

# H2Teesside Project

Planning Inspectorate Reference: EN070009/APP/4.2

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

The H2Teesside Order

Document Reference: 4.2: Explanatory Memorandum

The Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009 Regulation 5(2)(c)



**Applicant: H2 Teesside Limited**

Date: October 2024

## DOCUMENT HISTORY

<b>DOCUMENT REF</b>	4.2		
<b>REVISION</b>	1		
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<b>SIGNED</b>	DK	DATE	OCTOBER 2024
<b>APPROVED BY</b>	NM		
<b>SIGNED</b>	NM	DATE	OCTOBER 2024
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## GLOSSARY

<b>Abbreviation</b>	<b>Description</b>
AD Guidance	Guidance on associated development applications for major infrastructure projects (April 2013).
Applicant	H2 Teesside Limited.
Application (or DCO Application)	The application for a DCO made to the SoS under section 37 of PA 2008 in respect of the Proposed Development because the Proposed Development is a project of national significance for which development consent is required further to the Section 35 Direction.
Associated Development	Defined under section 115(2) of PA 2008 as development which is associated with the principal development and that has a direct relationship with it. Associated development should either support the construction or operation of the principal development or help address its impacts. It should not be an aim in itself but should be subordinate to the principal development.
Authorised Development	The development for which development consent is required as set out in Schedule 1 of the DCO.
DCO	A Development Consent Order made by the relevant Secretary of State pursuant to the PA 2008 to authorise a NSIP or a section 35 project. A DCO can incorporate or remove the need for a range of consents which would otherwise be required for a development. A DCO can also include powers of compulsory acquisition.
DESNZ	Department for Energy Security and Net Zero.

<b>Abbreviation</b>	<b>Description</b>
EIA	Environmental Impact Assessment - the assessment of the likely significant environmental effects of a development, undertaken in accordance with the EIA Regulations.
EIA Regulations	Infrastructure Planning (Environmental Impact Assessment) Regulations 2017 (as amended) setting out how the environmental assessment of NSIPs and projects of national significance requiring development consent must be carried out and the procedures that must be followed.
ES	Environmental Statement, documenting the findings of the EIA.
H2T	H2Teesside Project – the name of the Proposed Development.
Hydrogen Distribution Network	A gaseous phase hydrogen pipeline network for the purpose of connecting to potential offtakers at various industrial installations across the Tees Valley.
Hydrogen Production Facility	The Hydrogen Production Facility to be built on the Main Site.
Land Plans	The plans showing the land that is required for the Proposed Development, and the land over which interests or rights in land are sought as part of the Order.
Main Site	The land where the Hydrogen Production Facility will be located (the Foundry).
NEP	Northern Endurance Partnership.
NGN	Northern Gas Networks Limited.
NSIP	Nationally Significant Infrastructure Project that must be authorised by the making of a DCO under PA 2008.
NZT	Net Zero Teesside Project.
Ofttaker	Means an entity or party that agrees to purchase and take delivery of a specified amount of energy (such as blue hydrogen in the case of this development) from a producer or supplier (the Applicant).
Order	The H2Teesside Order, being the DCO that would be made by the Secretary of State authorising the Proposed Development, a draft of which has been submitted as part of the Application.

<b>Abbreviation</b>	<b>Description</b>
Order land	Means the land shown coloured pink and the land shown coloured blue on the Land Plans, which is described in the Book of Reference.
Order limits	The limits of land to be acquired permanently or used temporarily as shown on the Land Plans, and the limits of land within which the Authorised Development, as shown on the Works Plans may be carried out.
PA 2008	The Planning Act 2008 which is the legislation in relation to applications for NSIPs, including pre-application consultation and publicity, the examination of applications and decision making by the Secretary of State.
Proposed Development	The development to which the Application relates, and as set out in Schedule 1 to the Order.
Requirements	The 'requirements' at Schedule 2 to the Order that, amongst other matters, are intended to control the final details of the Proposed Development to be constructed and also to control its operation, amongst other matters to ensure that it accords with the EIA and does not result in unacceptable impacts.
Section 35 Direction	The direction under section 35 of the PA 2008 dated 22 December 2022 from the SoS that the Specified Elements together with any matters/development associated with them should be treated as development for which development consent under the PA 2008 is required.
SoS	The Secretary of State – the decision maker for DCO applications and head of Government department. In this case the SoS for the Department for Energy Security and Net Zero.
Specified Elements	Those elements for which development consent under the PA 2008 is required, being the Hydrogen Production Facility and the Hydrogen Distribution Network.
STBC	Stockton-on-Tees Borough Council.
STDC	South Tees Development Corporation – a Mayoral Development Corporation responsible for approximately 400 hectares of land south of the River Tees in the borough of Redcar and Cleveland.

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<b>Abbreviation</b>	<b>Description</b>
Work No.	Work number, a component of the Proposed Development, described at Schedule 1 to the Order.
Works Plans	Plans showing the numbered works referred to in Schedule 1 to the Order and which together make up the Proposed Development.

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## 1.0 INTRODUCTION

### 1.1 Overview

- 1.1.1 This Explanatory Memorandum (**Document Reference 4.2**) has been prepared on behalf of H2 Teesside Limited. It forms part of the application (the 'Application') for a Development Consent Order (a 'DCO'), that has been submitted to the Secretary of State (the 'SoS') for the Department for Energy Security and Net Zero ('DESNZ'), under section 37 of 'the Planning Act 2008 (the 'PA 2008') in respect of the H2 Teesside Project (the 'Proposed Development').
- 1.1.2 The Applicant is H2 Teesside Limited, a bp company. H2 Teesside Limited will be the lead developer of the Proposed Development and bp will be appointed as the operator of the Proposed Development. The Proposed Development will support the decarbonisation of UK-produced natural gas by converting it to low carbon hydrogen in Teesside for use in industrial applications, thus helping to achieve national targets in relation to net zero. It will also contribute to restoring manufacturing jobs in the Tees Valley. The Proposed Development will export carbon dioxide (CO<sub>2</sub>) to the Northern Endurance Partnership ('NEP') offshore storage facility via NEP infrastructure on the adjacent Net Zero Teesside ('NZT') site, including the high-pressure compression facility and the CO<sub>2</sub> export pipeline.
- 1.1.3 The Applicant is seeking development consent for the construction, operation and maintenance of the Proposed Development, including associated development on land within the boroughs of Redcar and Cleveland and Stockton-on-Tees, Teesside and within the borough of Hartlepool, County Durham.
- 1.1.4 The Proposed Development will comprise an up to 1.2 Gigawatt Thermal (GWth) Carbon Capture and Storage (CCS) enabled Hydrogen Production Facility, a hydrogen distribution network and associated and ancillary development. It will be located primarily within the administrative boundaries of Redcar and Cleveland Borough Council (RCBC) and Stockton-on-Tees Borough Council (STBC). The hydrogen distribution network extends further north-west to include land in the administrative boundary of Hartlepool Borough Council (HBC).
- 1.1.5 The Specified Elements of the Proposed Development require a DCO as they are considered to be a project of national significance for which development consent is required pursuant to a direction made by the SoS under sections 35(1) and 35ZA of the PA 2008. The Proposed Development includes the Specified Elements and Associated Development to those Specified Elements.
- 1.1.6 This version of the Explanatory Memorandum has been produced to accompany the Applicant's Change Request Application and captures changes made in the DCO since the DCO Application submission, including changes in the DCO submitted at Deadline 2 of the Examination **[REP2-005]** and changes due to the Change Request Application. In the tracked change version of this document, all edits are shown in tracked changes with changes relating to the Change Request Application shown highlighted in yellow for clarity.

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## 1.2 The Proposed Development

- 1.2.1 The Proposed Development comprises the construction, operation and maintenance of an up to approximately 1.2 GWth CCS enabled Hydrogen Production Facility, with associated hydrogen distribution network of pipelines and utility connections, on land in Redcar and Cleveland, Stockton-on-Tees, and in Hartlepool on Teesside.
- 1.2.2 The Proposed Development will use natural gas to produce hydrogen (known as ‘blue’ hydrogen) with the carbon dioxide (CO<sub>2</sub>) created during the hydrogen production process being exported to the NEP offshore storage facility via NEP infrastructure on the adjacent Net Zero Teesside (‘NZN’) site, including the high-pressure compression facility and the CO<sub>2</sub> export corridor. Development consent was granted for NZT on 16 February 2024 and the Net Zero Teesside Order 2024 came into force on 11 March 2024. The consultation for NEP (offshore) closed on 6 November 2023.
- 1.2.3 The Proposed Development comprises the Hydrogen Production Facility together with the hydrogen gas (H<sub>2</sub>) network of pipelines to deliver low carbon H<sub>2</sub> to offtakers who may potentially use the H<sub>2</sub> in the future, and the CO<sub>2</sub> export, natural gas, electricity, water, oxygen (O<sub>2</sub>) and nitrogen (N<sub>2</sub>) connections required for the facility to operate. The Hydrogen Production Facility will produce low carbon H<sub>2</sub> which is compliant with the UK Government’s Low Carbon H<sub>2</sub> Standard (DESNZ, 2023) which defines what constitutes low carbon H<sub>2</sub> up to the point of production. The intent of the standard is to ensure new low carbon H<sub>2</sub> production makes a direct contribution to the UK’s greenhouse gas (GHG) emissions reduction targets.
- 1.2.4 The Proposed Development is subject to ongoing technical studies; however, it is expected to comprise the Hydrogen Production Facility with a design capacity of up to approximately 1.2 GWth Lower Heating Value (LHV), across two phases of development (up to 600 Megawatt thermal (MWth) per phase).
- 1.2.5 The Hydrogen Production Facility and infrastructure associated with its operation will be located on the Main Site. The Main Site is proposed to be located on land which is formerly part of the Redcar Steelworks.
- 1.2.6 The hydrogen distribution network of pipelines and other connections required for the facility to operate will cross other third-party land where required. These features are shown in the following areas:
- The Proposed Development Location is shown on Location Plan (Document Reference 2.1);
  - The location of the Main Site, Hydrogen Distribution Network and other connection corridors are shown on the Indicative Hydrogen Production Facility and Above Ground Installations Plans (Document Reference 2.6), Indicative Natural Gas Connection and Above Ground Installations Plans (Document Reference 2.7), Indicative Electrical Connection Plan (Document Reference 2.8), Indicative Water Connections Plans (Document Reference 2.9), Indicative Hydrogen Distribution Network Plans (Document Reference 2.10), Indicative



CO2 Export Pipeline Plan (Document Reference 2.11) and Indicative Industrial Gases Connection Plans (Document Reference 2.16);

- Construction compound areas as shown by Work No. 9 on the Works Plans (Document Reference 2.4) submitted as part of the Change Request Application; and
- The landscape and ecological areas (including replacement land) are shown in the Outline Landscape and Biodiversity Management Plan (**Document Reference: 5.9**) submitted alongside the Change Request Application.

### 1.3 The Purpose and Structure of this Document

1.3.1 The purpose of this document is to explain the effect and purpose of the provisions in the Order and is provided as required by regulation 5(2)(c) of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

1.3.2 It also identifies and explains departures from the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 ('the model provisions'). Whilst the power for the Secretary of State to designate, and the requirement to have regard to model provisions, have been removed, the Applicant considers it is still relevant to explain variations made in the Order compared to the model provisions<sup>1</sup>.

1.3.3 This Explanatory Memorandum should be read alongside the Order (**Document Reference: 4.1**) submitted as part of the Change Request Application and the various documents submitted in respect of the DCO Application. Document references in the Explanatory Memorandum relate to the Applicant's referencing as set out in the Application Guide (**Document Reference: 1.2**) submitted alongside the Change Request Application.

1.3.4 The document is structured as follows:

- Section 1 - Introduction
- Section 2 – Purpose and Need for the Order
- Section 3 – The Provisions of the Order
- Appendix 1 – Section 35 Direction

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<sup>1</sup> The Applicant acknowledges the change in approach set out in the updated DCO Guidance at paragraph 002, but this EM was written before the update was issued and it also still makes reference to other DCOs as well as the model provisions.

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## 2.0 PURPOSE AND NEED FOR THE ORDER

### 2.1 Nationally Significant Infrastructure Project

2.1.1 Section 14 'Nationally significant infrastructure projects: general' of the PA 2008 confirms the types of projects that are NSIPs and so require a DCO. However, the Proposed Development does not fall within any of the categories of NSIPs under section 14 as:

- Gas production facilities are not mentioned as a category of NSIP; and
- In respect of hydrogen distribution pipelines, further to the Energy Act 2023 and recent Government consultations, the Government intends that hydrogen distribution will require a 'gas transporter' licence. As such, consideration needs to be given to the section 14 category of 'gas transport pipe-lines', the criteria of which are defined by section 20 of the PA 2008. The Hydrogen Distribution Network proposed as part of the Proposed Development does not meet those section 20 criteria.

### 2.2 Section 35 Direction

2.2.1 On 22 December 2022, the SoS gave a direction under section 35 of the PA 2008 (the 'Section 35 Direction') that the 'Specified Elements' should be treated as development for which development consent under the PA 2008 is required. These Specified Elements are:

- A low carbon hydrogen production plant of up to 1,200 MW thermal (lower heating value) capacity to be developed in two phases – each up to 600 MW; and
- Hydrogen distribution pipelines that do not constitute nationally significant infrastructure projects (NSIPs) under the Planning Act 2008, being the Hydrogen Distribution Network. These will supply hydrogen to various off-takers on Teesside and within the surrounding area, such pipelines to be utilised in association with the hydrogen production plant. The hydrogen pipelines will run up to tie-in points with the relevant off-taker (likely to be, but not necessarily having to be) at the off-takers' site boundaries. Any works beyond this tie-in point will be progressed separately by the relevant off-taker and are not the subject of the direction.

2.2.2 As a result of the Section 35 Direction, development consent must be obtained in order to carry out the development in Work Nos. 1 and 6, and a DCO application must be made to the Secretary of State (section 37 of the PA 2008). These are set out in Schedule 1 (authorised development) of the Order as follows:

- Work No. 1 - a carbon capture enabled hydrogen production facility of up to 1.2 Gigawatt Thermal (GWth) lower heating value, comprising:
  - Work No. 1A.1 – one carbon capture enabled hydrogen unit of 600 MW;
  - Work No. 1A.2 – a second carbon capture enabled hydrogen unit of 600 MW;

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- Work No. 1B.1 – water connections and water and effluent treatment plant for Work Nos. 1A.1 and 1A.2;
  - Work No. 1B.2 – water connections and water and effluent treatment plant for Work No. 1A.2;
  - Work No. 1C – above ground pressurised hydrogen storage including high pressure compression and let down facilities;
  - Work No. 1D – administration, control room, gatehouse and stores;
  - Work No. 1E.1 – connections and ancillary works in connection with Work Nos. 1A.1, 1A.2, 1B.1, 1B.2, 1C and 1D; and
  - Work No. 1E.2 – connections and ancillary works in connection with Work Nos. 1A.2 and 1B.2.
- Work No. 6 – a hydrogen distribution network, being works for the transport of hydrogen gas from Work Nos. 1A.1 and 1A.2, comprising:
    - Work No. 6A.1 – underground and overground pipelines of up to 600mm nominal bore diameter for the transport of hydrogen gas connecting to Work No. 6B.1;
    - Work No. 6A.2 – underground and overground pipelines of up to 600mm nominal bore diameter for the transport of hydrogen gas connecting to Work No. 6B.2;
    - Work No. 6B.1 – above ground installations connecting Work No. 6A.1 to existing gas transmission system and gas distribution networks including tunnel head; and
    - Work No. 6B.2 – above ground installation connecting Work No. 6A.2 to Cowpen Bewley Natural Gas AGI.
- 2.2.3 A copy of the Section 35 Direction is enclosed at Appendix 1.

## **2.3 Matters for which development consent is sought**

- 2.3.1 Section 115(1) of the PA 2008 provides that development consent may be granted for "(a) development for which development consent is required, or (b) associated development". The third limb - paragraph (c) - is not relevant here. All the development in the Order must therefore come within either section 115(1)(a) or 115(1)(b), in order for the Secretary of State to have power to grant development consent for it.
- 2.3.2 By virtue of the Section 35 Direction, Work Nos. 1 and 6 fall under section 115(1)(a) of the PA 2008.
- 2.3.3 The Order also includes other development which is not in itself a NSIP under the PA 2008 and does not fall within the Specified Elements. The development is:

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- Work No. 2 – a gas connection, being works for the transport of natural gas to Work Nos. 1E.1 and 1E.2, comprising:
    - Work No. 2A – high pressure gas pipelines connecting Work No. 2B to the above ground installation at Work Nos. 1E.1 and 1E.2;
    - Work No. 2B – above ground installations relating to Work No. 2A; and
    - Work No. 2C – works to bring back into use and recommission an existing high pressure gas pipeline connecting Work No. 2B to the above ground installation at an existing gas supply network.
  - Work No. 3 – electrical connection works for the import of electricity from electricity transmission networks to Work Nos. 1E.1 and 1E.2, comprising:
    - Work No. 3A – electrical connection works comprising underground electrical cables running from Work Nos. 1E.1 and 1E.2 to Work Nos. 3B.1, 3B.2 and 3B.3;
    - Work No. 3B.1 – above ground installation connecting Work No. 3A to Pellet-Sinter substation, including above ground works within the substation;
    - Work No. 3B.2 – above ground installation connecting Work No. 3A to Tod Point substation, including above ground works within the substation; and
    - Work No. 3B.3 – above ground installation connecting Work No. 3A to a new substation;
  - Work No. 4 – water supply connection works to provide cooling and make-up water to Work Nos. 1B.1 and 1B.2, comprising up to two water pipelines of up to 1100 millimetres nominal bore diameter from the existing raw water main;
  - Work No. 5 – wastewater disposal works in connection with Work Nos. 1B.1 and 1B.2 comprising pipelines connecting to existing wastewater infrastructure;
  - Work No. 7 – a carbon dioxide export pipeline comprising:
    - Work No. 7A – an overground or underground pipeline of up to 600 millimetres nominal bore diameter and associated power and fibre-optic cables connecting the above ground installation at Work Nos. 1E.1 and 1E.2 to Work No. 7B; and
    - Work No. 7B – above ground installation connection between Work No. 7A and a carbon dioxide pipeline network;
  - Work No. 8 – gas connections, being works for the transport of oxygen and nitrogen to Work Nos. 1E.1 and 1E.2, comprising an oxygen gas connection comprising of underground and or overground pipelines and a nitrogen gas connection comprising of underground and or overground pipelines;
  - Work No. 9 – temporary construction compounds comprising laydown and open storage areas, contractor offices and staff welfare facilities, gatehouse
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and weighbridge, vehicle parking and cycle storage facilities, internal roads and pedestrian and cycle routes, security fencing and gates, external lighting including lighting columns, and, closed circuit television cameras and columns;

- Work No. 10 – access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points comprising:
  - Work No. 10A.1 – access and highway improvements and use relating to Work Nos. 1, 2, 3, 4, 5, 6A.1, 6B.1, 7, 8 and 10; and
  - Work No. 10A.2 – access and highway improvements and use relating to Work Nos. 6A.2 and 6B.2; and
- Work No. 11 – replacement land relating to Work Nos. 6A.2 and 6B.2, comprising works for habitat creation, reinstatement, enhancement and management including landscaping, provision for vehicle parking and access, planting and means of enclosure.

2.3.4 This development is not itself "development for which development consent is required" and so does not fall under section 115(1)(a) of the PA 2008. However, all of those Work Nos. (2, 3, 4, 5, 7, 8, 9, 10 and 11) comprise development that is associated with Work Nos. 1 and 6 and are required in order to carry out Work Nos. 1 and 6 and, in the case of Work Nos. 9 and 10, are also required to carry out all of the other Work Nos.

2.3.5 Schedule 1 of the Order also includes details of further development that may be carried out in connection with Work Nos. 1 to 11. The further development listed in Schedule 1 is not exhaustive and other works required in connection with Work Nos. 1 to 11 may be carried out provided they are within the parameters of the Environmental Impact Assessment ('EIA').

2.3.6 It is clear that all of the development set out in Schedule 1 of the Order comes within the policy and criteria in the 'Guidance on associated development applications for major infrastructure projects' (April 2013) (the 'AD Guidance') and is capable of being granted development consent by the Secretary of State either by:

- Section 115(1)(a) of the PA 2008 by virtue of being "matters/development" associated with the Specified Elements and therefore 'development for which development consent is required' under the requirements of the Section 35 Direction; or
- Section 115(1)(b) of the PA 2008 by virtue of being development associated with the Hydrogen Production Facility and the Hydrogen Distribution Network.

2.3.7 Applying the AD Guidance all of the development set out in Schedule 1 of the Order, (other than the Hydrogen Production Facility and the Hydrogen Distribution Network) and noting the description of the Proposed Development provided in Chapter 4 of the Environmental Statement (**Document Reference 6.2.4 [PDA-005]**), is:

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- directly associated with the Hydrogen Production Facility and the Hydrogen Distribution Network ("development for which development consent is required") as it is required for the construction, maintenance or operation of this infrastructure, or to mitigate its impacts (paragraph 5(i) of the AD Guidance);
  - subordinate to the Hydrogen Production Facility and the Hydrogen Distribution Network;
  - none of the development is an aim in themselves (paragraph 5(ii));
  - proportionate to the nature and scale of the Hydrogen Production Facility and the Hydrogen Distribution Network (paragraph 5(iv));
  - of a nature which is typically brought forward alongside a project for a Hydrogen Production Facility and the Hydrogen Distribution Network (paragraph 6);
  - listed in or analogous to the types of associated development in Annexes A and B to the AD Guidance. Those annexes mention the following which are of relevance to Work Nos. 2, 3, 4, 5, 7, 8, 9, 10 and 11:-
    - Formation of new or improved vehicular or pedestrian access (to stations, work sites etc), whether temporary or permanent;
    - Highway / junction improvements;
    - Alteration or construction of roads, footpaths and bridleways, parking spaces for workers and users of the principal development;
    - Temporary haul roads, vehicle-marshalling facilities and laydown areas;
    - Electricity networks, water/wastewater networks, fuel and pipeline networks and telecommunications networks;
    - Hard and soft landscaping;
    - Creation of compensatory habitats or replacement green space;
    - Working sites, site offices and laydown areas;
    - Overhead / underground lines; and
    - Gas pipelines.
- 2.3.8 In conclusion, all of the works described in Schedule 1 (authorised development) to the Order are either development for which development consent is required or associated development for which development consent may be granted (in accordance with sections 31 and 115 of the PA 2008, and taking account of the AD Guidance) and, accordingly, may lawfully form part of an application for an order granting development consent under the PA 2008.
- 2.3.9 A more detailed description of the various elements of the authorised development is provided in Chapter 4: Proposed Development of the Environmental Statement, **(Document Reference: 6.2.4 [PDA-005])**.
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## 2.4 Project interactions

- 2.4.1 The Applicant is promoting the H2Teesside Project which will tie in (via Work No. 7) to the CO<sub>2</sub> onshore gathering network being separately developed by NEP (and consent for which was granted as part of the NZT Project). NEP will be responsible for compressing, transporting and permanently storing the CO<sub>2</sub> captured from the Proposed Development. NEP's compression facilities are adjacent to the H2Teesside Main Site. The Applicant also has other associated development connections which extend into the NZT Project main site, including electrical, gas and water connections. The Applicant's approach of including connection corridors within the NZT Project main site has been discussed and agreed in principle with the NZT Project.
- 2.4.2 Broad corridors/areas for these connections need to be included at this stage as the NZT main site's (NZT Work Nos. 1 and 7) detailed design is not sufficiently progressed to be able to specify precise corridors in which the connections will run nor precise tie-in points. The Applicant will only carry out parts of the Proposed Development within the NZT main site to the extent necessary, within corridors / areas to be defined during detailed design and in close liaison with the NZT Project.
- 2.4.3 There are also other interactions between the Proposed Development and the NZT Project, including in relation to the connection corridors which extend from the Main Site through the Teesworks site; for allowing for Abnormal Indivisible Load (AIL) deliveries via Redcar Bulk Terminal; access routes; and within existing and proposed pipeline corridors south and north of the Tees. These have also been discussed with the NZT Project. Proposals to consider whether construction compounds could be shared are also being explored with the NZT Project.
- 2.4.4 Separately bp is also promoting the HyGreen Project, which is anticipated to be consented via a planning permission pursuant to the Town and Country Planning Act 1990. The HyGreen main site overlaps with the H2Teesside Main Site, and as above for NZT Project, this has been discussed with the HyGreen Project. This is to allow the H2Teesside project to utilise this area, should the HyGreen Project not progress. There are also overlaps between the respective connection corridors for the H2Teesside Project and the HyGreen Project in the Wilton area.
- 2.4.5 The Applicant is engaging with the NZT and HyGreen Projects in order to ensure that the projects take appropriate account of each other as they come forward, and to discuss the terms on which interactions will be managed. This may require protective provisions and/or a side agreement, which the parties are discussing.
- 2.4.6 Separately, the Applicant's Environmental Statement (**Document Reference: 6.1 to 6.4**) has considered the potential cumulative impacts arising from the Proposed Development, the NZT Project and the HyGreen Project. The Applicant has also reflected the NZT Project and HyGreen Project in the draft DCO (**Document Reference: 4.1**) Requirements where appropriate, such as in the construction traffic management plan and local liaison group Requirements (18 and 25 respectively), and will be working with them to help manage combined construction impacts, as set out in the Framework Construction Environmental Management Plan

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(**Document Reference: 5.12 [REP2-011]**), Framework Construction Traffic Management Plan (**Document Reference: 5.16 [REP2-015]**) and Framework Construction Workers Travel Plan (**Document Reference: 5.15 [REP2-014]**).

## 2.5 The undertaker

2.5.1 The “undertaker” is defined as H2 Teesside Limited in article 2 of the draft DCO, who has the benefit of the provisions of the Order, subject to the provisions of article 7 (benefit of this Order) and article 8 (consent to transfer the benefit of this Order) (see paragraphs 3.2.3 and 3.3.5 to 3.3.12 below).

## 2.6 Compulsory acquisition

2.6.1 In addition to providing for the construction and operation of the authorised development the Order will, in accordance with section 122 and section 120(3) / Schedule 5 of the PA 2008, authorise the acquisition of land and rights over land, and the extinguishment of, or interference with, interests in or rights over land.

2.6.2 The Book of Reference (**Document Reference: 3.1**) sets out a description of the land and interests included in the Order split by 'plots'. The plots are shown on the Land Plans (**Document Reference: 2.2**).

2.6.3 The Order provides for the areas which can be compulsorily acquired and what rights can be acquired, and what other rights and interests will be affected. The Order and the Book of Reference should be read together with the Statement of Reasons (**Document Reference 3.2 [APP-024]**) and Supplementary Statement of Reasons (**Document Reference 3.2a**) submitted alongside the Change Request Application which sets out the justification for the acquisition or interference with the Order land. Further information on the compulsory acquisition powers sought is provided below.

## 2.7 Special category land such as open space

2.7.1 Sections 131 and 132 of the PA 2008 apply to the compulsory acquisition of land or of new rights over land forming part of a common, open space or fuel or field garden allotment. For the purposes of sections 131 and 132, “open space” has the same meaning as in section 19 of the Acquisition of Land Act 1981:

*“means any land laid out as a public garden, or used for the purposes of public recreation, or land being a disused burial ground”.*

2.7.2 The parts of the Order land which are considered to be special category land and open space for the purposes of sections 131 and 132 are shown hatched blue on the Special Category Land and Crown Land Plans (**Document Reference: 2.3**) submitted alongside the Change Request Application. There are two different areas of special category land open space that are affected by the Proposed Development, and these have been defined in article 2 of the draft DCO as the Coatham Marsh Special Category Land and the Cowpen Bewley Special Category Land.

Coatham Marsh Special Category Land



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- 2.7.3 Section 132(2) of the PA 2008 states that the Order, to the extent that it authorises the compulsory acquisition of a right over open space land by the creation of a new right over land, shall be subject to special parliamentary procedure unless:
- the Secretary of State is satisfied that one of the exceptions under sections 132(3) to (5) of the PA 2008 applies; and
  - that fact, and the exception under the relevant subsection of sections 132(3) to (5), are recorded in the Order (or other document containing the Order).
- 2.7.4 The exceptions in sections 132(4) and (5) are not relevant to the Proposed Development. Section 132(3) provides that special parliamentary procedure is not required if the Order Land, when burdened with the rights under the Order, will be "no less advantageous than it was before" to the following persons:
- the persons in whom it is vested;
  - other persons, if any, entitled to rights of common or other rights; and
  - the public.
- 2.7.5 The Coatham Marsh Special Category Land is shown on sheets 5 and 6 of the Special Category Land and Crown Land Plans and is only subject to powers of temporary possession for the purposes of carrying out Work No. 4 and for new rights for the undertaker in relation to construction and maintenance of Work No. 4.
- 2.7.6 The Applicant considers that the test under section 132(3) of the PA 2008 is satisfied and that when burdened with the rights to install, inspect and maintain the elements of the Proposed Development, it would not be any less advantageous to persons in whom it is vested, other persons, if any, if entitled to rights of common or other rights, and to the public.
- 2.7.7 The draft preamble to the Order therefore (as it must pursuant to section 132(3)) sets out the Secretary of State's acknowledgment that section 132(3) applies. The Applicant's justification as to why section 132(3) applies is set out in the Statement of Reasons (**Document Reference: 3.2 [APP-024]**).
- Cowpen Bewley Special Category Land
- 2.7.8 The Cowpen Bewley Special Category Land is comprised of open space in Cowpen Bewley Woodland Park and this is shown on sheets 1 and 1A of the Special Category Land and Crown Land Plans.
- 2.7.9 This land is subject to proposed powers of compulsory acquisition of land, and compulsory acquisition of rights that cannot be argued to create a 'no less advantageous' position than is currently the case.
- 2.7.10 The Applicant is therefore relying on sections 131(4) and 132(4), which provide that special parliamentary procedure is not required in such circumstances if:
- replacement land has been or will be given in exchange; and
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- the replacement land has been or will be vested in persons in whom the Order land is vested and is subject to the same rights, trusts and incidents as are attached to the Order land (ignoring the Order granting development consent).
- 2.7.11 The proposed replacement special category land to be provided is shown hatched yellow on the Special Category Land and Crown Land Plans. The provision of woodland creation on the replacement special category land is provided under Work No. 11 of the Order and article 29 of the Order provides the mechanism by which the replacement special category land is to be given in exchange for the Cowpen Bewley Special Category Land and is to vest in the persons subject to the same rights, trusts and incidents as are attached to the Order land (see paragraphs 3.6.18 to 3.6.25 below).
- 2.7.12 The Applicant is satisfied that in the case of the Cowpen Bewley Special Category Land it meets the requirements of sections 131(4) and 132(4) of PA 2008 and the draft preamble to the Order therefore sets out the Secretary of State's acknowledgement that sections 131(4) and 131(4) of PA 2008 applies. The Applicant's full justification as to why these sections apply and how they are complied with is set out in the Statement of Reasons (**Document Reference: 3.2 [APP-024]**).
- 2.8 Statutory undertakers' land and apparatus**
- 2.8.1 The interests held by each statutory undertaker identified by the Applicant as owning land or having a right to keep or access apparatus within the Order land are identified in the Book of Reference (**Document Reference: 3.1**) submitted alongside the Change Request Application.
- 2.8.2 Section 127(2) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of statutory undertakers' land to the extent that:
- the land can be purchased and not replaced without serious detriment to the carrying on of the undertaking; or
  - the land can be replaced by other land belonging to or available for acquisition by the undertakers without serious detriment to the carrying on of the undertaking.
- 2.8.3 Section 127(5) of the PA 2008 states that an order granting development consent may only include provision authorising the compulsory acquisition of a right over statutory undertaker's land by the creation of a new right over land to the extent that:
- the right can be purchased without serious detriment to the carrying on of the undertaking; or
  - any detriment to the carrying on of the undertaking, in consequence of the acquisition of the right, can be made good by the undertaker by the use of the other land belonging to or available for acquisition by them.
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- 2.8.4 Section 138 of the PA 2008 states that an order granting development consent may only include provision for the extinguishment of rights of way, or rights to lay down, erect, continue or maintain apparatus on, under or over the land belonging to statutory undertakers for the purposes of their undertakings only if the Secretary of State is satisfied that the extinguishment is necessary for the purpose of carrying out the development to which the order relates.
- 2.8.5 The Order includes protective provisions in respect of statutory undertakers (see article 41 and Schedules 16 to [22]). The Applicant is currently seeking to agree the form of protective provisions with the affected undertakers. Further details as to how the tests under sections 127 and 138 of the PA 2008 have been satisfied are set out in the Statement of Reasons (**Document Reference: 3.2 [APP-024]**).
- 2.8.6 In addition, the Order includes protective provisions in relation to other third parties with affected apparatus who are not statutory undertakers and to whom sections 127 and 138 of the PA 2008 do not apply to ensure these parties are able to continue their operations. The Applicant is also seeking to agree Protective Provisions with parties who are not statutory undertakers but with rights of access or business operations that are within the Order limits. The Statement of Reasons (**Document Reference: 3.2 [APP-024]**) also sets out who these parties are and the need for protective provisions for them.

## 2.9 Marine Licence

- 2.9.1 Section 66(1) of the Marine and Coastal Access Act 2009 ('2009 Act') sets out the circumstances where a marine licence is required and so are a "licensable marine activity". The two circumstances that are of most relevance to the Proposed Development are:
- To deposit any substance or object within the UK marine licensing area, either in the sea or on or under the sea bed, from—
    - any vehicle, vessel, aircraft or marine structure,
    - any container floating in the sea, or
    - any structure on land constructed or adapted wholly or mainly for the purpose of depositing solids in the sea.
  - To construct, alter or improve any works within the UK marine licensing area either—
    - in or over the sea, or
    - on or under the sea bed.
- 2.9.2 "Marine licensing area" is defined by section 66(4) of 2009 Act as consisting of the "UK marine area other than the Scottish inshore region". "UK marine area" is defined by section 42 of the 2009 Act, the most relevant aspect in respect of the Proposed Development is section 42(3) which defines the sea as "any area submerged at mean high water spring tide and the waters of every estuary, river or channel, so far as the tide flows at mean high water spring tide (MHWS)".

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- 2.9.3 Section 74 of the 2009 Act allows for exemptions specified by the Marine Licensing (Exempted Activities) Order 2011. Article 4 of that order states a marine licence is not needed for an “exempt activity”. Article 35 sets out how there is an exemption for works activity in connection with the construction or operation of a bored tunnel “carried on wholly under the sea bed” so long as two conditions are met:
- that notice of the intention to carry on the activity must be given to the Marine Management Organisation before the activity takes place; and
  - the activity must not significantly adversely affect any part of the environment of the UK marine area or the living resources that it supports.
- 2.9.4 There is no provision for a Deemed Marine Licence (DML) in the Order for the Proposed Development because (i) there are no plans for the Proposed Development to deposit any substance or object in the UK marine licensing area; and (ii) the Applicant is using the bored tunnel exemption for works associated with the construction of the hydrogen pipeline crossing the River Tees and the crossings of Greatham Creek below Mean High Water Springs (MHWS).
- 2.9.5 The works for the pipeline at the crossings will be wholly under the riverbeds and the points at which the pipeline runs overground will be beyond the MHWS of Greatham Creek and the River Tees respectively, and the works will not have any effects on the marine licensing area.
- 2.9.6 The Applicant has liaised with the Marine Management Organisation in relation to this and is seeking its agreement that, due to the nature of the works proposed and the exemption that exists, a marine licence is not be required for the Proposed Development.

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## 3.0 THE PROVISIONS OF THE ORDER

### 3.1 Introduction

3.1.1 The Order includes a number of provisions to enable the construction, maintenance and operation of the Proposed Development. These are briefly described below and then considered in more detail in the following sections:

- Part 1: Article 1 sets out what the Order may be cited as and when it comes into force. Article 2 sets out the meaning of various terms used in the Order. Article 3 sets out the position on electronic communications for the purposes of the Order;
- Part 2: Article 4 provides development consent for the authorised development. Articles 5 and 6 respectively allow the authorised development to be maintained and operated. Articles 7 and 8 respectively set out who has the benefit of the powers of the Order and how (and to whom) those powers can be transferred. Article 9 provides for modifications and amendments to the York Potash Harbour Facilities Order 2016, modifies local legislation which benefits PD Teesport Limited as the statutory harbour authority on the River Tees and disapplication of certain specified provisions including section 23 of the Land Drainage Act 1991 and Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016 insofar as a flood risk activity permit(s) is required;
- Part 3: Articles 10 to 16 provide for the undertaker to be able to carry out works to and within streets, to create or improve accesses, to temporarily stop up streets and rights of way, and to regulate traffic;
- Part 4: Articles 17 to 21 set out supplemental powers relating to the discharge of water, felling or lopping of trees and removal of hedgerows, carrying out protective works to buildings, authority to survey and investigate land and the removal of human remains;
- Part 5: Articles 22 to 37 provide for powers of compulsory acquisition and to take temporary possession of land for the purposes of the authorised development, and also deal with various related land matters;
- Part 6: Articles 38 to 48 include various miscellaneous and general provisions in relation to the Order:-
  - Articles 38 to 40 include provisions relating to: application of landlord and tenant law; planning permission, and defence to proceedings in respect of statutory nuisance;
  - Article 41 provides protection for statutory undertakers and others through the protective provisions in Schedules 16 to [22];
  - Articles 42 to 47 include provisions for protection of Crown rights; the procedure in relation to certain approvals as set out under Schedule 13 (Procedure for Discharge of Requirements) and mechanism for appeals to

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be made by the undertaker to the Secretary of State in relation to certain local authority approvals post-DCO consent under Schedule 12 (Appeals to the Secretary of State); certification of plans as set out under Schedule 14; service of notices; arbitration procedure in the event of a dispute; and funding for compulsory acquisition compensation;

- Article 48 includes provisions in relation to the interface between the Proposed Development and the Anglo American environmental permit;
- Schedules: there are twenty-two Schedules to the Order, providing for:
  - the description of the authorised development (Schedule 1);
  - the Requirements (a form of control akin to planning conditions) applying to the authorised development (Schedule 2);
  - modifications and amendments to the York Potash Harbour Facilities Order 2016 (Schedule 3);
  - matters in relation to streets and access (Schedules 4 to 6);
  - matters in relation to temporary traffic measures (Schedule 7);
  - matters in relation to the removal of important hedgerows (Schedule 8)
  - matters in relation to compulsory acquisition and taking temporary possession of land (Schedules 9 to 11);
  - the procedure for the undertaker to appeal to the Secretary of State in relation to certain local authority approvals post-DCO consent (Schedule 12);
  - the procedure in relation to certain approvals for discharge of requirements (Schedule 13);
  - the certification of plans (Schedule 14);
  - the design parameters of the authorised development (Schedule 15); and
  - protective provisions (Schedules 16 to [22]).

3.1.2 The articles are considered below in numerical order (split between the 'Parts' of the Order). Schedules are briefly considered along with the article which introduces them or to which they relate and are then covered in more detail where necessary after the articles.

3.1.3 Alongside the justification for the inclusion of the provisions of the Order, examples of precedent made development consent orders are included for reference and to demonstrate the potential acceptability of such provisions.

## **3.2 Part 1 (Preliminary)**

3.2.1 Articles 1 (Citation and Commencement) and 2 (Interpretation) are preliminary provisions.

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- 3.2.2 Article 1 provides for the way in which the Order should be cited and when it takes effect.
- 3.2.3 Article 2 (Interpretation) provides for the interpretation of the rest of the Order, including the Schedules. Where appropriate some Schedules also contain provisions setting out what terms mean in the relevant Schedule. Article 2 makes alterations to the model provisions to accommodate the departures from the model provisions elsewhere in the Order, and to add required definitions that are relevant in the context of the authorised development including:
- Definitions of documents submitted as part of the DCO Application and which are referred to in the Order, such as the Environmental Statement (**Document Reference: 6.2**) and various framework plans and indicative strategies;
  - The definition of “apparatus” has the same meaning as in Part 3 of the New Roads and Street Works Act 1991. However, for the purposes of the Order this has been expanded to include pipelines (and parts of them), electricity and fibre optic cables, pipe and cable protection equipment and telecommunications equipment, and to include aerial markers, cathodic protection test posts and field boundary markers, transformer rectification kiosks and electricity cabinets. This is required to ensure that the definition of apparatus is sufficiently broad to encompass the nature of street works which the Applicant may need to carry out. A similar approach has precedent in The Net Zero Teesside Order 2024;
  - A definition of “maintain” has been added to make clear what is authorised under article 5 (maintenance of authorised development), and in particular that it does not permit the undertaker to depart from the description of the authorised development in Schedule 1 or to carry out maintenance operations which would cause any materially new or materially different adverse environmental effects to those identified in the Environmental Statement (**Document Reference: 6.2**). It also specifies that whilst 'replacement' of the authorised development is allowed, this cannot encompass the whole of it - this is to ensure that the Order cannot be construed so as to in effect allow the complete replacement of the authorised development at some point in the future. This wording has precedent in article 2 of The Net Zero Teesside Order 2024;
  - Article 2 defines “commencement” and separately also defines the “permitted preliminary works”. Where appropriate the Requirements (in Schedule 2) are drafted so that the permitted preliminary works can be carried out without discharging certain Requirements - an example is the detailed design approvals under Requirement 3. A Permitted Preliminary Works Construction Environmental Management Plan must be submitted to and approved by the relevant planning authority before the permitted preliminary works may commence and this plan needs to be in accordance with the Framework Construction Environmental Management Plan to the extent it is relevant to these works (Requirement 15). Where the permitted preliminary works need to be regulated by a Requirement, they are not excluded from it with one example
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of this being in Requirement 4 - Landscape and Biodiversity Management Plan. The works identified in the “permitted preliminary works” are considered appropriate as to the nature of these works, and the ES has assessed the Proposed Development on the basis that the permitted preliminary works may be carried out prior to certain Requirements being discharged or triggered. A similar structure and wording has precedent in The Net Zero Teesside Order 2024. The "permitted preliminary works" are defined as follows:

– *"permitted preliminary works" means works consisting of environmental surveys (including archaeological investigations), geotechnical surveys, surveys and protection of existing infrastructure, and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors, the provision of temporary means of enclosure and site security for construction, temporary access roads, paving, diversion of existing services and laying of temporary services (but not including the laying of any of the Work Nos. 2, 3, 4, 5, 6, 7 and 8), the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;*

- The "undertaker" is defined as H2 Teesside Limited, who has the benefit of the provisions of the Order, subject to the provisions of article 7 (benefit of this Order) and article 8 (consent to transfer benefit of this Order).
- Article 2 includes definitions of “commissioning” and “date of final commissioning”. “Commissioning” is defined as the process of testing systems and components of the authorised development (which are installed or in relation to which installation is nearly complete) in order to ensure that they, and the authorised development as a whole, function in accordance with the plant design specifications and the undertaker’s operational and safety requirements. The definition of “date of final commissioning” means the date on which commissioning of the authorised development is completed and it commences operation on a commercial basis or, where specified in the Order, the date on which a specified Work No. commences operation on a commercial basis. This definition has been drafted so that it can apply generally where used in some parts of the Order and to apply to specific Work Nos. where used elsewhere in the Order.

3.2.4 Paragraphs (2) to (6) of article 2 have been added to provide clarity in that (respectively) all distances, directions and lengths (except where specified otherwise) are approximate; all areas described in square metres in the Book of Reference (**Document Reference: 3.1**) are approximate; references to numbered works are as described in Schedule 1 and shown on the Works Plans (**Document Reference 2.4**) submitted alongside the Change Request Application and the Integrated Works Plans (**Document Reference 2.4a [REP2-003]**); how the word 'includes' is to be construed; and that references to "plot" are to those shown on



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the Land Plans (**Document Reference: 2.2**) submitted alongside the Change Request Application and described in the Book of Reference.

- 3.2.5 Article 3 (Electrical communications) has been added to confirm that references to documents in the Order include documents in electronic form and reference to communications being in writing include electronic communications. Paragraph (2) sets out conditions that must be satisfied in order for an electronic communication to be treated as valid. Paragraphs (3) to (5) set out the arrangements for sending paper copies and the revocation of consent by recipients to the use of electronic communications.

### **3.3 Part 2 (Principal Powers)**

- 3.3.1 Article 4 (Development consent etc. granted by this Order) grants development consent for the authorised development. Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different sections or parts of the authorised development. This split of the authorised development between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans (**Document Reference: 2.4**) submitted alongside the Change Request Application to delineate the area within which each 'work' can be constructed, maintained and operated (see article 4(2)). The areas within which each work can be constructed are therefore shown on the Works Plans. The Works Plans comprise of a Key Plan which identifies the geographic extent of a further 44 detailed plan sheets which overlay the red line boundary of the Proposed Development. The 44 detailed plan sheets in turn show the locations within which each Work Number must be constructed. The works set out in Schedule 1 are set out in paragraphs 3.8.1 to 3.8.20 below.
- 3.3.2 Paragraph (2) requires that the works authorised by the Order are situated in the numbered areas shown on the Works Plans. There is no concept of limits of deviation in the DCO or on the Works Plans. However, the boundary of each "work" is not flexible and therefore acts in a similar way to a limit of deviation. This is to provide certainty as to what has been consented by the Order, in respect of which land areas. Article 4 and Schedules 1 and 2 operate together to provide the parameters within which the undertaker must construct, operate and maintain the hydrogen production facility.
- 3.3.3 Article 5 (Maintenance of authorised development) provides for the maintenance of the authorised development. Article 5 reflects the terms of the model provisions, but text has been added to make clear that maintenance must be in accordance with the provisions of the Order and the Requirements, and that it may only take place within the Order limits.
- 3.3.4 Article 6 (Operation of authorised development) permits the operation and use of the authorised development. Paragraph 6(2) specifically preserves the need to obtain any other operational consent that may be needed for the hydrogen production facility in addition to the Order.

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- 3.3.5 Article 7(1) (Benefit of this Order) overrides section 156(1) of the PA 2008 (which is permitted by section 156(2)) and provides that the benefit of the Order is solely for H2 Teesside Limited, subject to article 8.
- 3.3.6 Overriding section 156(1) of the PA 2008 is common in DCOs that have been made and is a well-established practice, including The Net Zero Teesside Order 2024, The A38 Derby Junctions Development Consent Order 2023 as well as The Hinkley Point C (Nuclear Generating Station) Order 2013 and The Thorpe Marsh Gas Pipeline Order 2016. Given the nature of the authorised development and the powers sought in the Order, it is appropriate that the benefit of the Order is reserved to the undertaker (subject to the transfer provisions).
- 3.3.7 Article 8 (Consent to transfer benefit of this Order) makes provision for the transfer of the benefit of the Order.
- 3.3.8 The consent of the Secretary of State is needed before the undertaker can transfer or lease the benefit of the Order, except where:
- (i) the transferee or lessee is
    - (a) the holder of a licence under section 6 of the Electricity Act 1989 or section 7 of the Gas Act 1986;
    - (b) in relation to the transfer of a lease of any works within a highway, a highway authority responsible for the highways within the Order limits;
    - (c) in relation to any works to provide a connection between any part of Work Nos. 6A.1 or 6A.2 and a person to whom a supply of hydrogen is to be provided (i.e. an hydrogen off-taker) (and including Work Nos. 6B.1 and 6B.2), that person; or
  - (ii) where the compensation provisions for the acquisition of rights or interests in land or for effects on land have been discharged or are no longer relevant.
- 3.3.9 The justification for these provisions is that in such cases, the transferee or lessee will either be of a similar regulatory standing to the Applicant, or there are no outstanding actual or potential compulsory acquisition compensation claims, and there is therefore no need for regulatory oversight of any transfer. The carve outs from the need for consent have precedent in orders such as The Net Zero Teesside Order 2024, The Immingham Open Cycle Gas Turbine Order 2020 and The Hornsea Three Offshore Wind Farm Order 2020.
- 3.3.10 In addition, the Applicant has allowed for a transfer of the benefit of the Order to an hydrogen offtaker, via paragraph (i)(c) noted above, in relation to works to provide a connection between the Hydrogen Distribution Network and the offtaker’s premises. Part of the connection works may be constructed or operated by the offtaker, and it is therefore appropriate to allow for the transfer of the benefit of the Order in relation to this.
- 3.3.11 Article 8(3) specifies that where a transfer or grant is made under article 8(1) references in the Order to the undertaker include any such transferee or lessee.
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- 3.3.12 Article 8(7) provides that where the consent of the Secretary of State is not needed, the undertaker must still notify the Secretary of State in writing prior to the transfer or grant of the benefit of the provisions of the Order. Article 8(8) to (10) provide further detail on the notification that is to be given.
- 3.3.13 Article 9 (Amendment and modification of statutory provisions) provides for Schedule 3 to set out modifications and amendments to The York Potash Harbour Facilities Order 2016 (as amended), once these have been agreed and finalised. The modifications would be made pursuant to the power contained in section 120(5) of the PA 2008, which permit in certain circumstances the amendment of 'statutory provisions', defined in section 120(6) as including an instrument made under an Act. The York Potash Harbour Facilities Order 2016 is such a statutory instrument, and the amendments fall within the circumstances within which amendments are permitted. They will be amendments of provisions which relate to matters for which provision may be made in the Order or which it is necessary or expedient to make in connection with this Order, being the means by which conflicts between the works and powers contained within the two development consent orders are to be avoided. This approach was taken in The Net Zero Teesside Order 2024 and as the authorised development is in a similar location it is anticipated that similar modifications will be required. The Applicant will seek to agree these as soon as practicable.
- 3.3.14 This article also provides for the disapplication of certain requirements which would otherwise apply under local legislation. Section 120(5)(a) of the PA 2008 provides that an order granting development consent may apply, modify, or exclude a statutory provision which relates to any matter for which provision may be made in the Order.
- 3.3.15 Paragraph (2) of article 9 seeks to disapply certain byelaws, directions and licensing provisions in force pursuant to the Tees and Hartlepoons Port Authority Act 1966, Tees and Hartlepool Port Authority Revision Order 1974 and Tees and Hartlepool Harbour Revision Order 1994, to ensure that the Applicant has sufficient flexibility to build the scheme efficiently and is not restricted by byelaws, directions or licensing requirements that would impose restrictions on its construction operations and methodologies.
- 3.3.16 Article 9(2) provides for the disapplication of the following specified provisions:
- Section 23 of the Land Drainage Act 1991, which prohibits for example, the obstruction and other works in watercourses without the consent of the lead local flood authority or relevant internal drainage board;
  - Section 32 of the Land Drainage Act 1991, which would inappropriately allow the provisions of the Order relating to drainage to be revisited;
  - The provisions of any byelaws made under section 66 of the Land Drainage Act 1991;
  - The provisions of any byelaws made, or having effect, under paragraphs 5, 6 or 6A to Schedule 25 of the Water Resources Act 1991; and
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- Regulation 12 of the Environmental Permitting (England and Wales) Regulations 2016, insofar as a flood risk activity permit(s) is required.
- 3.3.17 The disapplication of the provisions above are sought on the basis that they address matters whose acceptability will have been sufficiently considered and resolved if the Order is made, notably in relation to the provisions under the Land Drainage Act 1991, the Water Resources Act 1991 and the Environmental Permitting (England and Wales) Regulations 2016 through protective provisions for the protection of the Environment Agency (Schedule 22 to the Order) and the approval role of local lead flood authority in Requirement 10. The purpose is to avoid unnecessary uncertainty, duplication and delay to the implementation of the Proposed Development.
- 3.3.18 Section 150 of the PA 2008 only allows requirements for prescribed consents to be disapplied if the relevant body has consented to this. The relevant consents are still to be obtained to ensure that the disapplications do not prejudice the statutory objectives and responsibilities of the relevant regulators.
- 3.4 Part 3 (Streets)**
- 3.4.1 Article 10 (Power to alter layout etc. of streets) allows the undertaker to alter the layout of a street or carry out any works in the street as are set out in Schedule 4 and shown on the Access and Rights of Way Plans (**Document Reference: 2.5**) submitted as part of the Change Request Application.
- 3.4.2 Paragraph (2) allows for the alteration of the layout of any street within the Order limits for the purposes of construction, operation, or maintenance. A general power to alter the layout of streets is considered necessary in order to ensure that any unforeseen works may be carried out within the Order limits and to ensure the construction of the Proposed Development can be completed. This latter power is subject to obtaining the consent of the street authority and to the restoration of such streets to the reasonable satisfaction of the street authority. This is based on article 8 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.4.3 Article 11 (Street works) is a model provision intended to permit in certain streets (as specified in Schedule 4) the carrying out of street works for the purposes of the authorised development. Paragraph (3) brings in sections 54 to 106 of the New Roads and Street Works Act 1991 to apply to any street works carried out pursuant to article 11(1). This provides protection for the street authority for the street in question. This is based on article 9 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.4.4 Article 12 (Construction and maintenance of new or altered means of access) provides that new or altered means of access are to be constructed to the reasonable satisfaction of the highway authority, unless otherwise agreed by the highways authority, and maintained at the expense of the undertaker for a year. This Article has precedent in Article 10 of The Longfield Solar Farm Order 2023 and Article 10 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.4.5 Any part of the new or altered means of access which are proposed to be public highway (as set out on the Access and Rights of Way Plans (**Document Reference:**

- 2.5) submitted alongside the Change Request Application) will then be maintained by the highway authority. Those parts of the new or altered means of access which are not intended to be public highway (such as private accesses which the undertaker is altering or creating and as also set out in the Access and Rights of Way Plans) will then be maintained by the relevant street authority. Details of the new or altered means of access which are proposed and not proposed to be public highway are set out in Schedule 5.
- 3.4.6 Paragraphs (3) and (4) of Article 12 mirror the defence in section 58 of the Highways Act 1980 where the undertaker is subject to an action for damages and has taken such care as was reasonably required in the circumstances to secure that the street was not dangerous to traffic. This defence needs to be expressly included in the Order since section 58 would not apply to works carried out pursuant to the Order.
- 3.4.7 Article 13 (Temporary closure of streets and public rights of way) provides for the temporary closure of streets and public rights of way for the purposes of carrying out the authorised development. The powers under this article are required to safely carry out works to construct parts of the authorised development including the hydrogen distribution pipelines and related highway improvements. No permanent stopping up or diversion is required. Similar wording has been used in other made Orders, including article 11 of The Longfield Solar Farm Order 2023, article 11 of The Immingham Open Cycle Gas Turbine Order 2020, article 12 of The Drax Power (Generating Stations) Order 2019.
- 3.4.8 In respect of streets and public rights of way, the article largely follows the approach in the model provision in that it applies generally, and also specifically to certain streets (set out in Schedule 6 of the Order and the Access and Rights of Way Plans). Route codes for footpaths and bridleways are shown where available on the Access and Rights of Way Plans. Specific points on the Access and Rights of Way Plans are marked by unique letter markers (cross-referenced in the Order) which provides certainty as to the parts of the streets or public rights of way which may be temporarily closed.
- 3.4.9 There are consultation requirements before temporary stopping up powers can be exercised and compensation is provided for in respect of the loss or suspension of any private rights of way. Paragraph (6) confers a power on the undertaker, where the use of a street or public right of way has been temporarily closed under the power in article 13, to use such street or public right of way as a temporary working site.
- 3.4.10 Article 14 (Access to works) is a model provision which permits the undertaker to form new or to improve existing means of access in the locations specified in Schedule 4. Article 14(1)(a) provides that the undertaker may, for the purposes of the authorised development, form and lay out the means of access, or improve existing means of access, at the locations within the Order limits identified in the third column of Schedule 4, which in turn refer to the Access and Rights of Way Plans (**Document Reference: 2.5**) submitted alongside the Change Request Application. Article 14(1)(b) provides a general power to form and lay out such other means of access or improve the existing means of access as the undertaker

reasonably requires for the purposes of the authorised development. The powers under article 14 are required because the Applicant will need to create or improve existing means of access for the purposes of the authorised development. The power under article 14(1)(b) is constrained by a requirement for the undertaker to first secure approval from the relevant planning authority. It would be incumbent on the undertaker to demonstrate that there is a reasonable requirement for the carrying out of such works pursuant to seeking that approval. Such a provision has been included in various DCOs including the East Anglia ONE North Offshore Wind Farm Order 2022.

- 3.4.11 Article 15 (Agreements with street authorities) is a model provision which provides that a street authority and the undertaker may enter into agreements with respect to the construction of a street or the carrying out of works in the street, and the alteration and diversion of the street. In addition to the model provisions, paragraph (1) provides for such agreements to deal with the strengthening, improvement, or repair of any streets. Article 15 is a provision relating to, or to matters ancillary to, the authorised development within section 120(3) of the PA 2008 as it directly relates to the safe construction of the authorised development. The power to enter into agreements with street authorities and highway authorities is necessary as section 278 of the Highways Act 1980 (agreements as to execution of works) does not relate to the powers under the Order. Such a provision has been included in various DCOs including The National Grid (King's Lynn B Power Station Connection) Order 2013, The Progress Power (Gas Fired Power Station) Order 2015, and the East Anglia ONE North Offshore Wind Farm Order 2022.
- 3.4.12 Article 16 (Traffic regulation measures) provides the undertaker with powers to temporarily make provision for traffic regulation measures (including placing traffic signs and signals) in the extents of the streets as specified in Schedule 7. This Schedule identifies the relevant streets, the measures to be put in place and the extent of the street affected with reference to the Temporary Traffic Regulation Measures Plan (**Document Reference: 2.13**) submitted alongside the Change Request Application. These specific measures are required to safely regulate traffic during the construction of the Proposed Development. It gives effect to any prohibition, restriction or other provision made by the undertaker as if it was made by the traffic authority or local authority in whose area the road is situated.
- 3.4.13 Article 16 is not in the model provisions but there is a precedent for it in article 14 of The Longfield Solar Farm Order 2023.

### **3.5 Part 4 (Supplemental Powers)**

- 3.5.1 Article 17 (Discharge of water) is a model provision which enables the undertaker to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the authorised development with the approval of the owner of the watercourse, public sewer or drain (such approval not to be unreasonably withheld) and subject to certain other conditions. Paragraph (6) makes clear that this article does not obviate the need for an environmental permit for water discharge activities or groundwater activities where this is required under

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- environmental permitting requirements. The reference from the model provisions to section 85 of the Water Resources Act 1991 has been deleted as this section has now been repealed and has been replaced with a reference to the Environmental Permitting (England and Wales) Regulations 2016 instead. This article has precedent in article 15 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.5.2 Article 18 (Felling or lopping of trees and removal of hedgerows) is a modified model provision which provides that the undertaker may fell or lop or cut back the roots of any tree or shrub within the Order limits to prevent it obstructing or interfering with the construction, maintenance or operation of the authorised development. Compensation is provided for loss or damage if caused. Paragraphs (4) and (5) also allows the undertaker to remove any hedgerow in the Order limits that is required to be removed and any important hedgerows identified in Schedule 8 (important hedgerows to be removed) of the Order. The drafting in paragraphs (4) and (5) has precedent in article 17 of The A303 (Amesbury to Berwick Down) Development Consent Order 2023.
- 3.5.3 Article 19 (Protective work to buildings) is a model provision which allows the undertaker to carry out protective works to buildings within the Order limits, subject to a number of conditions including the service of 14 days' notice (except in the case of emergency) and the payment of compensation. The model provision has been updated to refer to the five-year period during which protective works may be carried out, and compensation payable, starting on the date that those works are completed. The phrase in the model provisions (when it is 'open for use'), is not appropriate given the nature of the authorised development. There is precedent for this amendment in article 33 of the Immingham Open Cycle Gas Turbine Order 2020.
- 3.5.4 Article 20 (Authority to survey and investigate the land) is based on the model provision which allows the undertaker to survey and investigate land including bringing equipment onto the land and making trial holes. The power is subject to a number of conditions including a requirement for 14 days' notice to be given and is subject to the payment of compensation. The power extends to land "which may be affected by the authorised development" as surveys may need to be undertaken on such land to monitor the impacts of the authorised development. The article applies section 13 of the Compulsory Purchase Act 1965 (refusal to give possession to acquiring authority) thereby providing an enforcement mechanism (by way of a warrant) where entry onto land under the article is refused. This is considered necessary so that there is no delay in the implementation of the authorised development. This article has precedent in article 16 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.5.5 Article 21 (Removal of human remains) provides for the removal of human remains from the Order limits and for their reburial in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose or for their treatment according to the wishes of any personal representatives or relatives who come forward following the giving of necessary
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notices. This provision is considered necessary so that the discovery of any remains does not delay the implementation of the authorised development.

- 3.5.6 The undertaker is required to publish a notice of intended removal of human remains from the Order land and follow the procedure set out in article 21(3) to (11). However, article 21(12) provides that no such notice is required where the undertaker is satisfied that the remains were interred more than 100 years ago, and no relative or personal representative of the deceased is likely to object to their removal.

### **3.6 Part 5 (Powers of Acquisition)**

- 3.6.1 Article 22 (Compulsory acquisition of land) provides for the compulsory acquisition of such land as is required for the authorised development or which is required to facilitate the authorised development or is incidental to the authorised development. The article broadly follows the model provision, although reference to compensation for the extinguishment or suspension of a private right of way has been deleted as this is dealt with in article 26 (Private rights). This approach has precedent in article 18 of the Immingham Open Cycle Gas Turbine Order 2020. Article 22 is subject to articles 25 (Compulsory acquisition of rights etc.), 32 (Temporary use of land for carrying out the authorised development) and 42 (Crown rights).
- 3.6.2 Article 23 (Power to override easements and other rights) provides that by virtue of section 158 of the PA 2008 in carrying out or using the development authorised by the Order and doing anything else authorised by the Order, the undertaker may interfere with any easement, liberty, privilege, right or advantage annexed to land and affecting other land, including any natural right to support, or breach any restriction as to use of land arising by virtue of contract. It also provides that by virtue of section 152 of the PA 2008, compensation may be payable under section 10 of the Compulsory Purchase Act 1965 for any such interference or breach. This is not a model provision but is added to clarify the position regarding rights burdening land required for the authorised development. It has precedent in article 19 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.6.3 Article 24 (Time limit for exercise of authority to acquire land compulsorily) is a model provision which imposes a time limit of five years for the exercise of powers of compulsory acquisition. The date of the making of the Order has been used to align with the date from which the undertaker may exercise any powers of compulsory acquisition that may be contained within the Order. The Applicant considers that five years is an appropriate time limit as it is consistent with the time limit for commencing the authorised development set out in Requirement 1 of Schedule 2 of the Order and has precedent in the majority of Orders made to date, for example in article 20 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.6.4 Article 25 (Compulsory acquisition of rights etc.) allows for rights over land to be acquired as well as (or instead of) the land itself, and also for new rights to be created over land for the benefit of the Applicant and for the potential benefit of statutory undertakers (and others with apparatus) where apparatus is required to



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- be diverted or relocated (as identified in the table in Schedule 9 (Land in which new rights etc. may be acquired) to the Order).
- 3.6.5 It provides for such rights as may be required to be acquired by the Applicant over land which it is authorised to acquire under article 22 (Compulsory acquisition of land). In accordance with Advice Note 15, the Applicant has not sought a general power to impose restrictive covenants over the Order land, in article 25(1). The benefit of article 25 is that it would allow the Applicant, if appropriate, to reduce the area of outright (freehold) acquisition and rely on the creation and acquisition of rights instead, a lesser interference. A provision of this kind is usual in Transport and Works Act Orders and Hybrid Bills and has been followed in a number of development consent orders, for example The Net Zero Teesside Order 2024, The Immingham Open Cycle Gas Turbine Order 2020 and The A303 (Amesbury to Berwick Down) Development Consent Order 2020.
- 3.6.6 Paragraphs (2), (3), and (4) provide for the exercise of the power by statutory undertakers (for the reasons noted above), either where the Applicant has secured consent from the Secretary of State to transfer such powers to a statutory undertaker (or others with apparatus) or where the Secretary of State's consent is not required because the powers have been transferred to statutory undertakers pursuant to article 8(6), as explained in paragraphs 3.3.8 and 3.3.9 above.
- 3.6.7 Paragraph (5) provides that, for the land described in Schedule 9 and shaded blue on the Land Plans (**Document Reference: 2.2**) submitted alongside the Change Request Application, the Applicant's powers of compulsory acquisition are limited to the acquisition of such rights, and the imposition of such restrictive covenants, as may be required for the purposes of the authorised development as specified in Schedule 9. It also provides that for the land shaded pink on the Land Plans, the Applicant can acquire new rights and impose restrictive covenants for the purposes set out in Schedule 9. This is an extension of the principle set out above, and allows the undertaker to acquire the necessary rights and impose restrictions in land which is shown coloured pink on the Land Plans, if following detailed design that is feasible.
- 3.6.8 The power to acquire rights and in particular to impose restrictive covenants allows for the possibility of reducing the area of outright acquisition and therefore enables a more proportionate exercise of compulsory acquisition powers. It is in the public interest and has precedent in The Net Teesside Order 2024 and The Abergelli Power Gas Fired Generating Station Order 2019. This is of particular importance to the authorised development as restrictive covenants for the protection of the underground elements of the Proposed Development would impose a lesser burden on the retained surface of the land than would be the case were it to be acquired outright.
- 3.6.9 Paragraph (7) provides that, where the Applicant needs only to acquire rights over land, it is not obliged to acquire any greater interest in that land.
- 3.6.10 Paragraph (8) introduces Schedule 10, which amends existing compensation legislation in the case of a compulsory acquisition under the Order of a right by the
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- creation of a new right or the imposition of a restriction. Schedule 10 does not affect the entitlement to compensation, but generally ensures that the compensation code applies to the compulsory acquisition by the creation of new rights and the imposition of restrictive covenants.
- 3.6.11 Paragraph (10) explains the definition of rights over land and that it includes references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject.
- 3.6.12 Paragraph (11) confirms that nothing in this article permits the undertaker to acquire or create rights or impose restrictive covenants in land specified in Schedule 11 (land of which temporary possession may be taken).
- 3.6.13 As acknowledged in “good practice point 8” in PINS Advice Note Fifteen: Drafting Development Consent Orders (AN15), the changes made to compulsory acquisition legislation by the Housing and Planning Act 2016 has necessitated amendments to the compulsory acquisition provisions in DCOs. Article 25(7) addresses this by introducing Schedule 10 to the DCO which provides for amendments to Part 1 of the Compulsory Purchase Act 1965. The purpose of the amendments is to ensure consistency between the provisions of the DCO and the Compulsory Purchase Act 1965 (as amended by the Housing and Planning Act 2016) as applied by section 125 of the Planning Act 2008. Broad precedent is provided for these modifications by article 25 of the Silvertown Tunnel Order 2018 (which is referred to in AN15). In accordance with section 126(2) of the Planning Act 2008 these provisions are modified only to the extent necessary to ensure that they apply properly to the compulsory acquisition powers authorised by the DCO. There is also precedent in more recently made Orders for the drafting such as article 22 of The Longfield Solar Farm Order 2023.
- 3.6.14 Paragraph (12) provides that the article is subject to Crown rights (Article 42).
- 3.6.15 Article 26 (Private rights) is based on a model provision and has the effect of extinguishing private rights and restrictions over land where: (1) land is compulsorily acquired; (2) where notified by the undertaker, the private right is inconsistent with a right being compulsorily acquired; and (3) land is owned or leased by the undertaker. The article also suspends private rights where the private right is inconsistent with a right being compulsorily acquired by the undertaker and also suspends private rights for as long as the undertaker is in temporary possession of land under the Order. The article departs from the model provision in that it relates to all rights over land, not just rights of way, to ensure that any other rights that may exist cannot prevent the implementation of the authorised development. The article follows the approach in the Net Teesside Order 2024 and article 21 of The Longfield Solar Farm Order 2023. Paragraph (4) limits the scope of the suspension of existing rights to only what is necessary where temporary possession of land is taken pursuant to the Order.
- 3.6.16 Article 27 (Application of the 1981 Act) is a model provision that applies the vesting procedures in the Compulsory Purchase (Vesting Declarations) Act 1981 (the '1981

- Act') to the exercise of powers of compulsory acquisition pursuant to the Order and is a model provision. It gives the undertaker the option to acquire land via the process set out under the 1981 Act, rather than the notice to treat procedure. This article has been updated to incorporate and reflect the changes brought about by the Housing and Planning Act 2016. These modifications have precedent in The Wrexham Gas Fired Generating Station Order 2017 and The Silvertown Tunnel Order 2018.
- 3.6.17 Article 28 (Acquisition of subsoil and airspace only) permits the undertaker to acquire only the subsoil of, or airspace over, land which is to be compulsorily acquired, and gives the undertaker the ability to minimise the extent of interests acquired from owners. This Article is appropriate in the context of cables, pipes or other apparatus (which may be laid underground as part of the authorised development, or may oversail land), where acquisition of the 'entire' freehold may not be required, and it could permit the undertaker to compulsorily acquire only the 'smaller' interest, reducing the impact on the landowner. This is based on the model provision with amendments which have precedent in article 28 of The Southampton to London Pipeline Development Consent Order 2020.
- 3.6.18 Article 29 (special category land and replacement special category land) makes provision for the Cowpen Bewley Special Category Land (defined under article 2) to vest in the undertaker once the relevant planning authority has approved a scheme for the provision of replacement special category land and is discharged from all rights, trusts and incidents to which it was previously subject. Paragraph (1) makes it clear that the undertaker must not exercise relevant Order powers<sup>2</sup> in respect of the Cowpen Bewley Special Category Land until the undertaker has exercised a relevant Order power over the Replacement Special Category Land.
- 3.6.19 The Cowpen Bewley Special Category Land is owned by two entities, Stockton-on-Tees Borough Council (STBC) and Northern Gas Networks Limited (NGN). The DCO provides that the replacement special category land will be apportioned between them – that the land is vested in both of them is a requirement of section 131(4)(b).
- 3.6.20 Paragraph (3) therefore provides that the date when the replacement special category land is laid out and provided in accordance with approved scheme requirements, the council replacement special category land and the NGN replacement special category land will vest in the STBC and NGN respectively subject to the same rights, trusts and incidents as were attached to the Cowpen Bewley Special Category Land.
- 3.6.21 At the same time, paragraph (4) provides that the STBC and NGN are granted the access rights to the replacement special category land across the access track that runs from the public highway to the land – this ensures that STBC and NGN can access the replacement special category land as soon as the land is vested in them.
- 3.6.22 Paragraph (5) provides for further rights to be granted to STBC in NGN's replacement special category land, to enable STBC to access and maintain the land,

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<sup>2</sup> Where 'relevant Order powers' are defined in article 29(10) as articles 22 (compulsory acquisition of land), 25 (compulsory acquisition of rights etc.) and 32 (temporary use of land for carrying out the authorised development).

- unless otherwise agreed between the STBC and NGN. This reflects the fact that the land must be vested in both STBC and NGN, but in reality the replacement special category land will be managed by STBC, alongside the existing Cowpen Bewley Woodland Park (which the replacement special category land adjoins). Whilst NGN may transfer its part of the replacement special category land to STBC, in case this agreement is not put in place, paragraph (5) operates to ensure that STBC can manage the whole of the replacement special category land as intended.
- 3.6.23 Paragraph (7) states that the date on which the replacement special category land is laid out and provided must be no later than 24 months from the undertaker taking possession of the Cowpen Bewley Special Category Land.
- 3.6.24 As stated in paragraphs 2.7.8 to 2.7.12 above, the mechanism in this article is to enable the undertaker to satisfy the tests under sections 131(4) and 132(4) of PA 2008 that replacement land is being given in exchange for open space land subject to the same rights, trusts and incidents as attach to the Order land.
- 3.6.25 Paragraph (8) is a reference to the mechanism by which the undertaker can take temporary possession and acquire rights over the Coatham Marsh Special Category Land. As stated in paragraphs 2.7.3 to 2.7.7 above, the Applicant considers that the test under section 132(3) of the PA 2008 is satisfied and that when burdened with the rights to install, inspect and maintain the elements of the Proposed Development, it would not be any less advantageous to persons in whom it is vested, other persons, if any, if entitled to rights of common or other rights, and to the public.
- 3.6.26 Article 30 (Modification of Part 1 of the 1965 Act) modifies the provisions of Part 1 of the Compulsory Purchase Act 1965 as applied to the Order by section 125 of the PA 2008. This provision reflects changes introduced by the Housing and Planning Act 2016. Paragraphs (1) to (3) amend the provisions of the Compulsory Purchase Act 1965 so they are consistent with the terms of the Order and paragraph (5) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the acquisition of subsoil or airspace only or the temporary possession or use of land under this Order. These modifications have precedent in article 26 of The Southampton to London Pipeline Development Consent Order 2020.
- 3.6.27 Article 31 (Rights under or over streets) is a model provision which allows the undertaker to enter on and appropriate interests within streets where required for the purposes of the authorised development without being required to acquire that land. Provision is made for the payment of compensation in certain circumstances (with slight refinements to the wording of the model provisions). This refined wording has precedent in article 25 of The Immingham Open Cycle Gas Turbine Order 2020 and article 26 of The Longfield Solar Farm Order 2023.
- 3.6.28 Article 32 (Temporary use of land for carrying out the authorised development) allows the land specified in Schedule 11 to be temporarily used for the carrying out of the authorised development. There is a clear limit on the length of time that the undertaker can use land in this way, which in the case of land that may only be used

- temporarily is the earlier of: where Schedule 11 specifies a purpose for which possession may be taken relating to particular Work Nos., the end of the period of one year beginning with the date of final commissioning of these Work Nos.; or the end of the period of one year beginning with the date of final commissioning of the authorised development. The article also requires the undertaker to give 28 days' notice before taking possession, and to restore the land following the temporary works.
- 3.6.29 Paragraph 1(a)(ii) allows article 32 to apply to land which may later be the subject of compulsory acquisition. This reflects a common approach to designing and building infrastructure projects, whereby possession is taken of a wider area required for the purposes of construction, and once the location of new apparatus is known definitively (after it has been built), then the final area of land required permanently is defined and acquired. This allows for a more proportionate approach to the extent of land acquisition.
- 3.6.30 Paragraphs (4) and (5) provide that the Applicant may, pursuant to article 32(1)(a)(ii), temporarily use land that it may compulsorily acquire. This is also subject to a one-year limit beginning with the date of final commissioning of the authorised development.
- 3.6.31 Paragraph (9) makes it clear that the undertaker cannot compulsorily acquire the land specified in article 31(1)(a)(i) (which is land which of which temporary possession only is required). This approach was used in The Net Zero Teesside Order 2024.
- 3.6.32 Paragraph (10) makes it clear that the article does not preclude the creation or acquisition of new rights, imposition of restrictions or acquisition of rights in land specified in Schedule 9, and nor are the powers under article 28 (Acquisition of subsoil or airspace only) or article 31 (Rights under or over streets) precluded.
- 3.6.33 Paragraph (14) dis-applies the provisions of the Neighbourhood Planning Act 2017 that relate to temporary possession. The Applicant's rationale for this is that the provisions relating to temporary possession in the Neighbourhood Planning Act 2017 have not yet come into force and the regulations required to provide more detail on the operation of that regime are also not yet in place. The Applicant is of the view that it is not currently possible to understand or reflect accurately the temporary possession provisions as intended by Government in respect of DCOs. As such, it is considered appropriate to apply the temporary possession regime which has been included in numerous DCOs and orders made under the Transport and Works Act 1992 to date. This approach has been adopted in DCOs including The Net Zero Teesside Order 2024, The Silvertown Tunnel Order 2018, The Eggborough Gas Fired Generating Station Order 2018, and The Millbrook Gas Fired Generating Station Order 2019.
- 3.6.34 Article 33 (Temporary use of land for maintaining the authorised development) provides for the temporary use of land for maintenance of the authorised development. There are clear limits on the length of time that the undertaker can use land in this way, provisions requiring 28 days' notice to be given and restoration

- of the land following the temporary possession. This article is broadly based on the model provision and provides for the payment of compensation for that temporary use of the land. The maintenance period has been adapted from the model provision to apply to the period of one year beginning with the date of final commissioning, as opposed to the date on which the project is opened for use, as the latter is not an appropriate phrase for this type of development. Similar wording has been used in other made Orders for gas fired generating stations, including in article 28 of The Immingham Open Cycle Gas Turbine Order 2020. Paragraph (13) dis-applies the provisions of the Neighbourhood Planning Act 2017 that relate to temporary possession for the same reasons as above in respect of article 32.
- 3.6.35 Article 34 (Statutory undertakers) provides for the acquisition of land belonging to statutory undertakers within the Order land. The power is subject to the protective provisions in Schedules 16 to [22]. This includes a power to move the apparatus of those statutory undertakers and to extinguish their rights. The model provision has been amended to allow for the suspension of rights of a statutory undertaker (for example where land is being temporarily used under the terms of the Order) rather than just extinguishment. This power is required over the whole of the Order land and has precedent in made Orders including in article 33 of The Net Zero Teesside Order 2024, article 29 of The Longfield Solar Farm Order 2023 and article 28 of The East Anglia Two Offshore Wind Farm Order 2022.
- 3.6.36 Article 35 (Apparatus and rights of statutory undertakers in streets) makes provision in respect of the apparatus and rights of statutory undertakers in streets which are altered or diverted or where use is temporarily prohibited or restricted under article 10 (power to alter layout etc. of streets), article 11 (street works) or article 13 (temporary closure of streets and public rights of way). It is a model provision but has been amended in that sub-paragraph (2) onwards has been deleted from the model provision to avoid duplication with the protective provisions contained in Schedule 16 to [22] of the Order. This has precedent in article 34 of The Net Zero Teesside Order 2024, article 30 of the Longfield Solar Farm Order 2023 and article 30 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.6.37 Article 36 (Recovery of costs of new connections) provides that persons who have to create a new connection following the exercise of powers under article 34 (Statutory undertakers) may recover the costs of new connections from the undertaker. It is a model provision and has precedent in article 35 of The Net Zero Teesside Order 2024, article 31 of the Longfield Solar Farm Order 2023 and article 31 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.6.38 Article 37 (Compulsory acquisition of land - incorporation of the mineral code) prevents existing minerals under land being automatically acquired. It also addresses the situation where an owner wishes to work existing minerals and provides the undertaker with the ability to compensate the owner for any inability to do so as a result of the development.

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### 3.7 Part 6 (Miscellaneous and General)

- 3.7.1 Article 38 (Application of landlord and tenant law) is a model provision which would override landlord and tenant law so far as it would prejudice the operation of any agreement for leasing the whole of the authorised development, or the right to operate the same, or any agreement entered into by the undertaker for the construction, maintenance, use or operation of the authorised development. This provision is required to ensure that there is no impediment to the construction, use or maintenance of the authorised development.
- 3.7.2 Article 39 (Planning permission) sets out that it will not be a breach of the Order if development is carried out or used within the Order limits in accordance with any permission granted under the Town and Country Planning Act 1990 ('1990 Act') – this relates to both existing and future planning permissions granted under the 1990 Act. Article 39(3) sets out how, to the extent that there is inconsistency between development carried out or used pursuant to a planning permission granted under section 57 of the 1990 Act or other equivalent consent with any power or right under the Order or the authorised development, that inconsistency is to be disregarded for the purposes of establishing whether the 1990 Act permission is capable of physical implementation and no enforcement action may be taken in respect of that inconsistency under the 1990 Act.
- 3.7.3 Article 39(4) clarifies that any development or part of a development constructed within the Order limits under permission granted under section 57 of the 1990 Act is deemed not to be a breach of or inconsistent with the Order and does not prevent the Authorised Development being carried out or used or the use of any other power or right under the Order. The purpose of this part of the article is to provide certainty about the validity of different planning consents and regimes within the Order limits in the light of the recent case of Hillside Parks Ltd v Snowdonia National Park.
- 3.7.4 The drafting for these elements of this article have previously been adopted in The A66 Northern Trans-Pennine Development Consent Order 2024 and The Lower Thames Crossing project.
- 3.7.5 Article 39(2) is a model provision which has the effect of ensuring that the land on which the authorised development is constructed is not excluded from being "operational land" under the 1990 Act by the effect of section 263 of that Act. A similar provision has been included in other made orders for generating stations, including The Progress Power (Gas Fired Power Station) Order 2015 and The Wrexham Gas Fired Generating Station Order 2017.
- 3.7.6 Article 40 (Defence to proceedings in respect of statutory nuisance) is a model provision that provides that no one is able to bring statutory nuisance proceedings under the Environmental Protection Act 1990, if the statutory nuisance is created in the course of carrying out construction or maintenance of the authorised development and for which notice has been given under section 60 or consent obtained under section 61 of the Control of Pollution Act 1974, or which cannot be reasonably avoided as a consequence of the authorised development. This Article

- has precedent in article 36 of The Immingham Open Cycle Gas Turbine Order 2020. The Applicant considers that the Requirements provide sufficient protection against the matters that may constitute "statutory nuisances" under section 79(1) of the Environmental Protection Act 1990.
- 3.7.7 Article 41 (Protective provisions) provides for Schedule 16 to [22], which protects the interests of certain statutory undertakers and other third parties potentially affected by the authorised development.
- 3.7.8 Article 42 (Crown rights) includes provisions safeguarding the rights of the Crown in relation to the Crown Estate land within the Order land (under the River Tees and within Tees Bay). This Article has precedent in article 41 of The Hornsea Three Offshore Wind Farm Order 2020. Article 22 (Compulsory acquisition of land) and article 25 (Compulsory acquisition of rights etc.) include express provision confirming that the powers contained therein are subject to this article.
- 3.7.9 Article 43 (Procedure in relation to certain approvals) provides a procedure in relation to consents and approvals required pursuant to the Order (other than Requirements). Applications for consent submitted by the undertaker will be deemed to be granted if notice is not given of their refusal by the consenting authority within six weeks of the submission of the application (unless a longer period has been agreed between the parties). Where these provisions apply to an application, the undertaker is required to notify the consenting authority of the effect of the provisions when it submits the relevant application. The consenting authority must not unreasonably withhold or delay consent where an application has been submitted by the undertaker pursuant to this Article. The consenting authority is defined under article 2 (Interpretation) as the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions.
- 3.7.10 For any consent, agreement, or refusal pursuant to the Requirements a detailed procedure is provided for in Schedule 13 (see paragraph 3.8.92 and 3.8.93 below).
- 3.7.11 Paragraph (3) also states that Schedule 12 (Appeals to the Secretary of State) has effect. Schedule 12 establishes an appeal process for the undertaker to appeal to the Secretary of State in relation decisions made by a relevant local authority in respect of articles 10, 13, 14, 16, 20, 29(1), permit schemes (defined in article 2 as schemes made under Part 3 of the Traffic Management Act 2004) and where a local authority issues a notice under section 60, or does not grant consent or grants conditional consent under section 61 of the Control of Pollution Act 1974.
- 3.7.12 The aim of the article is to streamline the appeal process in the event of a refusal by a local authority, thereby minimising the potential for unnecessary delay to the Proposed Development.
- 3.7.13 In respect of the Control of Pollution Act 1974, both sections 60 and 61 include provisions which allow the recipient of a notice or the undertaker (in case of a consent) to appeal to a magistrates' court within 21 days. Section 70 states that any appeal shall be by way of complaint for an order and that the Magistrates' Court Act 1980 applies to the proceedings. Further provisions as to appeals under these



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- sections are included in Regulation 5 (in respect of appeals under section 60) and Regulation 6 (in respect of appeals under section 61) of the Control of Noise (Appeals) Regulations 1975.
- 3.7.14 Part 2 of the Magistrates' Court Act 1980 contains provisions for the hearing of civil complaints but it does not prescribe specific timescales. Section 144 of the PA 2008 contains an enabling provision for the making of rules for regulating and prescribing the procedure and practice to be followed in magistrates' courts in civil matters. An extensive number of statutory instruments have been made under this section, but the primary rules are considered to be those set out in the Magistrates' Court Rules 1981. Those rules impose a duty on the court to actively manage cases, and confer a range of powers to do so. However, they do not prescribe a specific procedure for the hearing of complaints.
- 3.7.15 Due to the need for certainty and the expeditious resolution both of any disagreements under sections 60 and 61 of the Control of Pollution Act 1974 and to ensure that the construction of the authorised development is not subject to unnecessary delay, Schedule 12 prescribes a clear procedure for the resolution of appeals by the Secretary of State. The Secretary of State also has an agreed process for the discharge of Requirements and is therefore well placed to deal with such appeals.
- 3.7.16 This modification of the Control of Pollution Act 1974 and the proposed process isprecedented, particularly for complex infrastructure projects (see, for example, article 44 of the A14 Cambridge to Huntingdon Improvement Scheme Development Consent Order 2016, article 52 of the M25 Junction 28 Development Consent Order 2022, and paragraph 4 of Schedule 17 to the Thames Water Utilities Limited (Thames Tideway Tunnel) Order 2014 which apply the same process to the Control of Pollution Act 1974). The proposal has been used in a number of orders where both approval of requirements and notices under the Control of Pollution Act 1974 are concerned (see, for example, Paragraph 16 of Schedule 2 to the Port of Tilbury (Expansion) Order 2019).
- 3.7.17 Article 44 (Certification of plans etc.) is a model provision which provides for the submission of the book of reference, environmental statement, plans and other documents referred to in the Order to the Secretary of State in order that they may be certified as being true copies.
- 3.7.18 Article 45 (Service of notices) deals with the service of notices pursuant to the Order. These provisions have precedent in Article 40 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.7.19 Article 46 (Arbitration) is a general arbitration provision which provides that differences under the Order should be settled by arbitration unless another means of resolving a dispute is provided for in the Order. It is a model provision. Article 46 specifies that arbitration will not apply to decisions of the Secretary of State under the Order.
- 3.7.20 Article 47 (Funding for compulsory acquisition compensation) provides for a guarantee or other form of security for the payment of compensation to be put in
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place prior to exercising the compulsory acquisition powers granted by the Order. The article is based on article 48 of The Net Zero Teesside Order 2024.

- 3.7.21 Article 48 (Interface with Anglo American permit) sets out how the carrying out of an 'authorised activity' by the undertaker shall not constitute a breach of or non-compliance with the Anglo American (AA) environmental permit (FB3601GS). 'Authorised activity' is defined as any works or activities authorised by the Order, works carried out in connection with the Authorised Development or the exercise by the undertaker of functions conferred by the Order. This article has been included in the draft DCO to address AA's concern (set out in paragraph 4.3 of its Relevant Representation [RR-010]) that their environmental permit covers land which could be compulsorily acquired by the Applicant using its powers in the DCO and that if the land were to be compulsorily acquired, AA would still be responsible for the operation of the permit. The article ensures that authorised activity undertaken by the undertaker does not constitute a breach of the permit.
- 3.7.22 It is envisaged that Protective Provisions (following the example agreed in The Net Zero Teesside Order 2024 and to be agreed between the parties) would provide for how AA is consulted on how the project is constructed in this location and provide for any access arrangements required for monitoring and ensuring the continued operation of the permit.

### 3.8 Schedules

#### Schedule 1 (Authorised Development)

- 3.8.1 Schedule 1 describes the authorised development in detail, split into 'work numbers', each of which represents different elements of the authorised development. This split between different work numbers enables the Order to refer to different parts of the authorised development by citing the relevant work number. The split also enables the Order and Works Plans (**Document Ref. 2.4**) submitted alongside the Change Request Application to delineate the area within which each 'work' can be constructed, maintained, and operated (see articles 4 to 6). The areas within which each work can be constructed are therefore shown on the Works Plans.
- 3.8.2 The works set out in Schedule 1 to the Order and which must be constructed within the corresponding areas shown on the Works Plans are:
- Work No. 1 - a carbon capture enabled hydrogen production facility of up to 1.2 Gigawatt Thermal (GWth) lower heating value, comprising:
    - Work No. 1A.1 – one carbon capture enabled hydrogen unit of 600 MW;
    - Work No. 1A.2 – a second carbon capture enabled hydrogen unit of 600 MW;
    - Work No. 1B.1 – water connections and water and effluent treatment plant for Work Nos. 1A.1 and 1A.2;

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- Work No. 1B.2 – water connections and water and effluent treatment plant for Work No. 1A.2;
  - Work No. 1C – above ground pressurised hydrogen storage including high pressure compression and let down facilities;
  - Work No. 1D – administration, control room, gatehouse and stores;
  - Work No. 1E.1 – connections and ancillary works in connection with Work Nos. 1A.1, 1A.2, 1B.1, 1B.2, 1C and 1D; and
  - Work No. 1E.2 – connections and ancillary works in connection with Work Nos. 1A.2 and 1B.2.
- Work No. 2 – a gas connection, being works for the transport of natural gas to Work Nos. 1E.1 and 1E.2, comprising:
    - Work No. 2A – high pressure gas pipelines connecting Work No. 2B to the above ground installation at Work Nos. 1E.1 and 1E.2;
    - Work No. 2B – above ground installations relating to Work No. 2A; and
    - Work No. 2C – works to bring back into use and recommission an existing high pressure gas pipeline connecting Work No. 2B to the above ground installation at an existing gas supply network.
  - Work No. 3 – electrical connection works for the import of electricity from electricity transmission networks to Work Nos. 1E.1 and 1E.2, comprising:
    - Work No. 3A – electrical connection works comprising underground electrical cables running from Work Nos. 1E.1 and 1E.2 to Work Nos. 3B.1, 3B.2 and 3B.3;
    - Work No. 3B.1 – above ground installation connecting Work No. 3A to Pellet-Sinter substation, including above ground works within the substation;
    - Work No. 3B.2 – above ground installation connecting Work No. 3A to Tod Point substation, including above ground works within the substation; and
    - Work No. 3B.3 – above ground installation connecting Work No. 3A to a new substation;
  - Work No. 4 – water supply connection works to provide cooling and make-up water to Work Nos. 1B.1 and 1B.2, comprising up to two water pipelines of up to 1100 millimetres nominal bore diameter from the existing raw water main;
  - Work No. 5 – wastewater disposal works in connection with Work Nos. 1B.1 and 1B.2 comprising pipelines connecting to existing wastewater infrastructure;
  - Work No. 6 – a hydrogen distribution network, being works for the transport of hydrogen gas from Work Nos. 1A.1 and 1A.2, comprising:
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- Work No. 6A.1 – underground and overground pipelines of up to 600mm nominal bore diameter for the transport of hydrogen gas connecting to Work No. 6B.1;
  - Work No. 6A.2 – underground and overground pipelines of up to 600mm nominal bore diameter for the transport of hydrogen gas connecting to Work No. 6B.2;
  - Work No. 6B.1 – above ground installations connecting Work No. 6A.1 to existing gas transmission system and gas distribution networks including tunnel head; and
  - Work No. 6B.2 – above ground installation connecting Work No. 6A.2 to Cowpen Bewley Natural Gas AGI.
  - Work No. 7 – a carbon dioxide export pipeline comprising:
    - Work No. 7A – an overground or underground pipeline of up to 600 millimetres nominal bore diameter and associated power and fibre-optic cables connecting the above ground installation at Work Nos. 1E.1 and 1E.2 to Work No. 7B; and
    - Work No. 7B – above ground installation connection between Work No. 7A and a carbon dioxide pipeline network;
  - Work No. 8 – gas connections, being works for the transport of oxygen and nitrogen to Work Nos. 1E.1 and 1E.2, comprising an oxygen gas connection comprising of underground and or overground pipelines and a nitrogen gas connection comprising of underground and or overground pipelines;
  - Work No. 9 – temporary construction compounds comprising laydown and open storage areas, contractor offices and staff welfare facilities, gatehouse and weighbridge, vehicle parking and cycle storage facilities, internal roads and pedestrian and cycle routes, security fencing and gates, external lighting including lighting columns, and closed circuit television cameras and columns;
  - Work No. 10 – access and highway improvements and use, comprising works to create, improve, repair or maintain streets, roads, haul roads and access points comprising:
    - Work No. 10A.1 – access and highway improvements and use relating to Work Nos. 1, 2, 3, 4, 5, 6A.1, 6B.1, 7, 8 and 10; and
    - Work No. 10A.2 – access and highway improvements and use relating to Work Nos. 6A.2 and 6B.2; and
  - Work No. 11 – replacement land relating to Work Nos. 6A.2 and 6B.2, comprising works for habitat creation, reinstatement, enhancement and management including landscaping, provision for vehicle parking and access, planting and means of enclosure.
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- 3.8.3 Schedule 1 of the Order also includes details of further ancillary development that may be carried out in connection with Work Nos. 1 to 11. The further ancillary development listed is not exhaustive and other works falling within the scope of associated development may be carried out provided they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental impact assessment.
- 3.8.4 Work No. 1 will be constructed in two phases, each comprising of a single Low Carbon Hydrogen technology, carbon capture facilities and utilities. Work No. 1 imposes a gross output capacity cap on the Hydrogen Production Facility, tying the Authorised Development to the scope of the EIA carried out and reported in the Environmental Statement (**Document Reference: 6.2**). The peak hydrogen export rate has been capped to 600 MWth Lower Heating Value (LHV) for each phase equating to 1.2 GWth LHV for phase 1 and 2 combined.
- 3.8.5 The works listed in Schedule 1 have also been drafted so as to be non-specific about the technology, configuration and layout of plant and apparatus (provided that the relevant Work No. is located within the corresponding shaded Work No. area shown on the Works Plans). There are a number of regulatory, commercial and technological factors which will influence the decision as to which options are selected, and the undertaker's ability to procure and deliver both a commercially flexible and highly efficient solution, taking account of the UK's energy needs, would be constrained if a final decision was taken now.

#### Natural Gas Connection

- 3.8.6 Natural gas feedstock for the hydrogen production process will be imported from the National Gas Grid to the Hydrogen Production Facility for use in the reforming process (Work No. 2). A natural gas pipeline will connect the Hydrogen Production Facility at the Main Site to an existing gas pipeline with Above Ground Installations (AGIs) at each end.
- 3.8.7 Work No. 2C provides for the Applicant to be able to maintain and utilise (and through the associated compulsory acquisition powers have the rights to maintain and utilise) an existing natural gas pipeline (National Gas Pipeline) to import its natural gas to the Main Site. The pipeline is currently mothballed and plans are in place to bring it back to service. The pipeline will be classified as an independent delivery network meaning that each of the users will need to secure their own relevant land rights to legally enable the import of natural gas. The Applicant is currently in commercial discussions for a Gas Transportation Agreement in respect of utilising the pipeline.

#### Electricity Connection

- 3.8.8 Various options are being considered for electricity supply (Work No. 3) which include a connection to proposed substations at Teesworks (planning permission for which Teesworks has obtained) or a connection to NZT's electrical network within the electrical connection corridor. There is also potential to connect at other substations, operated locally by Northern Power Grid, such as Lackenby and/or Grangetown substations. The final decision on substation/connection choice will be

subject to design development and further work based on constructability and electrical network resilience and capacity.

#### Water supply connection

3.8.9 Water supply connection (Work No. 4) is required at the Hydrogen Production Facility, including for cooling water purposes. It is expected that water (for process and sanitary uses) will be supplied via either:

- the existing Northumbrian Water Ltd (NWL) raw water supply to the STDC site; or
- a new connection to the existing NWL raw water supply either via tie-in to NZT infrastructure or the installation of a new connection.

3.8.10 A Raw Water Pre-treatment Plant will be used to pre-treat the source water prior to the demineralisation stage and the Demineralisation Plant will be used to treat water supplied to the Hydrogen Production Facility, stripped process condensate, flare knockout liquid and steam condensate from power generation and blowdown.

3.8.11 The pipeline from the Hydrogen Production Facility to the proposed tie-in location at the east end of Blue Road will be constructed below ground.

#### Wastewater disposal connection

3.8.12 Wastewater disposal works (Work No. 5) are required at the Hydrogen Production Facility for discharge of treated effluent. Two options are under consideration in terms of process effluent management. The first option is based on Minimalised Liquid Discharge (MLD) from the Effluent Treatment Plant. In this scenario, treated wastewater from the on-site Effluent Treatment Plant will be reused as makeup water in the Raw Water Pre-Treatment Plant. A concentrated liquid waste stream containing salts and residual nutrients would be transported off-site by tanker to an approved and licensed facility and treated in a manner consistent with nutrient neutrality requirements. The second option is an alternative to MLD and requires treatment of processed effluent in the bio-treatment plant and discharge via the NZT outfall to Tees Bay.

3.8.13 Clean stormwater could be discharged either to the NZT outfall discharging into Tees Bay or alternatively to a new outfall via the STDC drainage system into the Estuary.

3.8.14 Discharge of domestic / sanitary effluent would be to the local sewage system for treatment with a tie-in to Bran Sands via STDC system. In terms of waste disposal from the water plant, sludge from the Raw Water Pre-Treatment Plant and Bio-treatment Plant may be processed at Bran Sands WwTW with Brine from the Effluent Treatment Plant being sent to a suitable consented outfall for discharge.

3.8.15 At this stage in the design and assessment process and in applying the Rochdale Envelope approach, the land required for the water connection options currently proposed for the Main Site (i.e. connection to the NZT outfall) has been depicted as a broad corridor.

#### Hydrogen distribution network

- 3.8.16 A gaseous phase hydrogen distribution network of pipelines (Work No. 6) is required to connect various potential industrial offtakers across the Tees Valley to the Hydrogen Production Facility. The hydrogen pipelines would commence and finish at AGIs including metering and pigging skids and tie-in points with the relevant offtaker. These are likely to be, but not necessarily having to be, within the offtakers' site boundaries. Any works beyond these AGIs and tie-in points will be progressed and consented separately by the relevant offtaker.
- 3.8.17 The Hydrogen Distribution Network is also being routed to provide connections to the Gas Transmission System and Gas Distribution Network to enable blending and connection to future hydrogen transmission system. Various routing and connection options are being explored to enable these connections and the final routing and connection decision will be made in collaboration with the relevant transmission system and distribution network operators.
- 3.8.18 This is provided for through the options of a connection to the Cowpen Bewley Woodland Park natural gas AGI and the Billingham AGI.

Carbon dioxide export pipeline

- 3.8.19 Work No. 7 includes a connection to a carbon dioxide gathering pipeline network (on the adjacent NEP site), for the transportation of the captured carbon dioxide from the Hydrogen Production Facility to permanent offshore underground storage.

Other gases connections

- 3.8.20 Gas connections (Work No. 8) may be required for the transportation of compressed oxygen and nitrogen for use at the Hydrogen Production Facility, should a third party Air Separation Unit (ASU) be required to supply these gases. The connections for other gases will either be entirely above or below ground or a combination of the two.

Tying the EIA into the Order

- 3.8.21 The mechanics of the drafting in Schedules 1, 2 and 15 ensure that the undertaker does not exceed the basis of the assessment in the Environmental Statement (**Document Reference: 6.2**). This is achieved through the following mechanisms in the Order:
- Article 4 and Schedule 1 provide the power to carry out the authorised development. Pursuant to article 4(2) each numbered work must be situated within the area delineated on the Works Plans (**Document Reference: 2.4**) submitted as part of the Change Request Application - thus the project infrastructure can only be built within these areas. Given these overarching constraints, there is certainty as to where each element can be built, and that has been factored into the Environmental Statement assessments;
  - In terms of detailed design, Requirement 3 in Schedule 2 of the Order provides that the undertaker must obtain the approval of the relevant planning authority to the siting, layout, scale and external appearance of all new buildings and structures, prior to commencing these works;

- Requirement 3(12) in Schedule 2 of the Order provides that Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 (those with substantial buildings) must be carried out in accordance with the maximum design parameters set out in Schedule 15 and carried out in accordance with the approved details submitted to and approved by the relevant planning authority under this requirement;
  - The maximum parameters in Schedule 15 of the Order are the same as those used for the assessment of effects in the Environmental Statement. These parameters are based on application of the Rochdale Envelope principle, such that maximum building dimensions have been presented and assessed in the Environmental Statement, recognising that the final building massings may differ from (but will never be larger than) these maxima, depending on the technology provider selected;
  - The assessment of maximum parameters in the Environmental Statement (**Document Reference: 6.2**) also ensure that the air impact assessment and visual impact assessment of the tallest structures associated with the Proposed Development are defined and robustly assessed within the Environmental Statement.
- 3.8.22 The combined effect of and relationship between these provisions means that whichever options are selected, the authorised development will not give rise to environmental effects beyond those which have been assessed.

#### Schedule 2 (Requirements)

- 3.8.23 Schedule 2 sets out the Requirements which apply to the carrying out and operation of the authorised development. The Order land falls within the administrative boundaries of both Redcar and Cleveland Borough Council, Stockton-on-Tees Borough Council and Hartlepool Borough Council. For those Work Nos. falling across different administrative boundaries (Work No. 6 and related development under Work Nos. 9 and 10), Requirements would need to be discharged by each authority, for the relevant part within their respective areas. For ease the term 'relevant planning authority' is used below.
- 3.8.24 The Requirements closely relate to the mitigation set out in the Environmental Statement (**Document Reference: 6.2**). Various Requirements allow their discharge in relation to "a part" of the authorised development - this permits, for instance, the submission and approval of a management plan for the connection corridors first, if the construction programme means that those are ahead of another part of the authorised development. The Order deliberately does not define "a part", since it is not known at this stage exactly how each Requirement will be discharged. If the relevant planning authority considers, on receipt of an application to discharge a Requirement, that it requires more information, then it has power to require that pursuant to the process set out in Schedule 13 of the Order (see paragraph 3.8.92 and 3.8.93 below). Additional information could include that relating to another part of the authorised development, if necessary and appropriate in order to consider the details submitted for approval.



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- 3.8.25 Requirement 1 (Commencement of the authorised development) - this Requirement is based upon the model provisions and requires that the authorised development can only be commenced within five years of the date of the Order coming into force. The undertaker is required to give the relevant planning authority at least 14 days' notice of its intention to commence the authorised development.
- 3.8.26 Requirement 2 (Notice of start and completion of commissioning) - this is not a model provision. It requires the undertaker to give notice to the relevant planning authority of the intended start of commissioning, and the date of final commissioning for Work Nos. 1A.1 and 1A.2 respectively. These are points in the development programme at which certain Articles and Requirements are triggered or can no longer be relied on, and it is therefore appropriate for the relevant planning authority to be notified of when they occur. Notice of the intended start of commissioning and date of final commissioning has been used instead of giving the relevant planning authority notice of "commencement of commercial use" and is consistent with the wording used in requirement 2 of The Net Zero Teesside Order 2024. The latter term is common in some other generating station DCOs but is not required as a trigger in this case and is not therefore used in the DCO Articles and Requirements. The terms 'commissioning' and 'date of final commissioning' are defined at paragraph 3.2.3 above.
- 3.8.27 Requirement 3 (Detailed design) - this is based on a model provision. It requires the specific design details for all Work Nos. except 9, 10 and 11 to be submitted to and approved by the relevant planning authority, following consultation with STDC, before commencement (save for the permitted preliminary works). The permitted preliminary works are defined under article 2 of the Order. In respect of Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8, these must be carried out in accordance with the design parameters in Schedule 15 (which match the parameters used in the Environmental Statement (**Document Reference: 6.2**)) and in accordance with the approved details.
- 3.8.28 Requirement 4 (Landscape and biodiversity management plan) - this is based on a landscape model provision, however, it has been modified to make additional provision for biodiversity management and enhancement. It has been split into two plans, one relating to the construction period and the second relating to the operational period.
- 3.8.29 Sub-paragraph (1) requires the undertaker to submit a landscape and biodiversity management plan to the relevant planning authority, following consultation with STDC, prior to commencing the authorised development of that part the plan relates to. The plan must set out measures to protect existing tree and shrub planting and avoid impacts on biodiversity and habitats and must be implemented as approved during the construction period.
- 3.8.30 Sub-paragraph (4) requires the undertaker to submit a landscape and biodiversity management plan, prior to the commissioning the authorised development with the plan for management of any tree or shrub planting, measures to enhance and maintain shrub and tree planting to be retained, measures to enhance biodiversity,
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- an implementation timetable and landscape and biodiversity management, maintenance and monitoring during the operation period.
- 3.8.31 Both landscape and biodiversity management plans must be in substantial accordance with the Outline Landscape and Biodiversity Management Plan (**Document Reference: 5.9**) submitted alongside the Change Request Application and must be implemented as approved during construction or operation respectively.
- 3.8.32 This approach of splitting out the Requirement into two plans provides appropriate protection for the landscape and biodiversity elements during construction, whilst providing the undertaker with the ability to commence construction without having to have provided full details of all the final landscape and biodiversity proposals. It has precedent in The Immingham Open Cycle Gas Turbine Order 2020 and The Net Zero Teesside Order 2024.
- 3.8.33 Requirement 4 and the outline landscape and biodiversity management plan do not address the Cowpen Bewley replacement open space – this is instead secured by article 29, as noted above.
- 3.8.34 Requirement 5 (Public rights of way) requires the undertaker to submit a management plan for any sections of public rights of way that are to be temporarily closed. The management plan must be approved by the relevant planning authority prior to closing or diverting the relevant public right of way. The plan must include the details specified in sub-paragraph (2) and must be implemented as approved.
- 3.8.35 Requirement 6 (External lighting) - this is based upon a model provision and requires the undertaker to submit details of all external lighting to be installed during construction to the relevant planning authority for approval before the authorised development may commence, save for the permitted preliminary works. Sub-paragraph (2) contains an equivalent provision for the operation of the authorised development which requires the scheme to be submitted prior to commissioning.
- 3.8.36 The schemes submitted must be in accordance with the Indicative Lighting Strategy (Construction) (**Document Reference: 5.12.3 [APP-046]**) and Indicative Lighting Strategy (Operation) (**Document Reference: 5.8 [APP-038]**) respectively.
- 3.8.37 Requirement 7 (Means of enclosure) - this is based on a model provision. It requires that no part of the authorised development may commence, save for the permitted preliminary works, until details of all temporary means of enclosure have for that part been submitted to and approved by the relevant planning authority, following consultation with STDC, including a programme for the removal of such temporary means of enclosure. It also requires that prior to the date of final commissioning of each relevant Work No., any permanent means of enclosure must have been approved and completed.
- 3.8.38 Requirement 8 (Site security) - this is not a model provision. It requires that no part of Work No. 1 may be brought into use until a scheme detailing security measures to minimise crime has been approved by the relevant planning authority. The
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- approved scheme must be implemented throughout the operation of the relevant part of the authorised development.
- 3.8.39 Requirement 9 (Fire prevention) - this is not a model provision. It provides that no part of Work No. 1, save for the permitted preliminary works, may commence until a fire prevention method statement has been submitted to, after consultation with the Health and Safety Executive and the Cleveland Fire Authority, and approved by the relevant planning authority. The authorised development must be implemented in accordance with the approved details.
- 3.8.40 Requirement 10 (Surface and foul water drainage) - this is based on a model provision. It provides that no part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface and foul water drainage systems for that part, in accordance with the construction environmental management plan and the surface water drainage strategy, have been submitted to and approved by the relevant planning authority (in consultation with Environment Agency, the lead local flood authority and STDC). The systems must be constructed in accordance with the approved details.
- 3.8.41 The undertaker must then also obtain the approval of the relevant planning authorities (following consultation with the same bodies) of the equivalent permanent systems, which must occur prior to the start of construction of any part of those systems. The details to be submitted include a water quality risk assessment, programme for their implementation and a Surface Water Maintenance and Monitoring Plan. The details to be submitted must be in accordance with the principles set out in Chapter 9 of the Environmental Statement (**Document Reference: 6.2.9 [APP-061]**), the Flood Risk Assessment (**Document Reference: 6.4.9 [APP-192]**), the Indicative Surface Water Drainage Plan (**Document Reference: 2.12 [APP-018]**), the Nutrient Neutrality Assessment (**Document Reference: 5.13 [APP-047]**) and the Water Framework Directive Assessment (**Document Reference: 5.14 [APP-048]**).
- 3.8.42 The undertaker can submit separate plans for the surface and foul water drainage, as the programmes for designing each may be different.
- 3.8.43 Requirement 11 (Flood risk mitigation) - this is not a model provision. It provides that no part of the authorised development, save for the permitted preliminary works, may commence until a scheme for the mitigation of flood risk during construction has, for that part, been submitted to and approved by the relevant planning authority after consultation with the Environment Agency and STDC. The scheme must be implemented as approved and maintained throughout the construction period.
- 3.8.44 Also, no part of the authorised development may be commissioned until a further scheme in relation to the operational stage is submitted to and approved by the relevant planning authority for that part (after consultation with the Environment Agency and STDC). The Requirement sets out that the authorised development must not be commissioned until the scheme for the mitigation of flood risk has been implemented and a flood management plan has been submitted to and approved
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- by the relevant planning authority (following consultation with the Environment Agency and STDC).
- 3.8.45 Requirement 12 (Contaminated land and groundwater) - this is a modified model provision. It provides that no part of the authorised development may commence, save for investigations to assess ground conditions, the preparation of facilities for the use of contractors and the provision of temporary means of enclosure and site security for construction (where no foundations are required), until a scheme to deal with the contamination of land has, for that part, been submitted to and approved by the relevant planning authority following consultation with the Environment Agency and STDC. It requires that the submitted scheme must include a preliminary risk assessment (desk top study) and risk assessment; an appraisal of remediation options; and a proposal of the preferred option. Where the risk assessment indicates that remediation is required, the scheme must include a remediation strategy; a materials management plan; details of how any unexpected contamination will be dealt with; an update to the environmental risk assessment including a contaminated land conceptual site model; a long term monitoring and maintenance plan in respect of contamination including (but not limited to) monitoring of groundwater and surface water, appropriate screening criteria, and; and a plan for managing or otherwise decommissioning any boreholes installed for the investigation of soils, groundwater or geotechnical purposes.
- 3.8.46 If the remediation strategy is implemented, then a verification report demonstrating completion of the remediation works must be produced and supplied to the relevant planning authority and the Environment Agency. A statement as to how any outstanding remediation works will be completed must be supplied to the relevant planning authority and the Environment Agency, at the same time as the verification report, where this does not demonstrate completion of the remediation measures. Any outstanding remediation and monitoring measures must be completed to the reasonable satisfaction of the relevant planning authority by the date agreed, after consultation with the Environment Agency and STDC.
- 3.8.47 As an alternative to the above, the undertaker may submit for approval by the relevant planning authority, following consultation with the Environment Agency and STDC, a notification that the undertaker instead intends to rely on any scheme to deal with the contamination of land (including groundwater) for any part of the authorised development that has been previously approved by the relevant planning authority pursuant to an application for planning permission or an application to approve details under a condition attached to a planning permission. If this notification is approved by the relevant planning authority, then the approval set out in paragraph 3.8.45 will not be required.
- 3.8.48 This Requirement does not apply to any part of the Order land where the undertaker demonstrates to the relevant planning authority that the relevant part of the Order land is fit for the authorised development through the provision of a remedial validation report and the relevant planning authority notifies the undertaker that it is satisfied that the relevant part of the Order land is fit for the
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- authorised development on the basis of that report (subject to any ongoing monitoring requirements). Any ongoing monitoring arrangements pursuant to a previously approved scheme are secured by Requirement 12(10).
- 3.8.49 Requirement 12 and in particular the latter additional provisions are based on the equivalent provision in the Net Zero Teesside Order 2024.
- 3.8.50 Requirement 13 (Archaeology) - this is a modified model provision. It provides that no part of the authorised development may commence until a scheme of archaeological investigation for that part has been submitted to and approved by the relevant planning authority. The scheme submitted and approved must be in accordance with the principles set out in chapter 17 of the Environmental Statement (**Document Reference: 6.2.17 [APP-070]**). Furthermore, any archaeological investigations must be carried out in accordance with the approved scheme and by a suitably qualified person or organisation approved by the relevant planning authority.
- 3.8.51 Requirement 14 (Protected species) - this is a modified model provision. It requires that no part of the authorised development may commence until further survey work for that part has been carried out to establish the presence of any protected species. Should the survey work identify any protected species, no development of that part may be begun until, after consultation with Natural England, a scheme of protection and mitigation measures has been submitted to and approved in writing by the relevant planning authority. This Requirement is broader than the model provision in that it refers to "any" protected species, rather than just European protected species.
- 3.8.52 Requirement 15 (Construction environmental management plan) - this is a modified version of the model provision on 'Code of Construction Practice'. It requires that no part of the permitted preliminary works may be carried out until a Permitted Preliminary Works Construction Environmental Management Plan for that part has been submitted to and approved by the relevant planning authority.
- 3.8.53 It also requires that before commencement of any part of the authorised development, a Construction and Environmental Management Plan (CEMP) for that part which is in substantial accordance with the Framework Construction Environmental Management Plan (**Document Reference: 5.12 [REP2-011]**) is submitted to and, after consultation with the Environment Agency and STDC, approved by the relevant planning authority. Sub-paragraph (7) sets out a list of plans for that part that also need to be submitted to and (after consultation with the Environment Agency and relevant planning authority) approved by the relevant planning authority before commencement of that part of the authorised development. Sub-paragraph (8) provides flexibility as to how these plans can be submitted as appended to the CEMP submitted or as separate individual plans or as merged related sub-sets of plans so long as they achieve the desired effect as set out in the Framework CEMP.
- 3.8.54 Sub-paragraph (6) sets out that the relevant planning authority must not withhold its approval of a CEMP for that part on the basis that the proposed activities in the
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- plan include 24-hour working if the activities proposed to be subject to 24-hour working are consistent with those listed in the Framework CEMP.
- 3.8.55 All construction works associated with the authorised development must be carried out in accordance with the approved Construction and Environmental Management Plan and the plans listed in Requirement 15(7).
- 3.8.56 Requirement 16 (Protection of highway surfaces) - this is not a model provision. It requires details of the condition surveys (including any post-construction surveys) which are to be carried out on the public highways to be used during construction to be approved by the relevant planning authority prior to commencement of the authorised development, save for the permitted preliminary works. The surveys must then be carried out in accordance with the approved details, as well as any necessary repairs.
- 3.8.57 Requirement 17 (Extended planned shutdown maintenance period) – this is not a model provision. This requires that prior to the authorised development’s first extended planned shutdown maintenance period, an Environmental and Traffic Management Plan for that period must be submitted to and approved by the relevant planning authority. This plan is to be implemented as approved during the shutdown maintenance period. Prior to each subsequent extended planned shutdown maintenance period, a statement must be submitted to the relevant planning authority to either confirm there are no changes to or to notify them about any changes required to the Environmental and Traffic Management Plan approved and implemented for the first extended planned shutdown maintenance period.
- 3.8.58 Requirement 18 (Construction traffic management plan) - this is a modified model provision. It requires a construction traffic management plan to be submitted to and approved by the relevant planning authority, following consultation with National Highways, the relevant highway authority and STDC, save for permitted preliminary works. It also requires notices to be erected and maintained throughout the construction period at every entrance to and exit from the construction site, indicating the approved routes for traffic entering and leaving the site. The plan submitted and approved must be in substantial accordance with the Framework Construction Traffic Management Plan (**Document Reference: 5.16 [REP2-015]**) and must include details set out in sub-paragraph (3) including a Construction Workers’ Travel Plan (which must be substantially in accordance with the Framework Construction Workers Travel Plan (**Document Reference: 5.15 [REP2-013]**)).
- 3.8.59 Requirement 19 (Construction hours) - this is a modified model provision. It specifies the hours in the day within which all construction work and deliveries associated with the authorised development must be carried out.
- 3.8.60 The restrictions do not apply to work that does not exceed a specified noise limit, is approved in advance by the relevant planning authority (including as part of a Construction Environmental Management Plan) or is associated with an emergency. The restricted hours for the delivery of materials do not apply to the delivery of
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- abnormal indivisible loads where this is associated with an emergency or carried out with the prior approval of the relevant planning authority.
- 3.8.61 The Requirement also permits 60-minute mobilisation and de-mobilisation periods at the beginning and the end of the construction hours and the maintenance at any time of plant and machinery engaged in the construction of the authorised development where such activities do not exceed a noise limit measured at the Order limits agreed with the relevant planning authority in accordance with Requirement 20.
- 3.8.62 Requirement 20 (Control of noise - construction) - this is a modified model provision. It requires a scheme for the monitoring and control of noise to be submitted and approved prior to the commencement of the authorised development. The scheme submitted and approved must specify the details set out in sub-paragraph (2) including the maximum permitted levels of noise at each monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the relevant planning authority for specific construction activities.
- 3.8.63 Requirement 21 (Piling and penetrative foundation design) - this is not a model provision. It requires that no part of the authorised development may commence, save for permitted preliminary works, until a written piling and penetrative foundation design method statement informed by a risk assessment for that part, has been submitted to and approved by the planning authority. It requires that the planning authority must consult with the Environment Agency, Natural England and STDC on the method statement.
- 3.8.64 Requirement 22 (Restoration of land used temporarily for construction) - this is a modified model provision. It specifies that prior to the date of final commissioning of each relevant Work No., a scheme for the restoration (including remediation of contamination caused by the undertaker's activities) of any land within the Order Limits, which has been used temporarily for construction, has been submitted to and approved by the relevant planning authority (following consultation with STDC). It stipulates that the land must be restored within one year of the date of final commissioning of each relevant Work No. (or such longer period as may be approved by the relevant planning authority), in accordance with the restoration scheme. It specifies that the scheme submitted must take into account the updated hydrogeological impact assessment and any further ground investigation reports and groundwater monitoring that are required by Requirement 12 (contaminated land and groundwater).
- 3.8.65 Requirement 23 (Aviation warning lighting) - this is not a model provision. It requires details of the aviation warning lighting to be installed for the construction and operation of Work No. 1 must be approved before any part of the authorised development comprised in Work No. 1 may commence. It requires the planning authority to consult with the Civil Aviation Authority on the submitted details.
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- 3.8.66 Requirement 24 (Air safety) - this is not a model provision. It requires details of the information required by the Defence Geographic Centre of the Ministry of Defence to be submitted to and approved by the planning authority before commencement of Work No. 1, save for the permitted preliminary works.
- 3.8.67 Requirement 25 (Local liaison group) - this is not a model provision. It requires that before the authorised development commences, save for the permitted preliminary works, the undertaker must establish or convene jointly with either one or both of the undertaker as defined in The Net Zero Teesside Order 2024 and the developer of the HyGreen Teesside project, to establish a group to liaise with local residents and organisations about matters relating to the authorised development. The flexibility to convene jointly with the promoters of Net Zero Teesside and HyGreen Teesside is to enable the local liaison group to respond to issues that may arise as a result of cumulative impacts arising from the three projects together.
- 3.8.68 Relevant interest groups, the planning authority and STDC must also be invited, and a representative of the undertaker and its contractor must be in attendance. The group must meet every other month, starting in the month prior to commencement of the authorised development until the completion of commissioning, unless otherwise agreed by the majority of the members of the local liaison group.
- 3.8.69 Requirement 26 (Employment, skills and training plan) - this is not a model provision. It requires that a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction, and employment opportunities during operation, of the authorised development has been submitted to and approved by the relevant planning authority. The plan for the construction phase must be approved prior to the commencement of the authorised development, save for permitted preliminary works. The plan for the operational phase must be approved before any part of Work No. 1 is commissioned. The respective plans approved must be implemented and maintained during the construction and operational phases of the authorised development. Sub-paragraph (5) also allows the plans to be submitted jointly by either both or one out of the undertaker as defined in The Net Zero Teesside Order 2024 and the promoter of HyGreen Teesside.
- 3.8.70 Requirement 27 (Carbon dioxide transport and storage) - this is not a model provision. It states that no part of the authorised development, other than permitted preliminary works, may commence until evidence that a carbon dioxide storage licence has been granted and an environmental permit has been granted for Work No. 1A.1 has been submitted to the relevant planning authority. Carbon dioxide storage licence is defined in article 2.
- 3.8.71 Requirement 28 (Decommissioning) - this is not a model provision. It requires that the undertaker submits a decommissioning environmental management plan for that part and evidence that any necessary planning consents have been granted for decommissioning in relation to that part to the relevant planning authority within 12 months of the date of that Work No. permanently ceasing operation (or such longer period as may be agreed in writing with the relevant planning authority). The decommissioning environmental management plan must also be informed by
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- surveys carried out prior to start of decommissioning works to determine the presence or absence of protected species, notable species and invasive non-native species.
- 3.8.72 The relevant planning authority must approve the plan submitted for that Work No., following consultation with the Environment Agency, and confirm in writing that it is satisfied as to the evidence submitted for that part before any decommissioning works are undertaken and the plan must be implemented as approved.
- 3.8.73 If the plan is not approved, the undertaker must make a further submission within a period of 2 months of receiving notice from the relevant planning authority that the information submitted is not approved (or such other period as may be agreed with the relevant planning authority), unless it has submitted an appeal to the Secretary of State against the decision of the relevant planning authority pursuant to Schedule 13 (procedure for the discharge of requirements). Where the undertaker has submitted an appeal against the decision of the relevant planning authority to not approve the information submitted and the Secretary of State notifies the undertaker that the appeal has been dismissed, the undertaker must within a period of 2 months from the notice from the Secretary of State (or such other period as may be agreed with the relevant planning authority) make a further submission of information.
- 3.8.74 Requirement 29 (Requirement for written approval) - this is based on a model provision and confirms that the relevant planning authority's approval or agreement must be given in writing.
- 3.8.75 Requirement 30 (Approved details and amendments to them) - this is not a model provision. It requires that all details submitted to the relevant planning authority for approval must reflect the principles set out in the documents certified under article 45. It expressly states that "approved details" includes any amendments which may be subsequently approved by the relevant planning authority.
- 3.8.76 Requirement 31 (Amendments agreed by the relevant planning authority) - this is a modified model provision. This clarifies that where the phrase "unless otherwise agreed" appears in Requirements, it does not permit changes which could give rise to any materially new or materially different environmental effects than those assessed in the Environmental Statement. It also makes clear that where the Requirement requires consultation with another body, then any approval or agreement to any amendments must not be given without the relevant planning authority having first consulted with that body.
- 3.8.77 Requirement 32 (Consultation with South Tees Development Corporation) – this is not a model provision. This clarifies that where a Requirement specifies that STDC must be consulted by the relevant planning authority then this only applies to the extent that the matters submitted for approval relate to any part of the authorised development which is within the STDC area or could affect the STDC area in the opinion of the relevant planning authority. The STDC area is defined in the Order as the administrative area of STDC.

3.8.78 Requirement 33 (Disapplication of requirements discharged under The Net Zero Teesside Order 2024) – this is not a model provision. This provides that subject to the relevant planning authority’s approval, specific requirements in Schedule 2 may be disapplied where the equivalent requirements in The Net Zero Teesside Order 2024 have been discharged. The specific requirements are those which the Applicant considers there is sufficient potential overlap that the discharge of the Requirement by NZT may be sufficient to discharge the equivalent Requirement for H2Teesside Project. The article sets out the specific requirements as follows:

- Requirements 25 and 26 may be disapplied where Requirements 29 and 30 of The Net Zero Teesside Order 2024 have been discharged;
- Requirement 3 may be disapplied where Requirement 3 of The Net Zero Teesside Order 2024 has been discharged in respect of any infrastructure that is to be used for the purposes of both the Authorised Development and the authorised development as defined in The Net Zero Teesside Order 2024; and
- Requirement 10 may be disapplied where Requirement 11 of The Net Teesside Order 2024 has been discharged in respect of any surface and foul water drainage systems that are to be used for the purposes of both the Authorised Development and the authorised development as defined in The Net Zero Teesside Order 2024.

#### Schedule 3 (Modifications to York Potash Order)

3.8.79 Schedule 3 is currently a placeholder for a new Schedule to the York Potash Harbour Facilities Order 2016.

3.8.80 The Applicant is also liaising with the undertakers of the Net Zero Teesside Order 2024. Once provisions are negotiated and, if possible, agreed between the undertaker and the other parties, this Schedule will set out protective provisions for the benefit of the undertaker that will regulate the works authorised under the York Potash Harbour Facilities Order 2016 / Net Zero Teesside Order 2024, alongside the Proposed Development.

#### Schedules 4 – 6 (Street works)

3.8.81 Schedule 4 (Streets subject to street works) sets out the streets that would be subject to street works, including reference to the specific streets on the Access and Rights of Way Plans (**Document Reference: 2.5**) submitted alongside the Change Request Application.

3.8.82 Schedule 5 (Access) sets out those parts of accesses that are to be maintained at public expense or by the street authority (Parts 1 and 2 respectively) which are referred to in article 14 of the Order.

3.8.83 Schedule 6 (Temporary closure of streets and public rights of way) sets out the streets that may be subject to a temporary prohibition or restriction on the use of that street, including reference to the relevant plan, the location and the extent of the temporary prohibition or restriction on use.

#### Schedule 7 – Traffic Regulation Measures

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- 3.8.84 Schedule 7 (Traffic Regulation Measures) contains details of the streets and references to the Temporary Traffic Regulation Measures Plan (**Document Reference: 2.13**) submitted alongside the Change Request Application that are subject to temporary traffic regulation measures pursuant to article 16, and contains details of the nature of the measures for each affected street.

Schedule 8 – Important Hedgerows to be removed

- 3.8.85 This schedule sets out the important hedgerows to be removed pursuant to article 18 with reference to the Figure 2.15 – Important Hedgerows to be Removed (**Document Reference: 2.15**) updated and submitted as part of the Change Request Application.

Schedules 9 – 11 (Compulsory acquisition and temporary possession)

- 3.8.86 Schedule 9 (Land in which new rights etc. may be acquired) set outs classes of new rights and restrictions which may be acquired by the undertaker and plots in relation to which each of these classes of rights can be acquired. The plot numbers in column 1 of the table correlate with the relevant plot numbers on the Land Plans (**Document Reference: 2.2**) submitted alongside the Change Request Application. The second column of the table sets out the purposes for which rights over land may be acquired, or restrictive covenants may be imposed, in relation to specific Work Nos. That ensures that the undertaker’s ability to compulsorily acquire new rights in the land shown coloured blue on the Land Plans is limited to that required for the authorised development.
- 3.8.87 Schedule 10 (Modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) modifies existing compensation legislation including the Land Compensation Act 1973 and the Compulsory Purchase Act 1965, in the case of a compulsory acquisition under the Order of a right by the creation of a new right or the imposition of a restriction. This Schedule has precedent in Schedule 7 of The Immingham Open Cycle Gas Turbine Order 2020.
- 3.8.88 Schedule 11 (Land of which temporary possession may be taken) sets out the land temporary possession of which may be taken pursuant to article 32 (and which as described above, cannot be compulsorily acquired). It also sets out the purpose for which such temporary possession may be taken, such as for temporary access purposes or for a construction compound or laydown area.
- Schedule 12 – Appeals to the Secretary of State
- 3.8.89 This sets out the process of the appeals to Secretary of State in relation to decisions taken by local authorities under article 10, 13, 14, 16, 20, 29(1), permit schemes (defined in article 2 as schemes made under Part 3 of the Traffic Management Act 2004) and where a local authority issues a notice under section 60, or does not grant consent or grants conditional consent under section 61 of the Control of Pollution Act 1974.

3.8.90 The aim of the article is to streamline the appeal process in the event of a refusal by a local authority, thereby minimising the potential for unnecessary delay to the Proposed Development as set out in paragraphs 3.7.11 to 3.7.16 above.

Schedule 13 (Procedure for discharge of requirements)

3.8.91 Schedule 13 provides a clear procedure for the discharge of Requirements by the relevant planning authority. It sets out a time limit for decisions to be made within, with the ability to extend this period by agreement between the relevant planning authority and the undertaker, and a power for the relevant planning authority to request further information from the undertaker.

3.8.92 Deemed consent provisions come into effect when decisions are not made during this time, but this cannot apply where that could be inappropriate taking into account the environmental impacts of the authorised development. This process, including the time periods and deemed consent, is considered to be appropriate in order to ensure that the delivery of the authorised development is not delayed. This Schedule has precedent in Schedule 10 of The Immingham Open Cycle Gas Turbine Order 2020. The Applicant is continuing to engage with the relevant planning authorities on Schedule 13.

Schedule 14 (Documents and plans to be certified)

3.8.93 Schedule 14 sets out in a table all the documents and plans referred to in the Order and which need to be certified by the Secretary of State. The table identifies the relevant revision number and date of the document and plan.

Schedule 15 (Design parameters)

3.8.94 Schedule 15 sets out the relevant parameters for Work No. 1 which tie into the maximum form of development that has been assessed in the Environmental Statement (**Document Reference: 6.2**).

Schedules 16 to [22] (Protective Provisions)

3.8.95 The Protective Provisions are set out as separate Schedules for each interested party at the end of the draft DCO. The Applicant acknowledges that this is not a conventional approach (and contrary to the approach in Advice Note 15 (AN15) at 8.2 that Schedules should be presented in article order), however, AN15 at 4.5 states that separate Schedules for Protective Provisions can be acceptable. The approach taken is justified because of the large number of Protective Provisions expected for this project.

3.8.96 The general Protective Provisions for the benefit of:

- Statutory undertakers whose land or apparatus may be affected by the authorised development are set out in Schedule 16 – Protective Provisions for the Protection of Electricity, Gas, Water and Sewerage Undertakers and Schedule 17 – Protective Provisions for the Protection of Operators of Electronic Communications Code Networks). These are based on the equivalent Protective Provisions in The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024; and

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- Other relevant third parties, such as neighbouring companies, whose apparatus may be affected by the authorised development are set out in Schedule 18.
- 3.8.97 The remaining Protective Provisions Schedules provide draft Protective Provisions for specific statutory undertakers that, due to the nature of the Proposed Development, will require their own Protective Provisions. The drafting in these Schedules has not been agreed between the parties and will be negotiated and agreed during the course of the examination. These are:
- Schedule 19 – Protective Provisions for the Protection of National Grid Electricity Transmission Plc as Electricity Undertaker. The drafting is based on Protective Provisions agreed for The Drax Power Station Bioenergy with Carbon Capture and Storage Extension Order 2024;
  - Schedule 20 – Protective Provisions for the Protection of National Gas Transmission Plc as Gas Undertaker. This is based on the Protective Provisions in The Net Zero Teesside Order 2024.
  - Schedule 21 – Protective Provisions for the Protection of Railway Interests provides protection for Network Rail’s undertaking. This is based on the Protective Provisions in The Net Zero Teesside Order 2024.
  - Schedule 22 – Protective Provisions for the Protection of the Environment Agency which is required due to the proposed disapplication of consents proposed in article 9 of the draft DCO. The Protective Provisions are based on the provisions in The Gate Burton Energy Park Order 2024 as these use the Environment Agency’s latest precedent standard protective provisions.
- 3.8.98 See the Statement of Reasons (**Document Reference: 3.2 [APP-024]**) for more information on the relevant parties and protections.

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## **4.0 APPENDIX 1: SECTION 35 DIRECTION**