Northern Endurance Partnership

bp

bp's Update Submission to SoS
8 December 2022

Northern Endurance Partnership

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Northern Endurance Partnership

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8 December 2022

bp's update submission to the Secretary of State

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1. OVERVIEW

1.1 The Secretary of State ("SoS") will be aware of the extensive submissions BP Exploration Operating Company Limited ("bp") made into the examination of the Hornsea Project Four Offshore Wind Farm ("Hornsea Project Four") DCO application, regarding the interface between Hornsea Project Four and bp's proposed use of the Endurance Store for the purposes of delivering the ECC Plan.[1]

1.2 Following the close of the Hornsea Project Four examination on 22 August 2022, further representations relevant to the interface issues were made by Orsted (as promoter of Hornsea Project Four) to the examination into the Net Zero Teesside Project DCO application (reference: EN010103) (the "NZT DCO"), which seeks development consent and other powers and provisions for the onshore elements of the wider project necessary to deliver the ECC plan.

1.3 The applicants for the NZT DCO, Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (incorporated on behalf of bp as the operator of the Northern Endurance Partnership ("NEP")) (the "NZT DCO Applicants"), provided responses to Orsted’s submissions, but stressed throughout the examination that there were limits to the extent these matters properly fell to be examined through that process as opposed to the Hornsea Project Four decision-making process (and, if necessary, in the consenting process for the offshore consents necessary to deliver the ECC Plan[2]). Extensive submissions were made to the examining authority for the NZT DCO application in respect of this approach, explaining why bp did not therefore propose to re-litigate the same points in the NZT DCO examination to avoid duplication.[3]

1.4 In order to facilitate this approach and to assist the SoS’s decision-making process on Hornsea Project Four, the NZT DCO Applicants confirmed to the NZT DCO examining authority that bp would submit into the Hornsea Project Four decision-making process the relevant submissions from the NZT DCO examination[4]. It is of obvious importance to the interests of all parties, and to the public interest, that the SoS has all the necessary information before him in reaching a decision on Hornsea Project Four and/or in deciding whether to seek any further information/clarification as appropriate.

1.5 This submission is made for that purpose and to also update the SoS in relation to the matter of the Crown's consent to bp's proposed protective provisions within the Hornsea Project Four DCO under s135(2) of the Planning Act 2008 ("PA 2008").

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[1] bp provided a summary of the geographical overlap between the projects and an introduction to the ECC plan at Deadline 1, REP1-057, "*Summary of bp position with regard to the impact of Hornsea 4 on the Northern Endurance Partnership Project*", paras 1.1 to 2.11, e-pages 119 to 122.

[2] Appendix 5 to bp's Deadline 3 submission in the examination of Hornsea Project Four provided a summary of the consenting process for the necessary offshore consents (REP3-047, Appendix 5, e-page 87).

[3] For example, REP5-025, the NZT DCO Applicants' written summary of ISH3 submitted at Deadline 5 (e-pages 11 to 16)

[4] REP11-015, The NZT DCO Applicants' written summary of ISH5 submitted at Deadline 11, e-page 15.

2. ORSTED'S RESPONSE TO THE JASON COPPEL KC OPINION

2.1 At Deadline 8 of the Hornsea Project Four DCO examination, bp provided a Legal Opinion from Jason Coppel QC (as then titled, now KC) (the "JCKC Opinion")[5], which addressed the lawfulness of bp's proposed protective provisions, particularly in relation to how they interact with the Interface Agreement (such terms as previously defined by bp in its previous submissions on the matter). As noted in bp's Deadline 8 submission[6], the JCKC Opinion provided confirmation that:

2.1.1 s. 120(3) PA 2008 read, in particular, with paragraph 3 of Schedule 5 to that Act, clearly provides the necessary *vires* for the inclusion of bp's proposed protective provisions in the Hornsea Project Four DCO; and

2.1.2 in circumstances where the provisions are considered to interfere with the 'possessions' of Orsted in terms of A1P1 (by reference to their rights under the Interface Agreement), that the SoS would be entitled to conclude that any such interference would be proportionate in the public interest, given the very strong public interest in preserving the full extent of the Endurance Store and so the delivery of the ECC plan.

2.2 The JCKC Opinion was prepared in the context of previous written legal submissions made by James Maurici QC (again as he then was, now KC) (the "JMKC Submissions") which had been submitted by Orsted at Deadline 5 (REP5-076) and which argued broadly the opposite - that bp's proposed protective provisions (as they relate the Interface Agreement) would be unlawful, as *ultra vires* under s120(3) of the PA 2008 and/or contrary to the Human Rights Act 1998 as a breach of Orsted's A1P1 rights.

2.3 Orsted provided additional written submissions from James Mauríci KC (the "Further JMKC Submissions) at Deadline 9 of the examination of the NZT DCO application (REP9-032). Although those submissions responding to the JCKC Opinion were made in the context of the Articles proposed in the draft NZT DCO regarding the Interface Agreement (Articles 49 and 50), those Articles purposely reflected the equivalent drafting from bp's protective provisions submitted into the Hornsea Project Four DCO examination[7]. The Further JMKC Submissions are therefore equally relevant to the SoS' consideration of those protective provisions in the context of Hornsea Project Four. The Further JMKC Submissions are included at Annex 1 of this update submission on that basis.

2.4 The NZT DCO Applicants provided a written response to the Further JMKC Submissions as part of their representations to the NZT DCO examination. That written response is included at Annex 2 of this update submission. Again, whilst that document was prepared by reference to the relevant Articles in the draft NZT DCO, the submissions are equally applicable to bp's proposed protective provisions in the Hornsea Project Four DCO.

2.5 The NZT DCO Applicants' response to the Further JMKC Submissions at Deadline 11 (included at Annex 2, section 9, page 33) concluded that:

[5] REP8-023, Annex 1, e-page 8
[6] REP8-023, para 2.5.4, e-page 5
[7] The Explanatory Memorandum to the draft NZT DCO provides the context to and justification for Articles 49 and 50 and their origin in bp's protective provisions from the Hornsea Project Four DCO (Version 7 of the Explanatory Memorandum, Deadline 12, REP12-006, paras 3.7.15 to 3.7.19)

2.5.1 to the extent that there are disagreements between the parties as to points of fact or law, the position set out in the JCKC Opinion (as supplemented in the NZT DCO Applicants' response) is to be preferred;

2.5.2 however, both parties appear to agree that the question of whether the proposed interference with Orsted's contractual rights under the Interface Agreement is justified and proportionate is a matter of judgment for the Secretary of State; and

2.5.3 it follows from the NZT DCO Applicants' submissions that this is a judgment which he could lawfully and rationally conclude in the NZT DCO Applicants' favour.

2.6 Orsted responded to the NZT DCO Applicants' written submissions at Deadline 12 of the NZT DCO examination, largely reasserting the various JMKC submissions. The NZT DCO Applicants provided written responses to Orsted's Deadline 12 submissions at the final Deadline 13. Orsted's Deadline 12 response, and the NZT DCO Applicants' Deadline 13 response (section 6, page 16) are included at Annexes 3 and 4 respectively.

2.7 Of particular relevance for the SoS's decision on Hornsea Project Four is Orsted's assertion in paragraph 3.2.6 (of their Deadline 12 response (Annex 4)) that they do not consider it would be "*rational for the Secretary of State to conclude that there is substantial public interest in preserving the viability of the ECC plan"* or that, in the event the SoS concludes that there is, "*that this may justify an interference with Orsted's contractual rights under the Interface Agreement"*. The NZT DCO Applicants' response to these (unreasoned) assertions is set out in paragraphs 6.4.5 to 6.4.9 of its Deadline 13 submission (pages 18 and 19 of Annex 5).

2.8 bp considers those submissions from the NZT DCO examination to represent the totality of the additional material from that process which is relevant to the SoS' consideration of the application for the Hornsea Project Four DCO. If, having considered the additional documents, the Secretary of State has any additional questions about these or related matters, bp would be happy to assist further as required.

3. UPDATE ON CROWN CONSENT PURSUANT TO S135(2) OF PA 2008

3.1 At Deadline 8 of the Hornsea Project Four examination, bp provided a response to The Crown Estate's ("TCE") previous submissions into the examination (REP8-023, paragraphs 2.6 to 2.10, e-page 6). In particular, bp noted that TCE remained of the view that its consent was required pursuant to s135(2) of the PA 2008 in respect of the proposed provisions in bp's protective provisions addressing the Interface Agreement.

3.2 bp suggested in its Deadline 8 response that to the extent the SoS concludes that s135(2) is engaged, TCE should be prepared to provide its consent on a 'without prejudice' basis. In other words, TCE's consent would be contingent upon the SoS resolving the relevant technical and legal disputes between bp and Orsted in favour of bp.

3.3 As part of its own Deadline 8 submission (REP8-025), which crossed with and was prepared prior to sight of bp's Deadline 8 submission, TCE maintained its previously stated position concerning the principle of a provision addressing the Interface Agreement and specific to s135(2) noted that:

"*…currently The Crown Estate is not minded to agree to bp's protective provisions and the disapplication of any part of the Interface Agreement. However, we are willing to review our position once we have an understanding of the recommendations of the Examining Authority, the position of the Secretary of State and the progress of discussions between bp and the Applicant between now and then."* (emphasis added)

3.4 Following the close of the examination, bp has continued discussions with TCE on this issue. bp understands from those discussions that TCE's position remains as outlined above, in that it is not currently minded to grant consent pursuant to s135(2) on a 'without prejudice' basis (as proposed by bp), but remains willing to review its position depending on the position adopted by the SoS in respect of the technical/legal submissions put

forward by Orsted and bp regarding the interface between the respective projects and the interface agreement.

3.5 Whilst bp is cognisant of the sensitive position that TCE finds itself in, this 'wait and see' approach presents procedural issues that will require careful consideration by the SoS as part of the decision-making process. In the absence of some form of ‘minded to’ letter ahead of formal determination (which may introduce delay to the process), the SoS’s conclusions would not be definitively known until the decision is taken. Given the need for any consent granted pursuant to s135(2) to pre-date the DCO decision, bp remain of the view that a 'without prejudice' consent is the simplest way to ensure the SoS is not unduly constrained or unnecessarily delayed in determining the Hornsea Project Four application.

3.6 In the circumstances summarised above bp therefore respectfully asks the SoS to consider inviting TCE to submit a 'without prejudice' consent pursuant to s135(2) of the PA 2008. The consent would be intended to apply in circumstances where the SoS determines the technical and legal disputes between bp and Orsted in bp’s favour. Any such consent would not imply TCE agreed with bp's submissions, only that it did not wish to constrain the SoS' ability to include the full extent of bp's protective provisions were he satisfied by the arguments put forward by bp that this was both lawful and justified in the public interest.

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ANNEX 1
THE FURTHER JAMES MAURICI KC SUBMISSIONS

Hornsea Project Four

Net Zero Teesside Development Consent Order

Response to the Applicant's Legal Opinion

Deadline: 9, Date: 06 October 2022

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1 Introduction

1.1 At Deadline 7, Orsted Hornsea Project Four Limited ("Hornsea Four") undertook to respond to the Legal Opinion of Jason Coppel KC (Annex 1 of the Applicants' Response to the ExA's Second Written Questions (REP6-121).

1.2 That response is set out in Appendix 1 to this document.

Appendix 1 - Legal Submissions of James Maurici KC

<u>THE NET ZERO TEESIDE PROJECT DCO</u>

<u>REFERENCE: EN010103</u>

LEGAL SUBMISSIONS ON BEHALF OF

ORSTED HORNSEA PROJECT FOUR LIMITED

<u>Introduction</u>

1. This note is provided to the Examining Authority on behalf of Orsted Hornsea Project Four Limited ("**Orsted**") which is registered as an interested party in relation to the Net Zero Teeside Project ("**the NZT Project").** The NZT project is being promoted by a consortium including BP Exploration Operating Company Limited's ("**BP**").

2. These submissions are provided in response to the Advice of Jason Coppel QC (as he then was) dated 15 August 2022 ("**the Coppel Advice**"). These submissions should be read alongside: (i) Orsted's note dated 9 June 2022 ("**the 9 June note**") and submitted to the NZT Project examination; and (ii) Orsted's legal submissions ("**the Orsted legal submissions**") dated 8 June 2022 in respect of the Hornsea Project Four Offshore Wind Farm ("**the Hornsea Project**") DCO application (EN010098) (these submissions were attached to the 9 June note). The Coppel Advice was submitted in the context of the Hornsea Project DCO examination but has also been submitted to the NZT Project examination.

<u>Background</u>

3. The background as matters then stood is set out in the 9 June note and the Orsted legal submissions.

4. BP initially sought an article (Article 49) in the NZT Project DCO which stated that the Interface Agreement ("IA") would no longer have effect, and that no claim could be made, nor award granted, for any damages as a result of any alleged antecedent breach of the Interface Agreement prior to the date of the NZT DCO.

5. Following the submission to the NZT Project examination of the 9 June note and the Orsted legal submissions as well as correspondence from the Crown Estate on the need for their consent, BP amended Article 49 so that it no longer disapplied the IA in its entirety. Instead, as amended, it seeks to: (i) remove BP's liability to Hornsea Four under the IA "*due to or arising from [BP's] proposed or actual activities in the exclusion area*" stating that no claim could be made by, nor award granted to Orsted for any damages as a result of any alleged antecedent breach of the IA prior to the date of the NZT DCO; (ii) instead provide for compensation to be payable by BP to Orsted in lieu of liability under the IA. There are two scenarios: one where the compensation amount is agreed as at the date the NZT DCO is granted, and one where the compensation amount is not agreed, in which case it must be determined by the Secretary of State within 2 months of the NZT DCO coming into force. These scenarios are split into two alternative articles of the DCO: Article 49 and Article 50.

6. In terms of determination by the Secretary of State Article 50 provides:

> "(3) Unless otherwise agreed between the entities and notified to the Secretary of State in writing, the Secretary of State shall within 2 months of this Order coming into force determine and notify the entities of the compensation to be paid by the carbon entity to the wind entity, such compensation to be paid by no later than 1 February 2029, provided that the provisions of this paragraph have not ceased to have effect in accordance with paragraph (8) by that date (in which case no payment shall be due).
> (4) In determining the compensation, the Secretary of State shall balance any impact on the business undertaking of the wind entity from the carbon entity's proposed or actual activities in the exclusion area (and the removal of the carbon entity's liability to the wind entity under the interface agreement) pursuant to this Order with the public interest in preserving the full developable area of the endurance store.
> (5) In making a determination of compensation under paragraph (3), the Secretary of State shall take into account relevant submissions made by the entities during the examination of the Hornsea Project Four DCO and such further information (if any) provided by the entities pursuant to paragraph (4) above"

7. The Crown Estate has written to the Examining Authority to advise that it still considers its consent would be required for such an interference with the IA.

<u>The Coppel Advice – the Convention rights legal arguments</u>

8. The main issues on which there would appear to be disagreement all concern the proper approach, as a matter of law, to the justification put forward by BP for the interference caused by the NZT DCO with Orsted's Article 1, Protocol 1 rights. In particular the Coppel Advice fails properly to acknowledge:

1) that a measure can pursue what is self-evidently a legitimate aim that is in the public/general interest but still be found to be disproportionate if it imposes *"an individual and excessive burden"*;
2) the key importance of compensation (or the lack thereof) in relation to the issue of justification and in particular the striking of a fair balance;
3) that there is not a mechanical rule that the judgment of public authority decision-makers will be respected unless it is manifestly without reasonable foundation.

9. These are matters, which in terms of the law, are dealt with in the Coppel Advice at paras. 13 – 14 and 17(6). These matters are explored in detail below.

10. It should be noted that despite these disagreements there appears to be a very large degree of agreement on the Convention rights issues. Thus, in terms of what is agreed (references to paragraph numbers are to the Coppel Advice unless the contrary is stated):
    1) Para. 9: "*Orsted also contends – in §47vi of JMQC's submissions - that s. 120(3) PA 2008 should be read down pursuant to s. 3 HRA so as to not to permit the modification of the IA, as such modification would contravene its rights under Article 1P. I agree that if the modification of the IA, or the exclusion of bp's liability under it, did contravene Orsted's Convention rights, it would not be open to the SoS to make such provision in the DCO.*"
    2) Para. 11: it is not disputed by BP that "*the clauses of the IA which make provision for bp to pay compensation to Orsted, in particular in the event of a "Material Adverse Effect", represent a "possession" of Orsted within Article 1P. I make that assumption, noting the dictum of Coulson LJ in **Solaria Energy v Department for Business, Energy and Industrial Strategy** [2021] 1 WLR 2349, §34 that "a signed and part-performed commercial contract is, prima facie, a possession*".
    3) Para. 12: In terms of "*whether the removal of bp's liability to pay compensation under the IA would deprive Orsted of any "possession" within the second sentence of Article 1P, or would merely interfere with the peaceful enjoyment of, or control the use of, any "possession" … As JMQC points out (in §40 of his submissions), citing **Mott v Environment Agency** [2018] 1 WLR 1022, the Courts do not deem it necessary to categorise a measure as a deprivation or a control of use. However, I would agree with the thrust of his argument, that the closer a measure is to a deprivation of possessions, the more seriously it is likely to be regarded by the Courts*".

4) Para. 14: "*The domestic courts have analysed the issue of proportionality of interference with Article 1P "possessions" as comprising four stages (see, recently, **Aviva Insurance Ltd & Anor v Secretary of State for Work and Pensions** [2022] 1 WLR 2753, §§77-85): (i) whether the objective of a measure is sufficiently important to justify the limitation of a fundamental right; (ii) whether the measure is rationally connected to the objective; (iii) whether a less intrusive measure could have been used; and (iv) whether, having regard to these matters and to the severity of the consequences, a fair balance has been struck between the rights of the individual and the interests of the commun*ity." This is often referred to as the ***Bank Mellat*** test: see ***Bank Mellat v HM Treasury (No 2)*** [2014] AC 700.

11. On the matters in dispute (see above) the legal position is as follows:
    1) The justification for any interference with Orsted's Article 1, Protocol 1 rights that is affected by the DCO is the key issue here;
    2) Under Article 1, Protocol 1 for an interference to be justified it must: (i) pursue a legitimate aim that is in the public/general interest; (ii) be proportionate and (iii) be lawful (see para. 13 of the Coppel Advice and see also ***Aviva*** at para. 76);
    3) A measure can pursue what is self-evidently a legitimate aim that is in the public/general interest but still be found to be disproportionate. Thus, in the ***Mott*** case (see above) the measures taken by the Environment Agency were for the protection of the environment and of nature conservation sites of the highest importance. Despite that the absence of compensation for Mr Mott for his loss of fishing rights was held to mean that the measure was disproportionate;
    4) There is a four-stage test to be applied in assessing proportionality but it is not accepted that the broad margin of discretion afforded to decision-makers means that a measure will be held to be proportionate unless it is "*manifestly without reasonable foundation*" (see the Coppel advice at paras. 13 and 14) and that this must be applied to all four stages of the ***Bank Mellat*** test. The correct position is more nuanced than that and is set out in ***Aviva*** (emphasis added):

       "81. It seems that the first use of the phrase "manifestly without reasonable foundation" for A1P1 purposes was by the European Court of Human Rights ("ECtHR") in ***James v United Kingdom*** (1986) 8 EHHR 123. The ECtHR held at paras 46 that "the margin of appreciation available to the legislature in implementing social and economic policies should be a wide one" and that the court "will respect the legislature's judgment as to what is 'in the public interest' unless that judgment be manifestly without reasonable foundation". There were then a number of Supreme Court cases, including the ***Welsh Bill*** case [2015] AC 1016 , which applied the

manifestly without reasonable foundation test only to the first to third stages, and not the fourth stage of the ***Bank Mellat*** test.

82. In ***R (DA) v Secretary of State for Work and Pensions*** [2019] 1 WLR 3289 , the Supreme Court confirmed that the manifestly without reasonable foundation test applied to all parts of the four stage analysis. Lord Wilson JSC considered article 14 discrimination and A1P1 deprivation of property cases, including the ***Welsh Bill*** case, and held at para 65 that in relation to the Government's need to justify what would otherwise be a discriminatory effect of a rule governing entitlement to welfare benefits "the sole question is whether it is manifestly without reasonable foundation. Let there be no future doubt about it".

83. This conclusion was revisited in ***R (SC)*** [2022] AC 223 . R (SC) was decided in the Supreme Court after the judgment of the judge below. At para 115(2) of ***R (SC)*** Lord Reed PSC identified that "a wide margin is usually allowed to the state when it comes to general measures of economic or social strategy". There may be a wide variety of other factors which bear on the width of the margin of appreciation. The court must make a balanced overall assessment. At para 142 Lord Reed PSC emphasised that the ECtHR has generally adopted a nuanced approach, which enables account to be taken of a range of factors which may be relevant in particular circumstances so that a balanced overall assessment can be reached. As Lord Reed PSC said "there is not a mechanical rule that the judgment of the domestic authorities will be respected `unless it is manifestly without reasonable foundation'. The general principle that the national authorities enjoy a wide margin of appreciation in the field of welfare benefits and pensions forms an important element of the court's approach, but its application to particular facts can be greatly affected by other principles which may also be relevant, and of course by the facts of the particular case." Lord Reed PSC went on to show that this approach applied to many different types of cases.

84. When turning to the approach of the domestic courts Lord Reed PSC said at para 143 that a similar approach had been taken by domestic courts and that "where the European court would allow a wide margin of appreciation to the legislature's policy choice, the domestic courts allow a wide margin or 'discretionary area of judgment'". This was relevant to the intensity of review. Lord Reed PSC set out his conclusions from para 157 of the judgment. He recorded that "a low intensity of review is generally appropriate, other things being equal, in cases concerned with judgments of social and economic policy in the field of welfare benefits and pensions, so that the judgment of the legislature will generally be respected unless it is manifestly without foundation. Nevertheless, the intensity of the court's scrutiny can be influenced by a wide range of factors". This would depend on the circumstances of the case, and very weighty reasons would usually be required to be shown, and the intensity of view would be high, if a difference in treatment on a suspect ground was to be justified. Lord Reed PSC cautioned against taking a mechanical approach stating "a more flexible approach will give appropriate respect to the assessment of democratically accountable institutions, but will also take appropriate account of such other factors as may be relevant".

85. In these circumstances I do not accept Mr Brown's submission that the appeal should be allowed on the basis that the judge failed to apply, in a mechanistic fashion, the formula of "manifestly without reasonable foundation" to each stage of the four stage analysis. It is therefore necessary to return to the judge's assessment of the four stages of the ***Bank Mellat*** test applying the appropriate intensity of review."

5) It must also be recalled that the above case-law is largely concerned with the application of Article 1, Protocol 1 in *"the field of welfare benefits and pensions forms"*. That is a long way removed from the present case. The present case concerns the

interference with the contractual rights of one commercial party in order to benefit another.

6) The fourth stage of the ***Bank Mellat*** test - the *"fair balance test"* – involves a consideration of whether a fair balance has been struck between the public/general interest served by the measure and the protection of the affected party's fundamental rights: see ***Sporrong & Lonnroth v Sweden*** (1982) 5 EHRR 35 at para. 69.
7) The Strasbourg authorities have emphasised that even where a measure is in the public and general interest it will nonetheless be disproportionate if it imposes *"an individual and excessive burden"*: see ***Lithgow v UK*** (1986) 8 EHRR 329 at para. 120 and ***Bank Mellat*** at para. 70. The absence of compensation can result in the measure being found to impose such a burden and hence to be disproportionate: see ***Chassagnou v France*** (1999) 29 EHRR 35.
8) The factors relevant to whether a fair balance has been struck include critically for these purposes compensation. So the payment of compensation is highly relevant to the *"fair balance"* test (see the Human Rights Practice (Sweet & Maxwell) para. 15.060. Where the interference amounts to a deprivation then in almost all cases compensation is required even where the general interest pursued by the state is particularly strong: see ***Lithgow*** para. 120, ***Holy Monasteries v Greece*** (1994) 20 EHRR 1 para. 71, ***Jahn v Germany*** (2006) 42 EHRR 49 paras. 93ff and ***Vistiņš v Latvia*** (2014) 58 EHRR 4 at paras. 112 and 119. The ***Duran Education Trust*** case cited in the Coppell Advice at para. 17(6) is an example of an exceptional or very exceptional case where a deprivation is justified despite the absence of compensation. On the facts it was a case that has no real connection to the present case. In ***Mott*** the absence of compensation was key to the finding of a breach of Article 1, Protocol 1.

Application to this case

12. It is clear that what was proposed initially by BP namely the complete abrogation of the IA and with no compensation payable would have been in breach of Article 1, Protocol 1. It is no doubt for that reason that BP has amended its approach. This leads Jason Coppel KC to suggest, see para. 17(7) that this is now a case where it can be said that what is in issue is *"the removal of Bp's potential liability to Orsted under the IA"* and its replacement with *"another compensation mechanism"*.

13. There are a number of points that arise.

14. First, in terms of the position under the IA this is accurately recorded in the Coppel Advice at para. 3(3). It is said that *"If the HP4 project were to be precluded from installing infrastructure in the Overlap Zone in order to ensure the delivery of the ECC Plan this could in principle constitute a "Material Adverse Effect (Pre-Operational)", as defined in §1.3 IA, as giving rise to "Re-location costs" and/or "Re-programming costs". The IA, as currently framed, provides for bp (as the "Carbon Entity" under the IA) to compensate Orsted (the "Wind Entity") for such costs. In the case of Re-location costs, these would be calculated on the basis of "the diminution in the market value of the Wind Entity's project that will arise due to the loss of such infrastructure [from the Overlap Zone] or reduction in power output [as a result of infrastructure not being able to be located in the Overlap Zone] as the case may be" (§1.3 IA). If the parties cannot agree on the amount of compensation which is payable, there is provision in the IA for this to be decided by a single expert, whose determination "shall be final and binding upon the Entities except in the case of fraud or manifest error or failure by the Expert to disclose any interest or duty which conflicts with his functions under his appointment as Expert" (§6.4.10)."* Thus, it should be noted that:
    1) The compensation provisions are aimed at a situation – which was explicitly contemplated by the parties – namely what should happen if Orsted's Hornsea Project was excluded from the "Overlap Zone";
    2) In the Coppel Advice it is said at para. 17(4) that "*Orsted's legal submissions have placed much weight on the IA being a commercial agreement which bp freely entered into in the relatively recent past. That is of course true, but the full context is that bp was effectively required to succeed to the IA given the obligations assumed under §8 of the IA ("Succession") by the previous Carbon Entity and, as understand it, the IA was originally negotiated and entered into on the basis of an expectation that the two projects could co-exist within the Overlap Zone. Having done substantial further investigation, bp's technical conclusions are different, and rule out co-existence, and if the SoS were to accept them, that would go to undermining a key premise for the original IA, and for bp succeeding to it."* This is, with respect, a bad point given that:
        i. Whatever might have been the expectation in this regard the compensation provision was explicitly designed to deal with the very situation now in hand e.g., where the projects were incompatible and Orsted was excluded from the Overlap Zone;

ii. The suggestion that investigations have shown that there cannot be co-existence does not frustrate the contract. Indeed, the compensation provisions are there precisely to deal with that situation. Frustration applies where an unforeseen event makes performance of a contract impossible. The possibility that there would not be co-existence was contemplated and provided for in the IA. BP now seek to escape from its freely entered into commercial contractual obligations.

3) The compensation provisions in the IA set a clear and well-established basis for assessing damages, namely on the basis of the diminution in the market value of the Hornsea Project that will arise due to the loss of such infrastructure from the Overlap Zone or reduction in power output as a result of infrastructure not being able to be located in the Overlap Zone as the case may be.

15. Second, in contrast the replacement compensation mechanism that is now proposed to try and overcome the Article 1, Protocol 1 issues that arise is wholly uncertain in its operation. Thus, absent agreement the task of assessing compensation is handed to the Secretary of State. The basis for assessing compensation is not stated. What is provided is that the Secretary of State "*shall balance any impact on the business undertaking of the wind entity from the carbon entity's proposed or actual activities in the exclusion area (and the removal of the carbon entity's liability to the wind entity under the interface agreement) pursuant to this Order with the public interest in preserving the full developable area of the endurance store*." So, all that is known is that the compensation will by definition be less than would have been awarded under the IA. That is after all the whole purpose of the BP proposed Articles in the DCO. This provides no certainty whatever for Orsted as to what, if any, compensation it might receive. The potential for further legal challenge of any determination would be very great. These uncertainties and difficulties are highly relevant to whether the fair balance has been struck by what is proposed.

The Coppel Advice – one further matter

16. The Coppel Advice at para. 2 sets out details related to Jason Coppel KC's experience and expertise. This is highly unusual. Moreover, it is clear that this Advice was always intended to be provided to the Examining Authority. It is noted in this regard that on 7 March 2022 the Planning and Environmental Bar Association e-mailed its members saying:

> "As you will know, PEBA has regular meetings with PINS to discuss issues of concern to either side about the running of appeals and local plan examinations. At our most recent meeting, PINS have raised with us a matter which has been drawn to their attention by a number of Inspectors, relating to the way in which some advocates behave at events, in particular by repeatedly emphasising how experienced they (the advocates) are …
>
> • Inspectors approach members of the planning bar on the same basis – namely that it is assumed that all are properly qualified and able to present a case efficiently and properly. Accordingly, it is also not considered helpful for barristers to "talk up" their own experience when presenting submissions.
>
> PEBA recognises that it is for individual barristers to decide how best to represent their clients. It is, therefore, a matter for members how they respond to the above message. However, it is obviously not in the interests of any party either to undermine confidence in the tribunal (especially at inquiries where the public are often present) or to risk alienating the Inspector. "Talking up" one's own experience is not a practice which we apprehend would be welcomed when appearing before other tribunals and it is difficult to see how it might advance a party's case at a planning appeal."

17. Given the above it is not considered appropriate to include a similar paragraph in this document setting out the author's experience and expertise. If the Examining Authority did wish to have this then it could be provided this information.

Conclusions

18. For all these reasons the Secretary of State is asked to reject the proposed Articles disapplying the IA and to leave the IA in place. Even proceeding on the basis that there is vires for the Secretary of State to do what BP proposes it is submitted that a DCO should not be used to allow a highly sophisticated and well-advised commercial party to escape from obligations it freely entered into because it now regards this as a bad bargain. Moreover, for the above reasons what is proposed continues to constitute an unjustified interference with Orsted's Article 1, Protocol 1 rights notwithstanding the changes made to what is proposed in response to Orsted's earlier submissions.

JAMES MAURICI KC

LANDMARK CHAMBERS

180 FLEET STREET

EC4A 2HG.

4, October 2022

Northern Endurance Partnership

bp

ANNEX 2
THE NZT DCO APPLICANTS' RESPONSE TO THE FURTHER JMKC SUBMISSIONS

Net Zero Teesside

Net Zero Teesside Project

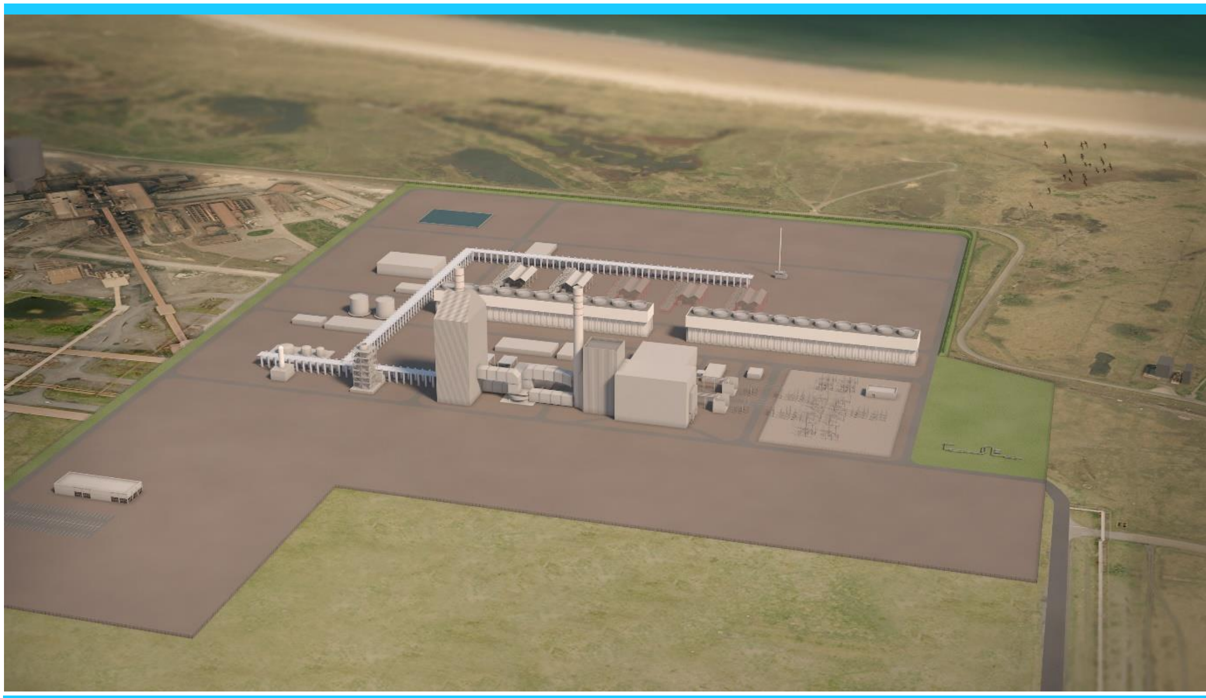
Planning Inspectorate Reference: EN010103

Land at and in the vicinity of the former Redcar Steel Works site, Redcar and in Stockton-on-Tees, Teesside

The Net Zero Teesside Order

Document Reference: 9.42 Applicants' Comments on Deadline 9 Submissions and Additional Submissions

Planning Act 2008



Applicants: Net Zero Teesside Power Limited (NZT Power Ltd) & Net Zero North Sea Storage Limited (NZNS Storage Ltd)

Date: October 2022

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GLOSSARY

Abbreviation	Description
AOD	Above ordnance datum
AS-	Additional Submissions
BAT	Best Available Techniques
BEIS	The Department for Business, Energy and Industrial Strategy
CCGT	Combined Cycle Gas Turbine
CCUS	Carbon Capture, Utilisation and Storage
CEMP	Construction and Environmental Management Plan
CTMP	Construction Traffic Management Plan
CO_2	Carbon dioxide
CPO	Compulsory Purchase Order
dB	Decibels
DCO	Development Consent Order
dDCO	Draft Development Consent Order
EIA	Environmental Impact Assessment
EPC	Engineering, Procurement and Construction
ES	Environmental Statement
ETS	Emissions Trading Scheme
ExA	Examining Authority
FEED	Front end engineering and design
FRA	Flood Risk Assessment
Ha	Hectares
HDD	Horizontal Directional Drilling
HIA	Hydrogeological Impact Appraisal
HoT	Heads of Terms
kV	Kilovolts
MHWS	Mean High Water Springs
MLWS	Mean Low Water Springs
Mt	Million tonnes

NATS	National Air Traffic Services
NSIP	Nationally Significant Infrastructure Project
NWL	Northumbria Water Lagoon
NZT	The Net Zero Teesside Project
NZT Power	Net Zero Teesside Power Limited
NZNS Storage	Net Zero North Sea Storage Limited
PA 2008	Planning Act 2008
PCC	Power Capture and Compressor Site
PDA-	Procedural Deadline A
PINS	Planning Inspectorate
RCBC	Redcar and Cleveland Borough Council
RR	Relevant Representation
SBC	Stockton Borough Council
SEL	Sound Exposure Level
SPA	Special Protection Areas
SoCG	Statement of Common Ground
SoS	Secretary of State
STDC	South Tees Development Corporation
SuDS	Sustainable urban drainage systems
UXO	Unexploded Ordnance
WFD	Water Framework Directive

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1.0 INTRODUCTION

1.1 Overview

1.1.1 This document, 'Applicant's Comments on Deadline 9 Submissions and Additional Submissions' (Document Ref. 9.42) has been prepared on behalf of Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (the 'Applicants'). It relates to the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy ('BEIS'), under Section 37 of 'The Planning Act 2008' (the 'PA 2008') for the Net Zero Teesside Project (the 'Proposed Development').

1.1.2 The Application was submitted to the SoS on 19 July 2021 and was accepted for Examination on 16 August 2021. A change request made by the Applicants in respect of the Application was accepted into the Examination by the Examining Authority on 6 May 2022.

1.2 Description of the Proposed Development

1.2.1 The Proposed Development will work by capturing CO_2 from a new the gas-fired power station in addition to a cluster of local industries on Teesside and transporting it via a CO_2 transport pipeline to the Endurance saline aquifer under the North Sea. The Proposed Development will initially capture and transport up to 4Mt of CO_2 per annum, although the CO_2 transport pipeline has the capacity to accommodate up to 10Mt of CO_2 per annum thereby allowing for future expansion.

1.2.2 The Proposed Development comprises the following elements:

- **Work Number ('Work No.') 1** – a Combined Cycle Gas Turbine electricity generating station with an electrical output of up to 860 megawatts and post-combustion carbon capture plant (the **'Low Carbon Electricity Generating Station'**);
- **Work No. 2** – a natural gas supply connection and Above Ground Installations ('AGIs') (the **'Gas Connection Corridor'**);
- **Work No. 3** – an electricity grid connection (the **'Electrical Connection'**);
- **Work No. 4** – water supply connections (the **'Water Supply Connection Corridor'**);
- **Work No. 5** – waste water disposal connections (the **'Water Discharge Connection Corridor'**);
- **Work No. 6** – a CO_2 gathering network (including connections under the tidal River Tees) to collect and transport the captured CO_2 from industrial emitters (the industrial emitters using the gathering network will be responsible for consenting their own carbon capture plant and connections to the gathering network) (the **'CO_2 Gathering Network Corridor'**);
- **Work No. 7** – a high-pressure CO_2 compressor station to receive and compress the captured CO_2 from the Low Carbon Electricity Generating Station and the CO_2

Gathering Network before it is transported offshore (the **'HP Compressor Station'**);

- **Work No. 8** – a dense phase CO_2 export pipeline for the onward transport of the captured and compressed CO_2 to the Endurance saline aquifer under the North Sea (the **'CO_2 Export Pipeline'**);
- **Work No. 9** – temporary construction and laydown areas, including contractor compounds, construction staff welfare and vehicle parking for use during the construction phase of the Proposed Development (the **'Laydown Areas'**); and
- **Work No. 10** – access and highway improvement works (the **'Access and Highway Works'**).

1.2.3 The electricity generating station, its post-combustion carbon capture plant and the CO_2 compressor station will be located on part of the South Tees Development Corporation (STDC) Teesworks area (on part of the former Redcar Steel Works Site). The CO_2 export pipeline will also start in this location before heading offshore. The generating station connections and the CO_2 gathering network will require corridors of land within the administrative areas of both Redcar and Cleveland and Stockton-on-Tees Borough Councils, including crossings beneath the River Tees.

1.3 The Purpose and Structure of this document

1.3.1 The purpose of this document is to summarise the Applicants' comments on the submissions made by Interested Parties at Deadline 9 (6 October 2022). The document also includes comments on Additional Submissions accepted by the Examining Authority after Deadline 9. The document is structured to provide comments on the following Interested Parties' Deadline 9 submissions:

- Section 2 – Anglo American
- Section 3 – ClientEarth
- Section 4 – Environment Agency
- Section 5 – Historic England
- Section 6 – Marine Management Organisation
- Section 7 – Natural England
- Section 8 – North Tees Group
- Section 9 – Orsted Hornsea Project Four Limited
- Section 10 – Redcar Bulk Terminal Limited
- Section 11 – Sembcorp
- Section 12 – Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited

2.0 ANGLO AMERICAN ("AA")

2.1.1 The Deadline 9 submission by AA [REP9-024] includes an update on progress and comments on the Applicants' Deadline 8 submissions.

2.2 Applicants' Response

2.2.1 The Applicants welcome AA's comments and agree with the summary of progress. As stated by AA, the Applicants progress update included in the CA Schedule [REP9-022] outlines the next steps for both parties.

3.0 CLIENTEARTH

3.1.1 The Deadline 9 submission by ClientEarth [REP9-025] includes a response to the ExA's request for further information under Rule 17 of Examination Rules

3.2 Applicants' Response

3.2.1 The Applicants' position is that no changes are required to the drafting in the DCO in order to secure a capture rate or to make the drafting consistent with the draft Keadby 3 DCO.

3.2.2 The Examining Authority is directed to the Applicants' Written Summary of Oral Submission for ISH5 (DCO) [Document Reference 9.43] where it addressed ClientEarth's submissions in detail.

4.0 ENVIRONMENT AGENCY ("EA")

4.1.1 The Deadline 9 submission by the EA [REP9-027] includes comments on the Applicants' Deadline 8 submissions.

4.2 Applicants' Response

4.2.1 Deadline 8 Submission - 9.35 – Applicants' Comments on Deadline 7 Submissions [REP8-049]. The Applicants note the Environment Agency's comments on Requirement 13 and that the Environment Agency has subsequently agreed revised wording of this requirement which is to be included in the draft Development Consent Order to be submitted at Deadline 12. The Applicants also note the Environment Agency's agreement that as there is no intention to re-use slag materials outside the Teesworks area, no additional testing of slag as outlined in paragraph 2.1.2 in ISH 4 Action 9 Contaminated Land Timeline [REP6-124] is required.

4.2.2 Deadline 8 Submission – 6.3.43 – ES Vol II Figure 10-17 Bedrock Aquifer [REP8-027]. The Applicants note the Environment Agency's comment but disagree that one of the aquifer designations is missing from the drawing.

4.2.3 Requests for further information: Question to the EA, the Applicants and ClientEarth regarding the scope of the environmental permit(s) with particular regard to securing carbon capture. The Applicants note and agree with the EA's responses to the Question. They broadly match and support the Applicants' position.

5.0 HISTORIC ENGLAND

5.1.1 The Deadline 9 submission by Historic England [REP9-028] includes responses to the ExA's Second Written Questions.

5.2 Applicants' Response

5.2.1 The Applicant notes the responses made in relation to HE 2.1, HE 2.2 and parts (i) and (ii) of HE 2.3.

5.2.2 In relation to part (iii) of question HE 2.3, the Outline Offshore Written Scheme of Investigation (WSI) has been prepared. This is an update of Appendix B (WSI for Marine Archaeology) to Document Ref. 9.18 Further Information Regarding Applicants' Responses to Historic Environment First Written Questions previously submitted at Deadline 4 [REP4-028] taking on board comments in the HE Deadline 9 submission:

- The comment made regarding further borehole/vibro-core composition has been included in Section A.2 Scope of work of the updated WSI, along with a requirement to consult with the archaeological contractor to confirm the geotechnical contractor's specification for the marine geotechnical survey.
- Further explanation has been provided in Section A.3 Methodology of the updated WSI regarding the requirement for a site specific Written Scheme of Investigation (WSI) and requires that methodologies set out in the site specific WSI will be agreed with Historic England and approved by the MMO.
- The monitoring and progress reports section has been updated to reference the detailed programme for the monitoring of the marine archaeological works, progress reporting and for the submission of deliverables, as detailed in Section A4 of the WSI.

5.2.3 The updated Outline Offshore WSI has been provided as Appendix 1 of this document.

6.0 MARINE MANAGEMENT ORGANISATION ("MMO")

6.1.1 The Deadline 9 submission by the MMO [REP9-029] includes comments on the Applicants' Deadline 8 submissions.

6.2 Applicants' Response

6.2.1 The Applicants have prepared responses to address each of the D9 comments from the MMO. A copy of the table sent to the MMO is below. This was sent to the MMO on 25 October 2022, along with an updated version of the deemed marine licences that the Applicants intend to submit as part of the finalised DCO at Deadline 12.

6.2.2 The Applicants await a response from the MMO. As the Applicants have accepted most of the MMO's suggested changes to the DMLs, and explained how the residual matters have been addressed by existing drafting in the DMLs, the Applicants are hopeful that confirmation can be obtained from the MMO that all matters have been resolved and the DMLs are agreed.

6.2.3 The Applicants also sent to the MMO updated drafting for condition 23 (UXO clearance) on 17th October and again on 25th October. The proposed final drafting has been included in the Applicants Written Summary of Oral Hearing ISH5 at Agenda Item 5 (Document Ref 9.43). The amendments now require the clearance methodology to be submitted based on UXO and magnetic anomalies actually identified and for Natural England to be consulted on the details submitted, as requested by the MMO at Deadline 8 [REP8-055] and committed to by the Applicants at Deadline 9 [REP9-018]. This was sent to the MMO on 17th October and their response is awaited.

MMO D9 comment	Applicant's response
Part 1 (1) – The MMO are not sure why the definition for "condition" has been removed as this wording is still used within the DML. It is requested that this is inserted back in.	The Applicants do not consider this definition was necessary given there is Part 2 (formerly Part 3) which is defined as the licence conditions. Nevertheless the Applicants are content with reinstating the definition as follows: "means a condition under Part 2 of this licence".
Part 1 (1) – The MMO are not sure why the definition for "disposal" has been removed as this wording is still used within the DML. It is requested that this is inserted back in.	The Applicants did not consider this definition was necessary given there is a description of the disposal works under the meaning of "licensed activities" at Part 1, paragraph 2(2). Nevertheless the Applicants are content with reinstating the previous definition if that removes any ambiguity. "disposal" means the deposit of dredged material at a disposal site carrying reference TY160 – "Tees Bay A" or TY150 – "Tees Bay C";

Part 1 (1) – The MMO are not sure why the definition for "order limits" has been removed as this wording is still used within the DML. It is requested that this is inserted back in.	The Applicants will insert the following: "Order limits" has the same meaning as in article 2(1) (Interpretation) of the Order.". That approach aligns with Article 2(2) of the Order which states: The definitions in paragraph (1) do not apply to the deemed marine licences except where expressly provided for in the deemed marine licences.
Part 1 (1) – The MMO are not sure why the definition for "licensable marine activities" has been removed as this wording is still used within the DML. It is noted that 'licensed activities' is included as a definition. It is recommended that either one of the two terms is chosen and used throughout for consistency.	The Applicants will replace references to "licensed marine activities" with "licensed activities". The Applicants agree both are not required.
Part 1 (4) – It is recommended a definition for "disposal site" is included within the definitions of Part 1(1)	The Applicants will include the following definition: "disposal site" means the disposal sites carrying reference TY160 – "Tees Bay A" or TY150 – "Tees Bay C";
Part 2 (11)(3)(b) – The MMO recommend a definition is included under Part 1 (1) for "dredge arisings".	The Applicants will include the following definition: "dredge arising" means inert material of natural origin, produced during dredging. The term "dredge arising" relates to disposal activities, and Condition 26 already restricts "dredging arisings" to the inert material of natural origin, produced during dredging. The definition above will be included to ensure clarity and consistency.
Part 2 (11)(3)(c) – The MMO recommend a definition is included under Part 1 for "deposit".	11(3)(c) states "deposit of dredge arisings". The definition of "dredge arisings" already clarifies what may be deposited. A separate definition of "deposit" would be circular and serve the same purpose. Accordingly the Applicants do not propose to include this definition.

Part 2 (11)(6) – The MMO note that the requirement to provide a copy of the notification to the MMO within 24 hours has been removed and request that this is inserted back in.	The Applicants accept this change and will reinstate that a copy of the notice to the MMO Licensing Team within 24 hours of the issue of the notice of commencement to the MMO Local Enforcement Officer.
Part 2 (11)(7)(b) – The MMO note the amendment to the wording, however, the change from 'marine activities' to 'offshore activities' can be subject to interpretation, and recommend this is included as a definition under Part 1. This should include whether "offshore activities" includes the detonation of Unexploded Ordnances.	The Applicants will update paragraph 11(7)(b) as follows: The relevant undertaker must inform the Kingfisher Information Service of Seafish by email to kingfisher@seafish.co.uk of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part— a) at least fourteen days prior to the commencement of ~~offshore activities~~ the authorised development, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and b) on completion of construction of ~~all offshore activities~~ the authorised development. The purpose of this provision is to notify Kingfisher Information Service of Seafish before construction activities in connection with Work Numbers in the marine environment (WN5, 6 and 8) start and when those construction activities have been completed. The use of "authorised development" is defined as "Work No. 5A, Work No. 5B and Work No. 8 described in paragraph 2 of this Part 1 or any part of those works". "authorised development" is therefore the appropriate terminology in 11(7)(b). With respect to UXO, the term "offshore activities" has been deleted and no longer applies. As set out above, this provision relates to commencement and completion of Work Numbers rather than specific licensed activities that may form part of those Work Numbers, and therefore UXO should not be referenced in this context. However, the condition already requires

	that details of vessel routes, timing and locations of the construction of the authorised development or any "part" of the authorised development. That would need to include such details where UXO clearance is required during the construction phase.
Part 2 (11)(7)(b) – The MMO is unsure why the wording "as soon as reasonably practicable and no later than 24 hours after" has been removed, as this is standard wording for this condition. The condition now no longer includes any deadline for when this information needs to be submitted to the Kingfisher Information Service of Seafish. It is requested that this is inserted back in.	The Applicants accept this change and will reinstate the drafting that the Kingfisher Information Service of Seafish must be notified of completion of the "authorised development" as soon as reasonably practicable and no later than 24 hours after completion of construction of all of the authorised development.
Part 2 (11)(8) - Previously this condition included the requirement to provide notices to Trinity House, the Maritime and Coastguard Agency, as well as the United Kingdom Hydrographic Office within 5 days, however, this is now missing from the updated DML. It is also noted that this now omits the requirement to submit to the MMO within 24 hours of issue. It is requested that the previous wording is used	The Applicants accept this change and will reinstate the drafting that Trinity House, the Maritime and Coastguard Agency, and the United Kingdom Hydrographic Office must be notified as soon as reasonably practicable and no later than 24 hours after completion of construction of all of the authorised development.
Part 2 (11)(9) –The MMO note that previously the requirement was to notify the MMO within 24 hours, however, this has now changed to 'within 5 days', but no justification for this amendment has been provided.	The Applicants will reinstate the commitment to notify the MMO "within 24 hours" of the issue of the notice sent to the UK Hydrographical Office. This would require updating paragraph 11(10) where the time period for notifying the MMO (currently five days) is secured. Please see comment below however.
Part 2 (11)(10) – The MMO recommends that this is captured within Part 11 (9) and not as a separate paragraph, as this is not in-keeping with other conditions of a similar nature.	The Applicants will include the drafting in paragraph 11(10) (the time period for notifying the MMO of a notice to the UK Hydrographical Office) within paragraph 11(9). It is of the view that a separate paragraph number is clearer but is content to make this change if that is the MMO's preference.

Part 2 (15)(2)(c) – There appears to be a minor typographic error, "not" should be "no"	The Applicants will correct this typo.

7.0 NATURAL ENGLAND ("NE")

7.1.1 The Deadline 9 submission by the NE [REP9-030] includes an update on discussions between the parties. NE also submitted a statement in advance of Issue Specific Hearing 6 dated 17 October 2022 on nutrient neutrality [AS-209].

7.2 Applicants' Response

7.2.1 The Applicants note and agree with NE's Deadline 9 submission.

7.2.2 The Applicant's also note NE's statement on nutrient neutrality [AS-209], particularly *"Natural England agrees that the modelling presented in the Nutrient Nitrogen Briefing Note demonstrates that additional nitrogen will not reach Seal Sands, which is the area of the SPA/Ramsar in unfavourable condition due to nitrogen enrichment. As such, the development would achieve nutrient neutrality. This is dependent on the implementation of either the design termed 'Option A' in the Briefing Note or a different design that would result in an equivalent or lower amount of nitrogen reaching Seal Sands."* The Applicants also note that NE agree that the Applicants approach to nutrient neutrality can be secured using a draft Requirement. The wording of that Requirement was approved by Natural England on 26 October 2022. The drafting of the Requirement and explanation of its purpose is provided as a post hearing note in the Applicants Written Summary of Oral Submissions for ISH6 (Document Reference 9.45).

7.2.3 The Applicants also note NE's comment in the statement that *"subject to the HRA being updated to incorporate the proposed mitigation, secured by the draft Requirement at Stage 2 (Appropriate Page 2 of 2 Assessment) of the assessment, Natural England would support a conclusion of No Adverse Effects on Site Integrity for impacts on Seal Sands."*

7.2.4 In terms of impacts on Tees Bay, the Applicants also note NE's comment on the statement that "*based on the evidence presented in the updated Habitats Regulations Assessment, Natural England agrees that any negative impacts are likely to be localised and inconsistent. Therefore, the discharge may, at worst, cause a temporary displacement of qualifying species within the Tees Bay but this would not constitute an Adverse Impact on the Site Integrity of the SPA/Ramsar. Natural England notes that assessing Water Framework Directive compliance in the Tees Coastal water body is the responsibility of the Environment Agency and that a demonstration of compliance would provide further evidence that the integrity of the SPA/Ramsar is not affected by the Proposed Development."*

8.0 NORTH TEES GROUP ("NTG")

8.1.1 The Deadline 9 submission by NTG [REP9-031] includes comments on the forthcoming hearings and ASI.

8.1.2 NTG made a submission at Deadline 2 that was not published until 17th October 2022 [REP2-070a].

8.1.3 NTG also submitted two Position Statements, one each in relation to ISH5 on the Draft DCO [AS-208] and CAH3 [AS-207].

8.2 Applicants' Response to REP9-031

8.2.1 1. The Applicants note NTG's comments. The Applicants have been negotiating land agreements with NTG since early 2021 and there have been extensive comments by both parties of the draft Heads of Terms. The Applicants shared draft protective provisions with NTG on 16th August 2022, to which the Applicants received a limited response on 13th September. The Applicants provided a further mark up to NTG on 14th October. The Applicants received a new set of protective provisions from NTG's representatives on 19th October. The PPs received by the Applicants are based on those for the benefit of the Sembcorp Pipeline Corridor, in Part 16 of Schedule 12 of the draft DCO [REP8-003]. The Applicants consider that many of the provisions relevant to Sembcorp as operator of the Sembcorp pipeline corridor are not relevant to NTG as landowner, however the Applicants are undertaking a detailed review and mark-up of the 19th October set of PPs as part of ongoing engagement with NTG. The Applicants have provided a further response on these in 8.4 below.

8.2.2 2. The Applicants have no further comment.

8.2.3 3. The Applicants and NTG agreed to submit an updated SoCG at Deadline 7 [REP7-004]. Since submission the parties have continued to hold discussions on the protective provisions and Heads of Terms, however, there has not been material progress made on either. Neither did the Applicants receive a request from NTG to update the SoCG. The Applicants will work with NTG to submit a revised SoCG at Deadline 12 on 1st November to reflect the current position of negotiations. With regards to NTG's comments on the Applicants' "unhurried responses", the Applicants do not agree with this summary. The Applicants have and will continue to engage actively with NTG in the pursuit of voluntary agreements.

8.2.4 4. The Applicants have no further comment.

8.2.5 5. The Applicants have submitted most recently at Deadline 8 [REP8-051] a document that outlines the basis for the Order Limits and justification for the corridor widths and rights sought.

With regards to the comments by NTG on the flexibility of re-routing of estate roads, the Applicants developed the Order Limits on the basis of the existing access routes and how the Sembcorp pipeline corridor is currently used and managed. A direct route between A and B would conflict with the existing fire water tank, pumps and ancillary equipment as outlined by NTG in paragraph 9.a) of their additional submission [AS-207].

The Applicants are considering drafting in the protective provisions to address the concern of flexibility for future estate requirements such as re-routing of the estate road. However, the protective provisions already incorporate consent to works provisions for NTG and which include consideration and maintenance of NTG's access requirements, in relation to both land within the Order limits and its adjoining land.

8.2.6 6. The Applicants would refer the ExA to their response to NTG's Written Representation in Applicants Comments on Written Representations [REP3-012] electronic page numbers 68-69.

8.3 Applicants' Response to REP2-070a

8.3.1 The Applicants note that a number of the points made by NTG in REP2-070a have now been superseded by subsequent NTG submissions and responses by the Applicants. For completeness, the Applicants have provided responses to their Deadline 2 submission below.

8.3.2 CA.1.8 – No further comment

8.3.3 CA.1.19i – The Applicants have provided a response to representations on the extent of rights sought in Justification of Corridor Widths [REP8-051].

8.3.4 CA.1.19ii – No further comment

8.3.5 CA.1.19iii – The Applicants are aware of the existing NTG interests and operations. The Applicants are in discussions with NTG on a voluntary agreement to support the Proposed Development. The Applicants need compulsory acquisition powers in order to ensure the deliverability of the scheme.

8.3.6 CA.1.19iv – Schedule 12 Part 26 to the dDCO [REP8-003] provides adequate control and consent for NTG in relation to works under the DCO. The Applicants continue to work with NTG to address their concerns but maintain that the protective provisions are the appropriate mechanism for this.

8.3.7 CA.1.24 – The Applicants have responded to the point on duration of rights sought in response to paragraph 6 in 8.4 below. With regards to efficient use of the corridor, the routeing of Work No. 6 is subject to detailed design by the Applicants. The Applicants' position remains that the protective provisions in Part 26 of Schedule 12 in the dDCO are the appropriate mechanism for these concerns. The protective provisions include approval of 'works details' by NTG, and this includes plans and sections that will show the routeing of Work No. 6.

8.4 Applicants' Response to AS-207

NTG Position Statement	Applicants' response
1. These are the Submissions and Position Statement on behalf of the North Tees Group (NTG). The three companies concerned, and the respective plot numbers, are:	North Tees Limited are not identified in the Book of Reference [REP6-007] for Plot 82. NTG have not raised this point with the Applicants prior to the submission of their position

NTG Position Statement	Applicants' response
(1) North Tees Ltd: plot nos. 81-83, 120-121, 124, 124a, 124b and 124d; temporary possession rights are sought over plot nos.124a and 124b, and New Rights in perpetuity over the remainder; (2) North Tees Rail Ltd: plot nos.84-88, over which New Rights in perpetuity are sought; (3) North Tees Land Ltd: plot nos.119, 128 and 128a, New Rights in perpetuity are sought over the first two plots and temporary possession over the last one.	statement, however the Applicants will discuss this directly with NTG.
2. NTG have advanced several objections to the use of powers of the compulsory acquisition of New Rights and of Temporary Possession in their responses to Deadlines and otherwise: see Deadline 2 response dated 6, 8 and 9 June 2022, letter dated 15 July 2022 concerned CAH2, Deadline 7 response 27 and 31 August 2022. It has very recently been drawn to the attention of NTG that the response dated 08/06/2022 (under Ref "0006-P1A4.5NTLLET007") was received but when PINS forwarded the email on internally, they did not forward the attachment therefore the Document and Representation has only on 17 October 2022 been added to the Examination Library and has not previously been seen by anyone. As that document set out a number of serious concerns of NTG about the use of CA, NTG submits that it must be fully considered, and NTG should not be prejudiced by an administrative error of PINS.	See Applicants' response in paragraph 8.3 above. The Applicants also note that the Position Statements provided by NTG do raise a number of new points and which are not a summary or clarification of NTG's written representation, where the points should have been made, at Deadline 2. The Applicants have however responded to them below.
3. The corridor for New Rights that concerns, inter alia, plot nos. 81-88, 119-121, 124, 124d and 128 is of a varying width of about 70 metres comprising a zone allocated for existing and proposed pipes and services (circa 30m in width) ("the Pipe Zone") as identified on the plans submitted by NTG in Deadline 7 (ref 0006-PIA.5NTLL ET013) and an essential vehicular access/service route along the southern side of the Pipe Zone ("the Access Road") contained within plot nos. 120, 121, 124, 124d, 128, 81, 82, 83, 85 and 87. The Pipe Zone contains a number of existing pipes laid and installed under easements exercisable over land owned and/or leased by NTG. It is believed that Works	The Applicants have provided technical justification, supporting the case for the extent of rights sought within the Deadline 8 submission Justification of Corridor Widths [REP8-051]. With respect to duration of rights sought, see point 6 below.

NTG Position Statement	Applicants' response
No.6 will involve the installation of a pipe of about 550mm diameter (which the Applicant has accepted can be positioned in a 1000mm wide easement strip within the Pipe Zone, which will not require any New Rights in perpetuity over the whole width of that corridor as provided for in article 25 of, and schedule 7 to, the dDCO. NTG submits that there has been no engineering or technical justification supporting the case for the width of New Rights sought (about 70m) and certainly none to support that width for New Rights in perpetuity	
4. The Land Plans dated 30 August 2022 are substantially different from the preceding set as to plans 3 and 4. Some land required from NTG that hitherto had been tinted blue, and subject to rights only, is now tinted yellow, and required for temporary possession, namely plot nos. 124a,124b and 128a. NTG. The exercise of temporary possession will involve excluding NTG from possession for the relevant temporary possession periods which NTG finds not acceptable. NTG is now facing a very different compulsory acquisition case against it than before 30 August 2022, and any representations previous to that date must be reconsidered in the light of that change. A compelling case must be made for the use of powers of compulsory acquisition s.122(3) of the Planning Act 2008), and that case has not been made by the Applicant for the New Rights that are being sought in dDCO.	Revision 4 of the Land Plans [REP6-014] were submitted as part of the Applicants' change request at Deadline 6. The examination timetable required comments on the change request by Deadline 8. As summarised in the Letter Requesting Further Proposed Changes [REP6-105], change no. 16 involved the removal of parcels of land subject to temporary possession powers from North Tees Land Limited land as they are no longer necessary following landowner discussions and technical assessment and a reduction in powers sought from compulsory acquisition to temporary possession for some parcels of land (relating to Work No. 6). These proposed changes were in part to address concerns raised by NTG in relation to the extent of the Order Limits. In addition to the removal of Order Land, the Applicants reduced the rights sought from compulsory acquisition to temporary possession for some parcels of land to reflect the level of rights required. The Applicants have set out elsewhere the compelling case for these powers (see also point 11 below), and specifically addressed the width of the Work No. 6 corridor in its Justification of Corridor Widths document [REP8-051]. In relation to these particular plots, as noted at Compulsory Acquisition Hearing 3, there is no justification for the Applicants to seek permanent rights over the relevant

NTG Position Statement	Applicants' response
	plots when only temporary possession is required. The protective provisions in Part 26 of Schedule 12 of the draft DCO [REP8-003] govern the exercise of powers in the DCO and require the Applicants to obtain the consent of NTG prior to commencing any part of the authorised development that would have an effect on the NT Group operations, including access to land within and adjacent to the Order Limits.
5. NTG has been engaged in negotiations for an agreement for the grant of an option for rights in favour of the Applicant. As the Applicant appears to have unreasonably delayed the negotiations, NTG now summaries the objections to compulsory acquisition it has so far sustained	The Applicants have been engaged with NTG since early 2021 and extensive comments have been exchanged between the parties. The detailed and extensive negotiations have resulted in a 39 page comments table to support the Heads of Terms and which has been exchanged between the parties a number of times. Achieving agreed Heads of Terms is not the relevant test which the Applicants must meet – they must demonstrate that they have sought and engaged in adequate negotiation, to seek to acquire the relevant interests by agreement. The Applicants' position is that they have very clearly met this test in relation to NTG, and that they have and will continue to act is a reasonable manner. The Applicants' preference remains to reach a voluntary agreement with NTG.
6. First, the New Rights sought should not be in perpetuity as it is quite clear in negotiations that the Applicant only wants a 60-year term at the maximum	The Applicants provided a justification in relation to the duration of rights sought in response to Action 6 in Written Summary of CAH2 [REP5-026]. For the benefit of the ExA, this response is repeated below. *As to the period during which the asset will be in place (and therefore during which maintenance activities will occur), whilst the pipeline has a design life, it may well operate beyond that design life and this will be considered and assessed in the future, taking into account technical, commercial, regulatory and other factors. The CO2 Gathering Network will be part of a regulated asset, with the undertaker having obligations to emitters to transport their captured CO2 and which the undertaker will*

NTG Position Statement	Applicants' response
	have to continue to meet. The actual operational period is not known at this point, and it is appropriate to seek the acquisition of permanent rights over land to allow for its continued safe operation as required.
7. Second, the areas over which both the New Rights and Temporary Possession powers are sought are larger than necessary. A distinction should be made in the definition of the right sought between those relating to the laying and position of the pipe and those concerned with access for construction and maintenance. A New Rights width of about 70 metres affecting plots nos.81-88, 119-121, 124, 124d and 128 is unnecessary for the proposed pipe of about 550mm in diameter. The Pipe Zone is circa 30m wide and can accommodate the relevant part of Works No.6. New Rights in perpetuity should not include the Access Road as without the Access Road essential maintenance, fire safety and safety works cannot be carried out to the pipes within the Pipe Zone. No part of the Access Road that falls within plots required for Temporary Rights shall be taken for that purpose. Access is required at all times over the Access Road for emergencies, maintenance, fire safety and safety purposes, and the under [sic] should not have possession as envisaged by Articles 31 and 32	The Applicants have provided technical justification, supporting the case for the extent of rights sought, within the Deadline 8 submission Justification of Corridor Widths [REP8-051]. In that document, the Applicants set out that the new rights sought are not limited to the permanent easement for the Work No. 6 pipeline. In addition, the new rights will be required to access, construct and maintain the pipeline. In relation to the temporary possession powers, as set out in the response to paragraph 4 above, the protective provisions provide NTG with an approval of 'works details' before the undertaker is allowed to commence any part of the authorised development that would have an effect on the NT Group operations.
8. Third, the New Rights sought over plot nos.81 – 88, 120, 121, 124, 124d, and 128 should only be exercised in a way that preserves the use and operation of the rail line within plots 81-88 and access strips in 120, 121, 124, 124d and 128.	The protective provisions provide NTG with rights for the approval of works details before commencing any part of the authorised development that would have an effect on the NT Group operations. This would clearly include the use and operation of a rail line, and NTG's interests in this respect are therefore adequately protected.
9. Fourth, the Temporary Possession rights sought are far larger than necessary in relation to plot nos. 124a, and 128. In addition:	Detailed responses have been provided to the sub-parts of paragraph 9 below.
a) Plot nos.124a and 128a contains an active fire water tank, fire water pumps and ancillary equipment for the whole of the North Tees Chemical Works (circa 350 acres), and for obvious safety reasons Temporary Possession	These specific plots of temporary possession land are included to support the construction of Work No. 6 over the existing elevated pipe bridge. This area of construction will require extensive scaffolding preparation of the

NTG Position Statement	Applicants' response
cannot be taken of these plots as access to the sire [sic] safety equipment is required at all times. Plots 124a and 128a (combined) are circa 1700 square metres and NTG submits that it cannot foresee a scenario where rights are needed over this area; the area will be sterilised by the taking of Temporary Possession. A distinction should be made in the definition of the right sought between those relating to the laying and position of the pipe and those concerned with access for construction and maintenance.	pipebridge to facilitate safe and efficient construction. The elevated working will also require support of crane operations. The temporary possession powers are required over not just the footprint of the crane but also the oversail movement with the boom; plots 124a and 128a make allowances for material laydown and crane operation. The Applicants are aware of the existing apparatus within these plots and as outlined above, due to the elevated construction in this section of the pipeline corridor the Applicants may be constructing Work No.6 above the active fire water tanks. The protective provisions would require the consent of NTG to the 'works details' in this area, as for any other works within their land. The 'works details' include "plans and sections", "details of the proposed method of working and timing of execution of works", and any further particulars requested by NTG (paragraph 308, Part 26). The protective provisions therefore provide NTG with sufficient information on the proposed works (and the right to request further information), and an approval of these works details prior to the undertaker commencing any part of the authorised development that would have an effect on the NT Group operations, including for requirements of access within the Order limits and adjacent land. The Applicants also note item 5 of NTG's Deadline 9 submission [REP9-031] where NTG remark that this area may be subject to future estate development by NTG. The Applicants will maintain dialogue with NTG, including in relation to any development plans it may have, and if the area is to be developed in a timescale which would conflict with the Proposed Development, then to discuss with NTG what may be possible in terms of land, approach to construction, or construction programme, to seek to take NTG's plans into account. To the extent that NTG does have development

NTG Position Statement	Applicants' response
	proposals (the Applicants are not aware of any at present) and they cannot be accommodated by the Applicants or could be delayed, statutory compensation is available to NTG. The Applicants note that they responded to SWQ CA.2.8 in relation to potential development proposals and which is relevant to this point (see the Applicants' Response to the ExA's Second Written Questions [REP6-121, electronic page 34 to 38]).
b) Plot 124b is an area of land south of the Access Road, the rights over this area should not be exercisable over existing access points at any time. NTG's concerns not wholly addressed in the Statement of Common Ground	Plot 124b is included within the Order Limits to facilitate the construction of the pipeline along the southern pipeline corridor. As outlined in responses to paragraphs above including part (a) immediately above, the protective provisions provide NTG with an approval mechanism of 'works details' that will include "details of the proposed method of working and timing of execution of works" and which must take account of NTG's access requirements. The Applicants note NTG's comment on the SoCG and will seek clarification from NTG as to what this refers to and whether the SoCG is the appropriate document for addressing their concerns.
c) The time period for the exercise of Temporary Possession of land for construction should be specified in Article 31 as the Applicant has advised NTG that a construction period of 4 months is adequate. Other users need access to the land on a regular basis. Plot 124b might be available for temporary purposes.	There are ongoing discussions between the parties over the definition of a construction period and what activities fall within or outside this. Agreement on this matter is subject to further discussion as part of the negotiations on the voluntary agreements. However, it should be noted that the Applicants have not confirmed that a period of 4 months is adequate to complete construction activities within NTG's land. The Applicants must retain the flexibility to be able to take temporary possession of land and carry out the Proposed Development, without being constrained by a set period of time during which works must be completed. There are a number of circumstances which could mean a

NTG Position Statement	Applicants' response
	construction period could be extended, and which may be known before construction commences or which may only occur during construction. Many of these circumstances are outside the Applicants' control and some of which may indeed be influenced by a land owner. The time period during which temporary possession powers may be exercised is defined in Article 31, in a way which is similar to many other made DCOs, and which strikes a reasonable balance between ensuring that the undertaker can carry out and complete the Proposed Development and the impacts on those with an interest in the land.
10. Fifth, if the Applicant intends to lay the pipe under Works No.6 just within the northern and southern boundary of the New Rights affecting plots nos.81-88, 119-121, 124, 124d and 128, there are the following objections. This position will obstruct the necessary service access along the Access Road required to service the existing pipelines corridor. Further, a more suitable position for the proposed pipe would be along the empty centre space within the Pipe Zone. On that basis, New Rights sought over the above plots are too extensive.	The Applicants have provided technical justification, supporting the case for the extent of rights sought within the Deadline 8 submission Justification of Corridor Widths [REP8-051]. The New Rights are not limited to the permanent easement for Work No. 6 but also relate to the access required for the construction, maintenance and operation of the pipeline.
11. Sixth, the use of powers of compulsory acquisition is totally unnecessary as NTG and the Applicant were at an advanced state of negotiations for the grant to the Applicants of rights to place a pipe within the Pipe Zone and it is only the unreasonable delay by the Applicant that has prevented the conclusion of those negotiations	Refer to the Applicants' response to paragraph 5 above. The fact that the negotiations with NTG have not, as yet, resulted in an agreement being entered into is precisely why the Applicants require compulsory acquisition powers in order to secure the deliverability of the Proposed Development. The Applicants' fuller explanation of its CA case is set out in: • Statement of Reasons [REP6-009] • Written Summary of Oral Submission for Compulsory Acquisition Hearing 1 [REP1-037] The Applicants will continue to negotiate with NTG to reach a voluntary agreement. However, the Applicants must continue to seek

NTG Position Statement	Applicants' response
	compulsory acquisition powers to provide for the scenario where an agreement cannot be reached or where an agreement is breached by the relevant landowner.
12. Seventh, NTG own in excess of 600 acres of land in the vicinity capable of development. The current delineation of the New Rights zone will have the practical effect of sterilizing the entire service corridor for investment as developers and investors will have no protection or certainty in relation to the implementation of the DCO. This could render the NTG land holding incapable of development for a period of 5 years and will adversely impact the entire Teesside area as the pipeline corridor is a critical service route and the NTG land has been identified as integral to the future development of Teesside. A mechanism for ensuring this does not occur is essential and could easily be achieved by the Applicant reducing the width of the New Rights zone and leaving an unaffected zone for other users to install media	The Applicants have provided technical justification, supporting the case for the extent of rights sought within the Deadline 8 submission Justification of Corridor Widths [REP8-051]. The Applicants have designed the Proposed Development and specified the Order Limits taking into account so far as possible known or potential developments. NTG has not provided any substantive details of any proposed development, nor addressed how the DCO or Proposed Development would impact any such development other than with general statements. NTG has also not addressed the protections provided for in Part 26 of Schedule 12 to the DCO, including in particular those provisions (noted above) relating to NTG's access to land within and outwith the Order Limits. As part of the detailed design the Applicants will liaise with landowners on the Applicants' preferred routeing of Work No. 6 within the corridor, and this will provide an opportunity for NTG to comment on the Applicants' proposals. The protective provisions also provide a formal approval mechanism for NTG, as noted above. As noted above at point 9a), the Applicants responded to SWQ CA.2.8 in relation to potential development proposals and which is also relevant to this point (see the Applicants' Response to the ExA's Second Written Questions [REP6-121, electronic page 34 to 38]).
13. The Applicant's response to NTG's letter of 26 August 2022 at line 10 of the Applicant's Excel sheet dealing with NTG's deadline responses states that the Applicant would also	The Applicants or their agents are not aware of having received a letter or excel sheet dated 26 August 2022. The Applicants are unable to respond to this specific point.

NTG Position Statement	Applicants' response
clarify that the DCO Boundary indicated on these drawings has subsequently been reduced by the Applicants at Deadline 6 is only very negligible and does not address the matters set in these submissions. Further, the Applicant's response that the FEED contractor is developing a proposed pipeline route within the constraints created by the existing assets, structural apparatus, and access acknowledges the physical constraints, but this should be reflected in the dDCO by reducing the area of the New Rights. None of the other responses of the Applicant to NTG's adequately address their concerns.	In relation to NTG's point on reducing the area of rights, the Applicants maintain that the powers sought and the extent of the Order Limits are necessary, appropriate and justified in order to deliver the Proposed Development. The Applicants have provided technical justification, supporting the case for the extent of rights sought within the Deadline 8 submission Justification of Corridor Widths [REP8-051].
14. NTG submits that the Examining Authority should recommend that dDCO be amended to reflect the above matters.	The Applicants note NTG's position and disagrees for the reasons set out above.

8.5 Applicants' Response to AS-208

NTG Position Statement	Applicants' response
1. These are the Submissions and Position Statement on behalf of the North Tees Group (NTG). The three companies concerned, and the respective plot numbers, are: (1) North Tees Ltd ("NTL"): plot nos. 81-83, 120-121, 124, 124a, 124b and 124d; temporary possession rights are sought over plot nos.124a and 124b, and New Rights in perpetuity over the remainder (2) North Tees Rail Ltd ("NTR"): plot nos.84-88, over which New Rights in perpetuity are sought; (3) North Tees Land Ltd ("NTLL"): plot nos.119, 128 and 128a, New Rights in perpetuity are sought over the first two plots and temporary possession over the last one.	North Tees Limited are not identified in the Book of Reference [REP6-007] for Plot 82. NTG have not raised this point with the Applicants prior to the submission of their position statement, however the Applicants will discuss this directly with NTG.
2. These Submissions set out the position of NTG in respect of, firstly, Part 26 of Schedule 12 to the dDCO, secondly, Article 8 of the dDCO and thirdly Schedule 2 to the same.	Noted.
3. Until recently NTG advanced their requirements by way of negotiations for an agreement for the grant of an option for rights in favour of the Applicant. As the Applicant unreasonably delayed the negotiations, the requirements as to protective provisions in Part	The Applicants have acted and will continue to act reasonably during engagement with NTG. The Applicants do not agree that they have unreasonably delayed negotiations. The Applicants' preference remains to secure a voluntary agreement.

NTG Position Statement	Applicants' response
26 of Schedule 12 to the dDCO (Part 26) largely emanate from matters so far agreed, or requested, in those negotiations, and in NTG's response to Deadline 6.	Protective provisions for the benefit of NTG have been within the Draft DCO submitted to the examination since Deadline 4 (REP4-002), with comments on Deadline 4 documents (including that version of the Applicants' DCO) due by Deadline 5. The Applicants legal representatives shared draft protective provisions directly with NTG on 16th August 2022, the Applicants received a limited response on 13th September, requesting a further mark up. The Applicants provided a further mark up to NTG on 14th October. The Applicants have received a new set of protective provisions from NTG's representatives on 19th October and which are completely different to those provided by the Applicants. The PPs received by the Applicants are based on those for the benefit of the Sembcorp Pipeline Corridor, in Part 16 of Schedule 12 of the draft DCO [REP8-003], as mentioned by NTG in oral submissions at Issue Specific Hearing 5. The Applicants consider that many of the provisions relevant to Sembcorp as operator of the Sembcorp pipeline corridor are not relevant to NTG as landowner (see also point 4 below), however the Applicants are undertaking a detailed review and mark-up of the 19 October set of PPs as part of ongoing engagement with NTG.
4. In its response to Deadline 9, NTG stated that Part 26 was wholly inadequate and that their position is very similar to that of Sembcorp, for whom there are protective provisions at schedule 16 of schedule 12 to the dDCO. The corridor for New Rights that concerns, inter alia, plot nos. 81-88, 119-121, 124, 124d and 128 is of a width of about 70 metres containing a number of pipes laid and installed under easements. As the pipes and supporting structures (Apparatus) are on land either owned or leased to NTG, it is a reasonable assumption that some of this Apparatus may be owned or leased by NTG, and therefore part of	NTG's position with regard to apparatus has not been made out. To date, the Applicants have not been made aware of any apparatus within the Order Limits that is owned or leased by NTG. It is inadequate for NTG to found an objection on an assumption that it may own or lease apparatus. Such a position is inadequately particularised, does not allow the Applicants to properly respond and risks leading to incorrect or unnecessary positions within the protection provisions. NTG's position should be clarified. In any case and importantly, the Applicants are of the view that the NTG is not in a similar

NTG Position Statement	Applicants' response
the land of which NTG is a registered proprietor, which ownership requires protection.	position to Sembcorp. In particular, Sembcorp operate the pipeline corridor on behalf of themselves and other operators, with an operational engineering (and other) resource to facilitate management of the corridor. NTG is a landowner and does not perform a similar function to Sembcorp. It follows that the Applicants do not consider that protections that may be appropriate for Sembcorp are also appropriate for NTG. For instance, it is not appropriate for NTG's protective provisions to be made out on the basis that they are managing or operating the pipeline corridor when that is in fact managed and operated by Sembcorp. It is Sembcorp who liaise with the relevant parties whose assets are located within the corridor. Therefore, NTG's protective provisions should not contain terms that are properly within the function of Sembcorp. Were NTG's protective provisions to contain such terms, the result would be protective provisions that are unnecessary for NTG's status and role as a landowner. They would also contain duplicated terms or create a requirement for response and approval that could give rise to delay and inconsistency, where those terms and any required consent is only properly within Sembcorp's remit. There is a very real risk that dual protections for both Sembcorp and NTG in relation to the pipeline corridor could cause substantial delay or significantly impact delivery of the Proposed Development. As noted above the Applicants received a set of protective provisions from NTG's solicitors on 19 October that were based on the Sembcorp protective provisions. The Applicants have not previously received a mark-up of the draft PPs from NTG and in particular NTG has not previously commented to the Applicants that it should receive the same or similar protections to those provided to/sought by Sembcorp. The Applicants are currently undertaking a detailed

NTG Position Statement	Applicants' response
	review of this mark up and will provide comments to NTG's solicitors shortly.
5. Part 26 should be amended and/or added to as follows.	See detailed responses below
6 - First, the following paragraphs of Part 16 schedule 12 shall be added to Part 26 with any references to Sembcorp substituted with references to NTG, namely, paras:180, 182 (with an additional provision that the undertaker shall not exercise its rights to remove apparatus where adequate space remains within the pipeline corridor to undertake the authorised development), 183, 185 (save that NTG shall not be liable for design approval), 186 (with additional (c) reasonable requirement for efficient and economic use of the corridor by the undertaker and (d) the terms of any legally binding agreements and/or easements entered into by NTG for the use of the service corridor), 187, 188 (with additional requirement for public and third party liability insurance and contamination liability for sums at an appropriate level, determined by an arbitrator if not agreed to be maintained at all times), 189 (with additional requirements for coverage for all costs for approvals during the lifetime of the project and contribution to maintenance of shared items - access, services, infrastructure and groundwater monitoring) and 195.	See above in response to paragraph 4 for the Applicants' general comments regarding NTG's approach to protective provisions.
7. Second, further or alternatively, para 308(1) of Part 26 should include any part of the authorised development (and any access in the future e.g.repairs maintenance and alterations) which would have an effect on any land owned by NTL, NTR or NTLL within the Order limits.	The Applicants note that this protection is already provided in the protective provisions at Schedule 12 Part 26 of the DCO. In particular see the consent to works provisions at paragraph 308 and which specifically include reference to access to NTG's land within the Order limits (as per the definition of 'operations') and access to NTG's adjacent land (see for instance paragraph 308(1) and (3)).
8. Third, there should be a provision obliging the Undertaker to reinstate after the construction of Authorised Works No.6.	Reinstatement of land used temporarily for construction is already secured by Article 31(5) and which specifically secures that this must be to the reasonable satisfaction of the landowner:

NTG Position Statement	Applicants' response
	"Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article".
9. Fourth, para 309 of Part 26 concerning indemnity should include construction, use maintenance, failure of the authorised development of act or default of the undertaker, subsidence, contamination or migration of contamination and interference with third party rights. Para 309 (2) should be deleted.	The Applicants are considering NTG's comments regarding indemnity as part of its review of the draft protective provisions provided by NTG's solicitors on 19 October, however, consider that the form of indemnity provided in paragraph 309(1) is appropriate and adequate. Paragraph 309 (2)(b) will be deleted in the iteration of the draft DCO provided at Deadline 12. Limb (a) should be retained, since it is clearly not reasonable for the undertaker to indemnify NTG where the relevant damage or obstruction is caused by NTG itself.
10. Fifth, if the Undertaker abandons use of Works No.6, it shall give written notice and remove (unless NTG specifies otherwise) and reinstate the affected land.	Decommissioning is secured by Requirement 32 of the draft DCO, the Applicants have provided a further response on decommissioning in response to paragraph 20 below.
11. Sixth, the Undertaker shall keep the Authorised Works No.6 in proper repair at all times and in compliance with all relevant statutory obligations, and no additional apparatus such as let-down and metering stations shall be provided.	These are inappropriate clauses to include in a DCO, where criminal liability would attach in instances of non-compliance. In addition, Work No. 6 will be a regulated asset and the appropriate place for controls over it is under the wider CO2 transport and storage regulatory regime. Additionally, it is unnecessary for the DCO to specify that the undertaker must comply with all statutory obligations – the DCO should not duplicate those controls already secured by statute.

NTG Position Statement	Applicants' response
12. Seventh, the Undertaker shall remedy at its expense any contamination (including migration) attributable in any way to Works No.6 to the lands owned and/or leased by NTG	These are inappropriate clauses to include in a DCO, where criminal liability would attach in instances of non-compliance. Remediation is adequately and comprehensively dealt with, across the whole Proposed Development, by requirement 13 in Schedule 2 to the DCO. In addition, article 31(5) of the DCO requires that "the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land". Article 31(6) also requires the undertaker to pay compensation "for any loss or damage arising from the exercise in relation to the land of the provisions of this article".
13. Eighth, having regard to the wide definition of "permitted preliminary works", at Article 2(1) of the dDCO, NTG submits that the nature of these works could be significant and give rise to material concerns necessitating approval being obtained before these works were undertaken. Furthermore, it would be inappropriate for the Applicant to create temporary enclosures and site security without an approval mechanism being in place, for security and safety reasons. Ground investigations that may exacerbate or disturb existing contamination equally require approval mechanisms. Pre and post entry surveys will be needed to record condition	The control of works provisions in the protective provisions do not exclude permitted preliminary works (these are necessarily part of the 'authorised development' and around which the control of works provisions are drafted), and therefore these are covered under the draft protective provisions provided at Part 26 of Schedule 12to the dDCO. The Applicants therefore consider that there is no issue of substance between the parties on this point. = The Applicants also note their response to point 12 above.
14. Ninth, the undertaker will not remove any apparatus or infrastructure where there is adequate space in the pipeline corridor for Works No.6 save for where engineering modifications to support apparatus necessitate .	The Applicants have provided technical justification, supporting the case for the extent of rights sought within the Deadline 8 submission Justification of Corridor Widths [REP8-051]. The Applicants have undertaken technical analysis of the pipeline corridor appropriate for this stage of consenting. The question of location of apparatus or infrastructure is not only one of there being adequate space for those items, but an array of other technical

NTG Position Statement	Applicants' response
	considerations such as detailed design, access, maintenance and safety requirements. The Applicants should not be restricted in the manner proposed by NTG as this risks being an impediment to the delivery of the Proposed Development.
15. Tenth, provisions should enable NTG its servants and contractors and others to enter the New Rights corridor and Temporary Possession areas to undertake maintenance, repairs and lay further services without obstruction by the undertaker save for reasonable periods only.	The protective provisions provide NTG with sufficient information on the proposed works (and the right to request further information), and an approval of these works details prior to the undertaker commencing any part of the authorised development that would have an effect on the NT Group operations, including for requirements of access within the Order limits and adjacent land.
16. NTG submits that the Examining Authority should recommend that Part 26 of Schedule 12 to the dDCO be amended to reflect the above matters.	The Applicants are continuing to engage with NTG on the protective provisions and will submit an updated set within the finalised DCO at Deadline 12.
Article 8 of the dDCO 17. Article 8 of the dDCO enables the Applicant to transfer any or all of the benefit of the provisions of the Order to another party, with some exceptions. Article 8 fails to contain any provisions by which the financial standing of any intended transferee may be tested, or any criteria for the same. Any transferee would become bound by the protective provisions in schedule 26 under which there are obligations for works and or indemnities, which obligations would become meaningless if the transferee had inadequate financial standing. NTG submits that some rigorous test of financial standing of an intended transferee should be included in Article 8(8)	The Applicants consider that this clause is standard DCO drafting, and has been accepted in multiple granted DCOs. There are very limited circumstances in which the Secretary of State's consent would not be required prior to transfer of the benefit. The circumstances in which the Secretary of State's consent is not required prior to transfer are limited such that the issue of financial standing would not need to be assessed, having regard to the parties to whom the transfer can be made, and the nature and scope of the interests that can be transferred. Where the Secretary of State's consent is required, it is not necessary to make explicit that he or she must have regard to financial considerations, or to dictate how such matters are addressed. The Secretary of State can be relied upon to exercise his judgment reasonably and to take account of all relevant matters (including, where appropriate, financial matters) in forming a judgment as to whether to grant consent.

NTG Position Statement	Applicants' response
Schedule 2 18. In respect of paragraph 3(7), NTG should be a consultee together with Sembcorp and STDC as the route and method of installation of the relevant apparatus is critical to NTG and its landholding. Furthermore, permitted preliminary works should not be undertaken until the approval of NTG has been obtained.	The Applicants do not agree that NTG should be added as a consultee to requirements. Sembcorp's and STDC's positions are different, and they have been added to reflect their particular circumstances. See also the Applicants' response to points 3 and 4 above. In relation to permitted preliminary works, refer to the Applicants' response to paragraph 13 above.
19. In respect of paragraph 16, NTG should be a consultee together with the Environment Agency, Sembcorp and STDC. NTG's landholding and the area that is to be subject to the New Rights and Temporary Possession is an industrial area used for petrochemicals. There is consequentially a high risk of environmental issues arising. NTG operates an estate ground water monitoring system and it is essential that it has input with regard to groundwater monitoring, oversight on the installation of any boreholes and ground water monitoring systems as this needs to interlink with their system and/or could cause material disturbance in highly sensitive areas	See the Applicants' response to point 18 above. In addition, the Applicants note that the protective provisions provide adequate protection for NTG, including the provision of information to them prior to works commencing, the ability for NTG to request additional information, and approval by NTG of the 'works details'.
20. In respect of paragraph 32, NTG maintain their position that apparatus and infrastructure should not be left in situ when decommissioned. There are significant health and safety and management issues with regard to apparatus remaining in situ. Alternatively, it should only be left in situ where NTG has agreed this position (at NTG's discretion) in respect of its landholding	Requirement 32 already includes safeguards to ensure the health and safety of apparatus left in situ. The DCO was updated at Deadline 8 to specify that where apparatus is proposed to be left in-situ and not removed, the steps to be taken to decommission such apparatus and ensure it remains safe must be included in the Decommissioning Environmental Management Plan (DEMP). The undertaker is not permitted to commence decommissioning works unless they are approved by the relevant planning authority (RPA). If the DEMP is not approved, the undertaker is obliged to submit further DEMP(s) within 2 months of such notice. Together the effect of this is that apparatus cannot be left in situ where it presents a safety risk. The expectation must be the RPA would only approve a plan that is compliant with the requirements under R32.

NTG Position Statement	Applicants' response
21. NTG submits that the matters above should be taken into account by the Examining Authority, and that the dDCO be amended accordingly	The Applicants note NTG's position and disagrees for the reasons set out above.

9.0 ORSTED HORNSEA PROJECT FOUR LIMITED ("ORSTED")

9.1.1 The Deadline 9 submission by Orsted [REP9-032 to REP9-033] includes comments on the Applicants Deadline 8 submissions.

9.2 Applicants' Response to Orsted's Deadline 9 Submissions

9.2.1 At Deadline 9, Orsted Hornsea Project Four Limited ("Orsted") commented on certain of the Applicants' previous submissions into the examination, specifically:

9.2.1.1. A response to the Legal Opinion of Jason Coppel KC (the "JCKC Opinion", Annex 1 of the Applicants' Response to the ExA's Second Written Questions [REP6-121]. The response takes the form of further legal submissions from James Maurici KC ("the Further JMKC Submissions" [REP9-032], Appendix 1); and

9.2.1.2. A response to the Applicants' Deadline 8 submissions [REP8-049], particularly Section 6 which set out the Applicants' response to the advice of Richard Harwood KC ("the RHKC Advice"), submitted by Hornsea Four at Deadline 6 [REP6-139].

9.2.2 The Applicants provided initial summary oral responses to Orsted's Deadline 9 submissions at Issue Specific Hearing 5 ("ISH5"), written summaries of which are also set out in Written Summary of Oral Submission – Issue Specific Hearing 5 (Document Ref. 9.43) submitted at this Deadline 11.

9.2.3 As set out at ISH5, the Applicants' have provided additional submissions below where considered helpful or relevant for the ExA's consideration of these points.

9.3 Response to the Further JMKC SUBMISSIONS

9.3.1 The Further JMKC Submissions demonstrate that there is at least a degree of common ground between the parties as regards the legal framework for potential interference with rights under Article 1 Protocol 1 ("A1P1") of the European Convention on Human Rights ("ECHR"). Nevertheless, it is clear that some elements of this framework remain in dispute and that there is disagreement as to the appropriate approach for the Secretary of State to take to an interference. This is a matter on which the Applicants make further submissions below. These additional submissions should be read alongside the JCKC Opinion, the content of which is relied upon in full but is not repeated here.

9.3.2 As an important preliminary observation, the Applicants note that the Further JMKC Submissions do not dispute the central proposition of the JCKC Opinion that it would be rational for the Secretary of State to conclude that the substantial public interest in preserving the viability of the ECC Plan may justify an interference (encompassing below, for ease of reference, interference, deprivation or control of use) with Orsted's contractual rights under the Interface Agreement ("IA"). The Further JMKC Submissions do not dispute that on the evidence before the Secretary of State the terms of the IA pose a real and significant risk to the ECC Plan, nor that there is substantial public interest in the ECC Plan proceeding; and it appears to be accepted that the assessment of whether an interference with A1P1 rights is justified will ultimately be a matter of judgement for the Secretary of State.

9.3.3 What the Further JMKC Submissions instead focus on is attempting to circumscribe the scope of the Secretary of State's rational judgement on this question of justification, over-emphasising the weight that should be attached to the quantum of compensation and the existing terms of the IA. The Applicants disagree with several of the assertions of law and fact in the Further JMKC Submissions, as explained below.

'Possessions'

9.3.4 As a preliminary point, at paragraph 10(2) the Further JMKC Submissions assert that bp does not dispute that *"the clauses of the IA which make provision for bp to pay compensation to Orsted… represent a "possession"* of Orsted within Article 1P". This mischaracterises what is said in the JCKC Opinion, which was expressly on the assumption that this was the case, while noting that the point was not clear-cut given that *"this would not be a straightforward case of contractual obligations being interfered with by legislation"* (paragraph 11, JCKC Opinion).

Threshold for assessment of proportionality

9.3.5 In paragraphs 8(1), 11(4) and (7), the Further JMKC Submissions attempt to cast doubt on the continued universal relevance of the principle that a domestic measure which pursues a legitimate aim will be held to be proportionate unless it is *"manifestly without reasonable foundation".* The Further JMKC Submissions assert that a measure will be held to be disproportionate if it imposes an *"individual and excessive burden".* While it is acknowledged that this test has been deployed, particularly by the European Court of Human Rights, it is not necessarily a feature of the domestic test of justification, with the UK Supreme Court in *Bank Mellat v HM Treasury (No 2)*[1] holding that *"[t]he approach to proportionality adopted in our domestic case law… has not generally mirrored that of the Strasbourg court"*.

9.3.6 The nuance introduced by *Aviva Insurance Ltd v Secretary of State for Work and Pensions*[2], excerpted in depth in paragraph 11(4) of the Further JMKC Submissions, is acknowledged by the Applicants and was addressed at paragraph 14 of the JCKC Opinion. The Applicants reaffirm the conclusion from that paragraph, that *""manifestly without reasonably foundation" is the governing test at all stages, but that certain factors may serve to increase the intensity of review within the framework of that test… Generally, however, and in the absence of special factors, judgments of a Minister in the field of social or economic policy will attract a wide margin of appreciation, or a low intensity of review".*

Relevance of compensation

9.3.7 In paragraph 11(8), the Further JMKC Submissions state that, where interference amounts to deprivation, a complete lack of compensation would prevent said

[1] [2014] AC 700 9 at [70 – 72]
[2] [2022] 1 WLR 2753

interference being justified in *"almost all"* cases. This gives rise to several important points:

9.3.7.1. On its own terms, the Further JMKC Submissions recognise and accept that there will be *some* cases where no compensation at all is required for an interference amounting to a deprivation to be justified. An example of this is *R (Durand Education Trust) v Secretary of State for Education*[3], which is cited at paragraph 17(6) of the JCKC Opinion. The Further JMKC Submissions seek to dismiss this as an *"exceptional or very exceptional case"* and instead cites *Mott v Environment Agency*[4] on the basis that lack of compensation was key to a breach of A1P1. However, *Mott* was – as Lord Carnwath giving judgment himself said – *"an exceptional case on the facts"* and there the decision-maker had failed to fully weigh the issue of fair balance at all, allowing the court greater latitude to intervene. Lord Carnwath held at [37] that:

> *"A1P1 gives no general expectation of compensation for adverse effects. Furthermore, where (unlike in this case) the authorities have given proper consideration to the issues of fair balance, the courts should give weight to their assessment."*

9.3.7.2. The importance of compensation is lessened the further from a deprivation the domestic measure is. As explained at paragraph 12 of the JCKC Opinion, the removal of a right in principle to compensation which may be triggered in future and is of currently indeterminate value is more likely to constitute an interference with peaceful enjoyment or a control of use, even more so if the contingent right is replaced by an alternative compensation mechanism. Therefore, it is easier for a decision-maker to conclude that the interference is justified, even if there was a complete absence of compensation.

9.3.7.3. However, the Applicants are not advocating that Orsted receive no compensation. The proposed DCO provisions (both in this examination and the Hornsea Project 4 examination) provide an alternative mechanism for compensation to be assessed by the Secretary of State, should the parties not agree as between themselves. The legality of an interference with zero compensation is therefore largely moot.

9.3.8 For those reasons it is clear that there is nothing in what is said about the issue of compensation in the Further JMKC Submissions that establishes any legal obstacle to the Secretary of State concluding that the Applicants' proposals are justified in the public interest.

Uncertainty of compensation

9.3.9 The Applicants disagree with the contention in paragraph 15 of the Further JMKC Submissions that the existence of some uncertainty as to the compensation Orsted

[3] [2021] ELR 213
[4] [2018] 1 WLR 1022

might receive is *"highly relevant to whether the fair balance has been struck"*. There are many situations in which an assessment of compensation would be, to some extent, discretionary; and the uncertainty is of even less significance where the level of compensation does not threaten the viability of the suggested compensation recipient's project (as Orsted has confirmed in the Hornsea Project Four DCO examination (REP5-074, Response to INF2.1, electronic page 44)). Therefore, the Applicants consider the claim that *"the potential for legal challenge of any determination would be very great"* to be unmerited.

Intended Purpose of the IA

9.3.10 In paragraphs 14(1) and (2), the Further JMKC Submissions assert that the IA and its compensation provisions were *"explicitly designed to deal with the very situation now in hand"* – namely circumstances in which Orsted's project could be entirely excluded from the Overlap Zone. That is simply not correct. The IA was put in place during the pre-feasibility stage of both developments, when it was considered that co-existence in the Overlap Zone could be possible, and it was designed to regulate interactions and impacts arising from co-existence, rather than wholesale exclusion of one party from the entire area. The relevance of the parties' differing intentions at the time of contracting is not to potential frustration of the contract, as suggested in paragraph 14(2)(ii) of the Further JMKC Submissions, but to the proportionality of the Secretary of State interfering with these provisions (and any individual and excessive burden arising from this, if applicable).

Conclusion

9.3.11 To the extent that there are disagreements between the parties as to points of fact or law, the position set out in the JCKC Opinion – as supplemented above – is to be preferred. Nevertheless, both parties appear to agree that the question of whether the proposed interference with Orsted's contractual rights is justified and proportionate is a matter of judgment for the Secretary of State. It follows from the Applicants' submissions that this is a judgment which he could lawfully and rationally conclude in the Applicants' favour.

9.4 Response to Orsted's Response to the Applicants' Deadline 8 submissions

9.4.1 This element of Orsted's response purports to respond to the Applicants' submissions at Deadline 8 (Section 6 of REP8-049, electronic page 18), which provided a full and detailed response to the RHKC advice submitted by Orsted at Deadline 6 [REP6-139] concerning the Applicants' approach to the Proposed Development's environmental impact assessment and the need for protective provisions for the benefit of Hornsea Project Four to be included in the NZT DCO.

9.4.2 The Applicants signposted in paragraphs 6.2.3 to 6.2.10 of their Deadline 8 response where they have responded in detail to these submissions previously.

9.4.3 It was noted in paragraphs 6.2.2 and 6.2.11 of the Deadline 8 response that whilst they do not believe the RHKC advice advances the arguments previously made by Orsted in respect of these two main contentions (and to which full responses have already been provided in the highlighted submissions), additional responses were

provided by the Applicants to address specific matters in the RHKC advice where considered necessary or helpful.

9.4.4 However, it was further observed in paragraph 6.2.11 that *"it is notable that the Opinion does not adequately acknowledge or grapple with the substance and detail of the Applicant's case as set out in the documents listed above, particularly in relation to the absence of any need for protective provisions for the benefit of Orsted in the NZT DCO. The Opinion addresses this matter briefly through a series of assertions in paragraphs 40 to 43, without reference or response to the Applicant's extensive and careful explanation as to why no such provision is needed."*

9.4.5 That summary of the position, and highlighting of the important gaps in the RHKC advice, remains apposite having had regard to Orsted's very limited additional submissions at Deadline 9.

9.4.6 If Orsted had proper persuasive answers to the Applicants' submissions on those core issues then it is reasonable to expect these would already have been shared with the examination by this late stage, so that they could be considered and examined by the ExA, and addressed by the Applicants as appropriate. Orsted has engaged the services of experienced solicitors, two specialist King's Counsel and experienced specialist junior counsel to advance its case in this examination. In those circumstances the absence of a clear and convincing response to the Applicants' submissions speaks volumes. Insofar as Orsted seeks to supplement what it has said so far as Deadline 12, the Applicants will address and respond to any such submissions at Deadline 13. Otherwise, the Applicants' do not consider there is utility or merit in repeating their previous submissions on those matters and instead focus on the narrow additional requests Orsted made in their response.

9.4.7 At paragraph 2.7 of its response, Orsted states:

"The Applicant appears to be suggesting that none of the infrastructure or powers sought as part of the "proposed development" will be used to generate, transport or store gas which will then be stored within the Overlap Zone or otherwise adversely affect Hornsea Project Four. It would be useful if the Applicant could confirm this position as the use of the term "largely outside" within its submissions introduces significant ambiguity. The avoidance of the Overlap Zone also contradicts other submissions made through the examination (for example at Deadline 1 at paragraph 36.2.2 of the Applicant's Comments on Relevant Representations (REP1-045)). If there is, indeed, no need for the proposed development to make use of the Overlap Zone for storage, would the Applicant be agreeable to a restriction being inserted in the DCO to this effect or could such a restriction be imposed?"

9.4.8 The Applicants responded to a previous formulation of this question from Orsted at section 8.4 of its response to Deadline 6 (REP6-122, electronic page 20) stating:

"It is anticipated that the carbon emitted and captured from the Proposed Development would largely settle at the crest of the Endurance store outside of the Overlap Zone, following offshore transportation and injection. This residual area

outside the Overlap Zone represents approximately 30% of the technical storage capacity of the Endurance Store…

Storage within the Overlap Zone is anticipated to occur in subsequent stages of the NEP project, in line with the timescales/programme advised by BEIS for the implementation of the ECC plan under the cluster sequencing process, to which detailed submissions have previously been made in the Hornsea Project Four examination and it is not proposed to repeat the same in this examination for the reasons previously set out to the ExA."

9.4.9 The use of the term 'largely settle' or 'largely outside', used in the Deadline 6 submissions and repeated in what was said at Deadline 8 reflects the fact that the storage settlement of the CO2 is based on forecast modelling at this stage, and the eventual, actual settlement will only be capable of being definitively confirmed following detailed monitoring - the terms of which will be governed pursuant to the relevant offshore consents. The crest of the Endurance Store (within which it is anticipated the CO2 would settle) sits outside of the Overlap Zone and has ample capacity to accommodate the rate and volume of CO2 emitted and captured from the Proposed Development. That means that to the extent there is any potential for some of the CO2 to extend into the Overlap Zone as it settles, this would be *de minimis* and not material for present purposes. By way of further clarification:

9.4.9.1. The structure of the Endurance store, representing its ability to contain CO2, has been extensively imaged and characterised through seismic acquisition over time and recently in the summer of 2022 by the Applicants. From this data, there is a high degree of certainty in the total volume of CO2 that can be contained through the process of pressurisation and displacement within the Endurance store, known as a saline aquifer. After CO2 is injected at the wells, because it is less dense than the brine within the saline aquifer, it will gradually migrate to the top of the structure, otherwise known as the crest.

9.4.9.2. Based on the volume of CO2 injected and CO2 behaviour within the Endurance Store outlined above, the final settlement of CO2 within the Endurance Store can be effectively computed. For the Proposed Development in the NZT DCO, the volume of CO2 injected over a 25-year period will be far less than the 30% technical storage capacity available within the residual area outside the Overlap Zone.

9.4.9.3. The migration of the dense phase CO2 to the crest is not an immediate process. Under the conditions of injection at pressure, the CO2 is expected to initially migrate through the natural porosity of the store formation as it finds its the path to the crest. During this short period, the CO2 may migrate along paths that are just outside of the crest. Monitoring of the CO2's behaviour during this migration process enables the level of store conformance compared to forecast models to be identified and subsequently updated, in order to better predict subsequent CO2 injection and migration pathways. Repeating this process therefore provides confidence in the ability of the forecast models to accurately predict where and how the CO2 will migrate within the store over time.

9.4.9.4. Currently, the forecast model predicts that the CO2 may initially migrate outside of the crest before settling, hence the qualifying terms "largely settle" or "largely outside" have been used. The modelling estimates that, even in a worst case scenario, less than 10% of the plume could potentially be located in a limited area extending only up to a few hundred metres into the northern edge of the Overlap Zone. The Overlap Zone encompasses an area of approximately 110 square kilometres and, having regard to the modelling ranges being employed, this potential overlap can properly be regarded as *de minimis* and not material for present purposes.

9.4.9.5. Moreover, containment of the CO2 for the purposes of this smaller development would be able to rely solely on the natural seal of the Endurance overburden without the need for any active pressure management, i.e., brine extraction. By contrast, brine extraction would be necessary for the purposes of the full field development of the Endurance store. This would necessitate the placement of brine wells at the edge of the full store structure, with a significant 80 square kilometre overlap within the approximate 110 square kilometre Overlap Zone. The absence of the need for brine extraction for a smaller-scale storage operation makes the process of monitoring of the smaller storage area significantly simpler, because the effect on CO2 migration of extracting brine from additional wells located away from the CO2 plume would not need to be considered. As a consequence, the monitoring requirements and associated methodologies (to be developed and agreed with the NSTA in due course) are expected to be significantly less demanding than those associated with the full field development of the Endurance Store (as addressed in the Hornsea Four DCO submissions). For those reasons, even allowing for the potential for some small part of the plume to migrate into the Overlap Zone in the worst case, there is not anticipated to be any inconsistency between the development of wind turbines for Hornsea Project Four within the Overlap Zone and the storage of emissions associated with the NZT Project within the remaining part of the Endurance Store outside of the Overlap Zone.

9.4.10 In any event, however, for the purposes of this examination the key point (as repeated throughout by the Applicants and at ISH5) is that there is no infrastructure or powers proposed to be authorised under the NZT DCO which would physically interact with or present a physical impediment to the project proposed to be authorised under the Hornsea Project Four DCO. Such interface is limited to the development/use of the Endurance Store itself, which is subject to a separate consenting process still to come.

9.4.11 The application process for those further offshore consents represents the appropriate forum within which Orsted can make such submissions, and under which the decision-maker can impose any such restrictions as deemed necessary or appropriate in the circumstances.

9.4.12 Orsted cannot properly suggest to the SoS that the offshore consenting process is unable to address such matters, if required. Nor has Orsted sought to take issue with

the Applicants' important point that the offshore consenting process will necessarily be much better placed to make such judgments because it will have a clearer and more detailed understanding of exactly what is proposed offshore and where it will be placed.

9.4.13 The Applicants have been consistent and transparent as to their position on this issue throughout the application and examination. By contrast, Orsted have consistently failed to identify any credible arguments in response to the Applicants' submissions and instead have simply repeated, or slightly reframed, the same conceptual submissions which fail to engage with or adequately address the Applicants' detailed responses to the same.

9.4.14 Finally, Orsted comments at paragraph 2.8 of its response:

"If there is no nexus between the development proposed in the DCO and Hornsea Four and if the Overlap Zone is not required for the "proposed development", how can the Applicant argue that interference with the Interface Agreement in the terms proposed by draft DCO Articles 49 and 50 is sufficiently related to, or matters ancillary to, the development for which consent is to be granted as is required by Section 120 of the Planning Act 2008".

9.4.15 The Applicants provided extensive justification as to the need for the inclusion of Articles 49 and 50 in the NZT DCO in REP1-035 Appendix 7 (electronic pages 173 and following) and their summary of oral case from Issue Specific Hearing 3 (REP5-025, electronic pages 11 to 16).

9.4.16 That justification has consistently been based on the risk posed by the IA to the full development of the Endurance Store and viability of the wider ECC Plan, of which the Proposed Development forms part, and not on direct interaction between the storage of emissions from the Proposed Development and Hornsea Project Four. It has always been made clear that, in principle, the Proposed Development can go ahead if Hornsea Project Four is able to develop in the Exclusion Area, but that this would frustrate the wider ECC Plan and indeed full use of this important store whether under the ECC plan or otherwise (see e.g. [REP1-035] Scenario 1 at electronic page 173 where it is explained in terms of "*risk to the viability of the Endurance Store to deliver the ECC Plan*" but it is also made clear that the "*Proposed Development would nevertheless still remain viable and acceptable, even if it were limited to capturing and transporting the carbon to only the residual part of the Endurance Store outside of the Overlap Zone which is not subject to the terms of the Interface Agreement*.").

9.4.17 Orsted's submissions do not acknowledge or grapple with the explanation provided in those submissions.

9.4.18 The Applicants further noted in those submissions that the narrow issue for this examination is whether, if the Secretary of State considers it necessary to include provision addressing the interface agreement in the Hornsea Project Four DCO, there is justification to reproduce that provision, in-effect, in this NZT DCO examination.

9.4.19 The Applicants set out their submissions as to why it is appropriate, noting that the main purpose is to cater for circumstances where the SoS considers such provision appropriate in the Hornsea Project Four DCO, but refuses the Hornsea Project Four DCO for other reasons. A secondary scenario was also highlighted in such submissions where the Hornsea Project Four DCO is granted with provision addressing the interface agreement included, but is not then implemented by Orsted leading such provision to lapse in effect. These scenarios are now embedded within the drafting of Articles 49 and 50 themselves.

9.4.20 In either of those scenarios, the Applicants explained that it is appropriate to reproduce the provision in the NZT DCO because the failure to do so poses a risk to the viability of the East Coast Cluster plan, to which the NZT Proposed Development forms part. This provides clear justification to rely on the *vires* under section 120(3) of the Planning Act 2008 for inclusion of such provision.

10.0 REDCAR BULK TERMINAL LIMITED ("RBT")

10.1.1 The Deadline 9 submission by RBT [REP9-034] includes an updated set of protective provisions that have been agreed in principle between the parties with the exception of indemnity provisions and an update on discussions between parties.

10.2 Applicants' Response

10.2.1 The Applicants have no further comment on RBT's submission. The Applicants can confirm that RBT's update on the status of discussions are accurate.

11.0 SEMBCORP

11.1.1 The Deadline 9 submission by Sembcorp [REP9-026] includes a notification of wish to speak at the forthcoming hearings.

11.2 Applicants' Response

11.2.1 The Applicants have no further comment.

12.0 TEESSIDE GAS & LIQUIDS PROCESSING AND TEESSIDE GAS PROCESSING PLANT LIMITED ("NSMP")

12.1.1 The Deadline 9 submission by NSMP [REP9-035] includes comments on the Applicants' Deadline 8 submissions.

12.2 Applicants' Response

12.2.1 1. The Applicants have no further comment.

12.2.2 2. The Applicants have no further comment.

12.2.3 3. The Applicants note NSMP's comments and acknowledge that it was added as a consultee to certain requirements in the Deadline 8 dDCO [REP8-005]. This was following discussions between the parties.

With regards to the powers associated with Work No. 10 in relation to plot 106, the Applicants maintain that these powers are required and justified in order to deliver and operate the Proposed Development. As outlined during discussions between the parties, the Applicants need to maintain the rights and powers of Work No. 10 at this location, as for all parts of the Order limits. The powers are required to enure for the duration of the Proposed Developemt – whilst at present a road exists and which is adequate for the Proposed Development construction traffic, this may not be the case in the future, including during construction or the operational/maintenance phase. Without the powers and associated rights to carry out activities to make up or maintain a road, the Applicants could be left in the position of not having sufficient access to the Proposed Development. The Applicants' position is that protective provisions are the appropriate mechanism for controlling what works may be carried out within plot 106 and to ensure that there potential adverse impacts on NSMP's operations are understood and avoided. The Applicants will continue to engage with NSMP to seek to agree a set of protective provisions for inclusion in the final DCO to be submitted at Deadline 12.

APPENDIX 1: UPDATED OUTLINE OFFSHORE SCHEME OF INVESTIGATION

A.1. Written Scheme of Investigation for Marine Archaeology

This appendix contains an outline of the scope of work required to mitigate potential impacts to marine archaeology as a result on the construction of the Proposed Development.

The design of the Proposed Development is not yet finalised and will not be completed until the detailed design stage. As such, the location of areas requiring marine archaeological mitigation cannot be detailed at this stage, but a methodology setting out the broad principles and methodology of the mitigation is outlined, in accordance with the information requested by the ExA.

The information in this outline Written Scheme of Investigation (WSI) ~~will be confirmed~~will inform ~~in~~ a Site Specific WSI which will be produced once the detailed design of the Proposed Development has been agreed. The Site Specific WSI will be prepared by a qualified and competent Archaeological Contractor, appointed by the Applicants, and submitted to and approved by the MMO, following consultation and agreement with Historic England.

Site of proposed marine archaeological investigation

The scope of marine archaeological investigation will focus on the site of the launch/ receiver point for the construction of a replacement water outfall, which is located approximately 1 km offshore. The outfall exit would be located at the end of the HDD tunnel, the approximate location of which is shown on Figure 1 (section ~~B~~A.8 Figures of this Appendix). A pocket would be dredged for the outfall head, which would then be secured within the dredge pocket by pin piling. A quantity of rock armour (approximately 100m^2) would be deposited around the outfall head as scour protection.

As the design is not yet finalised, the marine archaeological investigation will also focus on any other parts of the Site within the Order Limits where impacts to marine archaeological remains may occur as a result of the Proposed Development.

~~All of these~~Construction activities associated with the current Proposed Development design have the potential to impact marine archaeological assets, either by truncation and removal of features and deposits through dredging, or compaction and crushing of assets through the deposition of rock armour.

Known marine archaeological assets

There are no known wrecks, including protected wrecks, obstructions or aircraft remains recorded within the Order Limits in the vicinity of the HDD outfall. This is based on Historic Environment Record data and UKHO data gathered as part of the baseline study, and the results of geophysical survey carried out for Tees Offshore Windfarm. However, the geophysical survey extended only partially into the Order Limits and the majority of the Site within the Order Limits has not been subject to archaeological investigation. The lack of data may be due to the lack of investigation results rather than a true absence of assets.

There is one asset related to palaeolandscapes within the Order Limits, comprising a palaeochannel (Redcar and Cleveland Borough Council Historic Environment Record 6396, Figure 2 of Section ~~B8~~A8, identified as the pink polygon) which is potentially contemporary with the early Holocene Hartlepool and Redcar submerged forests and peat beds. The channel is approximately 300 m wide and has been mapped for approximately 4 km from the shoreline, following a similar alignment to the current course of the River Tees. This known marine heritage asset is of regional importance as set out in the North East Regional Research Framework, and is therefore of medium value.

Potential marine archaeological assets

Palaeochannels are rarely found in isolation, and are generally part of a larger complex of an extinct river system. As such, the palaeochannel located within the Study Area is likely to be part of a wider fluvial system and there is potential for palaeolandscape evidence to extend into the Site.

Bathymetric surveys and side-scan sonar, as part of the Pelorus geophysical survey undertaken in advance of the Teesside Offshore Wind Farm, identified 82 anomalies that could not be confirmed as being of anthropogenic interest, and therefore may be natural. These could represent palaeochannels and palaeolandscape evidence that may extend into the Site.

A.2. Scope of work

To mitigate impacts to the known and potential marine archaeological resource, a programme of marine geophysical survey and geoarchaeological assessment is proposed.

The following methodology sets out the broad framework for the proposed survey and the scope and standards required. The Archaeological Contractor will set out their proposed detailed methodology in their Site Specific WSI.

Marine geophysical survey assessment scope

It is anticipated that the marine geophysical survey assessment will comprise the assessment of existing geophysical survey data carried out by the Applicants for the Proposed Development. If there is an opportunity to carry out additional marine geophysical survey, or if additional marine geophysical survey is required in order to inform the marine archaeological mitigation response, the survey will be carried out by a survey company with appropriate archaeological expertise and including geophysicists with appropriate archaeological expertise onboard.

Archaeological interpretation of marine geophysical survey data and reporting

Raw survey data, together with factual reports and track plots, will be made available in digital formats by the Applicants to the Archaeological Contractor. The interpretation of data will include:

- the examination of side-scan, magnetometer, sub-bottom and multibeam data within areas that will be subject to scheme impacts in order to identify as yet unknown wrecks and archaeological remains; and
- the assessment of sub-bottom data in order to plot the general trend of the sub-surface sediments with archaeological potential.

The interpretive data will be presented in an illustrated archaeological report.

Marine geoarchaeological assessment scope

It is anticipated that geoarchaeological samples will be obtained during marine geotechnical surveys carried out in advance of the installation of the outfall. Intact borehole/ vibro-core material must be made available to the Archaeological Contractor prior to it being sub-sampled or tested by the geotechnical contractor.

The Applicants will consult with the Archaeological Contractor to confirm that the geotechnical contractor's specification for the marine geotechnical survey, specifically the sections relating to the recovery and storage of borehole/ vibro-core material, complies with the standards required for geoarchaeological assessment.

The assessment of this data may provide further information relating to palaeolandscapes and palaeoenvironments and will mitigate/ offset impacts to potential submerged prehistoric archaeology.

Sampling and reporting

The proposed environmental sampling strategies and methods, including the methods for processing, assessing and/or analysing samples, will be set out by the Archaeological Contractor in the Site Specific WSI. For geoarchaeological samples derived from geotechnical sampling programmes, the Applicants will ensure that samples are made available for geoarchaeological recording and sub-sampling, in accordance with the Site Specific WSI, prior to any processes that may render the sample ineffective, such as poor storage.

The Applicants, their Principal Construction Contractor and the Archaeological Contractor will consult to ensure that the relevant samples are retained and stored appropriately for ~~future~~ geoarchaeological assessment and analysis. The geoarchaeological assessment will comprise, as a minimum:

- Archaeological observation, recording and assessment of geotechnical cores;
- Archaeological review of geotechnical borehole logs
- Sub-sampling of core material; and
- Laboratory assessment and analysis of samples and sub-samples.

The results of the assessment will be compiled as a Geoarchaeological Assessment Report which will represent the agreed scope of assessment and analysis and include a broad chronological framework for the completed analysis.

General objectives

The general objectives of the geophysical survey are:

- To investigate the archaeological potential of the Order Limits;
- To assess the presence / absence of potential archaeological anomalies;
- To determine the significance of archaeological and geoarchaeological remains and place them within a local, regional and/ or national context;
- To preserve archaeological remains by record to offset impacts arising from the construction of the Proposed Development.

A.3. Methodology

The methodology in this outline WSI sets out the general scope of work that is likely to be required to mitigate impacts arising from the Proposed Development.

A detailed scope of work, informed by the final detailed design of the Proposed Development, will be set out in a Site Specific WSI, prepared by the Applicants' Archaeological Contractor at post-consent.

Site Specific WSI

The Archaeological Contractor will be required to prepare a Site Specific WSI which will comply with archaeological best practice and guidance published for offshore development. This guidance includes, but is not limited to:

- The Protocol for Archaeological Discoveries: Offshore Renewables Projects. The Crown Estate 2014;
- Model Clauses for Archaeological Written Schemes of Investigation: Offshore Renewables Projects. Guidance issued by The Crown Estate 2021;
- COWRIE Guidance for Assessment of Cumulative Impacts on the Historic Environment from Offshore Renewable Energy 2008; and
- Joint Nautical Archaeology Policy Committee (JNAPC) Code for Practice for Seabed Development 2006.

The appointed Archaeological Contractor will prepare a Site Specific WSI on behalf of the Applicants. The Site Specific WSI will include, as a minimum:

- Summary of the planning background and the DCO requirement the scope of work is fulfilling;
- Summary of the proposed construction activity;
- Roles and responsibilities of Archaeological Contractor, Principal Construction Contractor (if applicable) and Applicants;
- Illustrations showing the spatial extent and detailed location of investigation(s)
- Summary of archaeological baseline for the site and an appropriate study area;
- Objectives and research aims;
- Methodology, to include:
  - Fieldwork methodologies
  - Recording systems;
  - Finds policy and discard policy
  - Conservation proposals
  - Environmental sampling policy
  - Initial processing of finds and environmental samples

- Reporting stages, including a timetable for interim, post-excavation and publication
- Monitoring arrangements;
- Proposed staffing, including any sub-contractors and/ or specialists;
- Health and safety, including current guidance regarding Covid-19 control measures and
- Insurance details.

The methodologies set out in the Site Specific WSI will be agreed with Historic England and approved by the MMO. All survey work will be carried out in accordance with the approved Site Specific WSI and ~~current~~ relevant good practice and guidance.

Protocol for archaeological discoveries

The Site Specific WSI will contain a methodology for the treatment of unexpected discoveries. This will accord with the methodology presented in the Framework Construction Environmental Management Plan (CEMP) and a proposed methodology is provided in this outline WSI.

Unexpected archaeological discoveries that come to light during the course of the investigations will be addressed by the implementation of the Protocol for Archaeological Discoveries (PAD), using guidance published by Wessex Archaeology on behalf of the Crown Estate.

The protocol requires all discoveries of archaeological material to be reported by the Construction Contractor, in accordance with an agreed communication plan, to the Nominated Contact within their organisation, who will inform Implementation Service (IS) who will then, in turn, inform the relevant Archaeological Curator. If the find constitutes 'wreck' within the terms of the Merchant Shipping Act (1995) then the IS will also make a report to the Receiver of Wreck. Full contact details for all relevant parties will be included in the Protocol.

Staff on all survey and construction vessels will be informed of the Protocol, details of the find types that may be of archaeological interest, and the potential importance of any archaeological material encountered. Hard copies of the Protocol will be made available for use on board construction vessels and tool-box talks will be provided.

Monitoring and progress reports

The Site Specific WSI will include a detailed programme for the monitoring of the marine archaeological works, progress reporting, and for the submission of deliverables, as detailed in Section B4 of this outline WSI. ~~include the agreed methods for the monitoring of the archaeological works by the Archaeological Curator. This may include verbal progress reports upon request, and/ or weekly written progress reports.~~ The programme will be agreed in consultation with Historic England.

Provision for completing a daily site diary, which will capture the scope of work carried out that day, samples taken, artefacts recorded etc., will also be included in the Site Specific WSI.

Completion of fieldwork

The Archaeological Contractor shall prepare and submit a Completion Statement to the Applicants within one working day of completing the survey.

An OASIS entry shall be completed at the end of the fieldwork, irrespective of whether a formal report is required. The Archaeological Contractor will complete the online form at [redacted] within one month following completion of the fieldwork. Archaeological Contractors are advised to contact OASIS (oasis@ads.ahds.ac.uk) for technical advice.

A.4. Deliverables

Each phase of archaeological investigation will require an archaeological report to be produced. Combining the results of surveys into a single report would be permissible following agreement with the relevant Archaeological Curator.

Upon completion of each stage of investigation, an interim report will be produced within 10 days of completion. This would summarise the result and quantify the records, samples and artefacts recovered during the investigation.

A final report will be submitted within four weeks of the completion of the fieldwork. The final report should report on the location, extent and significance of archaeological, palaeoenvironmental and/or geoarchaeological features and/or anomalies recorded as part of the investigation. The final report should follow current good practice and guidance, and should, as a minimum, include the following:

- Title page;
- List of contents, figures, tables, etc;
- Non-technical summary;
- Introduction;
- 10 Figure National Grid Reference;
- Archaeological and historical background;
- Aims and Objectives;
- Methodology, including:
  - Survey methods used;
  - date(s) of fieldwork;
  - grid location;
  - geophysical instruments used (if applicable to that stage of investigation);
  - sampling intervals;
  - equipment configurations;
  - method(s) of data capture;
  - method(s) of data processing; and
  - methods of data presentation;
- Results and Interpretation - with reference to known HER and/ or UKHO and CITiZAN data;
- Deposit model (if applicable to that stage of investigation);

- Discussion, with reference to known HER data where applicable;
- Recommendations for analysis/ scientific dating/ further work;
- Conclusion;
- References to all primary and secondary sources consulted;
- OASIS reference number; and
- Statement of Indemnity.

The final report should be presented in Word format and any digital images in gif format.

A draft report should be submitted to the Applicants for comment and review prior to the finalisation of the report.

Archive deposition for archaeological geophysical survey

Relevant reference numbers will be obtained from the HER in advance of the fieldwork. These project identifiers will be cited in the project report and on other project paperwork.

The marine geophysical survey project is expected to be archived with the Archaeology Data Service (ADS) as an entire project archive, along with other portions of the project as relevant (geoarchaeological assessment). The exact nature of the archive will depend on further discussions between the Archaeological Contractor and the ADS.

A.5. General project requirements

Resources and programme

Experienced and qualified archaeologists shall undertake the archaeological works. All staff will be suitably qualified and experienced professionals and hold valid Construction Skills Certification Scheme (CSCS) cards, proof of which is to be provided to the Applicants upon request (refer to Section 7).

The archaeological works will be undertaken in accordance with an approved programme. Proposed changes to the agreed programme will only be accepted with the agreement of the Applicants.

Confidentiality and publicity

The archaeological works may attract the interest of the public and the press. All communication will be directed to the Applicants.

The Archaeological Contractor will not disseminate information or images associated with the project for publicity or information purposes without the prior written consent of the Applicants.

Copyright

The Archaeological Contractor shall assign copyright in all reports, documentation and images produced as part of this project to the Applicants. The Archaeological Contractor shall retain the right to be identified as the author or originator of the material. This applies to all aspects of the project. It is the responsibility of the Archaeological Contractor to obtain such rights from sub-contracted specialists.

The Archaeological Contractor may apply in writing to use or disseminate any of the project archive or documentation (including images). Such permission will not be unreasonably withheld.

A.6. Insurances, health and safety

The Archaeological Contractor will provide the Applicants with details of their public and professional indemnity insurance cover.

The Archaeological Contractor will have their own Health and Safety policies compiled using national guidelines, which conform to all relevant Health and Safety legislation and best practice. A copy of the Archaeological Contractor's Health and Safety policy will be submitted to the Applicants prior to the start of the survey.

The Archaeological Contractor shall prepare a Risk Assessment(s) and a project specific Health and Safety Plan and submit these to the Applicants prior to starting on site. The Archaeological Contractor will not be permitted to start on site until the Applicants have confirmed that the Risk Assessment is acceptable for the proposed works. If amendments are required to the Risk Assessment during the works, the Applicants and any other relevant party must be provided with the revised document at the earliest opportunity.

All staff involved in the archaeological investigation should be Construction Skills Certification Scheme (CSCS) qualified to a minimum standard as an 'Archaeological Technician' (for Construction Related Occupation card), 'Professionally Qualified Person' (through accreditation with CIfA) or 'Academically Qualified Person' (through an archaeology degree) and hold a valid CSCS card.

All equipment that is used in the course of the investigations must be 'fit for purpose' and be maintained in a sound working condition that complies with all relevant Health and Safety regulations and recommendations.

The Archaeological Contractor will assure the provision and maintenance of adequate, suitable and sufficient welfare and sanitary facilities at appropriate locations for the duration of the works.

If the Archaeological Contractor is appointed by the Applicants Principal Construction Contractor, then the Archaeological Contractor will comply with the Health and Safety policies and site Rules implemented by the Principal Construction Contractor. These roles and responsibilities will be confirmed with the Applicants and set out in the Site Specific WSI.

COVID-19 / other pandemics or high consequence infectious diseases

The Health and Safety policies, Risk Assessments and project-specific Health and Safety Plan compiled by the Archaeological Contractor will address undertaking fieldwork during the Coronavirus COVID-19 pandemic or any prevailing pandemic / high consequence infectious diseases (HCID) outbreak. All work should be undertaken in line with current government advice, which, at the time of writing includes the Site Operating Procedures (Construction Leadership Council, 2021 and any subsequent updates).

The Archaeological Contractor's Risk Assessment and Health and Safety Plan shall address COVID-19 or other prevailing pandemic / HCID specific hazard controls; travel, site, welfare and accommodation; PPE and hygiene provisions; mental health

and effects on people the site workers live with; and reporting procedures for site workers to raise any issues or concerns. They shall take account of changes to emergency procedures, factoring in, for example, increased emergency service response times and potential closures of A&E departments. Toolbox talks will adhere to social distancing.

The Risk Assessment and Health and Safety Plan will be clearly communicated to site workers with sufficient time prior to travel or commencement of work. All site personnel will familiarise themselves with site-specific COVID-19 or other prevailing pandemic / HCID mitigation measures. Signatures will be required to record that all site workers have attended appropriate site briefings and understood COVID-19 or other prevailing pandemic / HCID procedures. Site workers must be aware that COVID-19 or other prevailing pandemic / HCID controls (e.g., maintaining social distancing and hygiene standards) will take precedence until further notice. Site workers must adhere to the COVID-19 or other prevailing pandemic / HCID measures, controls and restrictions.

If tasks are identified that cannot be compliant with COVID-19 or other prevailing pandemic / HCID procedures, then work must not take place until further mitigation is put in place to remain compliant.

COVID-19 or other prevailing pandemic / HCID procedures will be under constant review as the situation evolves. The Archaeological Contractor will ensure that Risk Assessments are updated to reflect any changes to government advice be issued prior to the commencement of or during the archaeological works.

A.7. RReferences

Construction Leadership Council (2021). Site Operating Procedures.

COWRIE (2008). Guidance for Assessment of Cumulative Impacts on the Historic Environment from Offshore Renewable Energy.

Entec (2004). EDF Energy (Northern Offshore Wind) Ltd: Teesside Offshore Wind Farm Environmental Statement.

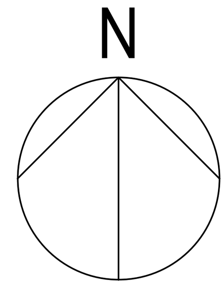
Joint Nautical Archaeology Policy Committee (JNAPC) (2006). Code for Practice for Seabed Development.

Petts, D. and Gerrard, C. (2006). Shared Visions: The North-East Regional Research Framework for the Historic Environment. Durham: Durham County Council.

The Crown Estate (202110). Model Clauses for Archaeological Written Schemes of Investigation: Offshore Renewables Projects. Wessex Archaeology.

The Crown Estate (2014). Protocol for Archaeological Discoveries: Offshore Renewables Projects. Wessex Archaeology.

A.8. - Figures



EXISTING PIPELINE

WC2 - COATHAM SAND DUNES - MICRO-BORED TUNNEL (NEW)

WC1 - MINOR ROAD - MICRO-BORED TUNNEL (NEW)

WC6 - INDUSTRIAL RAIL CROSSING - PIPEBRIDGE (EXISTING)

PIPELINE FOLLOWS EXISTING ROUTING

WC5 - MINOR ROAD BELOW GROUND (EXISTING)

WC4 - WATER CROSSING - PIPEBRIDGE (EXISTING)

WC9 - INDUSTRIAL ROAD CROSSING - UNDER ROAD BRIDGE (EXISTING)

WC3 - OPERATIONAL RAIL CROSSING - CULVERT (EXISTING)

WC10 - MINOR ROAD - PIPEBRIDGE (EXISTING)

WC8 - INDUSTRIAL RAIL CROSSING (X2) - PIPEBRIDGE (NEW)

WC7 - INDUSTRIAL ROAD CROSSING - PIPEBRIDGE (NEW)

0 50 100 150 200 250m

SCALE 1:2500

SAFETY, HEALTH AND ENVIRONMENTAL INFORMATION BOX

IT IS ASSUMED THAT ALL WORKS ON THIS DRAWING WILL BE CARRIED OUT BY A COMPETENT CONTRACTOR WORKING, WHEREAPPROPRIATE, TO AN APPROPRIATE METHOD STATEMENT

THIS DRAWING TO BE USED ONLY FOR THE PURPOSE OF ISSUE THAT IT WAS ISSUED FOR AND IS SUBJECT TO AMENDMENT

KEY

- SITE BOUNDARY
- WORK No. 4A - WATER SUPPLY CONNECTION WORKS - FRESHWATER CONNECTION
- WORK No. 5A - WASTE WATER DISPOSAL WORKS - EXISTING OUTFALL
- WORK No. 5B - WASTE WATER DISPOSAL WORKS - REPLACEMENT OUTFALL
- WORK No. 5C - WASTE WATER DISPOSAL WORKS - PIPEWORK CONNECTIONS TO BRAN SANDS
- POTABLE WATER SUPPLY CONNECTION ROUTE (BELOW GROUND)
- WASTE WATER EXISTING OUTFALL CONNECTION ROUTE (BELOW GROUND)
- WASTE WATER REPLACEMENT OUTFALL CONNECTION ROUTE (FOLLOWS CO2 EXPORT)
- WASTE WATER CONNECTION ROUTE TO BRAN SANDS (2X PIPELINES ABOVE GROUND)
- RAW WATER SUPPLY CONNECTION ROUTE (BELOW GROUND)

Revision Details	By	Check	Date	Suffix

Purpose of issue

FOR INFORMATION

Applicant

NZT POWER LTD AND NZNS STORAGE LTD

Project Title

Drawing Title

DCO Reference Number - 4.9

INDICATIVE WATER CONNECTION PLAN

Sheet 1 of 1 - Layout View

Designed	Drawn	Checked	Approved	Date
	SF			

AECOM Internal Project No.	Suitability	Project Manager
60559231	N/A	
Scale @ A1: AS SHOWN	Zone / Mileage: N/A	

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Drawing Number	Rev
60559231-PE-DRG-039	1

AECOM

PROJECT
NET ZERO TEESSIDE PROJECT

Net Zero Teesside

APPLICANTS
NZT POWER LTD. AND NZNS STORAGE LTD.

KEY

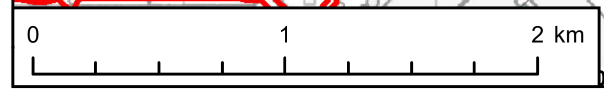
- Site Boundary
- 1km Study Area
- UKHO Wrecks and Obstructions - Point
- UKHO Wrecks and Obstructions - Polygon
- Protected Wreck

Maritime Heritage Assets - Point

- Post-Medieval
- Modern
- Unknown

Maritime Heritage Assets - Polygon

- Prehistoric
- Medieval
- Post-Medieval
- World War I
- World War II
- Modern



TITLE
FIGURE 19-1
LOCATION OF MARINE HERITAGE ASSETS IN THE 1KM STUDY AERA

REFERENCE
NZT_210512_ES_19-1_v2

SHEET NUMBER 1 of 1

DATE 12/05/2021

Scale @ A3 1:30,000

Project Management Initials: RL Designer: LC Checked: ARC Approved: AC

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Northern Endurance Partnership

bp

ANNEX 3
ORSTED'S RESPONSE TO DEADLINE 12 OF THE NZT DCO

Hornsea Project Four

Net Zero Teesside Development Consent Order

Comments on the Applicant's Submissions at Deadline 8 and 11

Deadline: 12, Date: 01 November 2022

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2 Response to the Applicant's Comments at Deadline 8 3

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1 Introduction

1.1 At Deadline 9, in REP9-033, Orsted Hornsea Project Four Limited ("Hornsea Four") sought clarification from Net Zero Teesside Power Ltd and Net Zero North Sea Storage Ltd ("the Applicant") on points raised in its comments on the legal advice of Richard Harwood KC submitted at Deadline 8 (REP8-049).

1.2 The Applicant has provided its response to those points of clarification, and has also provided a response to the legal advice of James Maurici KC submitted by Hornsea Four at Deadline 8 (REP11-014).

1.3 This submission sets out Hornsea Four's comments in response to the Applicant's submission made in REP8-049 and REP11-014 in so far as they are applicable to Hornsea Four .

2 Response to the Applicant's Comments at Deadline 8

2.1 Having considered the Applicant's position in response to the advice of Richard Harwood KC, there is nothing within that submission that changes Hornsea Four's position in relation to the need for protective provisions for the benefit and protection of Hornsea Four. As such, Hornsea Four's position is not repeated in full in this submission. Hornsea Four's position on this matter is set out in the following documents:

2.1.1 REP1-052 Written Summary of Orsted Hornsea Project Four Limited's Oral Case at Issue Specific Hearing 2

2.1.2 REP2-089 Written Representation

2.1.3 REP2-092 Legal Submission Note

2.1.4 REP5-022 Position Statement

2.1.5 REP5-038 Written Summary of Orsted Hornsea Project Four Limited's Oral Case at Issue Specific Hearing 3

2.1.6 REP6-139 Hornsea Four Responses to ExQ2 (which included the legal advice of Richard Harwood KC)

2.1.7 REP8-056 Comments on the Applicant's Submissions at Deadline 7

2.2 However, there are matters raised in the Applicant's Deadline 8 submission on which Hornsea Four would like to further respond. These are set out below.

2.3 The Applicant, at paragraph 6.2.21 of its comments on the Deadline 7 submissions, states in response to paragraph 23 of the Richard Harwood KC Advice, that no explanation has been provided regarding the adequacy of the assessment provided by the Applicant of the impacts of the wider NEP Project on Hornsea Four Offshore Wind Farm (REP8-049). Hornsea Four has clearly set out that it disagrees with the conclusions of the assessment, based on its position that the suggested mitigation would not be appropriate, as it would impact on the renewable energy contribution and render the project far less commercially competitive. Even with application of the mitigation

suggested by the Applicant therefore, a significant adverse effect would be experienced. Hornsea Four's position on this is set out in the following documents:

2.3.1 REP2-089 Written Representation

2.3.2 REP5-037 Comments on the Applicant's Submissions at Deadline 4

2.3.3 REP7-016 Comments on the Applicant's Submissions at Deadline 6

2.4 In addition, paragraph 31 of the Richard Harwood KC Advice makes the point that if it were possible to have more or larger turbines, then that could be done in any event, which would still therefore result in the loss of wind turbine capacity in the Overlap Zone should Hornsea Four Offshore Wind Farm be excluded from developing in that area.

2.5 At paragraph 6.2.27 of the Applicant's comments on the Deadline 7 submissions, the Applicant states:

2.5.1 *"the Applicant's position has always been that the project includes the storage and injection of CO2 into part of the Endurance Store, and that the part of the store that is required for storage of CO2 from the "proposed development" (the DCO project) lies* ***largely outside*** *of the Overlap Zone. That being the case, the EIA "project" (the DCO project and the transportation and injection of CO2 from that project into the Endurance Store) is viable and deliverable without affecting HP4."*

2.6 The Applicant clarified, in REP11-014 that based on forecast modelling, it is anticipated that the CO2 would settle within the crest of the Endurance Store which is outside the Overlap Zone, but that this could initially migrate outside of the crest and into part of the Overlap Zone. It is noted that the Applicant considers this to be *de minimis* and not material.

2.7 The Applicant's definition of project differs to that which Hornsea Four considers to be the project in EIA terms. This is set out in paragraphs 15 to 22 of the Richard Harwood KC Advice and concludes that *"the project is therefore the NZT Teesside DCO scheme and the CO_2 Endurance store and offshore infrastructure required for it to proceed."*

2.8 Hornsea Four considers the way in which the Applicant has defined the project by limiting the extent of the project to where the CO_2 emissions from the Proposed Development will be stored artificially cuts out a key component of the overall project, being the storage of CO_2 in the Endurance Store from the other emitters whose CO_2 emissions will be compressed and transported via infrastructure

to be consented by the NZT DCO. The reasons why this forms part of the project are set out in paragraph 18 of the Richard Harwood KC Advice, as follows:

"(a) the power station in the DCO scheme relies on CO2 being stored in Endurance;

(b) the DCO includes the compression equipment and part of the pipeline for the Teesside end of the store;

(c) whilst not essential to the conclusion that it is a single project, the Teesside compression equipment and the store will serve other CO2 generators in addition to the generating station;

(d) and draft DCO requirement 31(1) at Schedule 2 requires the Endurance CO2 store to be licenced and the pipeline consented before all but permitted preliminary works on the development proceed:

> "No part of the authorised development other than the permitted preliminary works may commence until evidence of the following (or such licence or consent as may replace those listed) has been submitted to and approved by the relevant planning authority—
>
> (a) that the carbon dioxide storage licence has been granted;
>
> … and
>
> (c) that any pipeline works authorisation required by section 14 of the Petroleum Act 1998 for offshore pipeline works from Work No. 8 to the carbon dioxide storage site has been granted."

2.9 Even if the Applicant's interpretation of the project was to be preferred, there is no guarantee that Co_2 form the Proposed Development would not settle in the Overlap Zone, as the Applicant notes at paragraph 9.4.9 of REP11-014 that "actual settlement will only be capable of being definitively confirmed following detailed monitoring - the terms of which will be governed pursuant to the relevant offshore consents. Based on the response from the applicant, the potential use of the Overlap Zone for the storage of CO_2 from the Proposed Development is at best uncertain.

2.10 The Applicant has asserted, in multiple submissions and at the Issue Specific Hearings, that Hornsea Four has not justified its reasons for seeking protective provisions. This is disputed.

2.10.1 Hornsea Four has set out the justification for protective provisions to be secured in its favour clearly in the submissions noted at paragraph 2.1 above. While the Applicant may disagree with the reasoning, it cannot be said that no case has been put forward. Hornsea Four maintains its position as set out within previous written submissions.

3 Response to the Applicant's Comments at Deadline 11

3.1 The Applicant, in REP11-014 provided its response to the James Maurici KC legal submission submitted by Hornsea Four at Deadline 8 (REP9-032), referred to as the "Further JMKC Submissions".

3.2 The Applicant contends that:

3.2.1 *"The Further JMKC Submissions do not dispute the central proposition of the JCKC Opinion that it would be rational for the Secretary of State to conclude that the substantial public interest in preserving the viability of the ECC Plan may justify an interference (encompassing below, for ease*

of reference, interference, deprivation or control of use) with Orsted's contractual rights under the Interface Agreement ("IA")." and

3.2.2 *"The Further JMKC Submissions do not dispute that on the evidence before the Secretary of State the terms of the IA pose a real and significant risk to the ECC Plan, nor that there is substantial public interest in the ECC Plan proceeding."*

3.2.3 The Further JMKC Submissions set out the legal position that a measure can pursue what is self-evidently a legitimate aim that is in the public/general interest but still be found to be disproportionate if it imposes "an individual and excessive burden". This is not conceding that the aim stated by the Applicant is legitimate.

3.2.4 On an objective assessment of the material submitted, Hornsea Four considers that the Applicant has failed to provide any clear evidence that the terms agreed as part of the Interface Agreement would render the ECC Plan unviable. In particular, the Applicant has failed to (i) demonstrate that co-existence is not possible and (ii) evidence that the other provisions in the interface agreement including the compensation provisions would operate in a way that would frustrate the ECC plan even in circumstances where physical co-existence is not preferred.

3.2.5 It is submitted that the Further JKMC submissions ought to carry significant weight in the Secretary of State's assessment of the imposition of Articles 49 and 50.

3.2.6 For the avoidance of doubt, Hornsea Four does not consider that it would be rational for the Secretary of State to conclude that there is substantial public interest in preserving the viability of the ECC Plan, or that in the event the Secretary of State reaches the opposite view on this, that this may justify an interference with Orsted's contractual rights under the Interface Agreement for the reasons set out in paragraphs 12 to 15 of the Further JMKC Submissions.

3.2.7 As set out in the conclusion of the Further JMKC Submissions: "*the Secretary of State is asked to reject the proposed Articles disapplying the IA and to leave the IA in place. Even proceeding on the basis that there is vires for the Secretary of State to do what BP proposes it is submitted that a DCO should not be used to allow a highly sophisticated and well-advised commercial party to escape from obligations it freely entered into because it now regards this as a bad bargain. Moreover, for the above reasons what is proposed continues to constitute an unjustified interference with Orsted's Article 1, Protocol 1 rights notwithstanding the changes made to what is proposed in response to Orsted's earlier submissions."*

3.2.8 At paragraph 9.3.9, the Applicant disagreed that the uncertainty with regard to the level of compensation being offered to Hornsea Four is highly relevant. For context, certainty as to the amount of compensation that may be paid in the event that Hornsea Four is excluded from the Overlap Zone is a key factor in how Hornsea Four quantifies the detrimental impact of such an exclusion on its business case going forward. The uncertainty of any compensation payable and the disapplication of key parts of the Interface Agreement, compounded with uncertainties in the market such as commodity prices and interest rates, make it challenging for Hornsea Four to make informed decisions about its project. It is important that Orsted have this certainty to seek to ensure that it can take a final investment decision on Hornsea Four and can build out the project within the timescales required, which are driven by a number of factors including Government policies on tackling climate change, supply chain constraints, and the operation of the Contracts for Difference regime. Additionally, certainty is required for Orsted to strategically maximise economies of scale

and ensure that costs to consumers are minimised. Finally, certainty around compensation payable supports Orsted in contributing as much as it can to government's offshore wind targets.

3.2.9 At paragraph 3.9.10, the Applicant disputes that the Interface Agreement was entered into, in part, to deal with a situation whereby one party was excluded from the Overlap Zone. It is quite unbelievable that the Applicant is suggesting that BP, a large commercial entity with a sufficiency of legal and technical advisers at its disposal, would have entered into an agreement without a full understanding of the potential risks of doing so, including the need to pay compensation in the event that Hornsea Four was precluded from installing infrastructure in the Overlap Zone. Indeed, in the Deed of Adherence made on 10 February 2021 between The Crown Estate Commissioners, Hornsea Four, Smart Wind Limited, Carbon Sentinel Limited and BP Exploration Operating Company Limited, and in which BP agreed to adhere to the Interface Agreement, it is stated in Recital (A) to that deed:

"The Interface Agreement provides, among other things, a mechanism for the co-existence of wind and carbon storage projects on an overlapping area of sea bed together with compensation and dispute resolution provisions in the alternative."

3.2.10 It is therefore clear that, at the point BP agreed to adhere to the Interface Agreement, that they were well aware that compensation would be payable in the event that co-existence was not possible.

3.2.11 Hornsea Four maintains its position that the Interface Agreement sets the appropriate mechanism for assessing compensation, and that these provisions should not be set aside because the Applicant or BP now consider that they have entered into a bad bargain.

3.2.12 In response to the Applicant's comments at paragraph 9.4.11-9.4.12, Hornsea Four's position remains as set out in its Written Representation (REP2-089) that the DCO process offers the best opportunity to fully consider the relevant issues and to apply appropriate mitigations and protections. There is no transparency in the storage permit process and whilst there may be the opportunity for limited consultation under the related EIA process, there is no opportunity to discuss issues and propose protections with the advisors to the decision maker. Appropriate mitigations should be considered and secured now – when the merits of the overall project are being weighted.

ANNEX 4
THE NZT DCO APPLICANTS' DEADLINE 13 RESPONSE TO ORSTED'S RESPONSE AT DEADLINE 12 OF THE NZT DCO EXAMINATION

Net Zero Teesside

Net Zero Teesside Project

Planning Inspectorate Reference: EN010103

Land at and in the vicinity of the former Redcar Steel Works site, Redcar and in Stockton-on-Tees, Teesside

The Net Zero Teesside Order

Document Reference: 9.50 Applicants' Comments on Deadline 12 Submissions & Updates to the Applicants' Draft DCO

The Planning Act 2008

Applicants: Net Zero Teesside Power Limited (NZT Power Ltd) & Net Zero North Sea Storage Limited (NZNS Storage Ltd)

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GLOSSARY

Abbreviation	**Description**
AOD	Above ordnance datum
AS-	Additional Submissions
BAT	Best Available Techniques
BEIS	The Department for Business, Energy and Industrial Strategy
CCGT	Combined Cycle Gas Turbine
CCUS	Carbon Capture, Utilisation and Storage
CEMP	Construction and Environmental Management Plan
CTMP	Construction Traffic Management Plan
CO_2	Carbon dioxide
CPO	Compulsory Purchase Order
dB	Decibels
DCO	Development Consent Order
dDCO	Draft Development Consent Order
EIA	Environmental Impact Assessment
EPC	Engineering, Procurement and Construction
ES	Environmental Statement
ETS	Emissions Trading Scheme
ExA	Examining Authority
FEED	Front end engineering and design
FRA	Flood Risk Assessment
Ha	Hectares
HDD	Horizontal Directional Drilling
HIA	Hydrogeological Impact Appraisal
HoT	Heads of Terms
kV	Kilovolts
MHWS	Mean High Water Springs
MLWS	Mean Low Water Springs

Mt	Million tonnes
NATS	National Air Traffic Services
NSIP	Nationally Significant Infrastructure Project
NWL	Northumbria Water Lagoon
NZT	The Net Zero Teesside Project
NZT Power	Net Zero Teesside Power Limited
NZNS Storage	Net Zero North Sea Storage Limited
PA 2008	Planning Act 2008
PCC	Power Capture and Compressor Site
PDA-	Procedural Deadline A
PINS	Planning Inspectorate
RCBC	Redcar and Cleveland Borough Council
RR	Relevant Representation
SBC	Stockton Borough Council
SEL	Sound Exposure Level
SPA	Special Protection Areas
SoCG	Statement of Common Ground
SoS	Secretary of State
STDC	South Tees Development Corporation
SuDS	Sustainable urban drainage systems
UXO	Unexploded Ordnance
WFD	Water Framework Directive

Net Zero Teesside

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1.0 INTRODUCTION

1.1 Overview

1.1.1 This document, 'Applicant's Comments on Deadline 12 Submissions & Updates to the Applicants' Draft DCO' (Document Ref. 9.50) has been prepared on behalf of Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (the 'Applicants'). It relates to the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for Business, Energy and Industrial Strategy ('BEIS'), under Section 37 of 'The Planning Act 2008' (the 'PA 2008') for the Net Zero Teesside Project (the 'Proposed Development').

1.1.2 The Application was submitted to the SoS on 19 July 2021 and was accepted for Examination on 16 August 2021. A change requests made by the Applicants in respect of the Application were accepted into the Examination by the Examining Authority on 6 May 2022, 6 September 2022 and 4 November 2022.

1.2 Description of the Proposed Development

1.2.1 The Proposed Development will work by capturing CO_2 from a new the gas-fired power station in addition to a cluster of local industries on Teesside and transporting it via a CO_2 transport pipeline to the Endurance saline aquifer under the North Sea. The Proposed Development will initially capture and transport up to 4Mt of CO_2 per annum, although the CO_2 transport pipeline has the capacity to accommodate up to 10Mt of CO_2 per annum thereby allowing for future expansion.

1.2.2 The Proposed Development comprises the following elements:

- **Work Number ('Work No.') 1** – a Combined Cycle Gas Turbine electricity generating station with an electrical output of up to 860 megawatts and post-combustion carbon capture plant (the **'Low Carbon Electricity Generating Station'**);
- **Work No. 2** – a natural gas supply connection and Above Ground Installations ('AGIs') (the **'Gas Connection Corridor'**);
- **Work No. 3** – an electricity grid connection (the **'Electrical Connection'**);
- **Work No. 4** – water supply connections (the **'Water Supply Connection Corridor'**);
- **Work No. 5** – a waste water disposal connection (the **'Water Discharge Connection Corridor'**);
- **Work No. 6** – a CO_2 gathering network (including connections under the tidal River Tees) to collect and transport the captured CO_2 from industrial emitters (the industrial emitters using the gathering network will be responsible for consenting their own carbon capture plant and connections to the gathering network) (the **'CO_2 Gathering Network Corridor'**);

- **Work No. 7** – a high-pressure CO_2 compressor station to receive and compress the captured CO_2 from the Low Carbon Electricity Generating Station and the CO_2 Gathering Network before it is transported offshore (the **'HP Compressor Station'**);
- **Work No. 8** – a dense phase CO_2 export pipeline for the onward transport of the captured and compressed CO_2 to the Endurance saline aquifer under the North Sea (the **'CO_2 Export Pipeline'**);
- **Work No. 9** – temporary construction and laydown areas, including contractor compounds, construction staff welfare and vehicle parking for use during the construction phase of the Proposed Development (the **'Laydown Areas'**); and
- **Work No. 10** – access and highway improvement works (the **'Access and Highway Works'**).

1.2.3 The electricity generating station, its post-combustion carbon capture plant and the CO_2 compressor station will be located on part of the South Tees Development Corporation (STDC) Teesworks area (on part of the former Redcar Steel Works Site). The CO_2 export pipeline will also start in this location before heading offshore. The generating station connections and the CO_2 gathering network will require corridors of land within the administrative areas of both Redcar and Cleveland and Stockton-on-Tees Borough Councils, including crossings beneath the River Tees.

1.3 The Purpose and Structure of this document

1.3.1 The purpose of this document is to summarise the Applicants' comments on the submissions made by Interested Parties at Deadline 12 (1 November 2022) and updates to the Applicants' draft DCO. The document is structured to provide comments on the following Interested Parties' Deadline 12 submissions and comments on the position as regards some other Interested Parties:

- Section 2 – Anglo American
- Section 3 – Marine Management Organisation
- Section 4 – North Tees Group
- Section 5 – Northumbrian Water Limited
- Section 6 – Orsted Hornsea Project Four Limited
- Section 7 – Redcar Bulk Terminal Limited
- Section 8 – Sembcorp Utilities (UK) Limited
- Section 9 – South Tees Development Corporation
- Section 10 – Teesside Gas & Liquids Processing and Teesside Gas Processing Plant Limited

2.0 ANGLO AMERICAN ("AA")

2.1.1 The Deadline 12 submission by AA [REP12-135] includes a joint statement between AA and the Applicants.

2.2 Applicants' Response

2.2.1 The Applicants submitted the same joint statement at Deadline 12 [REP12-130].

2.2.2 In this respect, the Applicants note that the Deadline 12 DCO mistakenly included Anglo American's preferred wording of the Protective Provisions providing at paragraph 232(3)(j)-(s) that Anglo American should be required to consent to the use of the land powers in the DCO.

2.2.3 As set out in the Joint Statement and for the avoidance of doubt, the Applicants do not agree to the inclusion of these provisions in the DCO for the reasons set out in the Joint Statement, and do not consider that they should form part of the DCO if made.

3.0 MARINE MANAGEMENT ORGANISATION

3.1.1 The Examining Authority is directed to the Statement of Common Ground signed by both the MMO and Applicants at Deadline 13 (Document Reference 8.4). This confirms that the MMO is content with the entirety of the drafting in the deemed marine licences in Schedules 10 and 11 of the final DCO [REP12-003] with the exception of Part 1, paragraph 7.

3.1.2 Whilst the MMO has not commented upon this provision previously, the Applicants anticipate that comments from the MMO may be received at Deadline 13 or, even in the absence of further comments from the MMO, it may assist the Examining Authority and Secretary of State to understand the Applicants' position on this matter prior to the end of the Examination.

3.1.3 Paragraph 7 makes clear that the general position is that section 72 (variation, suspension, revocation and transfer of licence) of the Marine and Coastal Access Act 2009 ("MCA 2009") applies to the deemed marine licences ("DMLs"). It follows that the entirety of the MMO's powers to revoke, suspend, transfer or vary a licence generally have effect. The Applicants agree this is appropriate and any issue with respect to the management and enforcement of the DMLs is a matter for the MMO.

3.1.4 The latter part of paragraph 7 deals specifically with the process for the *transfer* of the DMLs. It states that s72(7) (power of MMO to transfer or vary a licence following an application) and s72(8) (prohibition on transfer except by way of an approval under 72(7)) of the MCA 2009 would not apply where Article 8 (consent to transfer benefit of this NZT Order) of the NZT DCO [REP12-003] has effect.

3.1.5 The Applicants had included this drafting in the draft DCO [APP-005] that was submitted with the DCO application in July 2021. The drafting of this provision has not changed since this date and no substantive comments on this matter have been received from the MMO throughout the entirety of the Examination. Nevertheless, the Applicants address the MMO's position below.

3.1.6 Article 8(2) is the key provision. This states that the undertaker may transfer the whole of a DMLs with the consent of the Secretary of State (SoS). Article 8(3) specifies that the SoS must consult the MMO prior to approving such transfer. Article 8(13) specifies that the undertaker must also notify the MMO within ten days of the transfer taking effect.

3.1.7 The MMO advised on 4th November that it did not agree to the disapplication of sections 72(7) and (8) of the MCA 2009 where Article 8 of the Order has effect. The MMO advised that its position is that the entirety of s72 of the MCA must have effect, and that therefore any transfer of the DMLs must be decided by the MMO pursuant to an application under section 72(7) of the MCA 2009.

3.1.8 Together Article 8 ensures that the MMO will have an opportunity to advise the SoS as to whether or not a transfer should be approved (where such approval of a transfer of powers is required under Article 8). The expectation must be that the SoS will then take into consideration the advice of its marine advisors in making the determination. The provisions of Article 8 also ensure that no "partial" transfer can

be made so as to create uncertainty over enforcement of the DML by the MMO (note the reference in Art 8(2) to "whole of" the DML). Article 8 further ensures that the MMO have early notice of a transfer taking effect (which the Applicants recognise is important from an enforcement perspective).

3.1.9 The Applicants' position is that the process under Article 8 is a reasonable alternative to the transfer process under s72(7) and (8). It avoids duplication of procedures between Article 8 and the MCA 2009, and ensures that all powers under the DCO can be transferred pursuant to a single application to the SoS. That simplifies transfer arrangements for undertakers but also reduces the administrative burden on regulatory bodies (whilst ensuring appropriate safeguards for the MMO).

3.1.10 The arrangements in paragraph 7 are very well established in DMLs. They have been accepted by the Secretary of State in many recent DCOs, including Article 5(14) of The East Anglia TWO Offshore Wind Farm Order 2022, paragraph 7 of Schedule 11 of The Hornsea Project Three Wind Farm Order 2020 and Article 8(10 of The York Potash Harbour Facilities Order 2016. Furthermore, the Applicants have undertaken a review of DCOs with DMLs that have been made since 2015. This provision or similar wording is contained in twelve out of the fourteen DCOs that the Applicants identified (either in the DML itself or in the transfer of benefit article in the DCO).

3.1.11 The MMO have provided no explanation as to why the NZT Order is different to other DCOs such that this provision is not appropriate in the NZT Order. No explanation has been provided by the MMO as to why the Secretary of State is not capable of determining a transfer application subject to consultation with the MMO, or why the MMO considers that the Secretary of State would not adequately consider the advice of his marine advisors in making a determination on the transfer of one of the DMLs under Article 8 of the Order.

3.1.12 The Applicants' position is that this provision should be included in the final NZT Order, in line with precedent in other DCOs and taking into account the Applicants' clear rationale for including this provision.

4.0 NORTH TEES GROUP ("NTG")

4.1.1 The Deadline 12 submission by NTG [REP12-136] includes an update on discussions and a set of NTG's preferred protective provisions.

4.1.2 **Applicants' Response**

4.1.3 NTG have provided their timeline of events. The Applicants consider it may be of benefit to the Examining Authority to provide their timeline of events relating to the protective provisions, and this is set out below. In terms of the Applicants' timeline of engagement for the Heads of Terms, the Applicants refer to table 2.2 of the Statement of Common Ground with the NTG that was submitted at Deadline 12 [REP12-125]. In addition to this record of main meetings and calls, the Applicants note that there have been a significant number of emails exchanged other calls between the Parties (including their representatives) on a regular basis.

4.1.4 As is demonstrated in the timeline and the record of engagement, the Applicants have consistently sought to engage with NTG, including providing two fully considered sets of protective provisions along with a detailed mark-up in response to the draft that was provided by NTG at [REP11-043] and [REP12-136] which closely matched the protective provisions sought by Sembcorp.

4.1.5 The Applicants have carefully considered the positions that have been put by NTG and have responded with drafts that are proportionate, based on relevant precedents and relevant to NTG's ownership and operations. The Applicants will continue to make concerted efforts to negotiate with NTG however the Applicants' position is that the protective provisions provided at Part 27 of Schedule 12 offer appropriate protection for NTG's interests.

4.1.5.1. It is important that the Applicants clarify a comment that has been made by NTG at ISH5 and in REP12-136 at paragraph 1.4. The draft protective provisions provided by the Applicants on 16th August <u>do</u> provide protection for land within the Order Limits. This is demonstrated in paragraphs 366 and 367(1) of the protective provisions provided for the benefit of NTG within the draft Order at Part 27 of Schedule 12 [REP12-003]. Paragraph 367(1) states: "*Before commencing any part of the authorised development which would have an effect on the <u>operations</u> or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order Limits, the undertaker must submit to the NT Group the works details for the proposed works and such further particulars as the NT Group may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require*". The term 'operations' is defined under paragraph 366 to mean "*for each of NTL, NTR and NTLL, their respective freehold land <u>within the Order limits</u>*" [emphasis added]. The Applicants' have explained this previously directly to NTG (including on a call on 24 October) however no response addressing or acknowledging this has been provided by NTG.

4.1.6 <u>Applicants' Timeline with regard to Protective Provisions</u>

4.1.6.1. REP12-136 para 1.1 agreed (project engagement and kick off meetings between Applicants and NTG – 8th December 2020).

4.1.6.2. REP12-136 para 1.2 agreed (First land plans and Heads of Terms circulated from the Applicants' agent – 22nd February 2020).

4.1.6.3. REP12-136 para 1.3 agreed (First protective provisions were provided by the Applicants to NTG – 16th August 2022).

4.1.6.4. The Applicants sent a follow-up email then received a first response from NTG's solicitor on 13th September. This reply comprised an email providing a high-level summary of NTG's overall position on the approach to the draft protective provisions, not a mark-up.

4.1.6.5. The Applicants responded on 16th September to state the Applicants were considering NTG's position and would respond fully once instructions had been taken.

4.1.6.6. The Applicants provided a further full set of protective provisions taking into account NTG's comments to NTG on 14th October.

4.1.6.7. NTG responded on 19th October following ISH5. Their response comprised a set of protective provisions based very heavily on the protective provisions sought by Sembcorp, and this has subsequently been annexed to NTG's submissions at [REP11-043] and [REP12-136].

4.1.6.8. The Applicants undertook a detailed review of this set of protective provisions and returned their detailed comments including a mark-up to NTG on 28th October.

4.1.6.9. The Applicants have not received written comments on their draft provided on 28th October.

4.1.6.10. A call between the Applicants and NTG to discuss protective provisions was held on 4th November.

4.1.6.11. The Applicants have never expressed a refusal to engage with NTG and the Applicants note that no mark-up has been provided by NTG to the Applicants' draft protective provisions provided in August or October. The Applicants reiterate that they have consistently undertaken detailed consideration of NTG's comments and have, to-date, provided two drafts and one written mark-up of draft protective provisions. The Applicants remain committed to negotiations with NTG and will continue to seek an agreed position with NTG following the close of Examination.

4.1.6.12. The fact that the negotiations with NTG have not, as yet, resulted in an agreement being entered into is precisely why the Applicants require compulsory acquisition powers in order to secure the deliverability of the Proposed Development. The Applicants' fuller explanation of its overarching compulsory acquisition case is set out in its (i) Statement of Reasons [REP12-010] and (ii) the written summary of oral submission for Compulsory Acquisition Hearing 1 [REP1-037]. Reference is provided below to the various documents in which the Applicants have responded to matters raised by NTG.

4.1.7 Applicants' response to comments made in [REP12-136]

4.1.8 The Applicants note that NTG have explained at paragraph 1.8 of [REP12-136] that the Applicants draft protective provisions provided on 28th October is marked 'without prejudice'. The Applicants agree – such matters are not therefore disclosable, the concept of such negotiations being important to allow parties to carry out confidential negotiations, without prejudice to their position in open correspondence or submissions.

4.1.9 The Applicants respond to those comments made by NTG in REP12-136 where it considers it is appropriate to do so. Where comments are made by NTG with regard to points arising in commercial negotiations, the Applicants note that individual comments should not be considered in isolation, but rather as they are intended, within the context of a wider package of proposed terms and agreements that remain under negotiation with NTG.

4.1.10 The Applicants' response in this submission is to consider points thematically rather than by paragraph and does not duplicate or repeat comments it has made in previous submissions. For convenience, the Applicants note that their previous replies to NTG's representations are provided at [REP3-012], [REP6-122], [REP7-009], [REP8-049], [REP11-014] and [REP12-133], the last of which responds to NTG's additional submissions [AS-207] and [AS-208].

4.1.11 <u>Protection of NTG assets and operations, including its land interests and infrastructure</u> – the protective provisions provided at Part 27 of Schedule 12 of the draft Order [REP12-003] set out that no works comprising any part of the authorised development which would have an effect on NTG's operations (their respective freehold land within the Order Limits) or access to any land owned by the NT Group that is adjacent to the Order Limits may commence, until works details prepared by the undertaker have been approved by NTG (see paragraph 367(2)).

4.1.12 The works details are to comprise plans and sections, details of proposed methods of working and timing of works, details of vehicle access routes and any further particulars requested by NTG. The preparation of the works details is to be made subject to reasonable requirements made by NTG with regard to access (see paragraph 367(3)).

4.1.13 The Applicants require the ability to exercise compulsory acquisition of rights as they must be able to execute the development should the parties not reach voluntary agreement. If a voluntary agreement is reached, the Applicants need to retain compulsory acquisition powers where NTG is in breach or where there is a need to acquire or suspend third party rights. However, the Applicants consider that the draft protective provisions provide adequate protection for the concerns outlined by NTG in paragraph 2.1 of their submission [REP12-136].

4.1.14 Compulsory acquisition powers are needed to ensure that the nationally significant infrastructure project can be delivered; the protective provisions however protect NTG's interests by requiring the consent of NTG and their approval of works details.

4.1.15 The provision of works details as drafted by the Applicants provide suitable flexibility to encompass whichever topics those details need to cover at the relevant point in

future including (in response to [REP12-136]) matters relating to interactions with assets and infrastructure, access, detailed design of the proposed pipeline, methods of working, and where appropriate taking into account NTG's existing contractual obligations. NTG can request further information and its consent is required before the relevant access or works can be implemented.

4.1.16 In order to provide further comfort to NTG however, the Applicants are prepared to add an additional protective provision, as drafted in bold below. This means that if any apparatus of NTG's is impacted by the Proposed Development, then contingency arrangements must be made by the undertaker to NTG's approval (acting reasonably). This mechanism facilitates flexibility so that a suitable arrangement can be made at the relevant point in time. This would allow for apparatus to be replaced where required or for no replacement to be made where, for instance, apparatus is still in situ but is no longer required or in use and which there is clearly no benefit or need to replace.

Apparatus

370. **Where, in exercise of powers conferred by the Order, the undertaker acquires any interest in land in which any apparatus owned by NTL, NTR or NTLL is placed and such apparatus is to be relocated, extended, removed or altered in any way, no relocation, extension, removal or alteration shall take place until NTL, NTR or NTLL (as the case may be) has approved contingency arrangements in order to conduct its operations, such approval not to be unreasonably withheld or delayed.**

4.1.17 Matters relevant to protective provisions - The Applicants note that the protective provisions provided by NTG at [REP12-136] include provisions relating to land contamination (several, see paragraph 319), repair and condition (318) and decommissioning (321). These are matters otherwise covered by the draft Order, or which are not relevant to or appropriate to include in the protective provisions. See further the Applicants' comments on NTG's submissions in [REP11-014] and [REP12-133].

4.1.18 The width and extent of compulsory acquisition rights – in response to comments made by NTG regarding the width of the Order limits / pipeline and their request that "efficient and economic use" of the Sembcorp pipeline corridor is made (see paragraphs 309(1) and 315(c) of Annex 1 to [REP12-136]), the Applicants note firstly that their justification for the full extent of compulsory acquisition required is made in the Applicants' deadline 8 submission Justification of Corridor Widths [REP8-051]. Secondly, the Applicants note that they require compulsory acquisition powers that are adequate to deliver the Proposed Development, having regard to a wide array of considerations going beyond efficiency and economy, including health and safety considerations. The Applicants cannot be limited where there is a need to construct the Proposed Development in a safe manner or where there is a need to otherwise deliver the Proposed Development. Work No. 6 remains subject to detailed design, and the Applicants consider that the protective provisions, including approval of works details by NTG (incorporating approvals of plans and sections showing Work

No. 6), is the appropriate mechanism for managing and controlling the detail of the pipeline.

4.1.19 Temporary possession – the Applicants' position with regard to temporary possession is set out in previous submissions for instance in [REP12-133]. The Applicants consider that paragraph 331 of NTG's draft protective provisions provided in [REP12-136] is unnecessary and if it were to be included would duplicate the protection already provided for under the approval of works details mechanisms in the Applicants' draft protective provisions at part 27 of schedule 12 of REP12-003.

4.1.20 To put the position beyond doubt, the Applicants are though content to amend the 'works details' definition so that this specifically references areas in which temporary possession may be taken, as follows (amendments shown in **bold**):

"works details" means**, including for land of which the undertaker intends to take only temporary possession under the Order**-

(a) Plans and sections;
(b) Details of the proposed method of wording and timing of execution of works;
(c) Details of vehicle access routes for construction and operational traffic;
(d) Any further particulars provided in response to a request under paragraph 367.

4.1.21 Participation in community groups – the Applicants note that paragraphs 324 – 327 of the draft protective provisions annexed to NTG's submission [REP12-136] provide a duplication of the 'participation of community groups' provisions at paragraph 224 of the draft Order [REP12-003] for the protection of Sembcorp.

4.1.22 The Applicants are not aware of any community groups that are established or co-ordinated by NTG, and in any event the Applicants would already be obliged to participate in any such groups under the Sembcorp protective provisions. The Applicants therefore consider the inclusion of paragraph 324 – 327 to be not relevant to the NTG protective provisions and an unnecessary duplication.

4.1.23 6 months notification – A 6-month notification period is inconsistent with other protective provisions contained in Schedule 12 and with the Order, which has been drafted based on relevant precedent and granted DCOs. This provision should not be provided for in the protective provisions and the Applicants are not aware of any relevant explanation that has been made to justify its inclusion.

4.1.24 Paragraph 3 on the Statement of Commonality [REP9-012]

4.1.25 The Applicants have submitted a final Statement of Commonality at Deadline 13 (Document Ref. 8.36) and addressed NTG's comments in this update.

4.1.26 Paragraph 4 on the Compulsory Acquisition Schedule [REP11-020]

4.1.27 In relation to NTG's comments on the Compulsory Acquisition Schedule submitted at Deadline 11 [REP11-020], the reference to the SoCG was updated in the Deadline 12 submission [REP12-131]. The next steps remain accurate - the Applicants remain committed to pursuing a voluntary agreement with NTG and will continue to engage with NTG to progress these matters.

5.0 NORTHUMBRIAN WATER LIMITED ("NWL")

5.1.1 The Deadline 12 submission by NWL [REP12-137] includes a response to the ExA's Third Written Questions. The Applicants have also provided an update on the protective provisions for the benefit of NWL.

5.2 Applicants' Response

5.2.1 The Applicants would note that NWL's response to WE.3.1 contains common wording to the Applicants' response submitted at Deadline 11. This reflects the continued engagement between the parties, and alignment on current status and next steps.

5.3 Protective Provisions with NWL

5.3.1 REP12-137 does not comment on the protective provisions between NWL and the Applicants.

5.3.2 However, since Deadline 12 NWL and the Applicants have agreed the form of the side agreement annexing protective provisions to be entered into between the parties. The side agreement is now undergoing final approvals and the signing process before being completed.

5.3.3 Further to that agreed position, the Applicants wish to make an update to the form of protective provisions for the protection of NWL, which are provided for at Part 25 of Schedule 12 to the draft Order [REP12-003]. The update is to one paragraph only (paragraph 340) and identified in the **Bold** text:

340. The alteration, extension, removal or re-location of any apparatus shall not be implemented until–

(a) any requirement for any permits under the Environmental Permitting Regulations 2016 or other replacement legislation and any other associated consents are obtained; and

(b) if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc.) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NW and NW has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed,

and **in the event that** such works are to be executed **by the undertaker, they are to be executed** only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NW for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

6.0 ØRSTED HORNSEA PROJECT FOUR LIMITED (“ORSTED”)

6.1.1 The Deadline 12 submission by Orsted [REP12-138] includes responses to the Applicants’ submissions at Deadline 8 and 11.

6.2 The Applicants' Response to Orsted's Deadline 12 Submissions

6.2.1 At Deadline 12, Orsted Hornsea Project Four Limited ("Orsted") commented on certain of the Applicants' previous submissions into the examination, specifically responding to:

6.2.1.1. Elements of the Applicants' submissions at Deadlines 8 [REP8-049] and 11 [REP11-014], which were themselves responses to Orsted's previous submissions into the examination and particularly the advice of Richard Harwood KC ("the RHKC Advice") regarding the Project's approach to its environmental impact assessment, how the same considers the impact on Hornsea Project Four Offshore Wind Farm ("Hornsea Four") and the asserted need for protective provisions to be included in the NZT DCO for the benefit of Hornsea Four; and

6.2.1.2. A response to the Applicants other response to Orsted's Deadline 9 submissions at Deadline 11 [REP11-014], which focussed on responding to the additional legal submissions from James Maurici KC [REP9-032, Appendix 1].

6.2.2 It is clear the parties have a divergence of views on the matters subject to these submissions and much of what is said by Orsted in their Deadline 12 submissions has been addressed by the Applicants extensively in this examination already, and indeed, where relevant, within submissions made into the Hornsea Four DCO examination. The Applicants do not propose to repeat the substance of those submissions in this response, but have instead provided the ExA with examination library references for its previous submissions and further supplemented those submissions where this is thought likely to be helpful or relevant for the ExA's consideration of these points.

6.3 Response to Section 2 of Orsted's Deadline 12 Submissions

6.3.1 The Applicants' responses to Orsted's various submissions regarding the Project's approach to the matters considered within the RHKC advice are set out within Section 9.4 of its Deadline 11 response [REP11-014, e-pages 39 to 44] and Section 6.2 of its Deadline 8 response [REP8-049, e-page 18], which also cross-referred to its previous submissions on the matter and which also inform the Applicants' position:

6.3.1.1. Applicants’ Written Summary of Oral Submission for Issue Specific Hearing 1 [REP1-035], e-pages 9 – 13, Appendix 6 (Applicants' Response to Action 2 (in consideration of the overlap with Hornsea Four)) and Appendix 7 (Applicants' Response to Action 4 (options for the SoS on Hornsea 4));

6.3.1.2. Applicants' Comments on Deadline 1 Submissions [REP2-060] Section 6, particularly sub-section 6.3 (e-page 11);

6.3.1.3. Applicants' response to Orsted's Deadline 3 Submission [REP4-030]. This includes an assessment of the impact of the offshore elements of the NEP Project on Hornsea Four at Appendix 1;

6.3.1.4. Position statement between the Applicants and Orsted [REP5-022];

6.3.1.5. The Applicants' Written Summary of Oral Submission for Issue Specific Hearing 3 [REP5-025], e-pages 11 – 16 and 21 to 23;

6.3.1.6. Applicants' Response to Second Written Questions COM.2.2, DCO.2.14 – DCO.2.19 [REP6-121], e-pages 28 – 29, 52 - 56;

6.3.1.7. Applicants' Responses to Deadline 5 Submissions [REP6-122], particularly section 8.4 (The Proposed Development and the Endurance Store), e-page 20; and

6.3.1.8. Applicants' Comments on Deadline 6 Submissions [REP7-009], e-pages 23 – 25.

6.3.2 The submissions listed above represent a complete and comprehensive response to all of the submissions made by Orsted on these matters, including at Deadline 12.

6.3.3 Regardless of the various counter-submissions that have been made on behalf of Orsted, the simple position is:

6.3.3.1. The Applicants have provided an assessment of the impact of the offshore elements of the NEP Project on Hornsea Four (Appendix 1 to its Deadline 4 submission [REP4-030]). Orsted have made repeated submissions about the definition of the 'Project' and how that relates to this DCO application; however, that assessment of the impact of the overall project (including all the offshore infrastructure which will be subject to a further consenting process covered by EIA) on Hornsea Four has been provided, including an assessment of the unmitigated impact.

6.3.3.2. There is no gap in the information before this examination, only a dispute between the parties as to whether Orsted has provided any adequate and persuasive justification for seeking protective provisions under this DCO as a result of the impact identified in that assessment.

6.3.3.3. The Applicants have set out in their previous submissions referenced above (most recently sections 9.4.10 to 9.4.13 of its Deadline 11 submission) their position as to why such protections are neither justified, nor necessary, in this DCO.

6.3.3.4. For the avoidance of doubt, the submissions made in paragraph 9.4.9 of the Applicants' Deadline 11 response are accurate in respect of both the CO2 emissions captured from the NZT power station and the other emitters considered as part of Phase 1 of the ECC plan. The storage of all such Phase 1 emissions (to which the Proposed Development relates) is proposed to be located within the residual 30% capacity of the Endurance Store outside of the Overlap Zone.

6.4 Response to Section 3 of Orsted's Deadline 12 Submissions

6.4.1 Orsted submit in paragraph 3.2.4 of their response that:

> *"On an objective assessment of the material submitted, Hornsea Four considers that the Applicant has failed to provide any clear evidence that the terms agreed as part of the Interface Agreement would render the ECC Plan unviable. In particular, the Applicant has failed to (i) demonstrate that co-existence is not possible and (ii) evidence that the other provisions in the interface agreement including the compensation provisions would operate in a way that would frustrate the ECC plan even in circumstances where physical co-existence is not preferred."*

6.4.2 These are matters clearly central to the extensive submissions made into the Hornsea Project DCO examination and the ExA will be well aware of the Applicants' position that they do not consider it necessary or appropriate to re-litigate the same points in this examination, for reasons which have been rehearsed extensively both orally and in writing.

6.4.3 The Applicants' written summaries of oral submissions from ISH3 [REP5-025, e-pages 11 – 15] and, most recently, ISH5 [REP11-015, e-pages 14 to 22] provide the Applicants' relevant submissions on the matter. Those submissions also include the justification for imposition of Articles 49 and 50 in the draft DCO (which is a relevant matter for this examination). These Articles replicate drafting from the protective provisions proposed by bp into the Hornsea Four DCO examination to address the stated risk created by the interface agreement (as further detailed in paragraphs 3.7.15 to 3.7.20 of the Explanatory Memorandum (most recently submitted at REP8-006, e-page 36), adapted as necessary for the different context.

6.4.4 Orsted now submit in paragraph 3.2.6 that they do not consider it would be *"rational for the Secretary of State to conclude that there is substantial public interest in preserving the viability of the ECC plan"* or that, in the event the SoS concludes that there is, *"that this may justify an interference with Orsted's contractual rights under the Interface Agreement"*.

6.4.5 Although these are points for the Secretary of State to address when determining the Hornsea Four DCO application, it should be noted that Orsted does not seek to elaborate, explain or substantiate the submission that if the SoS were to conclude that there is substantial public interest in preserving the viability of the ECC plan he would be acting irrationally in the *Wednesbury* sense.

6.4.6 That new submission is extreme and it is surprising. It is not a submission that Orsted has made at any stage during the six-month HP4 examination, or that any advocate acting on its behalf has made during any one of the three ISHs held during the NZT examination at which these issues have been discussed. Had that been done, any such submission would have had to be explained and justified, and questions could have been put to Orsted to elucidate its position and test what lay behind it. It is now belatedly made in written form, at the very end of the NZT examination, without providing the Applicants or the ExA with any explanation or attempted justification that can be assessed and analysed.

6.4.7 The absence of any explanation or attempted justification for this new submission is most likely explained by its patent and total lack of merit. Any objective analysis of

the position would recognise that the ECC plan would deliver significant public interest benefits. That can be seen from the summary of bp's position in a joint position statement originally produced for the Hornsea Four examination, but re-submitted into this examination as REP2-021 (e-pages 115 +) at sections 1 to 4 and 14 to 15, the Project Need Statement [AS-015], and Planning Statement APP-070 and within REP1-035 (e-pages 9 to 13) and Appendices 3 and 4. Indeed Orsted's own submissions recognise the importance of such carbon capture and storage projects and their viability in the public interest (see REP2-021 Orsted Policy Summary at e-page 99 (Executive Summary paragraph 1.3, recognising that CCUS is "*of critical importance to both the UK's green recovery plan and the national need to meet Net Zero commitments by 2050*") and in more detail at e-pages 108 to 111 (section 9.2)). It necessarily follows that there is substantial public interest in preserving the viability of the ECC Plan. Thus, a conclusion by the Secretary of State that there is substantial public interest in preserving the viability of the ECC plan would not just be well within the range of rational responses, it would be obviously (indeed incontestably) correct.

6.4.8 Against that background, the question for the Secretary of State is whether that substantial public interest justifies the proposed interference with Orsted's contractual rights under the Interface Agreement. As a matter of law, the weight that attaches to the public interest in preserving the viability of the ECC plan is quintessentially a matter of judgment for the decision-maker.

6.4.9 Having regard to the clear and obvious lack of merit in Orsted's new 'irrationality' submission and the lack of any explanation or justification for it, the decision to advance that submission at this very late stage represents an implicit recognition of the underlying weakness of its case.

6.4.10 Paragraph 3.2.8 of Orsted's response makes various submissions regarding why it is said to be important for Orsted to have certainty on the level of compensation payable to them in the event they are excluded from the Overlap Zone (or rather, the Exclusion Area (as a sub-part to the Overlap Zone) as proposed by bp in its protective provisions in the Hornsea Four DCO examination).

6.4.11 The effect of bp's protective provisions, as incorporated into Articles 49 and 50 (as either/or options) in the NZT DCO is that the level of compensation due will be confirmed either on the face of the DCO (Article 49(3)) or by the SoS within 2 months of the making of the DCO (Article 50(3)). Paragraphs 3.7.15 to 3.7.20 of the Explanatory Memorandum (detailed above) explain how these provisions are intended to operate and interact with the decision/equivalent provisions in the Hornsea Four DCO.

6.4.12 The Applicants' stated preference is that the quantum of compensation is confirmed on the face of the Hornsea Four DCO, which would allow Orsted to immediately plan and progress their project upon receiving consent in that context (or within 2 months thereafter if the SoS elects to defer such award until after the making of the DCO). If that is not possible, the proposed approach would facilitate a rapid determination of the appropriate quantum following a fair and transparent process. In the unusual

circumstances that have arisen here, that represents a reasonable balance between the legitimate public and private interest considerations in play. In any event, these are matters for the Secretary of State to grapple with and determine as part of his decision-making on the HP4 application. No separate and distinct issues as to compensation arise in the context of the NZT examination.

6.4.13 Finally, paragraph 3.2.12 repeats Orsted's previous submissions regarding the inadequacies they perceive to exist in the consenting regime that Parliament has established for the offshore consents associated with the wider NEP project.

6.4.14 The Applicants' position is as previously summarised, including at sections 6.2.41 to 6.2.46 of its Deadline 8 response [REP8-049, e-pages 24 and 25] and they have nothing to add in response to Orsted's most recent comments, other than to note the submissions remain superficial and have not been elaborated upon or explained in any further detailed in this examination. Orsted's criticism of a legislative regime which has been judged by Parliament to be appropriate and proportionate as a means of making decisions on the relevant underlying application is very unlikely to be accepted by the SoS, and, in any event, the determination of an individual application for development consent under the Planning Act 2008 regime is not an appropriate vehicle for reviewing the merits of that separate legislative regime.

7.0 REDCAR BULK TERMINAL LIMITED ("RBT")

7.1.1 The Deadline 12 submission by RBT [REP12-139] includes a set of protective provisions.

7.2 Applicants' Response

7.2.1 The Applicants and RBT continue to discuss the suite of Agreements (including property agreements) sought to be negotiated between them. Although they have not yet completed, only a few issues remain, and the Applicants anticipate agreement should be reached in a short timescale.

7.2.2 As discussed below, an agreed position has been reached on Protective Provisions, but in the absence of the Agreements being complete, the Applicants continue to seek temporary possession powers over RBT's land; as explained and justified in its response to RBT's Written Representation at Deadline 3 [REP3-012] (see pages 77-78).

7.2.3 In respect of the Protective Provisions, following RBT's Deadline 12 submission, the Parties have continued to discuss the concerns expressed in respect of the Protective Provisions. Those discussions have resulted in the relevant paragraph of the Protective Provisions being agreed between the parties, meaning that the Protective Provisions as a whole are agreed.

7.2.4 As such, the agreed set of Protective Provisions are as set out in the Applicants' Deadline 12 DCO [REP12-003] save that paragraph 184 (Indemnity) should read as follows:

184.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 177 or by the use of the RBT site by the undertaker any damage is caused to the RBT site (including the wharf, roadways, any RBT buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption in any service provided, or in the provision by RBT or denial of any services, or in any loss of service from apparatus that is affected by the authorised development the undertaker must—

(a) bear and pay the cost reasonably incurred by RBT in making good such damage or restoring the provision by RBT of any services; and

(b) make compensation to RBT for any other expenses, loss, damages, penalty or costs reasonably incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or denial of any service provided by RBT.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of RBT, its officers, employees, servants, contractors or agents.

(3) RBT must give the undertaker reasonable notice of any claim or demand that has been made against it in respect of the matters in sub-paragraph (1)(a) and (b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker such consent not to be unreasonably withheld.

(4) RBT must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 184 applies. If requested to do so by the undertaker, RBT must provide a reasonable explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 184 for claims reasonably incurred by RBT.

8.0 Sembcorp Utilities (UK) Limited ("Sembcorp")

8.1.1 The Deadline 12 submission by Sembcorp [REP12-140 to REP12-163] includes a position statement, explanatory memorandum, set of protective provisions and supporting plans.

8.2 Applicants' Response

8.2.1 Sembcorp submitted a number of protective provisions supporting plans at Deadline 12.

8.2.1.1. Key Plan & Sheets 1-15 – These show the extent of Sembcorp's interests in the Teesside region bordered in a red outline. The Applicants would clarify that although the legend on the Key Plan [REP12-146] is labelled as "NZT Order Land (illustrative rep)", this does not reflect the Applicants' Order Limits. The legend should be labelled as "Sembcorp Interests" or similar.

8.2.1.2. Sembcorp also submitted a supporting plan for the Wilton complex [REP12-162] and Sembcorp's existing 24" pipeline [REP12-163].

8.2.1.3. The Applicants submitted the Sembcorp Pipeline Corridor Protective Provisions Plan at Deadline 12 [REP12-029]. This is a certified document and shows the physical extent of the Sembcorp Pipeline Corridor shaded in yellow and bordered in grey. This plan supplements Schedule 12 Part 17 of the draft DCO by marking the extent of the Sembcorp Pipeline Corridor that is a defined term within the protective provisions. The Wilton and Billingham sites are also marked on the plan with a blue outline.

8.2.1.4. The Applicants have not included Sembcorp's other interests on the Sembcorp Pipeline Corridor Protective Provisions Plan as this is beyond the purpose of the document. Sembcorp's other interests are addressed within wider definition of Sembcorp operations within Schedule 12 Part 17 of the draft DCO.

8.2.2 With respect to Sembcorp's proposed protective provisions [REP12-144], as expanded upon in Sembcorp's position statement [REP12-143] and explanatory memorandum [REP12-142], the protective provisions included at Part 17 of Schedule 12 of the Applicants' draft DCO submitted at Deadline 12 [REP12-003] are to a significant degree aligned with those proposed by Sembcorp, with some key differences, which are covered below.

8.2.3 The definitions included in the Sembcorp protective provisions are agreed. The Applicants' draft DCO [REP12-003] did not include the definition of "Sembcorp" in error, and **the Applicants agree with the definition as proposed by Sembcorp and this should be included in paragraph 213 as follows: " "Sembcorp" means Sembcorp Utilities (UK) Limited, with Company Registration Number 04636301, whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successor in title or function to the Sembcorp operations in, under or over the Sembcorp Pipeline Corridor;"**.

8.2.4 **The Applicants agree with the inclusion of "and is not a third party owner or operator" at the end of the definition for "operator". The Applicants also agree**

that in the definition of "owner" the words "but who is not a third party owner or operator" should appear below sub-paragraph (b) in that definition (as per Sembcorp's drafting), not as part of sub-paragraph (b). The Applicants agree to the inclusion of "(as defined in article 2(1) of the Order)" in the definition of "owner", after the words "Wilton Complex, any owner".

8.2.5 In terms of Sembcorp's proposed paragraph A(4), disapplying the application of Article 44, the Applicants do not consider that this should be included, as Article 44 provides an important backstop position ensuring that the nationally significant infrastructure project cannot be held up.

8.2.6 The drafting under the heading "Separate approvals by third party owners or operators" is different. The Applicants are prepared to accept the position taken by Sembcorp, although the Applicants propose the following drafting as that proposed by Sembcorp suggests that the consent of third party owners or operators is otherwise required under this Part 17, which is not correct. **The Applicants propose drafting at paragraph 214 to replace the existing paragraph as follows:**

(1) Nothing in this Part of this Schedule removes any obligation on the undertaker to seek consent from Sembcorp for works details pursuant to this Part where such approval is also sought or obtained from a third party owner or operator pursuant to the third party protective provisions.

(2) Where the undertaker seeks consent for works details from a third party owner or operator pursuant to the third party protective provisions that also require consent from Sembcorp under this Part, the undertaker must provide Sembcorp with—

(a) the same information provided to the third party owner or operator at the same time; and

(b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions.

8.2.7 Sembcorp includes restrictions in connection with the Sembcorp Pipeline Corridor at paragraphs D to E, which include restrictions on the exercise of powers of compulsory acquisition. The Applicants do not agree to the inclusion of these provisions, and have addressed this point in the Applicants' Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005], in particular at pages 30 to 32. The Applicants maintain their position, that to protect the delivery of the nationally significant infrastructure project, the Applicants must retain compulsory acquisition powers over the Order land to facilitate the construction, maintenance and operation of the pipelines.

8.2.8 In terms of the proposed insurance provisions (Sembcorp paragraph I, Applicants' paragraph 221), these are agreed, except that the Applicants do not agree to the requirement that a policy of insurance include "cover in respect of any consequential

loss and damage suffered by Sembcorp". This is a commercial matter for discussion between the parties outside the protective provisions.

8.2.9 With respect to the dispute resolution clauses proposed by Sembcorp, the Applicants' preference is for "option one" which aligns with paragraph 226 of the draft DCO, and the reference to Article 47 (arbitration). It is noted that the wording of that provision doesn't preclude the parties agreeing an alternate dispute resolution process of the type proposed by Sembcorp as "option two".

9.0 SOUTH TEES DEVELOPMENT CORPORATION ("STDC")

9.1.1 The Deadline 12 submission by STDC [REP12-164 - REP12-166] includes a summary of outstanding objections and closing submissions, and a set of protective provisions.

9.2 Applicants' Response

9.2.1 Introduction – Introduction – the Applicants have made very significant attempts to enter into voluntary property agreements with STDC since May 2020, as evidenced by the final Statement of Common Ground [REP12-122] and Compulsory Acquisition Negotiations Schedule [REP12-131]. The option for lease is in a mature form. The most recent face to face all-parties meeting took place on 12 October 2022. Since then the Applicants' solicitor and STDC's solicitor have been working together to finalise the option for lease and in seeking to do that have held 14 legal calls since 12 October 2022. Whilst that only relates to the most recent period, it provides an example of the level of negotiations which have been occuring between the parties. Any suggestion in STDC's representation that the Applicants have not been adequately negotiating or that issues have 'sat' with the Applicants is plainly incorrect. Those negotiations will continue beyond the end of the Examination. The next legal call is due to take place on 9 November 2022 after which arrangements will be made for an all parties meeting. The Applicants will continue to exhaust all attempts to enter into voluntary agreements with STDC

9.2.2 Background – the Applicants make no comment on the factual background. To the extent that STDC has expressed concern regarding potential interface or conflict with other development, or the extent of the Order Limits, the Examining Authority is directed to the Applicants Comments on STDC's Relevant Representation Applicants' [REP1-045] the Applicant's Comments on STDC's Written Representation [REP3-012], the Schedule of Changes to the DCO submitted at Deadline 4 [REP4-004] which included substantial updates to the protective provisions for the benefit of STDC, as well as the Applicants Comments on STDC's Deadline 6 Submissions [REP7-009] Deadline 7 Submissions [REP8-049] Deadline 8 submissions [REP9-018] and Deadline 11 submissions [REP12-133]. It would also refer to the Applicants' Justification Pipeline Width document that was submitted as Appendix 1 to the Applicants Written Summary of CAH2 [REP5-026] and updated at Deadline 8 [REP8-051].

9.2.3 Article 2 permitted preliminary works - the Applicants have amended the protective provisions to include consent for works details related to permitted preliminary works [REP12-003] and fully addressed STDC's submissions on permitted preliminary works in the Applicants Comments on STDC's Deadline 11 Submissions [REP12-133] and page 34 of the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005]. The Applicants would also direct the Examining Authority to Appendix 1 of this document for justification as to why the consent to works details (including permitted preliminary works) should not extend to Work Nos. 1 and 7 located at the PCC Site.

9.2.4 Article 8 Consent to transfer benefit of the Order – the Examining Authority is directed to the Applicants Comments on STDC's Deadline 11 Submissions [REP12-133]. The Applicants' position remains as set out in this response.

9.2.5 Schedule 2 (Requirements) - the Applicants strongly disagree with STDC having an approval role on the DCO Requirements. The Examining Authority is directed to the Applicants' full justification in the Applicants Comments on STDC's Written Representation [REP3-012] and the Applicants Written Summary of ISH3 [REP5-025]. The Applicants have retained Requirement 36 in Schedule 2 of the DCO, which specifies that STDC's consultee role only applies to the extent that the matters submitted for approval by the relevant planning authority relate to the STDC area.

9.2.6 Schedule 5, Access - The Applicants are content with the amendments proposed if plots 274 and 279, related to the creation of a means of access at Tees Dock Road, are removed from the Order. The amendments STDC refer to are included in Part 3 of the Applicants Schedule of Changes submitted at Deadline 12 [REP12-005] at page 18. The Applicants also confirmed in this document that updated plans (which would include updated access and rights of way plans) would be required in the event of a change to remove the aforementioned plots.

9.2.7 Protective provisions – Justification for Amendments – the Applicants have reviewed STDC's preferred protective provisions submitted at Deadline 12 [REP12-165] and related justification in its Closing Submissions [REP12-166]. The Applicants disagree that any amendments are required to the protective provisions submitted at Deadline 12 in Part 20 of Schedule 12 to the final DCO [REP12-003]. The Applicants have provided comprehensive justification for the protective provisions proposed therein in Appendix 1 to the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005]. They have also provided comprehensive responses to STDC's comments on the protective provisions at Appendix 1 of this document. It should be noted that in a number of instances the changes to drafting sought by STDC at Deadline 12 have already been secured in the final DCO submitted at Deadline 12.

9.2.8 The Examining Authority should note that STDC has commented on a set of protective provisions from October 2022 (referred to as the "14 October PPs") at Deadline 12. The Applicants had made updates to that set of protective provisions in preparing the final DCO submitted at Deadline 12 [REP12-003]. The Applicants have sought to assist the Examining Authority in Appendix 1 by setting out in tabular format the drafting changes sought by STDC in the 14 October PPs along with the paragraph referencing and accompanying comment. The Applicants have in separate columns in the table set out the updated drafting in the final DCO, along with the updated paragraph referencing, along with its comments in response to STDC's comments.

9.2.9 Compulsory Acquisition and Temporary Possession – with respect to the status of STDC and requirement to balance the public benefit of the Proposed Development against the loss of private rights, the Examining Authority is directed to the Applicants Comments on STDC's Relevant Representation Applicants' [REP1-045] the Applicant's Comments on STDC's Written Representation [REP3-012], and the

Applicants Written Summaries of CAH1 [REP1-037], CAH2 [REP5-026] and CAH3 [REP11-016]. The Applicants do not consider that STDC have raised any substantial new or different points in its submissions (and nor should it, at this stage). The Applicants' position is that they have already comprehensively addressed STDC's comments on the compulsory acquisition and temporary possession powers sought, during the course of the Examination.

9.2.10 Permanent Acquisition of Land – with respect to the status of negotiations on the land agreements, the Examining Authority is referred to the Applicants' response at paragraph 9.1.2 above. With respect to the position with Anglo American, the ExA is referred to the Joint Statement between the Applicants and Anglo American [REP12-130]. This makes clear that the protective provisions between the Applicants and Anglo American are bespoke and relate to the agreements negotiated between those parties (paragraph 4), and more importantly that the inclusion of a restriction on powers of compulsory acquisition at was an error (paragraphs 5 and 6). See also the response to Anglo American, at section 2 above.

9.2.11 Permanent Acquisition of Rights – the form of easement agreement is anticipated to replicate the main site option, and the main site option includes specific provisions relating to the entering into of the easement agreement. The efforts of both parties have therefore rightly focussed on entering into the main site option. The negotiation of the main site agreement is inextricably linked with the connection easement. That negotiations on the main site option are further ahead is not evidence that the Applicants have somehow failed to comply with CA Guidance with respect to the easement land.

9.2.12 The Applicants have set out its full justification as to why a control over the exercise of powers of compulsory acquisition in the protective provisions would be wholly inappropriate. The Examining Authority is directed to Appendix 1 to the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005] and Appendix 1 of this document.

9.2.13 Temporary Possession, Tees Dock Road - The Examining Authority its directed to page 3 of the Applicant's Written Summary of CAH2 [REP5-026] for a full summary of the Applicants' position. Further justification for the Applicants position is set out in the Applicant's Written Summary of CAH3 [REP11-016]. The Applicants have also proposed an appropriate "lift and shift" provision in the protective provisions to address STDC's concerns in Part 20 of Schedule 12 of the final DCO [REP12-003]. Notwithstanding, the Applicants have committed to requesting a further change to the Order to remove 274 and 279 if an agreement to secure an alternative access is entered into with STDC following the end of the Examination. The Examining Authority is directed to the introductory text and Part 3 of the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005]. The Applicants agree that the "lift and shift" provisions with respect to the "southern access road" should be removed if the aforementioned plots are removed from the DCO pursuant to a change request after the end of the Examination. The Applicants have identified those changes in Part 3 of the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005].

9.2.14 Plots 290, 291, 299 – Construction access from Redcar Bulk Terminal – the Applicants welcome confirmation that an "appropriate lift and shift" provision can address this issue. This has been included in the final DCO submitted at Deadline 12 [REP12-003]. The Applicants justification for the final terms of the protective provision is set out in Appendix 1 to the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005]. They have also provided comprehensive responses to STDC's comments on the protective provisions at Appendix 1 of this document.

9.2.15 Plots 289, 292, 293, 298 and 300 – Construction laydown / parking – the Applicants require powers of temporary possession at these plots for construction laydown activities including parking. The Applicants welcome confirmation that STDC are agreeable to an appropriate lift and shift provision for alternative parking arrangements. The Examining Authority is referred to the documents in paragraph 9.1.5 for full justification of the Applicant's protective provisions related to alternative parking arrangements.

9.2.16 Plots 297, 304, 306, 307, 308, 310, 311, 312, 326 – Existing outfall – the Applicants welcome confirmation of STDC's support for the removal of Work No. 5A. This change was approved by the Examining Authority pursuant to a procedural decision dated 4 November 2022 [PD-023].

9.2.17 Plot 409, 425, 427, 464 - Connection corridors – the Examining Authority is referred to the Applicants' response at paragraph 9.1.3 above. The Applicants strongly disagree with STDC's assertion that its proposals "sterilise" an 85m corridor. The flexibility the Applicants seek is specifically designed to ensure that an optimal route is secured and that there is minimal disruption to STDC's interests. Details of the final design must be provided to STDC pursuant to the consent for works details process. STDC will also be consulted on the final design as part of its consultee role on Requirement 3 (detailed design).

9.2.18 Water connection - the Applicants' position is the same as set out in paragraph 9.1.5. They welcome confirmation that an appropriate "lift and shift" arrangement can be secured by the protective provisions.

9.2.19 Plots 377, 378 – the Examining Authority is directed to the Applicants' justification in Appendix 1 of the Schedule of Changes to the DCO submitted at Deadline 12 [REP5-005] as to why a control over the exercise of compulsory acquisition powers must not be included in the final DCO. Very robust arrangements have been secured in the Applicant's final protective provisions to avoid the sterilisation of STDC and its lessees' land including approval of works details, cooperation arrangements related to managing the interaction between projects, lift and shift arrangements (as requested and agreed to by STDC) and arrangements to be consulted on several requirements where details may be approved that impact on STDC's interests.

9.2.20 Statement of Common Ground – the Applicants agree this reflects the latest position between the parties on these matters.

9.2.21 Funding Statement – the Applicants have deliberately not provided a separate estimate for land acquisition costs, since to do so in this case is likely to result in

commercial disadvantage to the Applicants, revealing its overall land assembly budget to interested parties and which could significantly impact on the ability of the Applicants to negotiate appropriate terms (the aim of which is to where possible avoid reliance on compulsory acquisition powers). The Applicants do not see how the lack of such a figure is of any disadvantage to STDC, or any other interested party. Matters of compensation are of course not relevant to the Secretary of State's decision in relation to the DCO. The Funding Statement (Document Ref. 3.3, updated at Deadline 13) provides adequate information to the Secretary of State in relation to the costs and proposed funding of the Proposed Development.

10.0 TEESSIDE GAS & LIQUIDS PROCESSING AND TEESSIDE GAS PROCESSING PLANT LIMITED ("NSMP")

10.1.1 The Deadline 12 submission by NSMP [REP12-167] includes an update on discussions and a set of protective provisions.

10.2 Applicants' Response

10.2.1 Section 3 of [REP12-167] sets out NSMP's position with respect to the protective provisions. These comments are addressed below.

10.2.2 NSMP paragraphs 3.2.1 & 3.2.2 "Protection of Access"

10.2.3 As set out in the Applicants' Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005] (page 46 onwards), the Applicants fully understand the importance to NSMP of the access road running through plots 103, 106 and 108 and to its gas processing facility. As explained in the Deadline 12 Schedule of Changes, the protective provisions proposed address this concern, and the Applicants have proposed bespoke approval principles and requirements for works on these plots reflecting NSMP's specific concerns.

10.2.4 The Applicants note that paragraph 3.2.1 of NSMP's submission is concerned with access over plots 103, 106 and 108, being the sole access road to NSMP's gas processing plant. As is clear from their submissions during the Examination, this is their key area of concern and the Applicants have responded to this in creating two works packages under the protective provisions; relevant works package A and relevant works package B. The approach is explained in the Schedule of Changes [REP12-005] on page 47 and following, and essentially means that the parts of the Proposed Development (including access) to take place on plots 103, 105, 106 or 108 (plots 103, 106 and 108 being the existing NSMP access road, and all plots, other than plot 108 being part of NSMP's freehold) and the neighbouring plots 110, 112, 113 and 114 (unless access is not needed via the NSMP plots to access those plots) comprise relevant works package A, and the Applicants' proposed works in this area are subject to more stringent controls, reflecting NSMP's need for continuous, uninterrupted access along the access road to its gas processing facility. For all other works comprising the Proposed Development, with the potential to impact NSMP's operations elsewhere in the Order limits and beyond, protection is still in place, but (as is clear from NSMP's submission paragraph 3.2.1) there is no justification for providing the same level of protection that is required for relevant works package A (see Applicants' Schedule of Changes [REP12-005] from pages 49 and 50).

10.2.5 The amendment to the protective provisions referred to by NSMP in paragraph 3.2.1 of its submission is accepted by the Applicants and was contained in the protective provisions submitted at Deadline 12, and the Applicants have addressed the individual paragraphs of the protective provisions submitted by NSMP below.

10.2.6 With respect to the requirement for a Construction Traffic Management Plan, the Applicants have also made allowance for this in the protective provisions it has submitted at Deadline 12. NSMP states in paragraph 3.2.1 that the traffic

management plan is a key required protection for NSMP "given that the access road which runs through plots 108, 103 and 106 is the sole access road to NSMP's nationally significant site". The reasoning from NSMP is consistent with the Applicants' approach that a specific traffic management plan is required for relevant works package A (rather than all parts of the Proposed Development with the potential to impact NSMP's operations across and beyond the Order limits).

10.2.7 With respect to paragraph 3.2.2 of NSMP's submission, and the rights sought over NSMP plots in Schedule 7 of the DCO, the Applicants have explained elsewhere (Applicants' Responses to Deadline 5 Submissions [REP6-122], Section 11 and Written Summary of Oral Submissions for CAH3 [REP11-122]) the need for rights over plot 105 in connection with Work No. 2A and over plots 103, 106 and 108 in connection with Work No. 10. The Applicants do not consider any amendments to Schedule 7 are required. However, the Applicants have included measures in the protective provisions to limit how and for what purpose rights sought in the DCO are exercised over these plots. The Applicants have included the drafting referred to by NSMP, so that it can withhold consent for works where access is proposed over plots 106 and 105 other than for the construction of Work No. 2A within plot 105. In addition, pursuant to paragraph 399 of the protective provisions proposed by the Applicants, the undertaker must not use plots 105 or 106 to access plots 110, 112, 113 or 114.

10.2.8 In terms of the ability to do works comprised in Work No. 10 over plots 103, 106 and 108 (road improvement works), NSMP has sought to prohibit the Applicants from undertaking any such works to the existing access road. The Applicants' position is that it needs to retain the ability to undertake such works, in the event the access road ceases to be maintained as it is now, and therefore would not be of a standard that the Applicants could use for construction or maintenance of the Proposed Development.

10.2.9 The Applicants have proposed (paragraphs 389 and 390 of the protective provisions submitted at Deadline 12) a restriction on undertaking Work No. 10 on plots 103, 106 and 108, other than if NSMP has failed to maintain the access road within those plots to a state of repair suitable for use by HGVs. Pursuant to paragraph 390(a), it would be unreasonable for NSMP to withhold consent for works comprised in Work No. 10 in the event of failure to maintain the access road by NSMP. The Applicants consider these provisions provide appropriate protection for NSMP whilst ensuring the Applicants can still deliver the Proposed Development. In reality, if NSMP had failed to maintain the access road, that would suggest its importance to its operations was no longer of the same level as it currently is. The likelihood of the Applicants needing to undertake road improvements as part of Work No. 10 on the access road, in circumstances where NSMP still depended on the access road for continuous, uninterrupted access, is very low.

10.2.10 <u>NSMP paragraph 3.2.2 "Definition of NSMP operations"</u>

10.2.11 The Applicants accept the NSMP submissions with respect to the scope of the "NSMP operations" and this is reflected in the protective provisions submitted at Deadline

12. The difference in the approach of the two parties relates to the level of protection itself, as has been explained by the Applicants above in response to NSMP's paragraph 3.2.1 submissions and in the Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005] (page 47 onwards). The Applicants' proposed approach is consistent with the NSMP submissions in paragraph 3.2.3, which require protection for its operations in Teesside (including ensuring the Proposed Development allows uninterrupted, unimpeded emergency access and otherwise reasonable access to its operations). It is noted that there is no mention of the same level of unhindered, uninterrupted access being necessary across Teesside, as it is specifically for the sole access road at plots 103, 106 and 108, and that is consistent with the protective provisions the Applicants have proposed.

10.2.12 NSMP paragraph 3.2.4 "Indemnity"

10.2.13 The Applicants welcome the acknowledgement from NSMP that a sensible cap on the Applicants' liability is required, and that principle is agreed. The Applicants do not agree with the level of the liability cap proposed by NSMP. The Applicants' position is that this is a private commercial matter that is best discussed and agreed between the parties, and the drafting in the protective provisions can simply refer to a cap on liability, as agreed between the parties.

10.2.14 NSMP paragraph 3.2.5 "Definition of NSMP group"

10.2.15 The Applicants do not agree that the protection in the DCO should be expanded to the "NSMP group". There are no interests within the Order limits owned by parties other than the three identified NSMP entities (Teesside Gas and Liquids Processing, Teesside Gas Processing Plant Limited and Northern Gas Processing Limited). The Applicants are not aware of any interests that are sought to be protected outside of the Order limits that are owned by entities other than the NSMP entities, and nothing in NSMP's submission at paragraph 3.2.5 nor its proposed definitions for its various interests / assets suggest anything to the contrary. The Applicants consider that the protection proposed is adequate to protect the interests / assets identified as having the potential to be affected by the Proposed Development and in particular the powers in the Order.

10.2.16 NSMP paragraph 3.2.6 "Compulsory Acquisition of rights"

10.2.17 The Applicants disagree that the "complexity of the arrangements" mean that powers of compulsory acquisition are not required, necessary or appropriate. In the absence of land agreements being entered into with the appropriate NSMP entities, the Applicants require powers of compulsory acquisition to ensure that the Proposed Development can be built, maintained, and operated, and so that the public benefits of the NZT project can be realised, including supporting the Government's policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets are met. The Applicants consider that the balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers, and noting the substantial public benefits that it considers exist for the Proposed Development.

10.2.18 The Secretary of State must be satisfied that there is a compelling case in the public interest for the compulsory acquisition. It is the Applicants' case that that exists for the whole of the Order land, including land owned by NSMP. The Applicants' position is that the compulsory acquisition powers sought in the DCO are necessary and proportionate and that it must retain the powers to exercise those rights. Accordingly, it does not agree that the protective provisions should be amended in the way proposed by NSMP in its protective provisions.

10.2.19 NSMP paragraph 3.2.7 "CATS access"

10.2.20 The Applicants have selected and included within the Order limits the most appropriate access to plots 110, 112, 113 and 114, being via the land/access road owned by NSMP. This is the most direct access route, and avoids alternatives which would have increased the Order land and meant the Applicants were seeking compulsory acquisition powers through operational areas (such as CATS'). The Applicants are in discussions with CATS about potentially using an alternative access route, by agreement, but do not consider that there is any justification for obligations (backed up by criminal liability) in the protective provisions to seek such an alternative. The Applicants' proposed access route is adequate and appropriate, and there is no need or justification for an alternative to be considered.

10.2.21 Notwithstanding, the Applicants are prepared to commit to use an alternative access if that can be agreed and secured, and have included drafting (at paragraphs 399-401) in Part 28 of Schedule 12 of the draft DCO submitted by the Applicants at Deadline 12 [REP12-003].

10.2.22 NSMP's draft protective provisions

10.2.23 NSMP has submitted a set of protective provisions attached to its submission. The Applicants' comments on the proposed provisions are set out below, using the paragraph numbers adopted by NSMP in its protective provisions. Paragraph references to the Applicants' protective provisions are references to Part 28 of Schedule 12 of the draft DCO submitted by the Applicants at Deadline 12 [REP12-003].

10.2.24 **Paragraph 2, defined terms** - Although NSMP has adopted some different terminology in some cases (it uses 'NSMP body' where the Applicants use 'NSMP entity', 'NSMP activities' for 'NSMP operations', 'NSMP pipes' for 'NSMP pipelines', 'NSMP land' for 'NSMP property', 'NSMP benefits' for 'NSMP rights'), those definitions are the same, except for the defined term itself, and these definitions are agreed (the Applicants understand that the terms used by the Applicants are likely to be agreed by NSMP at Deadline 13). **The one exception is "NSMP pipelines" in the Applicants' protective provisions (PPs) at paragraph 371 of Schedule 12, and the Applicants agree that the reference to "within the Order limits" should be substituted with "within Teesside".**

10.2.25 "NSMP requirements" – The Applicants apply these requirements to the relevant works package A only, for reasons explained above. In limb (b) the Applicants do not

include an express reference to the NSMP pipelines, as they are already defined as being part of the NSMP operations / activities, which are included here.

10.2.26 "works details" – the Applicants have not used this term, and instead refer to a "design package". NSMP has set out an approval process for the works details at paragraphs 7 – 9, which, in terms of process, achieves the same thing as the Applicants' approval process (Parts A – C) set out at paragraph 375 to 393. This is discussed further below, but for the purposes of the "works details" definition, the Applicants' position is that there is no material difference between the definition it has proposed for "design package". The Applicants understand that the use of "design package" and the proposed definition is likely to be agreed by NSMP at Deadline 13.

10.2.27 NSMP adopts the following definitions which are not used by the Applicants in their PPs: "affiliates", "losses", "NSMP group", "RPI". The Applicants do not agree to the inclusion of the "NSMP group" as noted above, and therefore neither that definition nor "affiliates" is agreed. Definitions of "losses" and "RPI" are similarly not agreed, as they relate to drafting in paragraph 16 relating to the indemnity, which is not agreed.

10.2.28 **Paragraphs 3 – 6, Construction traffic management plan** - The Applicants have included a detailed definition of the "traffic management plan" in paragraph 371 and the requirements for the traffic management plan set out in the definition arguably go further than what is required by NSMP's paragraph 3. It is noted that the Applicants have proposed the traffic management plan specifically in relation to relevant works package A, reflecting NSMP's submission at paragraph 3.2.1 and as addressed above.

10.2.29 The definition of "design package" for relevant works package A, requires the submission of the traffic management plan (either with the other documents, or in advance, as allowed by paragraph 380).

10.2.30 These definitions and paragraph 380 together have the same effect as paragraph 3 of the NSMP protective provisions, except that flexibility is allowed by the Applicants to either first have a traffic management plan approved, or for it to be approved alongside other design details. That is because it may be that it is more practicable to agree a traffic management plan in advance that could apply to multiple design packages, or a better approach may be that a specific traffic management plan is required for each design package. In all cases NSMP's approval is required, maintaining appropriate protection.

10.2.31 The other difference is that NSMP requires a traffic management plan before any part of the authorised development can be undertaken anywhere, that has the potential to affect access to NSMP's operations. The Applicants do not consider that is justified beyond the area of relevant works package A, particularly given the approval principles in place for works beyond that works package, as set out in paragraph 392.

10.2.32 NSMP's paragraphs 4 to 6 relate to the approval and implementation of the traffic management plan, and the Applicants' PPs achieve the same thing by virtue of paragraph 380 and the approval process set out in Part A of the PPs, which would apply to any traffic management plan. Paragraph 372 provides the restriction on works commencing until approval of the design package (which includes the traffic management plan) and paragraph 374 secures implementation in accordance with approved details.

10.2.33 The Applicants understand that the basic structure and approach as set out by the Applicants is likely to be agreed by NSMP at Deadline 13, subject to some points of detail on the drafting.

10.2.34 **Paragraphs 7 – 9, Consent under this Part:** NSMP sets out a process for approval of works details. The process is not inconsistent with the Applicants' PPs at paragraphs 372 to 393, which set out a more detailed approval process for design packages. At paragraph 9, NSMP's PPs set out what are termed the "approval principles" in part C of the Applicants' PPs at paragraphs 386 to 393. These are aligned, subject to the key differences highlighted above with respect to:

(a) The different approval principles proposed for relevant works packages A and B – the reasons for which are explained above;

(b) The ability to undertake works under Work No. 10 on the NSMP access road in the event it has not been maintained to an appropriate standard; and

(c) Specifying when it will be unreasonable of the NSMP entity to withhold approval of works details for relevant works package A (paragraph 390). Sub-paragraph (a) relates to the point above about allowing the undertaker to undertake road improvement works to the access road (Work No. 10) in specific circumstances. Sub-paragraph (b) applies to withholding consent on the ground of access, where there is already an approved traffic management plan, and a design package confirms that relevant works package A would be carried out in accordance with the traffic management plan approved by NSMP.

10.2.35 The effect of NSMP's paragraph 9(3)(f) is that a crossing agreement is required to be entered into for pipelines on which the NSMP entity relies for the NSMP operations, and the crossing agreement is required to be on terms reasonably satisfactory to NSMP. The Applicants accept that crossing agreements will be needed in some circumstances, however, it is not considered reasonable that the terms of any crossing agreements with third parties would need to be approved by NSMP. The Applicants' view is that this matter is more appropriately dealt with outside of the Order.

10.2.36 The Applicants understand that the basic structure and approach as set out by the Applicants is likely to be agreed by NSMP at Deadline 13, subject to some points of detail on the drafting (for example, it is expected that the three points outlined above as being key differences will remain, as will the requirement on crossing agreements).

10.2.37 **Paragraphs 10 – 14, Compliance with requirements, etc. applying to the NSMP activities** – NSMP's paragraph 10 is covered by the Applicants' paragraph 374 in terms of compliance with approved details. NSMP's paragraph 11 covers various points, which are the subject of ongoing discussion between the parties. The proposals relating to practical completion and remediation of defects are not able to be dealt with adequately in the way proposed by NSMP in protective provisions, and the Applicants consider these requirements are, if required at all, best suited to detailed drafting in a side agreement. Accordingly the Applicants consider this paragraph should not be included in the protective provisions.

10.2.38 Paragraph 12 is agreed with respect to relevant works package A (given that is the works package for which the Applicants accept uninterrupted access is required) and is included by the Applicants at paragraph 394.

10.2.39 Paragraph 13 is included by the Applicants at paragraph 395, except that the Applicants require that NSMP provide it with the conditions, requirements or regulations that it requires the undertaker to comply with. The Applicants consider this requirement to be entirely reasonable, given these are requirements potentially affecting NSMP's operations and which NSMP is therefore presumably aware of, and the Applicants cannot comply with them unless they are provided to the Applicants.

10.2.40 Paragraph 14 is included by the Applicants at paragraph 396, with the caveat that the undertaker could only exercise the powers in the Order to hinder or prevent access, if expressly provided for in an approved traffic management plan or design package. Given NSMP's approval would be required for those details, the Applicants consider this is acceptable and reasonable.

10.2.41 **Paragraph 15, Co-operation** – The Applicants included the co-operation provisions in paragraphs 391 and 393, with the only difference in drafting being that the provisions are split between relevant works packages A and B, and that the NSMP requirements (relating to access) are relevant only to relevant works package A (for reasons given above).

10.2.42 **Paragraph 16, Indemnity** – As recorded above, whilst the Applicants agree that a sensible cap on the Applicants' liability is required, the Applicants do not agree with the level of the liability cap proposed by NSMP. The Applicants' position is that this is a private commercial matter that is best discussed and agreed between the parties, and the drafting in the protective provisions can simply refer to a cap on liability, as agreed between the parties. **The Applicants propose that a new sub-paragraph 397(5) be included to provide: "The undertaker's maximum liability under this paragraph 397 shall be as agreed in writing between the undertaker and the NSMP entity".**

10.2.43 Similarly, the detail of the scope of the undertaker's liability is a matter for detailed commercial discussions between the parties, and go hand in hand with discussions on the amount of any cap on liability. The Applicants' proposed indemnity drafting is appropriate and provides suitable protection – in addition to all the other measures with the protective provisions – for the NSMP entities. As a result the Applicants consider that the protective provisions are adequate, and that otherwise this is a

matter that can if appropriate be most appropriately discussed and secured by way of a side agreement.

10.2.44 The Applicants have made submissions above with respect to the "NSMP group" and the Applicants therefore do not consider the undertakers should be liable for losses suffered by the NSMP group.

10.2.45 On sub-paragraph (4) NSMP does not agree to this drafting with respect to conduct of any claim, and the Applicants' position is that its proposed drafting in paragraph 397(3) is appropriate and reasonable, particularly given the Applicants' liability for the claims the subject of the sub-paragraph.

10.2.46 **Paragraph 17, Arbitration** – this paragraph is agreed, and this aligns with paragraph 398 of the Applicants' PPs.

10.2.47 **Paragraph 18, CATS Access** – as noted above in response to NSMP's paragraph 3.2.7, the Applicants do not consider NSMP's proposed provisions in relation to an alternative access are necessary or appropriate, and these should not be preferred over the Applicants' paragraphs 399-401.

10.2.48 **Paragraph 19, Consent** – The Applicants have set out their position on the restriction on CA powers above, and for those reasons, these additional provisions are not accepted and should be deleted.

APPENDIX 1: APPLICANTS COMMENTS ON STDC PROTECTIVE PROVISIONS

Para no. (14 October PPs)	STDC drafting change in 14 October PPs	STDC comment on drafting change in 14 October PPs	Para no. (final DCO submitted at D12)	Drafting in final DCO submitted at D12	Applicants comments at D13
226	~~*"adequacy criteria" means the criteria at paragraph 226A(c) and (d) in this Part;*~~	1.STDC consider this unnecessary given the substantial criteria already included in the "diversion condition" (a) to (j). See further comments on para 226A.	256(1)	*"adequacy criteria" means the criteria at sub-paragraph (2);*	The Applicants disagree that the "adequacy criteria" definition should be deleted. The purpose of this provision to confirm what the undertaker must not treat as constituting an inadequate alternative, subject to certain conditions (see paragraph 256(2) of Part 20 of the DCO submitted at Deadline 12). It accordingly serves a separate and mutually beneficial purpose from the criteria in the "diversion condition" definition. For completeness, the Applicants did make a minor change to the definition of "adequacy criteria" to make it clear that all of the criteria in paragraph 226A (now 256(2)) should apply.

226	*[**"DISCHARGE OUTFALL LAND" MEANS PLOTS 297 AND 308, SO FAR AS REQUIRED IN RELATION TO WORK NO. 5A;*** *"discharge outfall works" means work no. 5a within the discharge outfall land;]*	2.STDC strongly supports the Applicants' change request 18 "Removal of optionality for the disposal of wastewater to Tees Bay by removal of Work No. 5A (repair and upgrade of the existing water discharge infrastructure to the Tees Bay) resulting in a reduction in the Order Limits (Work Nos. 5A & 10)." [REP11-011]. If this change request is accepted by the Examining Authority / Secretary of State, then these provisions can be deleted from the protective provisions. If the change is for some reason rejected, these definitions should remain.	N/A	N/A	The definition of "discharge outfall land" and "discharge outfall works" have been deleted in the final DCO on the basis that they related to a "lift and shift" option for part of WN5A, that being removed by the Applicants pursuant to a change request submitted at Deadline 12. The Applicants removed these definitions in anticipation that the change request would be accepted by the Examining Authority (whilst offering drafting in Part 2 of the Schedule of Changes [REP12-005] for reinstating the drafting if the change request was refused). Confirmation was received on 4th November that the change request was accepted by the Examining Authority [PD-023]. Accordingly, the Applicants position is that the definitions should not be re-instated. STDC's position is that it is also in favour of deletion of these provisions if the change

					request was accepted. Accordingly, the Applicants anticipate that this point has now been resolved.
226	*“diversion condition” means that in relation to the relevant **DIVERSION WORK—*** *(a) in relation to a proposed work which is required for the construction of the authorised development, that ~~it~~ in the reasonable opinion of the undertaker ~~complies with the adequacy criteria and~~ it is adequate to enable~~s~~ the authorised development to be constructed and commissioned;*	3. As above (comment 1), STDC does not consider “adequacy criteria” necessary given the stringent other diversion conditions.	256(1)	*“diversion condition” means that in relation to the relevant diversion work—* *(a)in relation to a proposed work which is required for the construction of the authorised development, that it in the reasonable opinion of the undertaker complies with the adequacy criteria and enables the authorised development to be constructed and commissioned;*	Changes not accepted. The Applicants disagree with STDC’s proposed changes to remove reference to the “adequacy criteria”. See response to comment 1.
226	*(b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that ~~it~~ in the reasonable opinion of the*	4. As per comment 3.	256(1)	*(b) in relation to a proposed work which is required for the maintenance or operation of the*	Changes not accepted. The Applicants disagree with STDC’s proposed changes to remove reference to the “adequacy criteria”. See response to comment 1.

	undertaker ~~complies with the adequacy criteria and~~ it is adequate to enables the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;			*authorised development, that it in the reasonable opinion of the undertaker complies with the adequacy criteria and enables the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;*	
226(h)	*(h)in relation only to the AIL access route work that the diversion work complies with the red m**AIN CRITERIA; [AND]***	N/A	256(1)(h)	(h)in relation only to the AIL access route work that the diversion work complies with the red main criteria;	Change not accepted. The change proposed by STDC would appear to envisage the deletion of paragraph 226(i) related to the diversion condition for the "southern access route" in order that the word "and" would be appropriate at the end of the preceding paragraph 226(h), now 251(1)(h) (this becoming the penultimate limb of the "diversion condition" definition). The Applicants have set out below why paragraph 226(i) (now 256(1)(i)) must be retained. That being the case, the word "and" should not be retained at the end of

					paragraph 226(h) (now 256(1)(h).
226(i)	*(i)[in relation only to the southern access route work that heavy goods vehicles can access from the public highway through the Lackenby Gate and to the areas of Work Nos.1, 3, 7 and 9A; and]*	5. STDC strongly opposes the Tees Dock Road access. This definition will need to be removed if either: (i) the Examining Authority / Secretary of State agree with STDC that the Applicants have not made out a case for this access (by failing to adopt the reasonable alternative offered by STDC to temporary possession of plots 274/279) and accordingly remove the access from the scope of the DCO; or (ii) the Applicants decide to remove the access in the post-examination phase, and that change is accepted by the Examining Authority / Secretary of State. If neither of these circumstances arise, these definitions will need to be retained, to protect STDC's position as far as possible.	256(1)(i)	*(i)in relation only to the southern access route work that heavy goods vehicles can access from the public highway through the Lackenby Gate and to the areas of Work Nos.1, 3, 7 and 9A; and*	The Applicants disagree that the creation of an access from Tees Dock Road (at plots 274 and 279) is not required. An alternative at Lackenby Gate has not been secured by legal agreement. There is no guarantee such an agreement will be entered into. The Applicants have retained limb (i) in the final DCO submitted at D12 which provides for the potential alternative access at Lackenby Gate, in circumstances where powers to create an access from Tees Dock Road are retained in the final DCO. However, in either scenario i) or (ii) set out opposite by STDC, the Applicants agree that limb (i) should be removed from the protective provisions. The Applicants have provided for this in its drafting instructions to remove the powers over the creation of an access at Tees Dock Road in Part 3 of the

					Applicants Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005].
226(j)	~~and that in the reasonable opinion of the undertaker the car parking spaces would be available for use by the undertaker at all times during the periods specified, and that the land demonstrated for use as car parking spaces is suitable for such use,~~ *and that the undertaker will be able to operate a bus service that provides for the transport of personnel from the car parking spaces to construction areas during the construction of the authorised development.*	6. This text has been deleted as it does not reflect the principles agreed in the main site option negotiations between the parties. STDC also considers this an unreasonable / unnecessary caveat as it grants the Applicants a significant amount of discretion over and above what is needed in order to implement the authorised development.	256(1)(j)	*(j)and that in the reasonable opinion of the undertaker the car parking spaces would be available for use by the undertaker at all times during the periods specified, and that the land demonstrated for use as car parking spaces is suitable for such use, and that the undertaker will be able to operate a bus service that provides for the transport of personnel from the car parking spaces to construction areas during the construction of the authorised development.*	Change not agreed. The Applicants consider that the drafting is consistent with the principles in the main site option negotiations and that it is in any case reasonable and proportionate to include in the protective provisions. The Applicants have secured the necessary powers to provide parking within the temporary construction laydown forming part of WN9A. Temporary possession powers are available throughout the construction phase of the development. If STDC wish to provide an alternative, the undertaker must benefit from equivalent rights to provide parking as it requires under the powers in the DCO. The undertaker has gone further in accommodating STDC, by providing dates for making spaces available in line

					with the anticipated need for them during construction. Furthermore, it is plainly reasonable for the undertaker to require that any alternative land proposed by STDC for parking must be "suitable for such use".
226	*or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order or any other power in the Order which would permit access to or interference with land or interests in land held by the Teesworks entity;*	7. STDC has inserted a catch-all to capture any other powers exercised in the STDC area as there are various miscellaneous land and works powers within the DCO that could cause significant disruption to STDC or its tenants (e.g. article 11 street works or article 17 discharge of water), and which should also be subject to the protective provisions.	256(1)	*or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the 1981 Act as applied by this Order*	Change not agreed. The "other powers" in the Order (such as street works under Article 11 or the discharge of water under Article 17) could only be exercised by the Applicants with the benefit of an interest in STDC's land. The definition of "identified power" already deprives the Applicants of the ability to secure that under the Order by removing its powers of compulsory acquisition. The Applicants therefore consider this wording unnecessary.
226	*["Lackenby Gate" means the entrance to the Teesworks site located on the A1085 Trunk Road and known as Lackenby Gate;]*	8. As per comment 5.	256(1)	*"Lackenby Gate" means the entrance to the Teesworks site located on the A1085 Trunk Road and known as Lackenby Gate;*	See the Applicants' response to Comment 5 above.

226	*"proposed work" means one of the AIL access route works, [the discharge outfall works], the parking works, the PCC site access route works, [the southern access route works] or the water connection works;*	9. As per comment 2.	256(1)	*"proposed work" means one of the AIL access route works, the parking works, the PCC site access route works, the southern access route works or the water connection works;*	See the Applicants' response to Comment 5 above. The definitions of "discharge outfall works" and "southern access route works" has been deleted from the definition of "proposed work" following the procedural decision of the Examining Authority to accept the change request to remove WN5A [PD-023].
226	*"red main criteria" means* ***THAT:*** *(a)the diversion work must accommodate cargo of 20 metr****E WIDTH BY 20 METRE HEIGHT BY 80 METRE LENGTH, WITH AN AXLE WIDTH OF 10 METRES, AND WITH 5 METRES OF OVERHANG EACH SIDE;*** *(b)the diversion w****ORK MUST ALLOW A MINIMUM INTERNAL TURNING RADIUS OF 24 METRES FROM THE CENTRE OF THE DIVERSION WORK AND A MAXIMUM OUTER***	11. STDC has provided this definition based upon the principles agreed between the parties. At the time of drafting, the Applicants had not proposed their own definition. This definition provides the Applicant which sufficient certainty that any diversion of red main will be compatible with the delivery of the authorised development.	256(1)	*"red main criteria" means that—* *(a)the diversion work must be along a route must connect to plot 223 at the same location as the existing road;* *(b)the diversion work must connect into the construction areas required for the construction of the authorised development at a location required by the undertaker acting reasonably;*	The Applicants agree with the definition provided by STDC and which is replicated in sub-paragraphs (c) to (g) in the protective provisions in the final DCO submitted at D12. In addition, the Applicants have included new sub-paragraphs (a) and (b). These reflect what the Applicants consider as necessary as part of the main site option negotiations. Specifically, with respect to sub-paragraph (a), the Applicants must secure an access that connects into the land owned by RBT at plot 223, and that therefore provides a route to the RBT facility. With respect to sub-paragraph (b),

	TURNING RADIUS OF 53 METRES FROM THE CENTRE OF THE DIVERSION WORK; *(c)the longitudinal slope of the diversion work must not exceed 5%;* ***(D)THE TRANSVERSE SLOPE OF THE DIVERSION WORK MUST NOT EXCEED 1.5%; AND*** *(e)the diversion work must have a minimum grou**ND BEARING CAPACITY OF 100 KN/M2 AND SUFFICIENT PROTECTION PROVIDED IF IT CROSSES UNDERGROUND FACILITIES;***			*(c)the diversion work must accommodate cargo of 20 metre width by 20 metre height by 80 metre length, with an axle width of 10 metres, and with 5 metres of overhang each side;* *(d)the diversion work must allow a minimum internal turning radius of 24 metres from the centre of the diversion work and a maximum outer turning radius of 53 metres from the centre of the diversion work;* *(e)the longitudinal slope of the diversion work must not exceed 5%;* *(f)the transverse slope of the diversion work must not exceed 1.5%; and* *(g)the diversion work must have a minimum ground bearing capacity of 100 kN/m2 and*	the Applicants must have certainty that the alternative route actually secures access to the construction sites that would otherwise be serviced by the existing Red Main route. If the Applicants are obliged to accept an alternative and potentially longer route pursuant to paragraph 226A (now paragraph 256(2)) it is imperative that the alternative access route proposed by STDC secures adequate access to the construction areas that would otherwise be serviced by the Red Main route. This must be a pre-condition of any alternative route STDC propose.

				sufficient protection provided if it crosses underground facilities.	
	"southern access route land" means plots 274, 279, 282, 283, 287, 296, 348, 362, 363, 367, 370, 373, 374, 376 and 381 so far as required in relation to work no. 10; *"southern access route works" means work no. 10 within the southern access route land;*	12. As per comment 5.	256(1)	*"southern access route land" means plots 274, 279, 282, 283, 287, 296, 348, 362, 363, 367, 370, 373, 374, 376 and 381 so far as required in relation to work no. 10;* *"southern access route works" means Work No. 10 within the southern access route land;*	See response to Comment 5 above. The Applicants' position is that this drafting must be retained in the DCO unless the powers over plots 274 and 279 are removed. If the plots are removed, pursuant to either of the scenarios outlined by STDC in Comment 5, the Applicants have provided the consequential drafting instructions to remove these definitions in Part 3 of the Applicants Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005].
226	*"STDC area plan" means the plan which is certified as the STDC area plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;*	13. STDC has not yet been provided with a plan by the Applicants. If the Applicants insist upon reference to a plan, STDC refer to the plan appended to its relevant representation [RR-035]. The Applicants may be able to produce a copy in line with their other DCO plans.	N/A	N/A	Definition has been deleted. The Applicants have changed the definition of the STDC area to "means the administrative area of STDC". Accordingly, no definition of "STDC area plan" is required.

226	*["Tees Dock Road access" means an access from Tees Dock Road to plots 274 and 279 as shown on the land plans;]*	14. As per comment 5. STDC's position is that this definition is not required and should be removed, based on STDC's amendments to para 230A. If the Secretary of State elects to retain this wording, they should note that plots 274 and 279 are not themselves part of Tees Dock Road so the definition should read: "Tees Dock Road access" means an access from Tees Dock Road to plots 274 and 279 as shown on the land plans ".	N/A	N/A	The Applicants deleted the definition of "Tees Dock Road" access from the final DCO. Its sole purpose would have been to assist with the interpretation of a provision excluding the exercise of any powers to create an access at Tees Dock Road. However, the Applicants have included the exact same definition as STDC have requested in Part 3 of its Schedule of Change to the DCO at Deadline 12 [REP12-005]. Accordingly, if either of the scenarios outlined by STDC in Comment 5 occur, the Applicants would invite the Secretary of State to insert a definition of "Tees Dock Road access" requested by STDC.
226	*"the Teesworks site" means ~~the~~ any land within the Order limits ~~shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10~~ owned by Teesworks Limited, STDC and South Tees Developments Limited; and*	15. The Applicants' preferred form of wording excludes the PCC site from the scope of the protective provisions. STDC requires the Teesworks site definition to apply to all works within the scope of the DCO which take place on land owned by STDC (and its	256(1)	*"the Teesworks site" means the land within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 owned by STDC and South Tees Developments Limited;*	The Applicants disagree with the changes proposed. The definition of "Teesworks site" applies with respect to the consent to works details process. The changes proposed by STDC means that the protective provisions could

		associated parties). It is reasonable for STDC, as landowner, to have protective provisions that apply to all of the Applicants' works on its land, particularly in circumstances where an option for PCC site has not been agreed.			apply with respect to activities associated with WN1 and WN7 at the PCC site. In the event that the Applicants secure the rights to build these works, such activities would be self-contained on the PCC Site, a fenced area which the Applicants would have sole control of. It is not reasonable or necessary for the protective provisions to effectively give the Teesworks entities a control over works that are not near to its interests and where no impact on its operations has been identified (either by the Applicants or STDC in its submission during the Examination). The protective provisions and with it the definition of "the Teesworks site" have been drafted specifically to manage the potential interface with STDC's interests in the connection corridors. The Applicants' position remains that its definition of "the Teesworks site" must be retained.

					The Applicants also disagree with extending the definition of "Teesworks site" to include land owned by "Teesworks Limited". The interests in the land to which these protective provisions apply is currently owned by STDC or STDL and not Teesworks Limited. The protective provisions must be drafted to reflect current title interests. In any event, Teesworks Limited would have the benefit of the protective provisions upon acquiring an interest pursuant to the definition of "Teesworks entity" which applies to successors with a freehold interest and the terms of paragraph 284 (Interpretation).
226	*"water connection land" means part of plots 473, and plots 409a, 425a, 458, 461, 463, 467, 470, 472, 498, 509, 512, 515, 516, 518, 519, 521, 522, 524, 525, 531, 532, 533, 534, 535, 536, 537, 538, being the area shown ~~[x]~~hatched*	16. Added to reflect the colour on the plan provided by the Applicants to STDC.	256(1)	*"water connection land" means part of plots 473, and plots 409a, 425a, 458, 461, 463, 467, 470, 472, 498, 509, 512, 515, 516, 518, 519, 521, 522, 524, 525, 531, 532, 533, 534, 535, 536, 537, 538, being the area shown hatched*	Change made to definition by STDC is identical to change made in final DCO at D12. No further comment.

	green on the water connection plan, and so far as required in relation to Work No. 4;			*green on the water connection plan, and so far as required in relation to Work No. 4;*	
226A	*For the purposes of this Part of this Schedule, ~~the diversion conditions,~~ a diversion work or associated interest in land ~~must be considered to be adequate by the undertaker~~ is capable of meeting the diversion condition notwithstanding that:* *(a) it is longer in distance than the relevant proposed work it is replacing; or* *(b) in the case of vehicular or staff access, it increases the time taken to travel to the authorised development compared to the relevant proposed work it is replacing;* *~~provided that in the reasonable opinion of the undertaker the increase in~~*	17. The purpose of para 226A is simply to expressly acknowledge that diversions etc. can be longer in distance / duration and still meet the diversion condition (or conversely cannot be rejected simply on grounds that it is longer). 18. This protection is already provided by paragraphs of the diversion condition – see in particular (a), (b), (c) and (j). It is not reasonable or necessary for the Applicants to add further qualifications to matters which are already addressed by the "diversion condition".	256(2)	*(2) For the purposes of the diversion condition, a diversion work or associated interest in land must not be considered to be inadequate by the undertaker solely where—* *(a)it is longer in distance than the relevant proposed work it is replacing; or* *(b)in the case of vehicular or staff access, it increases the time taken to travel to the authorised development compared to the relevant proposed work it is replacing,* *provided that a diversion work or associated interest in land may not be considered to be adequate where in the reasonable opinion of the undertaker*	With respect to Comment 17, the Applicants agree that the purpose of paragraph 226A (now 256(2)) is to provide a safeguard that certain works may be longer in distance or duration and still be satisfactory. It is not considered that there is a substantive difference in the wording proposed by STDC in the first paragraph of 226A (now 256(2)) in order to necessitate a change to the drafting in the D12 DCO [REP12-003]. In fact it is arguable that the wording proposed by the Applicants ("must not be considered to be inadequate") provides greater protection to STDC than the proposed amendments ("is capable of meeting the diversion condition"). With respect to Comment 18, the Applicants disagree with the removal of the second part

	~~*distance or time (whichever is relevant) would not:*~~ ~~*(c) incur unreasonable cost, having regard to both the nature and scale of the relevant proposed work, and the nature and scale of the impact on the Teesworks Development; or*~~ ~~*(d) have a material adverse impact on the timetable for the delivery of the authorised development in accordance with the undertaker's construction programme.*~~			*an increase in distance or time (whichever is relevant) would— (c) incur unreasonable cost, having regard to both the nature and scale of the relevant proposed work, and the nature and scale of the impact on the Teesworks Development; or (d) have a material adverse impact on the timetable for the delivery of the authorised development in accordance with the undertaker's construction programme.*	of paragraph 226A (now 256(2)). The Applicants' position is that this wording is integral to limiting the circumstances where an alternative proposal (a "diversion work") must be accepted under the first part of the provision. Without this wording, there is uncertainty as to whether the terms of the "diversion conditions" take precedence or the terms of paragraph 226A (256(2)). STDC's attempt to "link" the drafting back to the diversion conditions in the first paragraph ("capable of meeting the diversion condition") is of no meaningful assistance in interpreting how the "diversion condition" and 226A (now 256(2)) are to be read together. The Applicants' drafting is clearer. The diversion conditions must always be satisfied. However the undertaker cannot "reasonably" refuse to treat a diversion condition as satisfied simply for

					the reasons under 226A(a) and (b) (now 256(2)(a) and (b) unless the circumstances where 226 (c) and (d) (now 256(2)(c) and (d) apply. For completeness, the Applicants did make some changes to this provision at Deadline 12 to improve clarity. However the substance of the provision is the same as the version in the 14 October PPs and the Applicants' DCO submitted at Deadline 8 [REP8-003].
Heading above paragraph 227	*Consent for works and land acquisition*	19. See new para 230B	Heading above paragraph 257	Consent for works	Change rejected. See comments below.
227	*Before commencing the construction of any part of ~~numbered works 2a, 3, 4a, 5, 6, 8, 9 and 10 or~~ the authorised development including any permitted preliminary works within the Teesworks site, the undertaker must first submit to the Teesworks entity for*	20. As per comment 15, prior approval should apply to all works on land owned by Teesworks, STDC and STDL. It would be unreasonable for the Applicants to be able to carry out certain works on the Teesworks Site without STDC's consent given the significant impacts this	257	*Before commencing the construction of any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 or any permitted preliminary works within the areas of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 within the Teesworks site, the undertaker must first*	Change rejected. The Applicants strongly disagree with the consent to works details applying outside of the connection corridors land. See response to Comment 15. For completeness, the Applicants did make changes to this provision in the Deadline

	its approval the works details for the work and such further particulars as the Teesworks entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.	could have on STDC's wider estate and other tenants.		*submit to the Teesworks entity for its approval the works details for the work and such further particulars as the Teesworks entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.*	12 DCO [REP12-003] to include the words "within the areas of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10" after the words "permitted preliminary works". The purpose of that change was to clarify that any consent to works details in respect of the PPW only has effect to the extent such PPW are within the connection corridors land and the vicinity of the Teesworks entities interests.
228	No works comprising any part of ~~numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 or~~ the authorised development including any permitted preliminary works within the Teesworks site are to be commenced until the works details in respect of those works submitted under paragraph 227 have been approved by the Teesworks entity.	21. As per comment 20		*No works comprising any part of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 or any permitted preliminary works within the areas of numbered works 2A, 3, 4A, 5, 6, 8, 9 and 10 within the Teesworks site are to be commenced until the works details in respect of those works submitted under paragraph 257 have been approved by the Teesworks entity.*	As above.

230A	230A. [The undertaker must not under any circumstances exercise the powers under Article 14~~(b) of the Order in respect of Tees Dock Road land~~ or other provision of this Order to create a means of access between the Tees Dock Road and plots 274 and 279 as shown on the land plans].	22. STDC has set out its case for the removal of plots 274/279 from the Order Limits (see below). Paragraph 230A is required only if either of the following circumstances take place: (a) the Examining Authority / Secretary of State agree with STDC that the Applicants have not made out a case for this access (by failing to adopt the reasonable alternative offered by STDC to temporary possession of plots 274/279) and accordingly remove it from the scope of the DCO; or (b) the Applicants decide to remove the access in the post-examination phase. If this paragraph is included, these amendments are necessary to protect STDC from the use of miscellaneous in the DCO to form a means of access over these plots.	N/A	N/A	The Applicants disagree with these changes. See response to Comments 5 and 14. However, the Applicants accepts the changes to the drafting are required in either of the scenarios that STDC has outlined in Comment 5. The Applicants have proposed the same drafting as STDC have set out opposite in Part 3 of the Applicants Schedule of Changes submitted at Deadline 12 [[REP12-005].
230B	*Regardless of any provision in this Order or anything*	23. STDC has provided its preferred from of drafting to	N/A	N/A	The Applicants strongly oppose this drafting and have not

	shown on the land plans or contained in the book of reference to the Order, the undertaker may not, otherwise than by agreement with the Teesworks entity: *(a) appropriate or acquire or take temporary possession of any land owned or held by the Teesworks entity;* *(b) appropriate, acquire, create, extinguish or override any easement or other interest, including by temporary possession, in land owned or held by the Teesworks entity;* *(c) appropriate, acquire, extinguish or override any easement or other interest in land owned or held by the Teesworks entity, including by temporary possession,* *such agreement not to be unreasonably withheld or delayed.*	control the use of compulsory acquisition and temporary possession powers over its land and interests. The provision is intended to allow STDC to either require acquisition by agreement, or alternatively for STDC to consent to the use of compulsory acquisition and temporary possession powers over its land. STDC is not seeking to impede the implementation of the scheme, and such control is therefore drafted as subject to STDC not unreasonably withholding or delaying its consent.			included it or similar wording in the final DCO submitted at D12. The Applicants' justification for its exclusion has already been set out in Appendix 1 to Applicants Schedule of Changes submitted at Deadline 12 [REP12-005].
234(1)(b)	*(1)* ***SUBJECT TO THE FOLLOWING PROVISIONS OF THIS***	24. STDC considers it appropriate that costs for arbitration are included within	264(1)(b)	*(1)* ***SUBJECT TO THE FOLLOWING PROVISIONS OF THIS***	The Applicants strongly disagree that it should be responsible for funding

	PARAGRAPH, THE UNDERTAKER MUST REPAY TO TEESWORKS LIMITED, SOUTH TEES DEVELOPMENTS LIMITED AND STDC THE REASONABLE COSTS AND EXPENSES INCURRED BY THEM IN, OR IN CONNECTION WITH— *The **AUTHORISATION OF WORKS DETAILS IN ACCORDANCE WITH PARAGRAPHS 227 TO 230;*** *(a)**THE AUTHORISATION OF WORKS DETAILS IN ACCORDANCE WITH PARAGRAPHS 227 TO 230;*** ***(B)THE PROCESS IN RELATION TO PROPOSED WORKS AND DIVERSION WORKS SET OUT IN PARAGRAPHS 236 TO ~~248B~~ 253;***	the recoverable expenses. STDC is entitled to serve diversion notices under the protective provisions and should not be subject to costs where arbitration is necessary to pursue resolution of the diversion works process. If STDC is liable for arbitration costs, it incentivises the applicants to use the arbitration process to resist diversions, with STDC having to weigh up the cost of defending its position at arbitration and the interests of its wider estate and statutory obligations.		***PARAGRAPH, THE UNDERTAKER MUST REPAY TO THE TEESWORKS ENTITY THE REASONABLE COSTS AND EXPENSES INCURRED BY THEM IN, OR IN CONNECTION WITH—*** *(a) the authorisation of works details in accordan**CE WITH PARAGRAPHS 257 TO 260;*** *(b) the process in relation to proposed works and diversion works set out in paragraphs 266 to 278(2**)***	arbitration by STDC. Its position is that the parties must be incentivised to follow the diversion procedures in the protective provisions before they move to arbitration. The Applicants' full justification has already been set out in Appendix 1 to Applicants Schedule of Changes to the DCO submitted at Deadline 12 [REP12-005].

231(1)(c) and (d)	*(c)*~~***WHERE THE RELEVANT DIVERSION WORK IS PROVIDED BY THE TEESWORKS ENTITY AND SOLELY FOR THE USE OF THE UNDERTAKER IN CONNECTION WITH THE AUTHORISED DEVELOPMENT,***~~ ***THE CONSTRUCTION OF A DIVERSION WORK PROVIDED INSTEAD OF THE RELEVANT PROPOSED WORK;*** ~~*(d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider teesworks site, a proportion of the cost of construction of a diversion work provided instead of the the southern access route works, the outfall discharge works, the pcc site access route works or the water connection works, such proportion to be*~~	25. This has been updated to reflect the principles which STDC understands have been agreed between the parties. The parties have agreed that until such time as the Applicants have installed apparatus / works, the Applicants are wholly responsible for the costs of any diversion works. In any event, since any diversion works would be for the benefit of the Applicants, and are necessary to avoid unacceptable effects of the Applicants' project on the Teesworks estate, it is reasonable that the Applicants bear the full costs of diversions.	264(1)(c) and (d)	*(c) where the relevant diversion work is provided by the Teesworks entity and solely for the use of the undertaker in connection with the authorised development, the construction of a diversion work provided instead of the relevant proposed work; and* *(d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider Teesworks site, a proportion of the cost of construction of a diversion work provided instead of the southern access route works, the PCC site access route works or the water connection works, such proportion to be agreed between the undertaker and the Teesworks entity acting*	The Applicants disagree with the proposed changes. The amendments made by STDC effectively mean that the undertaker will always be liable for funding a "diversion work" even where it solely benefits STDC, or benefits STDC in part. That cannot be fair, reasonable or proportionate. The Applicants have the power to carry out the proposed works under the Order, subject to payment of full compensation. If STDC wish to suggest an alternative proposal, and that proposal would benefit STDC, it must be responsible for funding a proportion of the related costs. The Applicants' full justification has already been set out in Appendix 1 to Applicants Schedule of Changes submitted at Deadline 12 [REP12-005]. Subject to referring to "relevant proposed work" at the end of sub-paragraph (c), removing the reference to "outfall discharge works" from sub-

	~~*agreed between the undertaker and the teesworks entity acting reasonably or to be determined by arbitration pursuant to paragraph 253.*~~			*reasonably or to be determined by arbitration pursuant to paragraph 283.*	paragraph 264(1)(d) (as part of the change request) and inserting a commitment to "act reasonably" in sub-paragraph (d) (as previously requested by STDC) no changes have been made by the Applicants to these provisions in the final DCO submitted at Deadline 12.
	~~*(3) The expenses associated with the activities outlined in sub-paragraph 234 so far as they relate to the procurement of diversion work instead of the ail access route works or the parking works will be incurred by the entity that serves the relevant diversion notice.*~~	26. See comment 25.	264(3)	*(3) The expenses associated with the activities outlined in paragraph 264 so far as they relate to the procurement of diversion work instead of the AIL access route works or the parking works will be incurred by the entity that serves the relevant diversion notice.*	The Applicants disagree with the deletion of this provision. The Applicants' full justification has already been set out in Appendix 1 to Applicants Schedule of Changes submitted at Deadline 12 [REP12-005].
236	*The undertaker must:* *(1) as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development:*	27. STDC's require this paragraph to impose a positive obligation on the Applicants to supply the programme once it is available. Without an agreement in place between the parties, and given the scale of impact of the authorised works on its other	266	*The undertaker must as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development—*	Drafting accepted by the Applicants in final DCO. For completeness, the Applicants have removed the reference to paragraph "(1)" at the beginning of paragraph 266 in the final DCO submitted at

	(a) provide to the Teesworks entity details of its proposed works programme; and *(b) provide such further particulars relating to the proposed works as the Teesworks entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the Teesworks entity within a period of 30 days of the Teesworks entity request or such longer period as the Teesworks entity and the undertaker may agree; and*	interests, STDC considers this to be a reasonable request. 28. Added to clarify this is the Teesworks entity.		*(a) provide to the Teesworks entity details of its proposed works programme; and* *(b) provide such further particulars relating to the proposed works as the Teesworks entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the Teesworks entity within a period of 30 days of a request by the Teesworks entity or such longer period as the Teesworks entity and the undertaker may agree; and*	Deadline 12 [REP12-003]. This was not required in accordance with legislative drafting guidance.
238	*238. The Teesworks entity may issue a notice (a "diversion notice") to the undertaker at any time prior to ~~30~~ 60 days after the later of:*	29. STDC requires 60 days to issue a diversion notice. The "lift and shift" process is technical in nature and requires considerable preparatory work by SDTC and, given the scale of the works concerned, it is not	268	*The Teesworks entity may issue a notice (a "diversion notice") to the undertaker at any time prior to 30 days after the later of:*	The Applicants strongly disagree with STDC's proposed changes to the timescales for the "lift and shift" procedures. The Applicants' full justification has already been set out in Appendix 1 to

	(1) the date of issue of the work notice under paragraph 236(2); or *(2) the date of issue of the most recent work notice under paragraph 237;* *unless the Teesworks entity and the undertaker, acting reasonably, agree such longer period prior to the expiry of the relevant ~~30~~ 60 day period.*	considered reasonable to require STDC to serve a notice within 30 days, particularly given the stringent diversion conditions imposed by the Applicants. 30. As per comment 29.		*(a) the date of issue of the work notice under paragraph 266(b); or* *(b) the date of issue of the most recent work notice under paragraph 267,* *unless the Teesworks entity and the undertaker, acting reasonably, agree such longer period prior to the expiry of the relevant 30 day period.*	Applicants Schedule of Changes submitted at Deadline 12 [REP12-005].
245(2)	*(2) in any case ~~150~~ 180 days from the date of the undertaker's works notice under paragraph 236(2) or if relevant ~~150~~ 180 days from the date of any revised works notice issued by the undertaker under paragraph 237.*	31. Updated to 180 days to account for the additional 30 days at para 238. 32. As per comment 31. 33. Updated to use the same wording as in para 237.	275(b)	*(b) in any case 150 days from the date of the undertaker's works notice under paragraph 266(b) or if relevant 150 days from the date of any further revised works notice issued by the undertaker under paragraph 267.*	With respect to Comment 31 and 32, see response in row above. Comment 33 is accepted, and the change has been incorporated into the final DCO submitted at Deadline 12.
246(2)	*(2) in any case ~~150~~180 days from the date of the undertaker's works notice under paragraph 236(2) or if relevant ~~150~~180 days from the date of any further works*	34. As per comment 31. 35. As per comment 31.	276(b)	*in any case 150 days from the date of the undertaker's works notice under paragraph 266(b) or if relevant 150 days from the date of any*	See response to Comments 29 and 30 above.

	notice issued by the undertaker under paragraph 237.			*further works notice issued by the undertaker under paragraph 267.*	
247	*If the undertaker issues a notice under paragraph 240(1) the Teesworks entity and the undertaker must use reasonable endeavours to enter into a diversion works agreement within 30 days of the notice on such terms as may be agreed between them, and where a planning permission is still to be obtained for the diversion work, the Teesworks entity must use ~~all~~ reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertakers' programme for the construction of the authorised development.*	36. STDC is not prepared to commit to "all reasonable endeavours" here. "Reasonable endeavours" is an appropriate level of commitment given the practical steps STDC could actually take (i.e. prepare and submit an application). STDC notes the Applicants' mutual obligation in this paragraph is "reasonable endeavours"	277	*If the undertaker issues a notice under paragraph 270(a) the Teesworks entity and the undertaker must use reasonable endeavours to enter into a diversion works agreement within 30 days of the notice on such terms as may be agreed between them, and where a planning permission is still to be obtained for the diversion work, the Teesworks entity must use reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertakers' programme for the construction of the authorised development.*	This change was made in the Applicants' final DCO submitted at Deadline 12 [REP12-003]. No further comment.