (see written summary of oral submissions at CAH1 – REP4-015]. In spite of the clear marker laid down by the Applicant in November 2024, by the end of the Examination, STG remains unable or unwilling to provide any details at all of the alleged alternative development proposal. That lacuna in and of itself fatally undermines the credibility of STG's objection.

- 2.1.14 At paragraph 2.4, STG asserts that the acquisition and/or development of *any* of the Phase 2 land, or land comprised in the Red Main access road or proposed pipeline corridor “*conflicts with*” its alternative development proposals and in the first bullet point on page 12 alleges that the acquisition of the Phase 2 land, Red Main land and proposed pipeline route will prevent its preferred development of the Teesworks Site. However, it provides no evidence of the way in which Phase 2, Red Main or the pipeline corridor are said to conflict with, prejudice or otherwise affect the alternative development proposals. There is no evidence or information before the Examination as to the nature of that proposal; its land requirements or layout and no evidence to demonstrate that any alternative development STG may seek to bring forward would be incompatible with the Proposed Development. There is not even a bare statement from the scheme's developer to support STG's stated position. STG's approach is simply to assert conflict without making any effort to substantiate that assertion or offering the Applicant or ExA any opportunity of interrogating its veracity.
- 2.1.15 At paragraphs 2.5 and 3.3, STG reiterates its own doubts that Phase 2 will ever be implemented. As explained at REP8-020, paragraph 2.1.2, the suggestion that Phase 2 should be dropped because of uncertainty as to the future demand for the hydrogen it would produce, amounts to a vote of no confidence in the Government's net zero strategy and a challenge to Government policy supporting the provision of the infrastructure necessary both to stimulate and to serve that demand. As such, this aspect of STG's case amounts to a disagreement with Government policy and should be rejected as such.
- 2.1.16 On the basis of its unsubstantiated assertions, STG invites the ExA to recommend the removal of all Phase 2 plots as well as those associated with the Red Main Access and pipeline corridor, all of which are necessary to deliver the Proposed Development. On page 13 of its closing submissions, it suggests some alternative land is available for construction access and pipeline routing, but does not even purport to identify any alternative land capable of accommodating Phase 2. That alternative land has only been raised as a possibility during the course of the Examination and is outwith the DCO red-line boundary. Given the level and urgency of need for new energy infrastructure, NPS EN-1 directs the Secretary of State, in considering the weight to afford to alternative sites or proposals to be guided by whether there is a realistic prospect of the alternative delivering the same infrastructure capacity in the same timescales as the proposed development (EN-1,

paragraph 4.3.23). There is no realistic prospect that the Proposed Development could be delivered in the same timescales on the alternative sites identified by STG given that no agreement has been reached as to the use of those alternatives, which have only belatedly been promoted by STG following the finalisation of the Order Limits.

2.1.17 In any event, the Applicant notes that:

- if STG wishes to proceed with these alternative options, it can do so pursuant to the diversion work process in the Protective Provisions; and
- any such proposals are in any event clearly not in compliance with NPS EN-1 being both vague and immature (paragraph 4.3.28) and is being put forward at the last stage of Examination, and STG quite clearly fail to meet the 'onus....to provide the evidence for its suitability' (paragraph 4.3.29).

2.1.18 In respect of the pipeline route, the Applicant has set out its position at Deadline 8 [REP8-020] on this point.

2.1.19 In summary, there is no reasonable basis on which the ExA or Secretary of State could properly accede to STG's request in the absence of any evidence as to the impacts which STG allege would result from the Proposed Development or any information on which to judge whether the public interest in delivering that alternative development is such as to justify refusal of permission for 5% of the UK's hydrogen target for 2030 and, indeed up to 10% of that target given that Red Main and the pipeline corridor are critical to the delivery of Phases 1 and 2.

(ii) STG's objection to the alleged "sterilisation" of STG's retained land by proximity to hazardous substances

2.1.20 STG first objected to the Proposed Development on the basis of its alleged sterilisation of its retained land at D7 on 6 February 2025 [REP7-062]. It has not provided any reasonable justification for raising this issue so late in the Examination. Nonetheless, the Applicant provided a comprehensive response at D8 [REP8-020, paragraphs 3.1.1 – 3.4.7].

2.1.21 At paragraph 2.8 of its closing submissions, STG criticises the Applicant for failing to provide any additional information on the anticipated HSE consultation zones *since D7*, without any acknowledgment of the late stage at which the issue was raised by STG or the extremely limited opportunity that has allowed for the Applicant to respond.

2.1.22 At paragraph 2.10, STG faintly attempts to justify the lateness in raising this issue on the basis that the impact of HSE consultation zones has become more acute in light of suggested uncertainty around the delivery of the HyGreen project in that the HyGreen development would have provided a 'buffer' between the H2Teesside hydrogen facility and STG's retained land. The Applicant cannot comment on the prospects of HyGreen coming forward, but even if it does not, this does not provide any reasonable justification for STG so belatedly raising concerns as to the HSE consultation zones.

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- 2.1.23 STG have long been aware of the nature of the Proposed Development and by implication that it would have HSE consultation zones associated with it. The only material change has been to STG's intended use of its retained land.
- 2.1.24 The Applicant understands from the HyGreen planning application (R/2024/0271/ESM), in particular the submitted Plot Plan Layout for HyGreen at Foundry (Appendix 1), that if HyGreen comes forward it will extend almost to the North-South road running across the Teesworks site and therefore utilise almost the entirety of STG's retained land to the west of the Applicant's reduced main site area. The remaining strip within STG's ownership is not of sufficient width to enable construction of significant buildings or other development. As such it is not clear how this would act as a buffer to STG's retained land in this direction as there would be a very limited strip of retained land on which to accommodate any development.
- 2.1.25 The Applicant would also note the HSE's advice to the HyGreen planning application (R/2024/0271/ESM) that, *'if and when a hazardous substance consent is granted, HSE will generally produce inner, middle and outer consultation zone maps around the site. These will then be used by HSE to provide Land Use Planning advice for subsequent developments in the vicinity. Because of this, granting a hazardous substance consent may introduce future constraints for commercial and residential land use near to the consented site.'* STG does not appear to have objected to the HyGreen project on the basis that it would give rise to unacceptable sterilisation of its adjoining land, and it is unclear therefore why it should object to the Proposed Development on that basis.
- 2.1.26 Even with HyGreen located adjacent to the main site, the Applicant currently anticipates that it is likely the inner zone associated with the Proposed Development will extend into STG's adjacent land to the north and south of the Proposed Development main site and therefore the same issue has also always existed for those areas of retained land and yet was never raised as a concern by STG until D7.
- 2.1.27 As such, STG's assertion that the issue initially presented a less acute concern as a result of the HyGreen development is demonstrably unfounded.
- 2.1.28 STG have been aware of the characteristics of the Proposed Development for some considerable time, the Proposed Development aligns with STG's declared intentions of manufacturing, logistics and distribution for the Foundry and in considering what development is acceptable on that site it is incumbent on STG to determine what uses would be appropriate neighbours for the Proposed Development on that basis.
- 2.1.29 STG now asserts that if the HSE inner consultation zone extends on to its retained land, this would *"prejudice"*, *"significantly restrict"* and *"seriously...jeopardise"* the delivery of the unspecified alternative development proposal that it wishes to bring forward. Again, its case is based entirely on unsubstantiated assertion. There is no evidence of what the alternative development would comprise; how it would be affected by HSE consultation zones; or whether it could be laid out in such a way as to avoid giving rise to objection from HSE.
- 2.1.30 At its highest, STG asserts at paragraph 2.9 that the development on its retained land *"may"* comprise buildings of three or more occupied floors and *"potentially"*
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accommodate more than 100 workers. It does not even go so far as to suggest this is likely. As explained in REP8-020, given that no public progress has been made on any development of STG's retained land, there is no reason why such development could not be designed to take account of the potential existence of inner consultation zones on the site.

- 2.1.31 On the basis of the unsubstantiated potential prospects of an unspecified alternative development that *might* be affected by the Proposed Development, STG invites the ExA to recommend the imposition of Protective Provisions that would be unreasonable; impossible for the Applicant to comply with; and which would be likely to render the Proposed Development undeliverable in that they oblige the Applicant to ensure that no part of the inner zone extends to STG's retained land.
- 2.1.32 For even those Protective Provisions to be acceptable to STG, it claims that the Applicant must first demonstrate that none of STG's retained land would fall within the HSE inner zone (paragraph 2.13). The HSE consultation zones will be determined by HSE and are not within the gift of the Applicant. Contrary to the allegation at paragraph 2.11 of STG's closing submissions, the Applicant has shared information on this matter insofar as it has been possible to do so. However, as explained in REP8-020, paragraph 3.3.1, at present no consultation zones have been generated for the Proposed Development, as the Applicant is not yet able, or required, to start the COMAH process or know the precise inventory of hazardous substances that will be on-site. It therefore cannot reasonably be expected to provide more information on the scope and extent of the consultation zones for the Proposed Development and can offer no guarantee that STG's retained land will fall outside the inner zone. In substance, STG's position and its proposed Protective Provisions therefore amount to an an-principle objection to the Proposed Development, raised for the first time just three weeks prior to the end of the Examination. That is manifestly unreasonable.
- 2.1.33 The Applicant has explained that it currently anticipates that the inner zone associated with the Proposed Development is likely to extend onto STG's land. If that proves to be the case, there is no evidence that it will sterilise the retained land, as alleged by STG. A range of appropriate uses could still be brought forward within the parameters of STG's Outline Planning Permission.
- 2.1.34 Furthermore, any development proposals on STG's retained land will require consent, whether planning permission or, if they are brought forward pursuant to the Outline Planning Permission, reserved matters approval from Redcar and Cleveland Borough Council. The Applicant does not accept that any such proposals could realistically be brought forward imminently. Either way, before any decision is taken on the acceptability of such proposals, it will be necessary to assess their likely environmental impacts. Since the Outline Planning Permission was granted in 2022, Natural England have become increasingly concerned about the impact of development on birds at the SPA/Ramsar Site, particularly in the location that STG identifies for the potential alternative development, close to Bran Sands Lagoon and Dabholm Gut (as the ExA can discern from the written submissions made by Natural England in respect of the Proposed Development). Any consent or reserved matters

approval would need to address potential impacts (including in-combination impacts) on bird assemblages in order to secure consent.

- 2.1.35 In the event that an application for reserved matters approval does come forward for development on STG's retained land, the potential impact of any such development on the delivery of the Proposed Development would be an obviously material consideration in determining that application. At paragraph 2.12 of its closing submissions, STG positively asserts its own view that development on its retained land would be likely to impede or cause difficulties to the delivery of the Proposed Development. As such, any decision on whether to approve such development would necessarily have to weigh the potential impacts of that scheme on the delivery of the Proposed Development in determining whether it should be approved. Putting the point at its lowest, it certainly could not safely be assumed that approval would be likely to be granted for a scheme that would prejudice the delivery of nationally significant and critical national priority infrastructure. Indeed, it would be highly surprising for approval to be granted for such a scheme in those circumstances.
- 2.1.36 In summary, STG has entirely failed to substantiate its allegations that the Proposed Development would sterilise its retained land or that any restrictions which may be imposed on the future development of that land would be such as to justify the refusal of development consent or the imposition of Protective Provisions that would be likely to render the Proposed Development undeliverable.

3.0 STG PROTECTIVE PROVISIONS

- 3.1.1 In respect of other matters in STG's Protective Provisions, firstly the Applicant notes that it does not accept that STG's approval is required for articles 19 and 20. Article 19 already provides for a counter-notice process and compensation to manage the impacts of these powers. It is also noted that any 'works' which would trigger this article will have already been approved by STG pursuant to paragraph 3 of the Protective Provisions.
- 3.1.2 In respect of article 20, the same arguments apply as are set out in [REP7A-027] for the other land powers in Part 5 of the draft DCO as they are a precursor to the use of those wider land powers. Including consent provisions for STG for this power would put them in control of the very first steps of developing the Proposed Development.
- 3.1.3 It is noted that STG has made some minor amendments to the definition of 'red main criteria' in its deadline 8 protective provisions [REP8-079], compared to its Deadline 7a protective provisions [REP7a-045]. The Applicant is agreeable to STG's proposed wording of paragraph (a) of the red main criteria definition in [REP8-079]. However, the Applicant does not agree with STG's deletion of "the longitudinal slope of the diversion work must not exceed 5% with a maximum of 3% for gradient". This is contained in paragraph (e) of the Applicant's preferred protective provisions. The requirements contained within the Applicant's drafting are critical to safely transport the Abnormal Indivisible Loads (AILs), which comprise very large modules, and other equipment to the Main Site.
- 3.1.4 STG's Deadline 8 Protective Provisions insert a new paragraph 13 (e)(ii) and amends paragraph 13 (e)(iii). In response to these amendments, the Applicant repeats its submissions made in paragraph 9 of its submissions contained in the Applicant's PPs position statement [REP7a-027]. Further, the inclusion of 'diversion works' in paragraph 13 (e)(iii) is contrary to the costs provisions outlined in paragraphs 13 (b), (c), (d) in STG's deadline 8 protective provisions as well as paragraph 11(3) of the Applicant's preferred protective provisions [REP8-007].
- 3.1.5 Finally, in respect of STG's proposed paragraph 9, the Applicant made clear in [REP8-020] why this is not acceptable or necessary. Imposition of this wording would potentially make the nationally significant Proposed Development undeliverable and needs to be seen in the context of the STG's assertions, without evidence, that there will be 'seriously detrimental' impacts to an unknown, unsubstantiated development.
- 3.1.6 In light of the above, and for clarity, the Applicant has submitted alongside this document its preferred form of Protective Provisions (in clean and track changes against its previous preferred form in REP8-007), showing its preferred form of red main criteria, and ensuring all article cross references are correct, which constitute the Applicant's final position on these provisions.

4.0 CONCLUSION

- 4.1.1 The Applicant has established a compelling case in the public interest to justify the Proposed Development and confirmation of the necessary compulsory acquisition powers to facilitate its delivery.
- 4.1.2 STG invites the ExA and Secretary of State to refuse development consent and compulsory acquisition powers for critical parts of the Development, which together would deliver up to 10% of the UK's hydrogen target for 2030. Its basis for doing so is entirely unsupported by evidence. There is simply no evidential basis on which the ExA or Secretary of State could reasonably determine that the impact of the Proposed Development on STG's asserted intentions for the use of its retained land is such as to justify its requests to refuse development consent; exclude land from the Order Limits or impose Protective Provisions that would unnecessarily and unreasonably delay the delivery of critical national priority infrastructure.

APPENDIX 1: PLOT PLAN LAYOUT FOR HYGREEN AT FOUNDRY

