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Our Ref: **Our Ref: 0006-P1A4.5NTLLET019**

## **Planning Act 2008 (as amended) – Section 55**

**Application by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited for an Order granting Development Consent for the Net Zero Teesside (“NZT”) project**

**Planning Inspectorate Reference: EN010103**

**Unique Reference: NZTP – AFP048, NZTP – AFP049, NZTP – AFP050**

### **Deadline 13 – *Various matters***

I refer to the above application for an Order granting development consent made under section 37(2) of the Planning Act 2008 (PA2008) received by the Planning Inspectorate on 19 July 2021 and accepted for examination on 16 August 2021.

The application seeks development consent to authorise the construction, operation, and maintenance of the NZT Project (specifically a carbon dioxide pipeline) on land at and in the vicinity of the former Redcar Steel Works Site, Redcar and in Stockton-on-Tees, on Teesside.

North Tees Land Limited (“NTLL”), North Tees Limited (“NTL”) and North Tees Rail Limited (“NTRL”), together North Tees Group (“NTG”) hold various interests within the site boundary in relation to the application by the Promoters for a development consent order (“the DCO”).

As per the deadline matters 13 set in the examination timetable for the DCO, NTG are responding to the Examining Authority (ExA) with the following points.

### **Protective Provisions**

1. Following NTG’s Deadline 11 submission (REP11-043), NTG submits that the ExA should take into account the following factual timeline of events when considering protective provisions:
  - 1.1 Project engagement and Kick Off Meetings held between the Applicant and NTG 8th December 2020.

- 1.2 First land plans and Heads of Terms circulated from the Applicants agent 22nd February 2020.
- 1.3 First protective provisions were received by NTG from the Applicant on 16th August 2022.
- 1.4 A call was subsequently held with the Applicants agent and NTG where NTG stressed the Protective Provisions do not reflect the agreed position in the voluntary agreement or indeed deal with any land within the Order limits. The Applicant stated they would provide a mark-up of the protective provisions in due course.
- 1.5 A marked up set of protective provisions was received by the Applicant Friday 14th October 2022. Unfortunately, the marked-up document did not reflect anything that was agreed between NTG and the Applicant.
- 1.6 NTG responded in full on Wednesday 19th October 2022. NTG have sent numerous consistent repeated chasers to have a call/ discussion with the Applicant and have not had commitment to meet even though during the ISH5 on Tuesday 19th October 2022, the Applicant stated they would do so. Please refer to transcript on Examination library.
- 1.7 As of Deadline 11, 26th October 2022, NTG await a response and a commitment to meet from the Applicant.
- 1.8 On 28<sup>th</sup> October 2022 at 17:00, NTG received a written response from the Applicant. Unfortunately, the document is marked without prejudice, therefore NTG are unable to Annex the response. The late mark-up and engagement are both disappointing and frustrating. However, NTG have summarized key areas in Point 2 below.
- 1.9 As of Deadline 12, 1<sup>st</sup> November 2022, the Applicant has not wanted to meet NTG despite stating during the ISH5 on Tuesday 19th October 2022, that they would do so.
- 1.10 Following repeated chasers from NTG, the Applicant agreed to meet via Teams Friday 4<sup>th</sup> November 2022. NTG stressed that they had been clear of the following facts from the outset of the Project as to why NTG require protective provisions within the Order limits:
  - 1.10.1 NTG have a significant asset and infrastructure base in the pipeline corridor. To name but a few, there are numerous boreholes for groundwater monitoring, roads, access tracks, road bridges, road barriers, culverts and fencing.
  - 1.10.2 Sembcorp's interest as per NTG's Deadline 11 submission (REP11-043), allows Sembcorp rights to install their own service media. Sembcorp's Protective Provisions are for the benefit of Sembcorp, not NTG. Sembcorp's and NTG's infrastructure bases are similar but ultimately different. There are many overlapping Protective Provisions in the corridor. NTG do not understand why they are being treated differently to other asset owners and don't have the level of protection required. Furthermore, Sembcorp's Deed of Easement only covers part of the Order limits.
  - 1.10.3 NTG has the control over and may lay new apparatus within the North Tees Pipeline Corridor. It is NTG who has the final say over who lays service media and on what basis in the pipeline corridor.
- 1.11 As of Deadline 13, 7<sup>th</sup> November 2022, the Applicant has stated no amendments will be made to the PP's. However, both parties can progress these after the final deadline of

the Examination and submit these to the Secretary of State/ the ExA. NTG don't understand the reasons as to why progress could not have been made within the Examination period.

- 1.12 Given the distinct lack of progress made, NTG would refer the ExA to the representation at Deadline 12 by NTG (REP12-136) in relation to the specific points around the Protective Provisions. The Deadline 12 submission is attached to this Representation as Annex 1 and they should be considered to be repeated in full and part of this submission.

**Comments on any other information submitted at Deadline 12**

2. NTG note the following comments received by the Applicant at Deadline 12. NTG have provided an update in the Table below, at Deadline 13.

D11 NTG Submission	D12 Applicant Response	D13 NTG Response
8 NTG, through its constituent companies, is the freehold owner of the North Tees Pipeline Corridor. NTG retain legal possession of the Pipeline Corridor and some of the assets and infrastructure within it. NTG has the control over, and may lay, subject to conditions, new apparatus laid within the North Tees Pipeline Corridor	The Applicants agree that NTG is the land owner of parts of the pipeline corridor, as recorded in the Book of Reference (Document Ref. 3.1, final version being submitted at Deadline 12). The Applicants' negotiations with NTG to acquire the rights to carry out and operate the Proposed Development reflect the fact that NTG is the freehold owner.	As per the timeline laid out in Item 1, NTG believe the Applicant has unreasonably delayed the negotiations and as of D13, NTG is still awaiting a response to the latest version of Heads of Terms, agreement to meet to discuss the land plans, updated Protective Provisions, a draft option agreement and a draft easement. NTG have been sending many chasers to the Applicant, but they are repeatedly delaying.
9 The Pipeline Corridor is subject to an easement in favour of Sembcorp dated 31st December 1998 ("the Easement"). Under the Easement Sembcorp have certain "Specified Rights" defined in schedule 1, as attached at Annex 3. Further, under the terms of the Easement the parties expressly acknowledged that certain apparatus was owned by the grantee and	See the Applicants' comments on paragraph 8 above, and previous submissions relating to the respective roles of Sembcorp and NTG. The Applicants are not clear that NTG's statement that it owns "all apparatus and structures not owned by Sembcorp" is correct, as the Applicants would understand that apparatus is also owned by other	NTG have been incredibly clear with the Applicant on the position for several years. NTG welcome the fact that the Applicant has acknowledged that NTG own apparatus in their pipeline corridor. NTG would like to understand with a high degree of urgency, why their Apparatus does not benefit

<p>other apparatus was owned by the grantor. Sembcorp hold a lease for a term expiring on 31 December 2048 from NTG of parts of plots 119-120 and the whole of 121. Subject only to these Sembcorp easement and leasehold rights, NTG retains legal possession of the corridor, all apparatus and structures not owned by Sembcorp, and with all the related responsibilities of an owner in possession of land used as a Pipeline Corridor serving a number of chemical industries. It is NTG that has control of what additional apparatus may be laid in the Pipeline Corridor. Subject to certain conditions in the easement, NTG has a right to lay add</p>	<p>third parties, such as Northumbrian Water Limited (and who for instance benefit from their own protective provisions in Schedule 12).</p>	<p>from the same level of protection as others.</p>
<p>10 At various positions there are culverts running under the Pipeline Corridor from one side to the other, two of which are quite large. These were seen by the ExA on the ASI. There are related retaining walls in various positions. There are numerous boreholes for ground water monitoring associated with environmental monitoring and the management of NTG's estate. There are also roads, access tracks, road bridges, road barriers and fencing. In respect of that part of the Pipeline Corridor the subject of the Easement, the previous paragraph above notes the split as to ownership of apparatus as between Sembcorp and NTG. As owner, and through its constituent companies, the</p>	<p>The Applicants note the matters raised by NTG as to ownership and apparatus within the pipeline corridor. The Applicants' previous submissions in relation to NTG's role and the adequate protective provisions remain relevant – see the Applicants' Comments on D9 Submissions &amp; Additional Submissions [REP11-014] on electronic pages 20-33.</p>	<p>NTG thank the Applicant for noting that NTG have a significant asset and infrastructure base in their own pipeline corridor. NTG would like to understand with a high degree of urgency, why their Apparatus within their pipeline corridor does not benefit from the same level of protection as others. NTG would also kindly remind the Applicant and that it is NTG who has ultimate control over their pipeline corridor.</p>

<p>party in possession in respect of the Easement area, NTG has supervisory, management and monitoring responsibilities</p>		
<p>11 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 extent of the New Rights that are being sought in dDCO (REP8-003).</p>	<p>The Applicants agree that the tests in S122 apply where compulsory acquisition powers are sought, and have set out previously the overarching compelling case (see for instance the Statement of Reasons (Document Ref. 3.2, updated version being submitted at Deadline 12) and the Applicants' Written Summary of Oral Submissions at CAH1 [REP1-037]).</p>	<p>NTG do not believe that there is a compelling case for CA and TP powers over their property. NTG are willing to engage on a voluntary basis.</p>
<p>12.1 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.</p>	<p>Refer to the Applicants' response to paragraph 6 in Comments on D9 Submissions &amp; Additional Submissions [REP11-014] on electronic page number 21.</p>	<p>NTG do not believe rights in perpetuity is appropriate.</p>
<p>12.2 Second, the areas over which both the New Rights and TP 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</p>	<p>Refer to the Applicants' response to paragraph 7 in Comments on D9 Submissions &amp; Additional Submissions [REP11-014] on electronic page number 22.</p>	<p>The Applicant has not addressed the question and has submitted different land plans in the Statement of Common Ground (REP12-127) and the land plans in the DCO (REP12-015). The extents and areas covered remain excessive and are wholly inappropriate to execute the Project requirements.</p>

<p>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 other 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 other safety purposes, and the under should not have possession as envisaged by Articles 31 and 32 of the dDCO (REP8-003).</p>		
<p>12.3 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</p>	<p>Refer to the Applicants' response to paragraph 8 in Comments on D9 Submissions &amp; Additional Submissions [REP11-014] on electronic page number 22.</p>	<p>NTG's view is that the Protective Provisions are inadequate in this regard.</p> <p>NTG requested a clear statement in the Protective provisions that the Applicant would not reduce the width or obstruct access/ egress routes.</p>
<p>12.4 Fourth, 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</p>	<p>Refer to the Applicants' response to paragraph 10 in Comments on D9 Submissions &amp; Additional Submissions [REP11-014] on electronic page number 25.</p>	<p>NTG's view is that the Protective Provisions are inadequate in this regard.</p> <p>NTG requested a clear statement in the Protective provisions that the Applicant would not reduce the width or obstruct access/ egress routes.</p>



<p>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.</p>		
<p>12.5 Fifth, the use of powers of CA is totally unnecessary as NTG and the Applicant as part of the voluntary arrangement have agreed that the Applicants can place a pipe within the Pipe Zone area only. It is only the unreasonable delay by the Applicant that has prevented the conclusion of those negotiations.</p>	<p>Refer to the Applicants' response to paragraph 11 in Comments on D9 Submissions &amp; Additional Submissions [REP11-014] on electronic page number 25. In addition the Applicants note that NTG has confirmed in the Statement of Common Ground (Document Ref. 8.30, further version being submitted at D12, paragraph 4.11.3) that there should be a commitment by the Applicants "not to exercise CA powers... once an Option agreement is in place". The Applicants have, as for other land owners, offered to include a clause in the option agreement which prevents CA powers being exercised unless the agreement is breached.</p>	<p>NTG's view is that the Applicant has unreasonably delayed negotiations.</p>
<p>12.6 Sixth, NTG own in excess of 600 acres of land in the vicinity capable of development: see Annex 1. 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</p>	<p>Refer to the Applicants' response to paragraph 12 in Comments on D9 Submissions &amp; Additional Submissions [REP11-014] on electronic page number 26. In addition, the Applicants note that NTG's submissions at Deadline 11 in relation to economic harm are assertions and no evidence or detail is provided in relation to potential development of NTG's land, its form, timescales, or prospects of it coming forward, nor is</p>	<p>NTG own in excess of 600 acres of land in the vicinity capable of development. There is significant interest in the site from developers. NTG have requested that the Applicant provide confirmation in the Protective Provisions that the Applicant would act in good faith with regard to cooperating with others recognising that the pipeline corridor is a multiuser corridor serving</p>

<p>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. NTG invite the ExA to comment on the potential loss of several hundred job opportunities given the immense degree of uncertainty this wholly unnecessary sterilisation of the North Tees Pipeline Corridor will provide inward investors. NTG's view is that the Applicant has not addressed and has grossly underestimated the economic harm and loss of employment that their potential Project will cause. NTG invite the ExA to comment upon the reasons why this potential Project could sterilise the North Tees development land for a period of 5 years due to the simple fact that the Applicant doesn't know where they are going to lay the pipe and does not want to engage in voluntary agreements as per every other pipeline owner.</p>	<p>any evidence provided as to the number or nature of jobs NTG say could be created. These matters are highly relevant to the Examining Authority's assessment of the position, and the Applicants refer to their response to CA.2.8 (electronic page 34 of Applicants' Response to the ExA's Second Written Questions [REP6-121].</p>	<p>extensive development land.</p>
<p>13.1 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</p>	<p>Refer to the Applicants' response to paragraph 9.a) in Comments on D9 Submissions &amp; Additional Submissions [REP11-014] on electronic page number 22</p>	<p>NTG's view is that the Protective Provisions are inadequate in this regard and requested a clarificatory statement in the Protective Provisions that left no doubt that any entry onto NTG's</p>



<p>reasons TP cannot be taken of these plots as access to the fire 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 TP. 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.</p>		<p>landholding requires consent.</p>
<p>13.2 Plot 124b is an area of land south of the Access Road. NTG repeats paragraph 7.2(iv) above relating to its objection to various crossing points being subject to TP. NTG must have unobstructed access across these crossing points at all times for management and safety reasons. The protective provisions at dDCO schedule 12, part 26 do not protect any land of NTG within the Order limits, and are therefore of no assistance.</p>	<p>Refer to the Applicants' response to paragraph 9.b) in Comments on D9 Submissions &amp; Additional Submissions [REP11-014] on electronic page number 24.</p>	<p>NTG's view is that the Protective Provisions are inadequate in this regard.</p> <p>NTG requested a clear statement in the Protective provisions that the Applicant would not reduce the width or obstruct access/ egress routes.</p> <p>The Applicant has stated on both the ASI to the ExA and NTG, that NTG can rely on their Protective Provisions.</p> <p>The Protective Provisions refer to operations and NTG have requested a clear statement and clause that any entry onto NTG land for any purpose construction or maintenance requires consent and approval of works.</p>
<p>13.3 The time period for the exercise of TP of land for construction should be specified in Article 31 as</p>	<p>Refer to the Applicants' response to paragraph 9.c) in Comments on D9 Submissions &amp; Additional</p>	<p>The Applicant is changing their position around construction and the scope of activities that falls within</p>

<p>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.</p>	<p>Submissions [REP11-014] on electronic page number 24.</p>	<p>construction. The Applicant needs to be under a specific obligation not to obstruct or hinder other users through all phases of construction with regards to other user activities such as construction, repairs and maintenance.</p>
<p>14 The Applicant's justification for the width of the pipeline is REP8-051. This document admits that design is at an early stage (para 2.2.3), and that the proposed pipe could be routed anywhere within the existing pipelines/structures and therefore the Applicant needs to maintain the flexibility allowed by the acquisition of new rights within the areas shown on the Land Plans: see para 2.2.6. In summary, REP8-051 accepts that no precise location of the proposed pipe has yet been designed out, that it could go anywhere within the corridor, and that the only reason for the width of the corridor is that it gives the Applicant a choice of where to put the pipeline. That is no engineering or technical justification supporting the case for the full width of New Rights sought (about 70m), as it is quite clear that the whole width of the Pipeline Corridor will not be required for the pipeline. Requiring the whole width because the Applicant is not sure where to put the pipeline cannot justify compulsory acquisition as it shows that there is no</p>	<p>The Applicants do not consider that these submissions by NTG add to the general points it has made previously in relation to the pipeline corridor, and the Applicants' explanation in REP8-051 remains robust and clear. That includes an explanation as to the position reached in design, which is not unusual for a project of this nature at this stage in the consenting, engineering and land process for a major piece of nationally significant infrastructure, and the need for flexibility to be maintained to ensure that the Proposed Development can be delivered. The Applicants have confirmed that rights would only be acquired to the extent required following conclusion of the relevant processes, and which would include liaison with landowners and operators of apparatus, both informally as part of the Applicants' stakeholder engagement process and formally as secured by protective provisions (relating to NTG specifically and to others with interests in the pipeline corridor). None of that reduces the compelling case in the</p>	<p>That is no engineering or technical justification supporting the case for the full width of New Rights sought (about 70m), as it is quite clear that the whole width of the Pipeline Corridor will not be required for the pipeline. Requiring the whole width because the Applicant is not sure where to put the pipeline cannot justify compulsory acquisition as it shows that there is no compelling case for the whole width.</p>

<p>compelling case for the whole width.</p>	<p>public interest which the Applicants consider exists for the compulsory acquisition of rights sought in relation to NTG (and other) land within the corridor. Indeed, if the Applicants were to seek reduced rights (geographically or in nature) then there is a very real risk that they could not deliver the Proposed Development, and the lack of rights would present an impediment to it proceeding.</p>	
<p>15 In summary, the Justification of Corridor Widths show that the Applicant does not know where or how they are going to lay the carbon dioxide pipeline and therefore the Applicant seeks CA and TP rights more than what they will ever require to cover any potential eventuality. This approach, after almost 2 years of discussions, is not reasonable or proportionate given the knock-on consequences for existing and future businesses. Furthermore, the approach is wholly unprecedented for the North Tees Pipeline Corridor</p>	<p>See the Applicants' comments in respect of paragraph 14 above. The Applicants welcome to acknowledgement that there have been almost 2 years of discussions.</p>	<p>NTG welcomes an acknowledgement from the Applicant that following 2 years of discussions, NTG are still awaiting an updated set of Heads of Terms, a first draft option or an easement and protective provisions that would reflect the most basic levels of protection a freehold owner requires.</p>
<p>16 The ExA should not treat REP8-051 as an engineering or technical document. Firstly, NTG submits that the author, checker and approver are the same individual. It summarises the level of resource and approach by the Applicant to this Project with regards to and in consideration of other</p>	<p>The Applicants are currently in FEED, developing the design and execution strategy of the Proposed Development. The Applicants have a competent and experienced project delivery team in place progressing the Proposed Development. This includes extensive</p>	<p>NTG do not understand why FEED for the precise routing cannot be undertaken to protect current and future businesses. NTG stress there are contractors with extensive resource and experience in the region that would be able to deliver routing of the pipeline in a short</p>

<p>existing businesses. There are numerous engineering consultants that could have been engaged that have laid pipelines in the North Tees Pipeline Corridor recently and will be doing so on other Projects imminently. NTG do not understand why FEED for the precise routing cannot be undertaken to protect current and future businesses.</p>	<p>engineering, construction, operations and project management resource directly supporting the project. The Applicants developed the Order Limits with support from pre-FEED contractors who have direct and relevant experience in the Teesside region and specifically the Sembcorp pipeline corridor. During FEED, the Applicants are again utilising contractors with extensive resource and experience in the region. These extensive resources have been utilised in the development of the Application and supported during Examination. It is simply not correct, as NTG appear to assert, that the Applicants do not have or have not engaged appropriate and professional expertise</p>	<p>timeframe should the Applicant chose to engage with them.</p>
<p>17 The excessive rights sought by the Applicant will blight and sterilise the established Pipeline Corridor for many years and adversely affect NTG and other occupiers and tenants. The pipeline is an established commercial Pipeline Corridor governed by pre-existing legal documentation the majority of which dates back to 1998 regulating its use of operation and procedures for work where commercial terms can be readily agreed, where there is full engagement by the developer.</p>	<p>See the Applicants' response to paragraph 14 above, and its Comments on D9 Submissions &amp; Additional Submissions [REP11-014] (electronic pages 15-33).</p>	<p>The excessive rights sought by the Applicant will blight and sterilise the established Pipeline Corridor for many years and adversely affect NTG and other occupiers and tenants. NTG have offered sensible proposals to mitigate this position such as 1) no removal of apparatus unless required to do so from an engineering perspective in terms of modifying support infrastructure 2) having regard to efficient use of the corridor and the Applicant should act in good faith and cooperate to ensure the ongoing use of the corridor as a multiuser facility by existing and future users.</p>

		<p>All of these reasonable requests within proposed protective provisions have been rejected. NTG would accept the position that the Applicant could move Apparatus if there was no available room in the pipeline corridor to construct the authorised development. However, this is a three-dimensional pipeline corridor. The dDCO in its current format will create uncertainty for both NTG and persons wishing to utilise the pipeline corridor now and in the future.</p>
<p>18 As per the ASI, there should be obligations put on the Applicant to make the most efficient use of the corridor having regard to its current and future use as an essential pipeline commercial corridor serving the industrial Tees basin. There is ample empty space in the middle of the Pipeline Corridor for a new pipeline.</p>	<p>The Applicants would note that representations should not be made during an ASI, to ensure fairness to all parties involved in the examination which is principally a written process and with hearings as set by the Examining Authority. The Affected Party's case should be set out fully in its written representation (due at Deadline 2 in this examination), with later representations only clarifying and building on that. This comment applies to a number of rows below (and is not repeated), where NTG appear to suggest that representations were made at the ASI. The Applicants have conducted a number of surveys of the pipeline corridor to establish the existing conditions and support the routing design. As part of this, the Applicants note NTG's comments on space in the middle of the corridor. The</p>	<p>NTG would note that the ExA and the Applicant were present at the ASI and facts were only presented during the ASI. NTG's position is as previous. The Applicant should make the most efficient use of the corridor having regard to its current and future use as an essential pipeline commercial corridor serving the industrial Tees basin. There is ample empty space in the middle of the Pipeline Corridor for a new pipeline.</p>

	<p>Applicants will look to utilise available space wherever possible to minimise the impact on existing apparatus. However, the Applicants would note that the routing of the pipeline will not be consistent along the length of the pipeline corridor within NTG land. Existing apparatus enters and exits the corridor at numerous points, therefore the available space varies and is inconsistent. The Applicants are developing a proposed routing taking into account these constraints, and any other constraints that may exist following further surveys, liaison or development by others. The Applicants would also clarify that if Work No. 6 is located in the centre of the pipeline corridor, then the Applicants would still need permanent access rights between the existing access track and the pipeline position, to construct, maintain and operate the pipeline. These rights would be continuous and extend between the final position of the pipeline and the existing access track, over all existing apparatus in between. Rights would also still be required over the existing access track. The Order limits would not, given those circumstances, be any different even if positioning the pipe in the centre of the corridor were possible.</p>	
<p>19 As per the ASI, TP powers should not be authorised for areas such</p>	<p>It is clearly unworkable for powers (whether for compulsory acquisition or</p>	<p>Removing crossing points onto and off the access track does not leave holes</p>



<p>as crossing points to access tracks or where there is existing infrastructure/ pipelines already laid and where emergency equipment is in-situ.</p>	<p>temporary possession) to be excluded for parts of the corridor, such as the situations cited by NTG. This would leave significant 'holes' in the Applicants' powers in the DCO and would very likely mean that the Proposed Development was not deliverable. The appropriate solution is protective provisions, see the Applicants' Comments on D9 Representations and Additional Submissions [REP11-014] (various points from electronic page 20 onwards).</p>	<p>in the Applicants powers. That assertion is incorrect. NTG looks forward to understanding why the Applicant believes it does after 2 years of discussions.</p>
<p>20 The Applicants have provided very little actual engineering justification for the widths selected over each part of the Corridor. Para 2.2.3 of REP8-051 states "The new rights extend from 1m outside the edge of the existing northern access track to 1m outside the edge of the existing southern access track." NTG submit that in relation to Plot 120 and Plot 119, where there is no southern access track, the Applicant has chosen an additional area of 20m with no justification.</p>	<p>In plots 119 and 120, there is no established access track for the southern part of the pipeline corridor. The Applicants have assessed this area of the corridor during the development of the Order Limits. It was determined that as there is no established access then additional Order Land was required to support with construction and maintenance access. Plot 119 would also support the construction and maintenance of the pipeline within the existing elevated pipebridge. Due to the elevation, crane operations and working at heights would be required - this form of construction has a greater demand for staging areas for materials and plant compared to areas of the pipeline corridor where only 'at grade' working is required.</p>	<p>The Applicants have provided very little actual engineering justification for the widths selected over each part of the Corridor.</p>
<p>21 There is no specific reference to any existing</p>	<p>The Applicants have made reference to existing</p>	<p>NTG disagrees that existing apparatus has</p>

<p>apparatus in REP8-051. For example, if the ExA can recall from the ASI, that there is a 132kV pylon and overhead cables on Plots 120 and 119. The NTG raise the issue as to why CA powers sought in areas that are simply sterilised from current existing apparatus. The Applicant has not provided any justification or made any reference to such apparatus.</p>	<p>apparatus in paragraphs 2.2.7 – 2.2.9 of Justification of Corridor Widths [REP8-051]. The Order limits have been specifically set bearing in mind the existing apparatus, and the potential for additional apparatus to be installed prior to the Proposed Development being delivered, as explained in that document.</p>	<p>been referred to with any level of site-specific detail in paragraphs 2.2.7 – 2.2.9 of Justification of Corridor Widths [REP8-051].</p>
<p>22 NTG has stressed throughout the process that the Applicants should not construct apparatus within the existing access tracks or reduce their width through any modifications. The access tracks cannot be reduced any further and are required to allow emergency access/ egress and for vehicles such as cranes for lifting. NTG has retained throughout the Examination that there should be an alternative right for access purposes and the carte blanche sterilisation of everything approach in unreasonable and unacceptable. There is no methodology or rationale to support any of the land requirements by the Applicant.</p>	<p>The Applicants have addressed the approach to access tracks in the Justification of Corridor Widths [REP8-051], and in the protective provisions in Applicants' Comments on D9 Representations and Additional Submissions [REP11-014] (various points from electronic page 19 onwards)</p>	<p>Firstly, NTG does not have sufficient protection in the Protective Provisions as per the previous comments.</p> <p>Secondly, the Justification of Corridor Widths [REP8-051], gives no comfort with regards to the Applicant not reducing access track widths as part of the authorised development.</p>
<p>23 As explained to the ExA and stressed during the ASI there has been significant, recent Projects and ones that are imminent where the construction of pipelines have comfortably fitted within the existing pipezone area (such as the central area) without the need for additional, excessive land. NTG does</p>	<p>The Applicants have illustrated within cross section C of Justification of Corridor Widths [REP8-051] the key existing features within the Order Limits. When these features are assessed with the associated rights sought by the Applicants, as illustrated by cross section C, it shows the</p>	<p>Cross section C of Justification of Corridor Widths [REP8-051] is not to scale and is not representative of the pipeline corridor.</p>

<p>not accept the Applicants' assertion that a large width corridor is necessary for these purposes and submits that the ExA cannot place any reliance on the Applicants' position without further specific justification being provided. It would be helpful if the Applicants could at least reference one site specific piece of apparatus for NTG to comment.</p>	<p>basis behind the extent of the compulsory acquisition rights extends from the outer edge of the northern access track to the outer edge of the southern access track. It also illustrates the central area which currently has no existing apparatus (and see the response to point 18 above in relation to that).</p>	
<p>24 NTG notes that Cross Section C (Work No 6) is one of the narrowest sections of the corridor. NTG question why the cross section is not to scale and why the cross section is presented in this manner it is when the Applicant entered onto NTG land to undertake 3D imaging and surveying. These images would be more beneficial to the ExA. The cross section is misrepresentative of the facts and one can only assume the details of the survey have not been provided or presented to the ExA as it would identify there is a clear and reasonable path for the development in the centre space.</p>	<p>The purpose of the cross sections is to illustrate the DCO Order Limits and powers in relation to the existing pipeline corridor and access routes. These are to supplement the basis and justification set out in Justification of Corridor Widths [REP8-051]. The objective is not to outline the specific location of individual apparatus, such as via a 3D survey. Instead, cross section C outlines the fundamental features at that point of the pipeline corridor in relation to the extent of rights sought.</p>	<p>Cross section C of Justification of Corridor Widths [REP8-051] is not to scale and is not representative of the pipeline corridor</p>
<p>25 Absent any specific, detailed and particular explanation to the rights sought, NTG submits that the ExA should conclude that the Applicants have not demonstrated why all the rights sought are necessary.</p>	<p>The Applicants refer to the points above and those in earlier submissions as referenced above.</p>	<p>NTG refers to the points above.</p>

<p>26 NTG sees no reason why a proportionate and reasonable assessment with due regard to the existing and future apparatus and arrangements in the North Tees Pipeline Corridor cannot be provided following 2 years of discussions</p>	<p>The Applicants refer to the points above and those in earlier submissions as referenced above.</p>	<p>NTG refers to the points above.</p>
<p>27 The Applicants intimate that their aim is "to minimise sterilisation of land" for certain parts of the corridor. This pays insufficient regard to the fact that the land affected by the dDCO will be blighted and other development effectively prevented in the interim. In these circumstances, the unnecessary and overly broad inclusion of land within the North Tees Pipeline Corridor within the dDCO powers runs completely contrary to the Applicants stated aim. NTG submit that the ExA should conclude that the Applicant has not produced land plans to minimise sterilisation of land based on representations to date and the ASI.</p>	<p>The Applicants refer to the points above and those in earlier submissions as referenced above.</p>	<p>NTG refers to the points above.</p>
<p>28 To summarise, it is NTG's submission that the site boundary/ easement area is simply too large and in part, inappropriate. Therefore, the area sterilised is too large, and the extent is excessive for the NZT Project requirements. This can be evidenced from the basic fact that the Applicant has agreed a 1 metre easement in the voluntary</p>	<p>The Applicants refer to the points above and those in earlier submissions as referenced above.</p>	<p>NTG refers to the points above.</p>

<p>agreement. Therefore, the sterilisation is unnecessary and excessive. The rights sought extend well beyond the pipezone and ultimately there has been no engineering or technical justifications given for the proposals and no site specific considerations as per REP8-051.</p>		
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As of Deadline 13, 7th November 2022, NTG are still awaiting revised Heads of Terms from the Applicant along with a draft option and easement for consideration. NTG hereby strongly reconfirm their objection to the Net Zero Teesside Project and Development Consent Order Application and the grant of compulsory rights over their property and rights.

Kind Regards.

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# Annex 1



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01.11.22

Our Ref: **Our Ref: 0006-P1A4.5NTLLET018**

## **Planning Act 2008 (as amended) – Section 55**

**Application by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited for an Order granting Development Consent for the Net Zero Teesside (“NZN”) project**

**Planning Inspectorate Reference: EN010103**

**Unique Reference: NZTP – AFP048, NZTP – AFP049, NZTP – AFP050**

### **Deadline 12 – *Various matters***

I refer to the above application for an Order granting development consent made under section 37(2) of the Planning Act 2008 (PA2008) received by the Planning Inspectorate on 19 July 2021 and accepted for examination on 16 August 2021.

The application seeks development consent to authorise the construction, operation, and maintenance of the NZT Project (specifically a carbon dioxide pipeline) on land at and in the vicinity of the former Redcar Steel Works Site, Redcar and in Stockton-on-Tees, on Teesside.

North Tees Land Limited (“NTLL”), North Tees Limited (“NTL”) and North Tees Rail Limited (“NTRL”), together North Tees Group (“NTG”) hold various interests within the site boundary in relation to the application by the Promoters for a development consent order (“the DCO”).

As per the deadline matters 12 set in the examination timetable for the DCO, NTG are responding to the Examining Authority (ExA) with the following points.

### **NTG’s proposals for protective provisions are at Annex 1 hereto – Protective Provisions for the Protection of North Tees Limited, North Tees Rail Limited and North Tees Land Limited.**

1. Following NTG’s Deadline 11 submission (REP11-043), NTG submits that the ExA should take into account the following factual timeline of events when considering protective provisions:



- 1.1 Project engagement and Kick Off Meetings held between the Applicant and NTG 8th December 2020.
  - 1.2 First land plans and Heads of Terms circulated from the Applicants agent 22nd February 2020.
  - 1.3 First protective provisions were received by NTG from the Applicant on 16th August 2022.
  - 1.4 A call was subsequently held with the Applicants agent and NTG where NTG stressed the Protective Provisions do not reflect the agreed position in the voluntary agreement or indeed deal with any land within the Order limits. The Applicant stated they would provide a mark-up of the protective provisions in due course.
  - 1.5 A marked up set of protective provisions was received by the Applicant Friday 14th October 2022. Unfortunately, the marked-up document did not reflect anything that was agreed between NTG and the Applicant.
  - 1.6 NTG responded in full on Wednesday 19th October 2022. NTG have sent numerous consistent repeated chasers to have a call/ discussion with the Applicant and have not had commitment to meet even though during the ISH5 on Tuesday 19th October 2022, the Applicant stated they would do so. Please refer to transcript on Examination library.
  - 1.7 As of Deadline 11, 26th October 2022, NTG await a response and a commitment to meet from the Applicant.
  - 1.8 On 28<sup>th</sup> October 2022 at 17:00, NTG received a written response from the Applicant. Unfortunately, the document is marked without prejudice, therefore NTG are unable to Annex the response. The late mark-up and engagement are both disappointing and frustrating. However, NTG have summarized key areas in Point 2 below.
  - 1.9 As of Deadline 12, 1<sup>st</sup> November 2022, the Applicant has not wanted to meet NTG despite stating during the ISH5 on Tuesday 19th October 2022, that they would do so.
2. NTG note the following from the mark-up of Protective Provisions received from the Applicant, 28<sup>th</sup> October:
    - 2.1 The general position of the Applicant is that NTG are not entitled to similar provisions as Sembcorp as NTG's status is different.
      - 2.1.1 NTG would like to remind both the Applicant and the ExA that NTG, through its constituent companies, is the freehold owner of the North Tees Pipeline Corridor. NTG retain legal possession of the Pipeline Corridor and some of the assets and infrastructure within it. NTG has the control over and may lay new apparatus within the North Tees Pipeline Corridor. The Applicant is wholly wrong in their assertion as it is NTG who has the final say over who lays service media and on what basis in the pipeline corridor.
      - 2.1.2 Sembcorp's interest as per NTG's Deadline 11 submission (REP11-043), allows Sembcorp rights to install their own service media.

- 2.2 The position of the Applicant not allowing NTG to protect their assets and infrastructure is unprecedented. NTG have been incredibly clear from the outset and the Applicants position remains unchanged without justification or reasoning.
- 2.2.1 Both the ExA and the Applicant (from the ASI and the Applicant from numerous site inspections) are aware of NTG's asset and infrastructure base. To name but a few, there are numerous boreholes for groundwater monitoring (associated with environmental monitoring and the management of NTG's estate), roads, access tracks, road bridges, road barriers, culverts and fencing.
- 2.2.2 Under the terms of the Sembcorp Easement, the parties expressly acknowledged that certain apparatus was owned by the grantee and other apparatus was owned by the grantor. NTG have a significant asset and infrastructural base in the pipeline corridor that simply needs protection along with other asset owners.
- 2.2.3 Sembcorp hold a lease for a term expiring on 31 December 2048 from NTG of parts of plots 119-120 and the whole of 121. Subject only to these Sembcorp easement and leasehold rights, NTG retains legal possession of the corridor, all apparatus and structures not owned by Sembcorp, and with all the related responsibilities of an owner in possession of land used as a Pipeline Corridor serving a number of chemical industries.
- 2.2.4 Finally, NTG have pre-existing contractual obligations that it must meet for its asset and infrastructure base. These will be significantly impaired and hindered without Protective Provisions.
- 2.2.5 To summarise, the Applicant is making a false assumption that NTG have no assets or infrastructure in its pipeline corridor. NTG has consistently made the Applicant aware throughout the entire Examination process and the position was further emphasised as part of the ASI, 20<sup>th</sup> Oct 22, with various infrastructural features being identified.
- 2.3 NTG are concerned at the Applicants lack of understanding of the pipeline corridor. As recent as the latest correspondence of 28<sup>th</sup> October 2022, the Applicant has stated Sembcorp have an obligation to operate and maintain the pipeline corridor. There are simply no such provisions in the Deed of Easement outwith Sembcorp's own apparatus.
- 2.4 The DCO is drafted with many overlapping Protective Provisions. The Applicant is repeatedly stating to NTG that NTG cannot benefit from Protective Provisions as it is covered by Sembcorp. That is simply not the case. The rights, assets and infrastructure of NTG need to be protected even if they are in close proximity to other apparatus.
- 2.5 The Applicant has raised concerns over Para 313 of Annex 1, the importance of this is NTG regulate access and control works undertaken on their land including the NTG pipeline corridor. NTG have contractual commitments in relation to ground conditions and operate a groundwater monitoring system as part of their estate management. It is essential for NTG to have adequate protection in relation to third parties accessing land

and undertaking activities that may have an impact upon the environmental condition of NTG's landholding. Sembcorp do not have responsibility for these matters under the Deed of Easement.

- 2.6 The Applicant has raised concerns over Para 309 (1). This is a basic level of compromised protection to provide a degree of certainty both to NTG and those deriving title through them that their Apparatus can be installed without fear of unnecessary removal/ interruptions in supply. This goes to the heart of NTG's concerns with regards to extensive land sterilisation.
- 2.7 The Applicant has raised concerns over Para 311. The Applicant has agreed this as part of the voluntary negotiations, and this is reflective of pre-existing obligations imposed on parties using the pipeline corridor.
- 2.8 The Applicant has raised concerns over Para 315 limbs c and d. NTG's response is as follows.
- 2.8.1 As part of the ASI, the ExA became visually aware that the pipeline corridor can accommodate future pipe owners/ users as firstly, it is a 3-dimensional site and secondly, there was ample space in the centre of the pipeline corridor. Thus, consideration should be given to the economic and efficient use of the pipeline corridor and positioning/ routing of any future pipeline.
- 2.8.2 The Applicant has agreed to lay the pipeline within the pipe zone extents as part of the voluntary agreement.
- 2.8.3 Furthermore, this position is entirely consistent with the Applicant statement "to minimise sterilisation of land" for certain parts of the corridor stated in the Justification of Corridor Widths submission [REP8-051].
- 2.9 The Applicant has raised concerns over Insurance provisions Para 317. It is NTG's position that:
- 2.9.1 Prior to undertaking works on NTG land, the undertaker must have appropriate insurance in place.
- 2.9.2 The level of insurance must be at an appropriate amount and any dispute over that should be determined by an arbitrator.
- 2.9.3 Sembcorp are not contractually obliged to NTG to maintain or manage insurance levels in the pipeline corridor. Therefore, NTG need an ability to ensure that operators are carrying adequate insurances. The absence of this would cause concern to future pipeline owners/ users.
- 2.10 The Applicant has raised concerns over repair provisions Para 318-321. It is NTG's position that:
- 2.10.1 This is a reasonable position to NTG as a landowner.

- 2.10.2 It is not appropriate to undertake works to construct a building or letdown station in the pipeline corridor. The Applicant has agreed this in the voluntary agreement.
- 2.10.3 As per the ASI, the ExA were made aware any redundant pipes are always safely decommissioned and removed. 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.
- 2.11 The Applicant has raised concerns over expense provisions in Para 322 based upon its belief that NTG should not have the same protections as Sembcorp. It is NTG's position that:
- 2.11.1 In practice and reality, NTG undertake reviews and construction and alteration licences for works within the pipeline corridor and furthermore, direct and approve routing.
- 2.11.2 NTG do require similar coverage of expenses to Sembcorp.
- 2.12 The Applicant has raised concerns over indemnity provisions in Para 316. The Applicant is seeking to limit its indemnity only to matters arising from construction of the Works. It is NTG's position that:
- 2.12.1 The indemnity should cover any losses from the construction of the Works and thereafter anything arising from the use of the authorised development, its maintenance, or any failures on the part of the undertaker to act in accordance with its obligations.
- 2.12.2 The indemnity should also cover issues associated with environmental matters such as contamination, migration of contamination and exacerbation of existing contamination.
- 2.12.3 The indemnity should not be limited by excluding indirect, consequential or loss of profits. This is a position that has been agreed with many other interested parties in the context of their Protective Provisions.
- 2.13 In relation to Para 330(1), NTG do not understand why the Applicant is not prepared to make clear that they will cooperate, act reasonably and in good faith to facilitate other parties future use of the corridor. It is NTG's position that this is essential wording to protect against the significant risk of long-term sterilisation of the pipeline corridor as identified in Deadline 11 submissions (REP11-043 Para 18, 27&28).
- 2.14 In Para 330 (2), NTG do not understand why the Applicant is not prepared to keep NTG informed with development, so that NTG can plan the ongoing use and management of the pipeline corridor by itself or tenants or third parties.

- 2.15 Para 331 was introduced by NTG into the Protective Provisions to address concerns regarding the Temporary Possession (“TP”) rights and specifically ensuring unobstructed use of access routes and crossing points to TP areas for operational activities. The Applicant specifically stated NTG should rely on the Protective Provisions and has resisted amending the extent of these rights in the land plans. It now appears however the Applicant is refusing to include express and clear provisions within the Protective Provisions to deal with the concerns of NTG. These concerns were emphasised in Deadline 11 (REP11-043), and the ExA as part of the ASI.
3. NTG wish to draw the ExA to the attention of the Statement of Commonality, REP9-012. Section 8.3 for NTG is incorrect. Topics such as Compulsory Acquisition and Temporary Possession, Decommissioning, Development Consent Order are clearly subject to disagreement and should be in red.
4. NTG wish to draw the ExA to the attention of the Statement of Commonality, REP11-020. Section 49 for NTG is incorrect. Firstly, the latest Statement of Common Ground submission is incorrect. The Applicant said it was at Deadline 2 but it was at Deadline 7. Secondly, the wrong version was submitted at Deadline 7 (REP7-004). The ExA is aware of this. Finally, the statement regarding next steps is incorrect. In NTG’s view, the Applicant has unreasonably delayed negotiations. As of 1st November 2022, NTG are still awaiting revised Heads of Terms from the Applicant along with a draft option and easement for considerations.

NTG hereby strongly reconfirm their objection to the Net Zero Teesside Project and Development Consent Order Application and the grant of compulsory rights over their property and rights.

Kind Regards.

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# Annex 1

## Schedule 12

### PART 26

#### FOR THE PROTECTION OF NORTH TEES LIMITED, NORTH TEES RAIL LIMITED AND NORTH TEES LAND LIMITED (“NT GROUP”)

#### 306.

For the protection of NT Group (as defined below) the provisions of this Part have effect for the benefit of owners and operators in NT Group and their successors in title and the NT Group Pipeline Corridor unless otherwise agreed in writing between the undertaker and NT Group.

#### 307.

In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

“apparatus” means mains, pipes, cables, sewers, drains, ditches, watercourses, culverts or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or on land;

“NTL” means North Tees Limited (company number 05378625) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NTLL” means North Tees Land Limited (company number 08301212) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NTR” means North Tees Rail Limited (company number 10664592) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NT Group” means NTL, NTR and NTLL;

“operations” means, for each of NTL, NTR and NTLL the land or property (including all freehold, leasehold, easements, wayleaves, licenses and other rights) vested in NT Group (or any related company whose assets or operations are impacted by the construction, maintenance, operation and decommissioning of the development, including access to and from those operations or activities;



“operator” means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the NT Group Pipeline Corridor or has rights to the use of such apparatus or alternative apparatus, but who is not an owner in relation to the NT Group Pipeline Corridor and is not a third party owner or operator;

“owner” means—

- (a) in relation to the NT Group Pipeline Corridor, any person—
  - (i) with an interest in the NT Group Pipeline Corridor;
  - (ii) with rights in, on, under or over the NT Group Pipeline Corridor; or
  - (iii) with apparatus in, on or under the NT Group Pipeline Corridor;but who is not a third party owner or operator;

“the NT Group operations” means—

- (a) the activities and functions carried on by NT Group in the NT Group Pipeline Corridor (including in relation to any access routes and laydown spaces associated with them or it);
- (b) other pipes and apparatus (including access routes and laydown spaces associated with such pipes and apparatus) operated—
  - (i) by NT Group; or
  - (ii) by any owner or operator within the NT Group Pipeline Corridor.

“NT Group Pipeline Corridor” means the infrastructure corridor owned, managed and operated by the NT Group shown edged [x] (being plot numbers X, Y, Z) on the NT Group Pipeline Corridor protective provisions supporting plans;

“The NT Group Pipeline Corridor protective provisions supporting plans” means the plans which are certified as the NT Group Pipeline Corridor protective provisions supporting plans by the Secretary of State under article 45[is it 40?] (certification of plans etc) for the purposes of this Order;

“Reasonable and Prudent Constructor ” means a person or body constructing and/or operating or intending to construct and/or operate the authorised development and in doing so (and in the general conduct of its undertaking) exercising a degree of skill, diligence, technical competence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced promoter and/or constructor and/or operator (in substantial compliance with all applicable laws) in the construction and/or operation of the authorised development and/or the carrying out of works and any reference to the standard of a Reasonable and Prudent Constructor shall be a reference to such degree of skill and diligence technical competence prudence and foresight.

“third party owner or operator” means an owner or operator of apparatus other than NT Group and the subject of the protective provisions in Parts 1 to 25 and 27 of this Schedule;

“works details” means—

- (a) plans and sections;
- (b) a method statement describing and including:
  - (i) the exact position of the works;
  - (ii) the level at which the works are proposed to be constructed;
  - (iii) the manner of the works’ construction including details of excavation and positioning etc;
  - (iv) the positioning of all apparatus;
  - (v) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
  - (vi) any intended maintenance regime;
  - (vii) details of the proposed method of working and timing of execution of works;
  - (viii) details of vehicle access routes for construction and operational traffic;
  - (ix) appropriate risk assessments;
  - (x) construction design management; and

- (xi) detailed proposals to avoid any conflict arising as between the authorised development and other works that may be undertaken in the NT Group Pipeline Corridor.
- (c) any further particulars provided in response to a request under paragraph 311.

### **Separate approvals by third party owners or operators**

#### **308.**

- (1) Where the undertaker seeks consent from a third party owner or operator the undertaker must provide NT Group with—
  - (a) the same information provided to the third party owner or operator to the extent that it is relevant to the NT Group operations; and
  - (b) a copy of any approval from the third party owner or operator.

### **Removal of apparatus**

#### **309.**

- (1) Save for where engineering modifications to existing support apparatus are necessary to accommodate the authorised development, the undertaker shall not exercise its right to remove existing apparatus where adequate space remains within the NT Group Pipeline Corridor to undertake the authorised development.
- (2) Subject to paragraph 309 (1), if, in exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, the apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of NT Group and equivalent rights for the alternative apparatus have been granted to NT Group and, where relevant, the owner or operator of the apparatus.
- (3) Subject to paragraph 309 (1) if, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used by way of New Rights or otherwise under this Order, the undertaker requires the removal of any apparatus placed in the land, it must give to the owner or operator and NT Group advanced written notice of the requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed; and in that case (or if in consequence of the exercise of any of the powers conferred by this Order NT Group reasonably needs to remove any of its apparatus) the undertaker must afford to the owner or operator and NT Group to its satisfaction the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land or of land secured by the undertaker and subsequently for the maintenance of the apparatus.
- (4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between the relevant owner or operator and NT Group and the undertaker or in default of agreement settled by an arbitrator appointed under paragraph 329.
- (5) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an arbitrator under paragraph 329 and after the grant to the owner or operator of any such facilities and rights as are referred to in sub-paragraph (2) and after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part subject to any reasonable directions given to or requirements imposed on that owner or operator by NT Group.
- (6) Notwithstanding sub-paragraph (5), if the undertaker gives notice in writing to the owner or operator in question and NT Group that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being

executed by the owner or operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

- (7) If works are executed by the undertaker in accordance with sub-paragraph (6), the owner or operator of the apparatus and NT Group must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.
- (8) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around any apparatus (where the apparatus is laid in a trench) within 3,000 millimetres of the apparatus, without the written agreement of NT Group, such agreement not to be unreasonably withheld.

### **Alternative apparatus**

#### **310.**

- (1) Where, in accordance with this Part, the undertaker affords to or secures for an owner or operator and/or NT Group facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted:
  - (a) on such terms and conditions as may be agreed between the undertaker and NT Group or in default of agreement determined by arbitration under paragraph 329;
  - (b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards; and
  - (c) in such terms no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.
- (2) In settling the terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—
  - (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
  - (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised development for which the alternative apparatus is to be substituted.
- (3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to the owner or operator and NT Group as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

### **Consent under this Part in connection with NT Group operations**

**311.** The undertaker must give NT Group not less than 6 months prior written notice of an intention to commence the authorised development on the NT Group Pipeline Corridor and

#### **312.**

Before commencing any part of the authorised development:

- (a) which would or may have an effect on the operation or maintenance of the NT Group operations or to any land either within the Order limits or which is adjacent to those limits ; and
- (b) which would or may require access to any land owned or leased by NT Group, including land which is within and/or adjacent to the Order limits.
- (c) in all cases where such works are within 3,000 millimetres of the NT Group Pipeline Corridor,

the undertaker must submit to NT Group the works details for the proposed works and such further particulars as NT Group may, within 60 days from the day on which the works details are submitted under this paragraph, reasonably require.

**313.** Before exercising any rights to enter onto any land owned or leased by NT Group (including without limitation access to inspect, repair, maintain or alter any apparatus, the erection of temporary enclosures, site security, and the carrying out of any activities which would or may exacerbate or disturb existing contamination (including without limitation ground investigations)) the undertaker must submit to NT Group the works details for the proposed works and reasons for entry and such further particulars as NT Group may, within 20 days from the day on which the works details are submitted under this paragraph, reasonably require. Provided that this paragraph 313 shall not apply to works covered by paragraph 312.

**314.** The works referred to in paragraph 312 and 313 must not be commenced until the works details in respect of those works submitted under that paragraphs 312 and 313 have been approved by NT Group.

**315.** Any approval of NT Group required under paragraphs 312 and 313 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as NT Group may require to be made for–

- (a) the continuing safety and operational viability of the NT Group operations;
- (b) the requirement for NT Group and any owner and operator to have reasonable access to the NT Group operations at all times;
- (c) the efficient and economic use of the NT Group Pipeline Corridor by the undertaker; and
- (d) the terms of any legally binding agreement and/or easements entered into by NT Group, or otherwise binding upon NT Group for the use of the NT Group Pipeline Corridor.

**316.**

- (1) The authorised development must be carried out in accordance with the works details approved under paragraphs 312 and 313 and any requirements imposed on the approval under paragraph 315.
- (2) Where there has been a reference to an arbitrator in accordance with paragraph 329 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 329.
- (3) If having obtained approval under paragraphs 312 and or 313, the undertaker does not commence authorised developments with [6] months of date of approval, the undertaker must reapply for approval in accordance with 312 – 315.

## **Insurance**

**317.**

- (1) Before carrying out any works forming part of the authorised development on any part of the NT Group Pipeline Corridor, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place and thereafter maintain at all times public and third party liability insurance and contamination liability insurance for the authorised development with a reputable insurer in such sum at

an appropriate level, determined by an arbitrator if not agreed to be maintained at all times. (Evidence of that insurance must be provided to NT Group on request.

- (2) Not less than 90 days before carrying out any works forming part of the authorised development on any part of the NT Group Pipeline Corridor or before proposing to change the terms of the insurance policy, the undertaker must notify NT Group of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.
- (3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to works or the use of the authorised development affecting the NT Group Pipeline Corridor during the operation of the authorised development at the level specified in the notice of proposed insurance.
- (4) If there is a dispute in relation to the proposed insurance including the terms or level of cover to be provided, NT Group or the undertaker may refer the matter to arbitration under paragraph 329.

### **Repair**

- 318.** The undertaker shall keep the authorised development in good repair and condition in a manner appropriate to a Reasonable and Prudent Contractor.
- 319.** The undertaker shall remedy at its expense any contamination, migration of contamination or exacerbation of pre-existing contamination caused by the undertaker or in any way attributable to the authorised development to land owned or leased by NT Group or to any adjacent land in compliance with all relevant laws.
- 320.** In carrying out the authorised development, the undertaker shall not install any buildings, let down stations, metering stations on the land owned or leased by NT Group.
- 321.** On decommissioning the authorised development in accordance with Article 32 or if the undertaker abandons the use of the authorised development it shall give written notice within three months of such event occurring and remove (unless NTG specifies otherwise) all apparatus relating to the authorised development from the land owned or leased by NT Group and reinstate the affected land.

### **Expenses**

#### **322.**

- (1) Subject to the provisions of this paragraph, the undertaker must pay to the owner or operator in question and NT Group on demand all charges, costs and expenses reasonably and properly incurred by them under this Part in, or in connection with:
  - (a) the approval of works details and any works under this Part;
  - (b) the approval of insurance under this Part;
  - (c) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part;
  - (d) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
  - (e) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation, alteration, relaying, replacing, decommissioning or removal of any works or temporary works in consequence of the exercise by the undertaker of any power under this Order;
  - (f) the design, project management, supervision and implementation of works;
  - (g) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;

- (h) monitoring the effectiveness of any requirements referred to in paragraph 313 and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those requirements;
- (i) the service by the undertaker of any notice, plan, section or description;
- (j) obtaining any approvals of NT Group in connection with this Order including this Part 26; and
- (k) costs of maintenance, repair, lighting, cleaning and renewal of any shared items including but without limitation, access roads and tracks, service media, support infrastructure, and groundwater monitoring, provided that this aspect of expenses in subclause (k) shall be a fair and reasonable proportion of the sums incurred by the Grantor.

within a reasonable time of being notified by the person in question that it has incurred such expenses, such notification to be provided by the owner or operator and/or NT Group.

- (2) Where reasonable and practicable, the person to whom the payment is to be made under this paragraph must notify the undertaker of any anticipated expense as outlined in sub-paragraph (1) and provide an estimate of such costs prior to incurring such expense.
- (3) In advance of any payment under sub-paragraph (1) above being made and where reasonably requested by the undertaker, the person to whom the payment is to be made under this paragraph must provide to the undertaker such reasonable evidence of the costs incurred as the undertaker may reasonably request.
- (4) There must be deducted from any sum payable under sub-paragraph (1) (c) the value of any apparatus removed under this Part, that value being calculated after removal:
  - (a) If in accordance with this Part—apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
  - (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an arbitrator under paragraph 329 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the owner or operator in question by virtue of sub-paragraph (1) (c) must be reduced by the amount of that excess.

- (5) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (5), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.
- (6) For the purposes of sub-paragraph (3)
  - (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.
- (7) An amount which apart from this sub-paragraph would be payable to NT Group a person in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on NT Group that person by

deferment of the time for renewal of the apparatus in the ordinary course that person's business practice, be reduced by the amount that represents that benefit.

## **Indemnity**

### **323.**

- (1) Subject to sub-paragraphs (4) and (5), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the, use, maintenance or any failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence contamination, migration of contamination, exacerbation of existing contamination, and interference with third party rights resulting from any of these works or the exercise of rights in this Order, any damage or loss is caused to NT Group operations or NT Group property, any apparatus or alternative apparatus (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or there is any interruption in any service provided, or in the supply of any goods, by an owner or operator or NT Group, or they become liable to pay any amount to any third party, the undertaker must-
  - (a) bear and pay on demand the cost reasonably incurred by NT Group in making good such damage or restoring the service, supply or operations; and
  - (b) indemnify NT Group for any expenses, loss (including loss of profits), demands, proceedings, damages, claims, investigations, charges, actions, orders, awards, judgments, other liabilities and expenses (including legal fees, expenses and fines), penalty or costs incurred by NT Group, by reason or in consequence of any such damage, loss or interruption,
- (2) The fact that any act or thing may have been done by that person on behalf of the undertaker or in accordance with a plan approved by that person or in accordance with any requirement of NT Group as a consequence of the authorised development or under its supervision will not excuse the undertaker from liability under the provisions of this sub- paragraph.
- (3) For the purposes of sub-paragraph (1) NT Group must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker (which shall not be unreasonably withheld or delayed), if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (4) For the purposes of sub-paragraph (1) NT Group 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 323 applies where it is within their reasonably gift and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties is out of their control. If requested to do so by the undertaker, NT Group must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to subparagraph (1).

## **Participation in community groups**

- 324.** Before undertaking any works or exercising any powers in this Order relating to or affecting the NT Group operations, the undertaker must participate in any relevant consultation groups established or co-ordinated by NT Group.
- 325.** Before undertaking any construction works affecting the NT Group operations, where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Order limits in terms of—
  - (a) construction noise and vibration management;
  - (b) air quality, including dust emissions;



- (c) waste management;
- (d) traffic management and materials storage on site;
- (e) surface water and groundwater management; or
- (f) artificial light emissions,

the undertaker must participate in any relevant community environmental liaison group that may be established or co-ordinated by NT Group with local residents and businesses.

**326.** The undertaker must co-operate with NT Group to respond promptly to any complaints raised in relation to the construction or operation of the authorised development or the traffic associated with the authorised development.

**327.** The undertakers' obligations in paragraphs 311 and 312 are subject to NT Group providing reasonable notice to them of the existence of a relevant consultation group or a relevant community environmental liaison group and reasonable notice of the arrangements for meetings of those groups.

#### **Notice of start and completion of commissioning**

**328.**

- (1) Notice of the intended start of commissioning of the authorised development must be given to NT Group no later than 14 days prior to the date that commissioning is started.
- (2) Notice of the intended date of final commissioning must be given to NT Group no later than fourteen days prior to the date of final commissioning.
- (3) On completion of the construction of authorised development within the NT Group Pipeline Corridor, the undertaker shall reinstate any part of the land owned or leased by NTG which has been affected by the works to the reasonable satisfaction of the undertaker.

#### **Arbitration**

**329.** Any difference or dispute arising between the undertaker and NT Group under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and NT Group be referred to and settled by arbitration in accordance with article 47 (arbitration).

#### **Future use of the NT Group Pipeline Corridor**

**330.**

- (1) The undertaker acknowledges that there are and will be other users from time to time of the NT Group Pipeline Corridor and the undertaker shall cooperate and act reasonably and in good faith at all times to facilitate the future use of the NT Group Pipeline Corridor by owners, operators and NT Group, or other persons that desire to utilise the NT Group Pipeline Corridor.
- (2) The undertaker shall provide NT Group with information requested by NT Group from time to time in relation to the authorised development that NT Group reasonably needs in order to plan the ongoing use and management of the NT Group Pipeline Corridor and the granting of rights within such corridor.

#### **Temporary possession**

**331.** Where the undertaker takes temporary possession of any part of any land owned or leased by NT Group under its rights in this Order, the undertaker shall permit NT Group and its servants and contractors and others authorised to enter such areas to undertake operational activities, maintenance, repair and lay further services without obstruction by the undertaker save for reasonable periods only.