# H2Teesside 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: RFI-3 Response to Secretary of State Consultation Letter 2 questions 3, 4 and 6 and Consultation Letter 3

Planning Act 2008

**Applicant: H2 Teesside Ltd**

Date: 1 August 2025

Rev: 0

## DOCUMENT HISTORY

| | | | |
|---|---|---|---|
| **DOCUMENT REF** | **RFI-3 [REQUEST FOR INFORMATION]** | | |
| **REVISION** | 0 | | |
| **AUTHOR** | BP/PM/DWD/AECOM | | |
| **SIGNED** | BP | DATE | 01.08.2025 |
| **APPROVED BY** | BP | | |
| **SIGNED** | BP | DATE | 01.08.2025 |
| **DOCUMENT OWNER** | DWD | | |

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# 1.0 INTRODUCTION

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 was accepted for Examination. The Examination commenced on 29 August 2024 and concluded on 28 February 2025. The Examining Authority (ExA) submitted a Report and Recommendation in respect of its findings and conclusions to the Secretary of State on 28 May 2025.

1.1.3 The Secretary of State issued letters dated 7 July 2025 ('Secretary of State's Consultation Letter 2') and 21 July 2025 ('Secretary of State's Consultation Letter 3') to the Applicant (and other parties) with a request for information.

1.1.4 **Part 1** of this document provides the Applicant's responses to questions 3, 4 and 6 of the Secretary of State's Consultation Letter 2 (the latter also incorporating the response to National Grid Electricity Transmission's response to the Secretary of State's Consultation Letter 1 on 13 June 2025) – questions 1, 2 and 5 of the Secretary of State's Consultation Letter 2 were responded to in the Applicant's letter of 18 July 2025.

1.1.5 **Part 2** of this document provides the Applicant's comments on the response to the Secretary of State's Consultation Letter 2 by Natural England and the Applicant's comments on response to the Secretary of State's Consultation Letter 1 by North Tees Group Limited. It also provides a general update on the position with landowner Interested Parties.

1.1.6 As part of the development of this document, the Applicant had also prepared a response to South Tees Group's response to the Secretary of State's Consultation Letter 1 ('STG Submission'). This response was developed on the basis that any decision by Redcar and Cleveland Borough Council (as local planning authority)'s ('RCBC') on the Reserved Matters Approval Application submitted by Teesworks Limited (part of the South Tees Group) for a data centre ('the RMA Application'), referred to in the STG Submission, would not be made until after 1 August. This view was taken on the basis of the RCBC website indicating that the decision deadline for the RMA Application was 23 September, and that even that deadline was considered unlikely to be met, given the content of the representations that the Applicant and a number of other parties had submitted in respect of the RMA Application, which noted the lack of key environmental information provided and the lack of any consideration of the Proposed Development in the application.

1.1.7 However, at 4.30pm on 1 August, the Applicant became aware that Redcar and Cleveland Borough Council had issued its approval for the RMA Application that afternoon. The consequence of that decision being made so close to the deadline for submission of responses to the Secretary of State's Consultation Letter 3, is that the Applicant requires time to review RCBC's decision documents and reformulate

the response it had prepared accordingly, to account for the content of those documents and in order to fully consider and robustly set out what it considers the implications of the decision may be for the Secretary of State's decision on the Proposed Development.

1.1.8 As such, the Applicant confirms that it will submit a response to the STG Submission, taking account of the decision on the RMA Application, as soon as is practicably possible after 1 August, which the Applicant respectfully requests that the Secretary of State uses his discretion to accept once submitted.

## 2.0 PART 1: APPLICANT'S RESPONSE TO QUESTIONS 3, 4 AND 6 OF THE SECRETARY OF STATE'S CONSULTATION LETTER 2

**Table 2-1:** Response to Secretary of State's Consultation Letter 2

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| 3 and 4 | **Crown land – the Applicant and TCE**<br>3. In its response to the first information request, the Applicant stated it has not obtained the outstanding relevant Crown consent pursuant to section 135 of the Planning Act 2008, but that progress had been made with 11 articles out of 20 agreed with TCE. No response was received from TCE.<br>The Applicant and TCE should provide evidence to the Secretary of State of the obtained section 135 consent by no later than 1 August 2025 to allow time for the evidence to be reviewed ahead of the statutory deadline.<br><br>4. If TCE's consent has not been obtained by 1 August 2025, the **Applicant** should set out the reasons for this, including any outstanding issues. At that time, the **Applicant** should share its new correspondence with TCE and confirm when these issues will be resolved by. | 3. The Applicant and the Crown Estate have agreed all terms to enable Section 135 consent to be issued by the Crown Estate, and the Applicant understands that the Crown Estate has issued the consent to the Secretary of State in response to this question.<br><br>4. As a result of the above, this question is no longer relevant. |
| 6 | **Project Union and the Cowpen Bewley Arm - the Applicant, NGT and NGET**<br>6. In respect of the lack of an agreed position with NGET, the Applicant stated that it seeks 'to reach a mutually acceptable negotiated position that would allow NGET to withdraw that position prior to the Secretary of State decision'.<br><br>The Applicant and NGET should provide a final update on this position by no later than 1 August 2025. | The Applicant can confirm that despite recent discussions with NGET, a mutually acceptable negotiated position has not been met between the parties; and it is considered unlikely to be reached in an acceptable timeframe.<br><br>As such, the Applicant considers that the Secretary of State can make his determination on the DCO and decide whether or not it considers serious detriment is caused to NGET's statutory undertaking as a result of the Applicant's proposals.<br><br>The Applicant's position on this matter remains as it was at the end of Examination, being that it considers that serious detriment is <u>not</u> caused to NGET's undertaking, for the reasons set out in the Second Change Application Report [REP7-011], Saltholme Interaction Report [REP7A-015], and in the Applicant's Deadline 9 Response to NGET submission [REP9-022].<br><br>The Applicant has also noted NGET's response to Secretary of State Consultation Letter 1 and responds accordingly:<br>• the reference to alternative construction laydown areas would ultimately need to be agreed with NGET. The point, however, is to illustrate that there are ways for H2Teesside and Saltholme Expansion to co-exist, even if it adds complexity;<br>• although the Applicant has set out its position in paragraph 1.6.2 of [REP9-023] in relation to safety matters, to seek to reach resolution, it is willing to accept the addition of the wording in sub-paragraphs (i) to (n) of paragraph 9(2) (Retained apparatus: protection) proposed by NGET in [REP8-058], with the exception of sub-paragraph (m). With this sub-paragraph the Applicant is concerned that it would not necessarily be able to provide the information that is suggested in NGET's wording, as to do so may require information being provided by third parties whom may not be willing to share it. As such, the Applicant proposes that this wording is amended to: '*an analysis of safety risks and appropriate mitigation measures arising from* |

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| | | *the specified works being carried out in the vicinity of third party assets in the Linkline corridor';*<br>• in respect of the Saltholme Expansion Protective Provisions drafting:<br>– NGET point (a): the facilitation of access for the Proposed Development would be agreed with NGET as part of agreeing the plan for the works in and around Saltholme substation envisaged by this provision. This may or may not involve the use of plot 3/23, depending on NGET's preference. However, for completeness the Applicant could accept that the first paragraph of the proposed Protective Provision could be amended to read as follows: *"Not less than 56 days before the commencement of Work No 6.A.1 within plots 3/18, 3/20, 3/21 and 3/22 on the land plans or the commencement of Work No. 10A.1 within plot 3/23 on the land plans, the undertaker must submit to National Grid"*;<br>– More generally on NGET's point (a): the wording proposed sets out that the plan to be approved must include details on how the works are to be executed and how access is to be taken. Given that this provision will need to be taken into account alongside the 'Retained apparatus – protection' paragraph of the Protective Provisions (which would deal with any concerns in respect of NGET's existing apparatus) and any approval must be reasonable (meaning that if NGET considers that there is information missing it would be reasonable for NGET to not approve the plan), it is not clear what else NGET wishes the wording to say;<br>– NGET point (b) – the proposed wording has been suggested by the Applicant in the context that NGET is claiming serious detriment is caused to its statutory undertaking, but on the basis primarily that this is because it would make Saltholme Expansion slower and potentially more expensive to deliver. Neither of these are matters of serious detriment, and the Applicant is concerned that given these arguments are being deployed now, NGET would seek to refuse consent for plans on the same basis at the time of construction. Proposed sub-paragraph (5) simply sets the guardrails on what would be considered reasonable behaviour in dealings under these Protective Provisions.<br>– NGET point (c) – The Applicant's drafting is not seeing to impart any powers over NGET's land outside of the Order limits. It is seeking to cater for the scenario where NGET require that the Applicant utilise a different access strategy than it has currently proposed in the Order limits, as NGET has suggested in its submissions, to ensure both projects can be delivered. This would be on NGET land, and so only affecting NGET interests. If NGET was not content with the terms being offered for any such property agreements, then it could refuse consent. If it is considered that this position needs to be made clearer in the drafting, then the Applicant suggests that proposed sub-paragraph (4) could be amended as follows: *For the purposes of sub-paragraph (3) "approval" includes the entering into of any necessary property agreements for use of the property of NGET outside of the Order limits that NGET reasonably considers is ~~may be~~ necessary to facilitate access to Work No* |

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| | | *6.A.1 within plots 3/18, 3/20, 3/21 and 3/22 during construction, maintenance and decommissioning of those works;*<br>– NGET point (d) – the Applicant cannot accept a position where a third party is considered as the arbiter of a dispute without recourse to another dispute resolution process. In respect of Saltholme, given the importance of the matters that could be in dispute (i.e. the co-existence of the Proposed Development with a proposed expansion of the Saltholme Substation, and so not relevant to the proper functioning of the existing electrical transmission network), it is reasonable and appropriate that recourse could be made to resolve matters via arbitration. More generally, in terms of the Proposed Development's interactions with NGET's apparatus, the Applicant can see no reason why dispute resolution should not be applied to NGET when it is applied to other statutory undertakers. Ensuring the appropriate technical expertise considers such a dispute is enabled by the drafting of article 46 of the draft DCO.<br>• in respect of the definition of 'apparatus' in NGET's Protective Provisions, the Applicant's position remains as at the end of Examination and it does not accept NGET's proposed wording. Protective Provisions are conceptually about protecting assets which exist that could be affected by a consented development, and any protective or replacement works to them that are then required pursuant to the Order, not about seeking to 'future proof' a statutory undertaker's network, however it may look in the future. If NGET is to bring forward new apparatus, then it would do so in the context of knowing that H2T has consent and is being brought forward and so should therefore plan its developments accordingly. Clearly, in this case, NGET is particularly concerned about Saltholme Expansion, which has led to the specific provisions proposed by the Applicant discussed above.<br>• in respect of NGET's concerns about acceptable security and acceptable insurance:<br>– the Applicant notes that NGET's point in respect of being concerned about the transfer of benefit of the DCO to an 'unknown' entity is not applicable in the circumstance of the Proposed Development, as pursuant to article 8, a transfer would either be to a statutory undertaker under the Gas Act, a hydrogen supply company which would have been licensed by the Government, or a body that has been approved by the Secretary of State under article 8. This is therefore not a valid reason why NGET's suggested provisions need to be included in the DCO; and<br>– more generally, the Applicant considers that this is ultimately a matter for Secretary of State determination. In principle, the Applicant is backed by companies of good financial standing and as standard commercial practice would employ contractors with appropriate security and insurance measures in place. The Applicant considers that this is sufficient without the need for drafting within the Protective Provisions on this topic.<br>Finally, the Applicant notes that, further to its 18 July response to Secretary of State Consultation Letter 2, on 23 July the Government published a consultation on blending hydrogen into the GB transmission network, to understand its strategic and economic benefits in the context of |

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| | | developing the UK's hydrogen economy. The Government's minded to position is to consider further whether to support and enable transmission blending of up to 2% hydrogen by volume. The retention of the Cowpen Bewley Arm is therefore aligned with the Government's current position and could help the Proposed Development support the implementation of blending, if enabled, as explained in the Applicant's 18 July response. |

# 3.0 PART 2: APPLICANT'S RESPONSES TO NATURAL ENGLAND, NORTH TEES GROUP LIMITED AND GENERAL NEGOTIATIONS UPDATE

## 3.1 Comments on Natural England's Response to Secretary of State Consultation Letter 2

3.1.1 There are a number of points of principle which the Applicant wishes to set out following Natural England's submissions.

3.1.2 Firstly, it is noted that Natural England's submission seems to suggest that it is the case that all impacts of a scheme must be mitigated (see e.g. paragraph 6). This is not the case. All projects have some level of impact, and the requirement in the EIA Regulations (see Regulation 14(c)) is simply that an Environmental Statement must describe any measures that are proposed to mitigate potentially significant effects, not that every significant effect must be mitigated.

3.1.3 Similarly, paragraph 4.1.5 of NPS EN-1 should be read on the same basis - the Secretary of State is required to balance impacts and benefits, including any mitigation measures that are put forward. Ultimately, planning decisions are made every day on the basis of some impacts potentially not being mitigated, and that being balanced against the benefits of a scheme. There is therefore no requirement for the Secretary of State to impose a Requirement in respect of the SSSI impact of the Proposed Development, particularly as any such impact is hypothetical at this stage, based on conservative assumptions and the design of the Proposed Development not being finalised.

3.1.4 Secondly, in respect of the efficacy of any mitigation measures that are brought forward, Natural England advise that they cannot advise on the efficacy of any mitigation measures at this point in time and that the Applicant has not done so either.

3.1.5 As has been set out in its Examination submissions, the Applicant's position is that in respect of at-source mitigation measures, the Applicant has not undertaken the detailed design process as of yet and so cannot confirm if further emissions reduction can be achieved. As set out in its response to Secretary of State Consultation Letter 1, initial engagement with the Environment Agency has indicated that there are design changes which could be made to reduce emissions, but this is not yet confirmed. Appropriate emissions mitigation is already included in the initial design, however, it is also something that the permitting process will consider, and it is appropriate for the permitting process to deal with this matter, further to section 4.12 of the NPS EN-1.

3.1.6 In respect of other, off-site, mitigation measures, the Applicant agrees with Natural England's suggestions within Examination as to the type of measures that could be deployed to enable the SSSI to reach favourable condition. However, the efficacy of such measures cannot be stated at this time as:

- they are not in the Applicant's control as it requires a strategic approach to be taken with multiple parties;

- it is not clear on whether they would be appropriate to mitigate the impact of the Proposed Development alone given that it is so small; and
- it is not possible to confirm which measures are appropriate now, as cumulative impacts will be dependent on which projects will actually be brought forward with the potential to affect the SSSI through nitrogen deposition.

3.1.7 It is in this context that it is important that (without prejudice to the Applicant's overall position) any DCO Requirement on this matter allows for flexibility in how any mitigation is achieved rather than suggesting or requiring that certain measures are appropriate – this is achieved through the Applicant's proposed wording.

3.1.8 Thirdly, in response to paragraph 11 of Natural England's response, the Applicant acknowledges that Natural England has been concerned about the impacts of the Proposed Development alone and cumulatively. However, the discussion on off-site mitigation measures has been focussed on delivering a strategic answer to the strategic problem of multiple industrial facilities potentially impacting upon the SSSI and to what degree, including whether the SSSI is indeed as sensitive to nitrogen deposition as has been assumed.

3.1.9 Finally, the Applicant considers that Natural England's concerns in paragraph 8 do not contradict those expressed by the Applicant's response to the Secretary of State's Consultation Letter 2. The key point is that any Requirement needs to allow for an outcome to be achieved but not be so constraining so as to restrict the methods by which that outcome can be achieved. The Applicant's proposed wording in its response to Secretary of State Consultation Letter 2 achieves both those aims.

## 3.2 Comments on North Tees Group Limited Response to Secretary of State Consultation Letter 1

3.2.1 NTGL has submitted a further revised version of its preferred form of protective provisions (PPs) for consideration by the Secretary of State. Save as detailed in paragraph 3.2.3 below, the PPs submitted on behalf of NTGL (included as appendix 1a to their submission) mirror those submitted by NTGL at deadline 8 [REP8-068].

3.2.2 The Applicant responded to those PPs in in its deadline 9 response [REP9-014], and its position remains as outlined in that response, to which the Secretary of State's attention is drawn.

3.2.3 The exceptions are:

- Amendments have been made to paragraphs 3 (Consent), 16 (Boreholes), 17 (Huntsman Drive) and 20(1) (Apparatus) to bring NTGL's preferred PPs in line with those submitted by the Applicant to the Examining Authority at Deadline 9 [REP9-014]. These changes are welcomed and agreed by the Applicant.

- At paragraph 3, NTGL has sought to extend the time period in which NTGL must respond to works details submitted by the Applicant from 28 days to 30. The Applicant agrees to this amendment.
- NTGL has deleted Part 1 of its Deadline 8 preferred PPs (PPs for the Protection of Owners and Operators of the Linkline Corridor) and has acknowledged in its letter dated 17 April 2025 (appendix 1 to its submission) that PPs have now been agreed between the Applicant and Sembcorp for the benefit of the Owners and operators of the Sembcorp Protection Corridor and, as such, they will no longer be seeking to negotiate any amendments to the Sembcorp Protection Corridor PPs or seeking their own PPs in this regard. This is again welcomed by the Applicant.

3.2.4 In addition, NTGL has raised the following points in its letter dated 12 May 2025 (included as appendix 2 to the submission) to which the Applicant wishes to respond:

Paragraph 5

3.2.5 At paragraph 5 NTGL states that it has been trying to engage with the Applicant for a considerable amount of time and that its preference would have been to have had more detailed engagement prior to the close of examination with a view to reaching an agreed position in respect of the PPs.

3.2.6 The Applicant notes that NTGL did not engage in the Examination process until Deadline 7 (see [REP7-026] in this regard). Notwithstanding the lack of engagement from NTGL, the Applicant proactively included a form of PPs in the draft DCO submitted to the ExA at Deadline 7 and has sought to engage with NTGL as to the form of the PPs since then.

3.2.7 Following close of the Examination there has been correspondence and discussions between the legal representatives for H2T and NTGL. Through correspondence in April and May 2025, solicitors for the Applicant sought further explanation/justification for the amendments being sought by NTGL to the PPs, including further detail of NTGL's development proposals. Such further detail is required to enable the Applicant to consider whether more targeted amendments could be agreed to the PPs in order to address NTGL's specific concerns. Unfortunately, such information has not been forthcoming.

3.2.8 The Applicant remains eager to engage in direct discussions with representatives of NTGL and is currently trying to arrange a meeting to better understand NTGL's requirements, with a view to reaching agreement on the PPs.

Paragraphs 7 and 12

3.2.9 At paragraphs 7 and 12 NTGL state that it is fundamental that the PPs require the Applicant to obtain NTGL's consent where any works are required within the Order limits, and not only where works would have an effect on land adjacent to the Order Limits.

3.2.10 The Applicant considers that the PPs should offer protection to (1) NTGL's land that would be affected by the authorised development (this would be land within the Order Limits) and (2) access to land owned by NTGL that is adjacent to the Order Limits.

Paragraphs 8 to 11

3.2.11 At paragraphs 8 to 11 NTGL suggest that the circumstances in which the proposed PPs must be considered for the Proposed Development are different to the circumstances under which the Secretary of State imposed PPs in the NZT DCO in that:

- NTGL's development proposals are more advanced now than at the stage that PPs were being negotiated for the NZT DCO;
- NZT has now been granted development consent and submitted its plans for installation of infrastructure in the Linkline Corridor; and
- the pipe routing and proposed works for the Proposed Development extend beyond the Sembcorp Protection Corridor into land owned, operated and controlled by NTGL.

3.2.12 To address this, NTGL propose an amendment to the definition of NTL Estate to include the NTL Linkline Corridor and have added wording to paragraph (3) (not carried forward into the form of PPs appended to their letter at appendix 1a) to confirm that it would be reasonable for NTGL to withhold consent where it reasonably considers the relevant works could prejudice the future development of the NTL Estate.

3.2.13 As noted above, the Applicant has sought further details of NTGL's existing and proposed operations and what NTGL considers to be potential interactions with the Proposed Development.

3.2.14 To date, NTGL has only made the Applicant aware of its specific concerns regarding access across Huntsman Drive and access to Boreholes, both of which the Applicant has sought to address with specific provisions in its preferred form PPs.

3.2.15 It is noted that NTGL has indicated that its development proposals are now more advanced than at the stage when the NZT DCO was made. However, NTGL has declined to share meaningful details of those development proposals with the Applicant, despite the Applicant having requested such information.

3.2.16 NTGL is seeking protective provisions that are akin to those that have been agreed/are under negotiation with third party operators. NTGL is a commercial landlord, not an operator. It is therefore the Applicant's position that the protective provisions that NTGL is seeking are inappropriate and go beyond what is reasonably required.

3.2.17 Without further detail of potential interactions with NTGL's existing and/or proposed operations (and in the absence of an application, or an indication of when an application may be submitted for NTGL's future development proposals), the

Applicant does not consider that it would be appropriate to extend the PPs in the manner being sought by NTGL.

3.2.18 With regard to concerns raised in relation to potential congestion in the Sembcorp corridor, it is the Applicant's position that the Sembcorp PPs (alongside bespoke PPs agreed with operators within that corridor) provide adequate protection. Affording NTGL approval rights could create unnecessary delays and give rise to potential for conflicting responses which could prevent the implementation of the Proposed Development.

3.2.19 With regard to concerns raised regarding the wider Linkline Corridor the Applicant notes that this is a new point that has been raised by NTGL for the first time following close of the Examination.

3.2.20 For the reasons already outlined above, the Applicant does not agree to the inclusion of specific provisions to allow NTGL to withhold its permission to works where it considers such works would prejudice future development on the NTL Estate. As noted above, NTGL is a commercial landlord and not an operator and there is insufficient detail currently available of NTGL's future development proposals to enable the Applicant to agree to such provisions.

### 3.3 General Update on Negotiations with Landowner Interested Parties

3.3.1 Since the end of Examination, the Applicant has continued negotiations with Interested Parties as to the appropriate protective provisions and property agreements. The Applicant continues to negotiate and make progress on these agreements. By way of example, the Applicant is pleased to confirm that it has now agreed the terms of a confidential side agreement with Venator Materials UK Limited. The Applicant understands that Venator Materials UK Limited has removed its objection to the DCO.

3.3.2 However, notwithstanding these ongoing negotiations, they are not complete, and the Applicant considers that they are unlikely to complete prior to the Secretary of State's decision date of 28 August 2025. As such, the Applicant is content that the Secretary of State can make his decision on the basis of the submissions before him. The Applicant's position on the appropriate protective provisions to include in the DCO are as outlined in the Applicant's submissions made from deadline 7 onwards. We invite the Secretary of State to determine the DCO application on the basis of the Applicant's submissions on each respective party's protective provisions.