



Postal address
PO Box 3501, Bristol BS2 2FL
T: 0117 925 2020 | F: 0117 925 2025

Planning Inspectorate
Temple Quay House
2 The Square
Temple Quay
Bristol
BS1 6PN

Our ref: bs/db/4ch58/0090
Your ref: [REDACTED]
Doc no: 29353085v1

By e-mail: hynetco2pipeline@planninginspectorate.gov.uk 11 September 2023

Dear Sirs

HyNet Carbon Dioxide Pipeline
Our Client: Exolum Pipeline System Limited
Update on Protective Provisions

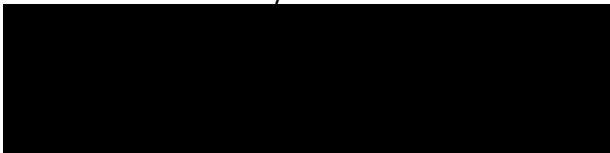
We act for Exolum Pipeline System Limited ("Exolum"). Exolum is an Interested Party which owns and operates the previous Government Pipeline Storage System, a network of critical national infrastructure for the delivery of petroleum fuel around England.

We have been negotiating protective provisions with the Promoter's solicitors. We enclose a copy of Exolum's preferred protective provisions and a comparison showing these preferred provisions against the provisions that, so far, have been agreed with the Promoter.

In summary, the protective provisions are agreed save wording at paragraph 3.1 preventing the acquisition of Exolum's premises and interests in land. The Promoter has not agreed to the inclusion of this wording.

We note, however, that equivalent wording appears in other protective provisions at Schedule 10 of the draft Development Consent Order Revision J; for example, at Part 3 Paragraph 20, Part 4 Paragraph 36, and Part 5 Paragraph 52. We therefore hope that the Promoter will agree to its inclusion and we will continue to engage with the Promoter's solicitors to agree the protective provisions.

Yours faithfully



Veale Wasbrough Vizards LLP



www.co.uk | Offices in London, Watford, Bristol & Birmingham

VWV is a brand of Veale Wasbrough Vizards LLP, a limited liability partnership registered in England and Wales, registered number OC384033, registered office Narrow Quay House, Narrow Quay, Bristol BS1 4QA. A list of members may be inspected at the registered office. The term Partner means a member of Veale Wasbrough Vizards LLP or a senior employee of equivalent standing. Veale Wasbrough Vizards LLP is authorised and regulated by the Solicitors Regulation Authority (SRA 597329). We are a member of the Association of European Lawyers with representative offices throughout the EU & Central & Eastern Europe.

PART X

FOR THE PROTECTION OF EXOLUM PIPELINE SYSTEM LTD

Application

- 1 For the protection of Exolum the following provisions, unless otherwise agreed in writing at any time between the undertaker and Exolum, have effect.

Interpretation

- 2 In this Part of this Schedule, the following terms have the following meanings—

Additional Rights: means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of retained Apparatus including any restrictions on the landowner and occupiers for the protection of the retained Apparatus and to allow Exolum to perform its functions.

Alternative Apparatus: means alternative apparatus adequate to enable Exolum to fulfil its functions as a pipeline operator in a manner not less efficient than previously.

Alternative Rights: means rights for the construction and for access to and for the use, protection, inspection, maintenance, repair and renewal of Alternative Apparatus including any restrictions on the landowner and occupiers for the protection of the Alternative Apparatus and to allow Exolum to perform its functions.

Apparatus: means the pipeline and storage system and any ancillary apparatus owned and/or operated by Exolum and includes:

- (a) any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;
- (b) any ancillary works, all protective wrappings, valves, sleeves and slabs, cathodic protection units, together with ancillary cables and markers;
- (c) such legal interest, and benefit of property rights and covenants as are vested in in respect of these items;

and, where the context allows, includes Alternative Apparatus.

Application: means the application to the Secretary of State for the Order made by the undertaker under the Planning Act 2008 on 3 October 2022.

Authorised Development: has the same meaning as that given in Article 2(1) (interpretation) of the Order and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule.

Commence: has the same meaning as that given in Article 2(1) of the Order (and commencing must be construed accordingly).

Deed of Consent: means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus

or to provide for access to Apparatus in a manner consistent with the terms of this Part of this Schedule.

Exolum: means Exolum Pipeline System Ltd (company number 09497223) and for the purpose of enforcing the benefit of any provisions in this Schedule, any group company of Exolum Pipeline System Ltd and in all cases any successor in title.

Expert: is a person appointed in accordance with paragraphs 57 to 64 to resolve a dispute under this Schedule.

functions: includes powers, duties and commercial undertaking.

in: in a context referring to Apparatus in land includes a reference to Apparatus under, over or upon land.

Order: means the order granting development consent, made by the Secretary of State and brought into force following the Application under the Planning Act 2008.

parties: means the undertaker and Exolum and "party" is to be construed accordingly.

Plan: includes all designs, drawings, sections, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary to allow Exolum to assess the relevant works to be executed properly and sufficiently and in particular must describe:

- (a) the exact position of the works;
- (b) the level at which the works are proposed to be constructed or renewed;
- (c) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;
- (d) the position of the affected Apparatus and/or Premises and any other apparatus belonging to another undertaker;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regime;
- (g) details of the proposed method of working and timing of execution of works; and
- (h) details of vehicle access routes for construction and operational traffic.

Premises: means land that Exolum owns, occupies or otherwise has rights to use including but not limited to storage facilities, administrative buildings and jetties.

Protective Works: means works for the inspection and protection of Apparatus.

Restricted Works: means any works that are near to, or will or may affect any Apparatus or Premises including:

- (a) all works within 15 metres measured in any direction of any Apparatus including embankment works and those that involve a physical connection or attachment to any Apparatus,
- (b) the crossing of Apparatus by other utilities,

- (c) the use of explosives within 400 metres of any Apparatus or Premises,
 - (a) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of any Apparatus or Premises,
 - (e) all works that impose a load directly upon the Apparatus, wherever situated
- whether carried out by the undertaker or any third party in connection with the Authorised Development.

Working Day: means any day other than a Saturday, Sunday or English bank or public holiday.

Acquisition of Apparatus

- 3 Regardless of any other provision in the Order or anything shown on the land plans or if the Order covers any Premises or interest in any land in which any Apparatus is placed or over which access to any Apparatus is enjoyed:
 - 3.1 the undertaker must not, otherwise than by agreement with Exolum, acquire any Apparatus or Exolum's rights in respect of Apparatus, any Premises or any of Exolum's interests in land;
 - 3.2 the undertaker must not, otherwise than in accordance with this Schedule:
 - 3.2.1 obstruct or render less convenient the access to any Apparatus or Premises;
 - 3.2.2 interfere with or affect Exolum's ability to carry out its functions as an oil pipeline operator;
 - 3.2.3 require that Apparatus is relocated or diverted; or
 - 3.2.4 remove or required to be removed any Apparatus;
 - 3.3 any right of Exolum to maintain, repair, renew, adjust, alter or inspect Apparatus may not be extinguished until any necessary Alternative Apparatus has been constructed, it is in operation and the Alternative Rights have been granted, all to the reasonable satisfaction of Exolum; and
 - 3.4 any right of Exolum to access the Exolum Apparatus and/or Premises must not be extinguished until necessary alternative access has been provided to Exolum's reasonable satisfaction.
- 4 Prior to the carrying out of any Restricted Works or any works authorised by this Order that will affect the existing rights of Exolum, the parties must use all reasonable endeavours to negotiate and enter into such Deeds of Consent (crossing consent) and (if necessary) variations to the existing rights upon such terms and conditions as may be agreed between Exolum and the undertaker acting reasonably and which must be no less favourable on the whole to Exolum than this Schedule, and it will be the responsibility of the undertaker to procure and / or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such works.
- 5 Where the undertaker acquires land which is subject to any existing rights held by Exolum and the provisions of paragraph 15 do not apply, the undertaker must:
 - 5.1 Retain any notice of the existing rights held by Exolum on the title to the relevant land when registering the undertaker's title to such acquired land; and

- 5.2 provide up to date official entry copies to Exolum within 20 working days of receipt of such up to date official entry copies.
- 6 Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has an easement, right, asset, interest, Apparatus or Premises:
- 6.1 where reasonably necessary, and provided that all health and safety requirements, including any requirements applicable to the undertaker under the Construction, Design and Management Regulations 2015 are complied with, Exolum may exercise its rights to access such land:
- 6.1.1 in an emergency, without notice but in all such instances Exolum will notify the undertaker as soon as reasonably practicable and until service of such notice, entry will be at Exolum's own risk; and
- 6.1.2 in non-emergency circumstances, having first given prior written notice to the undertaker in order to allow the parties to agree the timing of their respective works during the period of temporary possession; and
- 6.2 the undertaker may not remove or in any way alter Exolum's rights in such land, unless in accordance with the provisions of this Order.

Removal of Apparatus and Rights for Alternative Apparatus

- 7 If, having used all reasonable endeavours to implement the Authorised Development without the removal of any Apparatus:
- 7.1 the undertaker reasonably requires the removal of any Apparatus; or
- 7.2 Exolum reasonably requires the removal of any Apparatus;
- then the relevant party must give written notice of that requirement to the other.
- 8 The parties must use all reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of the Alternative Apparatus to be provided or constructed.
- 9 The undertaker must afford to Exolum the necessary facilities and rights for the construction of Alternative Apparatus and subsequently the grant of Alternative Rights in accordance with paragraphs 15 to 19.
- 10 Any Alternative Apparatus is to be constructed in land owned by the undertaker or in land in respect of which Alternative Rights have been or are guaranteed to be granted to Exolum. The Alternative Apparatus must be constructed in such manner and in such position or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraphs 54 to 64.
- 11 After the details for the works for Alternative Apparatus to be provided or constructed have been agreed or settled by expert determination in accordance with paragraphs 54 to 65, and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 7, Exolum must proceed as soon as reasonably practicable using all reasonable endeavours to construct and bring into operation the Alternative Apparatus and subsequently to remove (or if agreed between the parties to allow the undertaker to remove) any redundant Apparatus required by the undertaker to be removed under the provisions of this Schedule.
- 12 The following paragraphs 13 and 14 only apply if:

- 12.1 Exolum fails to comply with its obligations under paragraph 11 to remove any redundant Apparatus; and
 - 12.2 the undertaker has served notice on Exolum specifying the default; and
 - 12.3 Exolum has failed to remedy the default within 28 days.
- 13 In the circumstances set out in paragraph 12, if the undertaker then gives notice in writing to Exolum that it will remove the redundant Apparatus, that work, instead of being executed by Exolum, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Exolum.
- 14 Nothing in paragraph 13 authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any Apparatus, or execute any filling around the Apparatus (where the Apparatus is laid in a trench) within 3000 millimetres of the Apparatus unless that Apparatus is redundant and disconnected from Exolum's remaining system.

Facilities and Rights for Alternative Apparatus

- 15 Where, in accordance with the provisions of this Schedule, the undertaker affords to Exolum facilities and rights for the construction of Alternative Apparatus and the grant of Alternative Rights, in substitution for Apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Exolum in accordance with this Schedule or in default of agreement settled by expert determination in accordance with paragraphs 54 to 65.
- 16 Alternative Rights must be granted before any Alternative Apparatus is operating as part of the pipeline and storage system which forms the Apparatus.
- 17 The parties agree that the Alternative Rights be granted by way of a 999 year lease, substantially in the form of Exolum's precedent from time to time as amended by written agreement between the parties acting reasonably.
- 18 Nothing in this Schedule or contained in the Alternative Rights shall require Exolum to divert or remove any Alternative Apparatus.
- 19 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 Expert less favourable on the whole to Exolum than the facilities and rights enjoyed by it in respect of the Apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the Expert will make such provision for the payment of compensation by the undertaker to Exolum as appears to the Expert to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus and Alternative Apparatus: protection

- 20 Before commencing the execution of any Restricted Works, the undertaker must submit to Exolum a Plan of the works to be executed and any other information that Exolum may reasonably require to allow Exolum to assess the works.
- 21 No Restricted Works are to be commenced until the Plan to be submitted to Exolum under paragraph 20 has been approved by Exolum in writing and are to be carried out only in accordance with the details submitted under paragraph 20 and in accordance with such

reasonable requirements as may be notified to the undertaker in writing in accordance with paragraph 22 by Exolum.

22 Any approval by Exolum of the Plan of works submitted under paragraph 20 must not be unreasonably withheld or delayed, and Exolum must communicate its approval or refusal of the plans within 56 days of the date of submission of the plan under paragraph 20 and any approval of the Plan of works may be given subject to such reasonable requirements as Exolum may require to be made for:

22.1 the continuing safety and operational viability of any Apparatus and/or Premises; and

22.2 the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace, maintain and ensure the continuing safety and operation or viability of any Apparatus and/or Premises

providing such reasonable requirements are notified to the undertaker in writing.

23 Exolum will be entitled to watch and inspect the execution of Restricted Works at any time.

24 Where reasonably required by either party, in view of the complexity of any proposed works, timescales, phasing or costs, the parties must with due diligence and good faith negotiate a works agreement for the carrying out of Protective Works or the installation of Alternative Apparatus.

25 If in consequence of the works notified to Exolum by the undertaker under paragraph 21, the circumstances in paragraph 7 apply, then the parties will follow the procedure in paragraph 7 onwards.

26 Nothing in paragraphs 20 to 25 precludes the undertaker from submitting prior to the commencement of works to protect retained Apparatus or to construct Alternative Apparatus (unless otherwise agreed in writing between the undertaker and Exolum) a new Plan, instead of the Plan previously submitted, in which case the parties will re-run the procedure from paragraph 25 onwards.

27 Where Exolum reasonably requires Protective Works, the parties must use all reasonable endeavours to produce a plan of the work proposed and a plan of the proposed position of any physical features to be provided or constructed.

28 The undertaker must afford to Exolum the necessary facilities and rights for the construction of Protective Works and subsequently the grant of Additional Rights in accordance with paragraphs 15 to 19.

29 Any Protective Works are to be constructed in land owned by the undertaker or in land in respect of which Additional Rights have been or are guaranteed to be granted to Exolum. The Protective Works must be constructed in such manner and in such position or situation as may be agreed between Exolum and the undertaker or in default of agreement settled by expert determination in accordance with paragraphs 54 to 65.

30 After the details for the Protective Works to be provided or constructed have been agreed or settled in accordance with paragraphs 54 to 65, and after the grant to Exolum of any such facilities and rights as are referred to in paragraph 9, Exolum must proceed as soon as reasonably practicable using reasonable endeavours to construct and bring into operation the Protective Works.

31 Where the undertaker needs to carry out emergency works:

- 31.1 it must give to Exolum notice before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement;
 - 31.2 the parties will work together to co-ordinate their respective works and agree a plan of those works before such works commence, or as soon as is reasonably practicable after the works have commenced where it is not reasonably practicable to provide notice prior to commencement; and
 - 31.3 it must comply with the conditions imposed under paragraph 22 insofar as is reasonably practicable in the circumstances.
- 32 In this Part of this Schedule, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

Cathodic protection testing

- 33 Where in the reasonable opinion of Exolum or the undertaker:
- 33.1 the Authorised Development might interfere with the cathodic protection forming part of Apparatus; or
 - 33.2 any Apparatus might interfere with the proposed or existing cathodic protection forming part of the Authorised Development;

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

- 34 The Parties must carry out the works and enter into such agreements as are reasonably necessary to implement the measures for providing or preserving cathodic protection.

Expenses

- 35 Subject to the following provisions of these paragraphs 35 to 38, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with:
- 35.1 undertaking its obligations under this Schedule including:
 - 35.1.1 the installation, inspection, removal, alteration, testing or protection of any Apparatus, Alternative Apparatus and/or Protective Works;
 - 35.1.2 the execution of any other works under this Schedule; and
 - 35.1.3 the review and assessment of Plans;
 - 35.2 the watching of and inspecting the execution of the Authorised Development, any Restricted Works and any works undertaken by third parties as a result of Authorised Development (including the assessment of Plans); and
 - 35.3 imposing reasonable requirements for the protection or alteration of Apparatus affected by the Authorised Development or works as a consequence of the Authorised Development in accordance with paragraph 22;

together with any administrative costs properly and reasonably incurred by Exolum.

36 Provided that Exolum takes all reasonable steps to minimise the costs incurred in the following circumstances, there will be no deduction from any sum payable under paragraph 35 as a result of:

36.1 the placing of apparatus of a better type, greater capacity or of greater dimensions, or at a greater depth than the existing Apparatus; or

36.2 the placing of apparatus in substitution of the existing Apparatus that may defer the time for renewal of the existing Apparatus in the ordinary course;

37 The scrap value (if any) of any Apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under paragraph 35.

38 Upon the submission of proper and reasonable estimates of costs and expenses to be incurred by Exolum, the undertaker must pay Exolum sufficiently in advance but to enable Exolum to undertake its obligations under this Schedule provided that in the event that the costs reasonably incurred by Exolum are less than the amount paid by the undertaker pursuant to this paragraph 38 then Exolum must promptly repay any overpayment to the undertaker within 30 days of the payment of those costs.

Damage to property and other losses

39 Subject to paragraphs 40 to 44, the undertaker will:

39.1 indemnify Exolum for all reasonable loss, damage, liability, costs and expenses reasonably suffered or incurred by Exolum directly arising out of:

39.1.1 the carrying out of works under this Schedule;

39.1.2 the carrying out of the Authorised Development;

39.1.3 the use or occupation of land over or in the vicinity of any Apparatus or in the vicinity of any Premises in connection with the carrying out of the Authorised Development;

39.1.4 any injury or damage whatsoever to any property, real or personal, including the property of Exolum; and

39.1.5 any matters arising out of or in connection with this Order;

39.2 indemnify Exolum against any claim made against, or loss suffered by, Exolum as a result of any act or omission committed by the undertaker's officers, employees, contractors or agents whilst on or in the vicinity of any Apparatus or Premises;

39.3 pay to Exolum on demand the cost reasonably incurred by Exolum in making good any damage to the Apparatus (other than Apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) arising out of the carrying out of works under this Schedule and arising out of the carrying out of the Authorised Development; and

39.4 pay to Exolum the cost reasonably incurred by Exolum in stopping, suspending and restoring the supply through its Apparatus in consequence of the carrying out of works under this Schedule or the carrying out of the Authorised Development;

and make reasonable compensation to Exolum for any other expenses, losses, damages, penalty or costs incurred by Exolum by reason of any such damage or interruption including all claims by third parties.

- 40 The fact that any act or thing may have been done by Exolum on behalf of the undertaker or in accordance with a Plan approved by Exolum or in accordance with any requirement of Exolum or under its supervision will not, subject to paragraph 41, excuse the undertaker from liability under the provisions of paragraph 39.
- 41 The undertaker and Exolum must at all times take reasonable steps to prevent and mitigate any loss, damage, liability, claim, cost or expense (whether indemnified or not) which either suffers in connection with this Schedule.
- 42 The undertaker warrants that:
- 42.1 the information it or any of its employees, agents or contractors provide to Exolum about the Plans or the Authorised Development and on which Exolum relies in the design of and carrying out of any works is accurate; and
- 42.2 the undertaker or any of its employees, agents or contractors have exercised all the reasonable skill, care and diligence to be expected of a qualified and experienced member of their respective profession.
- 43 Exolum must give to the undertaker reasonable notice of any claim or demand to which paragraph 39 applies.

Insurance

- 44 The undertaker must not Commence the Authorised Development or any intrusive environmental (including archaeological) surveys and investigation or intrusive site or soil surveys on any land in respect of which Exolum has an easement, right, operations, assets or other interests or carry out any Restricted Works unless and until Exolum has confirmed to the undertaker in writing that it is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker (or its contractor) has procured acceptable professional indemnity insurance, where relevant, and public liability insurance with minimum cover of £25 million per event, with respect to the carrying out of the works.
- 45 The undertaker must maintain such insurance for the construction period of the Restricted Works, being from the proposed date of Commencement of the Authorised Development to the completion of any Restricted Works or Protective Works.

Co-operation and reasonableness

- 46 Where Apparatus is required to be protected, altered, diverted or removed under this Schedule, the undertaker must use all reasonable endeavours to co-ordinate the execution of any works under this Schedule:
- 46.1 in the interests of safety;
- 46.2 in the interest of the efficient and economic execution of both Exolum's works and the Authorised Development; and
- 46.3 taking into account the need to ensure the safe and efficient operation of Apparatus and carrying out of Exolum's functions.

- 47 Exolum must use all reasonable endeavours to co-operate with the undertaker for the purposes outlined in paragraph 47.
- 48 The undertaker and Exolum must act reasonably in respect of any given term of this Schedule and, in particular, (without prejudice to generality) where any approval, consent or expression of satisfaction is required by this Schedule it must not be unreasonably withheld or delayed.

Emergency circumstances

- 49 The undertaker acknowledges that Exolum provides services to His Majesty's Government, using the Apparatus, which may affect any works to be carried under this Schedule and the Authorised Development.
- 50 In the following circumstances, Exolum may on written notice to the undertaker immediately suspend all works that necessitate the stopping or suspending of the supply of product through any Apparatus under this Schedule and Exolum will not be in breach of its obligations under this Schedule:
- 50.1 circumstances in which, in the determination of the Government, there subsists a material threat to national security, or a threat or state of hostility or war or other crisis or national emergency (whether or not involving hostility or war); or
 - 50.2 circumstances in which a request has been received, and a decision to act upon such request has been taken, by the Government for assistance in relation to the occurrence or anticipated occurrence of a major accident, crisis or natural disaster; or
 - 50.3 circumstances in which a request has been received from or on behalf of NATO, the EU, the UN, the International Energy Agency (or any successor agency thereof) or the government of any other state for support or assistance pursuant to the United Kingdom's international obligations and a decision to act upon such request has been taken by the Government; or
 - 50.4 any circumstances identified as such by the COBRA committee of the Government (or any successor committee thereof); or
 - 50.5 any situation in connection with which the Government requires fuel capacity, including where the United Kingdom is engaged in any planned or unplanned military operations within the United Kingdom or overseas.
- 51 The parties agree to act in good faith and in all reasonableness to agree any revisions to any schedule, programme or costs estimate (which will include costs of demobilising and remobilising any workforce, and any costs to protect the Apparatus "mid-works") to account for the suspension.
- 52 Exolum is not liable for any costs, expenses, losses or liabilities the undertaker incurs as a result of the suspension of any activities under paragraphs 50 to 53 or delays caused by it.

Escalation of differences

- 53 The undertaker and Exolum must use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Schedule in accordance with the following provisions.

- 54 The undertaker and Exolum will each nominate a representative who will meet to try to resolve the matter. If the matter is not resolved at that level within ten working days of either the undertaker or Exolum requesting such a meeting (or such longer period as may be agreed between the undertaker and Exolum) the matter may at the request of either the undertaker or Exolum be referred for discussion at a meeting to be attended by a senior executive from each party.
- 55 If the meeting between senior executives fails to result in a settlement within 20 working days of the date of the request for such a meeting (or if it is not possible to convene a meeting within this period) then either the undertaker or Exolum may refer the matter to expert determination or arbitration in accordance with the provisions of paragraphs 57 to 65 (dispute resolution).

Dispute resolution

- 56 If any dispute or difference arising out of or in connection with this Schedule is not resolved in accordance with paragraphs 54 to 56 (escalation of differences), either the undertaker or Exolum may refer the matter to:
- 56.1 in the case of any dispute or difference pursuant to paragraphs 10, 15, 19 or 33, expert determination under paragraphs 58 to 64; or
- 56.2 in the case of any dispute or difference not falling within paragraphs 57.1, arbitration under Article 48 (Arbitration) of the Order.
- 57 The parties will agree on the appointment of an independent Expert and must agree with the Expert the terms of their appointment.
- 58 If the parties are unable to agree on an Expert or the terms of their appointment within five working days of either party serving details of a suggested expert on the other, either party will then be entitled to request the Institution of Civil Engineers or its successor to appoint an Expert and to agree with the Expert the terms of their appointment.
- 59 The Expert is required to prepare a written decision including reasons and give notice (including a copy) of the decision to the parties within a maximum of three months of the matter being referred to them.
- 60 If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by paragraph 60 then either party may re-apply to the relevant professional body referred to above to discharge the Expert and to appoint a replacement Expert with the required expertise and this clause will apply to the new Expert as if they were the first Expert appointed.
- 61 The parties are entitled to make submissions to the Expert and will provide the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- 62 The Expert will act as an expert and not as an arbitrator. The Expert may award interest as part of their decision. The Expert's written decision on the matters referred to them will be final and binding on the parties in the absence of manifest error or fraud.
- 63 The Expert may direct that any legal costs and expenses incurred by a party in respect of the determination will be paid by another party to the determination on the general principle that costs should follow the event, except where it appears to the Expert that, in the circumstances, this is not appropriate in relation to the whole or part of such costs. The

Expert's fees and any costs properly incurred by them in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) will be borne by the parties equally or in such other proportions as the Expert directs.

- 64 The dispute resolution procedure set out in this Schedule will apply to matters dealt with in this Schedule notwithstanding any dispute resolution procedure provided for either in the Order or as part of any other consent in respect of the Authorised Development.

Miscellaneous

- 65 Nothing in this Schedule affects the provisions of any enactment or prior agreement regulating the relations between the undertaker and Exolum in respect of any Apparatus laid or erected in land belonging to the undertaker on the date the Order is granted.
- 66 No failure or delay by a party to exercise any right or remedy provided under this Schedule or by law will constitute a waiver of that or any other right or remedy, nor will it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy will prevent or restrict the further exercise of that or any other right or remedy.