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# H2Teesside Project

Planning Inspectorate Reference: EN070009/APP/4.1

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

Document Reference: 4.1b: Draft Development Consent Order – Without Prejudice  
Excluding Cowpen Bewley Spur

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



**Applicant: H2 Teesside Limited**

Date: February 2025

Rev. 8a

**202\* No.**

**INFRASTRUCTURE PLANNING**

**The H2Teesside Order 202\***

*Made* - - - - - \*\*\*

*Coming into force* - - - - - \*\*\*

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An application has been made to the Secretary of State under section 37 (applications for orders granting development consent) of the Planning Act 2008(a) (the “2008 Act”) in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(b) for an Order granting development consent.

The application was examined by a panel appointed by the Secretary of State pursuant to Chapter 3 of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(c). The panel having considered the application with the documents that accompanied the application, and the

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(a) 2008 c.29. Section 37 was amended by section 137(5) of, and Schedule 13 to, the Localism Act 2011 (c.20).  
 (b) S.I. 2009/2264, amended by S.I. 2010/439, S.I. 2010/602, S.I. 2012/635, S.I. 2012/2654, S.I. 2012/2732, S.I. 2013/522, S.I. 2013/755, S.I. 2014/469, S.I. 2014/2381, S.I. 2015/377, S.I. 2015/1682, S.I. 2017/524, S.I. 2017/572, S.I. 2018/378, and S.I. 2019/734.  
 (c) S.I. 2010/103, amended by S.I. 2012/635.

representations made and not withdrawn, has, in accordance with section 74(2)(a) of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn, the report and recommendation of the appointed panel and having taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(b) and having had regard to the documents and matters referred to in section 104(2)(c) (decisions in cases where national policy statement has effect) of the 2008 Act has determined to make an Order granting development consent for the development comprised in the application on terms that, in the opinion of the Secretary of State, are not materially different from those comprised in the application.

In accordance with section 132(3)(d) of the 2008 Act, the Secretary of State is satisfied, having considered the report and recommendation of the Panel, that the parcels of land comprised in the coatham marsh special category land (as defined in article 2 of this Order) when burdened with a new right created under this Order, will be no less advantageous than they were before the making of this Order to the following person: (a) the persons in whom they are vested; (b) other persons, if any, entitled to rights of common or other rights; and (c) the public.

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115 and 120(e) of the 2008 Act, makes the following Order—

## PART 1

### PRELIMINARY

#### Citation and commencement

1. This Order may be cited as the H2Teesside Order 202\* and comes into force on \*\*\*\*.

#### Interpretation

- 2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(f);  
“the 1965 Act” means the Compulsory Purchase Act 1965(g);  
“the 1966 Act” means the Tees and Hartlepoons Port Authority Act 1966(h);  
“the 1974 Order” means the Tees and Hartlepool Port Authority Revision Order 1974(i);  
“the 1980 Act” means the Highways Act 1980(j);  
“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(k);

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- (a) Section 74 was amended by the Localism Act 2011 (c.20) section 240(2), Schedule 13 paragraph 29 and Schedule 25, Part 20.  
(b) S.I. 2017/572.  
(c) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c.23) and by section 240(2) and Schedule 13 paragraph 49 of the Localism Act 2011 (c.20).  
(d) Section 132 was amended by section 24(3) of the Growth and Infrastructure Act 2013 (c.27).  
(e) Sections 114, 115 and 120 were amended by sections 128(2) and 140 and Schedule 13, paragraphs 1, 55(1), (2) and 60(1) and (3) of the Localism Act 2011. Relevant amendments were made to section 115 by section 160(1) to (6) of the Housing and Planning Act 2016 (c.22).  
(f) 1961 c.33.  
(g) 1965 c.56.  
(h) 1966 c.xxv.  
(i) S.I. 1975/693.  
(j) 1980 c.66.  
(k) 1981 c.66.

“the 1984 Act” means the Road Traffic Regulation Act 1984(a);

“the 1986 Act” means the Gas Act 1986(b);

“the 1989 Act” means the Electricity Act 1989(c);

“the 1990 Act” means the Town and Country Planning Act 1990(d);

“the 1991 Act” means the New Roads and Street Works Act 1991(e);

“the 1994 Order” means the Tees and Hartlepool Harbour Revision Order 1994(f);

“the 2004 Act” means the Traffic Management Act 2004(g);

“the 2008 Act” means the Planning Act 2008(h);

“access and rights of way plans” means the plans which are certified as the access and rights of way plans by the Secretary of State under article 44 (certification of plans etc.) for the purposes of this Order;

“address” includes any number or address used for the purposes of electronic transmission;

“apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act and further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity and fibreoptic cables, pipe and cable protection telecommunications equipment and electricity cabinets;

“application guide” means the document of that description which is certified by the Secretary of State as the application guide under article 44 for the purpose of this Order;

“authorised development” means the development described in Schedule 1 (authorised development) and any other development authorised by this Order within the meaning of section 32 (meaning of “development”) of the 2008 Act;

“book of reference” means the document of that description which is certified by the Secretary of State as the book of reference under article 44 for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carbon dioxide storage licence” means a licence for the activities under section 17 of the Energy Act 2008(i) for a carbon dioxide storage site;

“carbon dioxide storage site” means a site for the storage of carbon dioxide captured by the authorised development;

“carriageway” has the same meaning as in the 1980 Act;

“change application report” means the document of that description which is certified as the change application report by the Secretary of State under article 44 for the purposes of this Order;

“change application report – appendices” means the document of that description which is certified as the change application report – appendices by the Secretary of State under article 44 for the purposes of this Order;

“coatham marsh special category land” means the land identified as comprising open space and shown hatched blue on sheets 4 and 5 of the special category land and crown land plans;

“commence” means beginning to carry out a material operation, as defined in section 56(4) of the 1990 Act (which explains when development begins), comprised in or carried out for the

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(a) 1984 c.27.  
 (b) 1986 c.44.  
 (c) 1989 c.29.  
 (d) 1990 c.8.  
 (e) 1991 c.22.  
 (f) S.I. 1994/2064.  
 (g) 2004 c.18.  
 (h) 2008 c.29.  
 (i) 2008 c.32.

purposes of the authorised development and “commencement”, “commenced” and cognate expressions are to be construed accordingly;

“commissioning” means the process of testing systems, infrastructure and components of any part of the authorised development (which is installed or in relation to which installation is nearly complete) in order to ensure that that part functions in accordance with the plant design specifications and the undertaker’s operational, contractual and safety requirements;

“consenting authority” means 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 contained in Schedules 15 to 43 (protective provisions);

“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 this Order, the date on which a specified Work No. commences operation on a commercial basis;

“electronic communication” has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000(a);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in electronic form;

“emergency” means a situation where, if the relevant action is not taken, there will be adverse health, safety, security or environmental consequences that, in the reasonable opinion of the undertaker, would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action;

“the environmental statement” means the statement certified as the environmental statement by the Secretary of State under article 44 for the purposes of this Order;

“footpath” and “footway” have the same meaning as in the 1980 Act;

“flood risk assessment” means the document of that description which is certified as part of the environmental statement by the Secretary of the State under article 44 for the purposes of this Order;

“framework construction environmental management plan” means the document of that description which is certified as the framework construction environmental management plan by the Secretary of State under article 44 for the purposes of this Order;

“framework construction traffic management plan” means the document of that description which is certified as the framework construction traffic management plan by the Secretary of State under article 44 for the purposes of this Order;

“framework construction workers travel plan” means the document of that description which is certified as the framework construction workers travel plan by the Secretary of State under article 44 for the purposes of this Order;

“highway” and “highway authority” have the same meanings as in the 1980 Act;

“HyGreen Teesside” means a proposed project for a green hydrogen production facility in the administrative boundary of Redcar and Cleveland Borough Council;

“H2 Teesside Limited” means H2 Teesside Limited (company number 14523230) whose registered office is at Chertsey Road, Sunbury on Thames, Middlesex, England, TW16 7BP;

“indicative lighting strategy (construction)” means the document appended at appendix C of the framework construction environmental management plan;

“indicative lighting strategy (operation)” means the document of that description which is certified as the indicative lighting strategy (operation) by the Secretary of State under article 44 for the purposes of this Order;

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(a) 2000 c.7.



“indicative surface water drainage plan” means the document of that description which is certified as the indicative surface water drainage plan by the Secretary of State under article 44 for the purposes of this Order;

“land plans” means the plans which are certified as the land plans by the Secretary of State under article 44 for the purposes of this Order;

“legible in all material respects” means the information contained in an electronic communication is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form;

“maintain” includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development provided that such activities do not give rise to any materially new or materially different adverse effects that have not been assessed in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“The Net Zero Teesside Order 2024” means the development consent order as made by the Secretary of State on 16 February 2024(a);

“NGET” means National Grid Electricity Transmission plc (company number 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH;

“NSMP entities” means Northern Gas Processing Limited (company number 2866642) of Suite 1, 7th Floor 50 Broadway, London, SW1H 0BL, Teesside Gas and Liquids Processing (company number 02767808) of Suite 1, 7th Floor 50 Broadway, London, SW1H 0BL and Teesside Gas Processing Limited (company number 05740797) of Suite 1, 7th Floor 50 Broadway, London, SW1H 0BL;

“nutrient neutrality assessment” means the document of that description which is certified as the nutrient neutrality assessment by the Secretary of State under article 44 for the purposes of this Order;

“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” means 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;

“outline landscape and biodiversity management plan” means the document of that description which is certified as the outline landscape and biodiversity management plan by the Secretary of State under article 44 for the purposes of this Order;

“outline site waste management plan” means the document appended at appendix A of the framework construction environmental management plan;

“outline water management plan” means the document appended at appendix B of the framework construction environmental management plan;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(b);

“permit scheme” means any schemes made under Part 3 of the 2004 Act in force at the date on which this Order is made;

“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 services (but not including the laying of any of Work Nos. 2, 3, 4, 5, 6, 7 and 8), the temporary display of site notices or advertisements and any other works

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(a) S.I. 2024/174.

(b) 1981 c.67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34). There are other amendments to section 7 which are not relevant to the Order.

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;

“relevant highway authority” means the highway authority responsible for the relevant highway pursuant to section 1(1A)(2) of the 1980 Act;

“relevant planning authority” means the local planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

“requirements” means those matters set out in Schedule 2 (requirements) to this Order;

“special category land” means the coatham marsh special category land shown hatched blue on the special category land and crown land plans;

“special category land and crown land plans” means the document of that description which is certified as the special category land and crown land plans by the Secretary of State under article 44 for the purposes of this Order;

“Sembcorp” means Sembcorp Utilities (UK) Limited (company number 04636301) whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS;

“STDC” means South Tees Development Corporation, whose headquarters are at Teesside Airport Business Suite, Teesside International Airport, Darlington, DL2 1NJ;

“STDC area” means the administrative area of STDC;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act;

“street” means a street within the meaning of section 48 (streets, street works and undertakers)(a) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act(b);

“Teesworks Limited” means Teesworks Limited (company number 12351851) whose registered office is at Venture House, Aykley Heads, Durham, England, DH1 5TS;

“temporary traffic regulation measures plan” means the plans which are certified as the temporary traffic regulation measures plan by the Secretary of State under article 44 for the purposes of this Order;

“traffic authority” has the same meaning as in section 121A (traffic authorities) of the 1984 Act;

“tribunal” means the Lands Chamber of the Upper Tribunal;

“undertaker” means, subject to articles 7 (benefit of this Order) and 8 (consent to transfer benefit of this Order), H2 Teesside Limited;

“water framework directive assessment” means the document of that description which is certified as the water framework directive assessment by the Secretary of State under article 44 for the purposes of this Order;

“watercourse” includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

“working day” means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(c);

“works plans” means the plans which are certified as the works plans by the Secretary of State under article 44 for the purposes of this Order; and

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(a) Section 48 was amended by section 124 (1) and (2) of the Local Transport Act 2008 (c.26).

(b) “Street authority” is defined in section 49, which was amended by section 1(6) and paragraphs 113 and 117 of Schedule 1 to the Infrastructure Act 2015.

(c) 1971 c.80.

“The York Potash Harbour Facilities Order 2016” means the development consent order as made by the Secretary of State on 20 July 2016<sup>(a)</sup>.

(2) All distances, directions and lengths referred to in this Order, except for the parameters referred to in Schedule 14 (design parameters), are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access and rights of way plans are to be taken to be measured along that work.

(3) All areas described in square metres in the book of reference are approximate.

(4) References in this Order to “numbered work” and “Work No.” are references to the works comprising the authorised development as set out in Schedule 1 (authorised development) and shown on the works plans.

(5) The expression “includes” is to be construed without limitation.

(6) References in this Order to plots are references to the plots shown on the land plans and described in the book of reference.

### **Electronic communications**

3.—(1) In this Order—

- (a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form; and
- (b) references to a form of communication being “in writing” include references to an electronic communication that satisfies the conditions in paragraph (2) and “written” and other cognate expressions are to be construed accordingly.

(2) The conditions are that—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission; and
- (b) the communication is—
  - (i) capable of being assessed by the recipient;
  - (ii) legible in all material respects; and
  - (iii) sufficiently permanent to be used for subsequent reference.

(3) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(4) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (5).

(5) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date may not be less than seven days after the date on which the notice is given.

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(a) S.I. 2016/772.

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by this Order**

4.—(1) Subject to the provisions of this Order and to the requirements, the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plans.

#### **Maintenance of authorised development**

5.—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

#### **Operation of authorised development**

6.—(1) The undertaker is hereby authorised to use and to operate the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required from time to time to authorise the operation of the authorised development.

#### **Benefit of this Order**

7. Subject to article 8 (consent to transfer benefit of this Order), the provisions of this Order have effect solely for the benefit of the undertaker.

#### **Consent to transfer benefit of this Order**

8.—(1) Subject to paragraph (2), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be so agreed.

(2) The consent of the Secretary of State is required for a transfer or lease pursuant to this article, except where paragraph (6) applies.

(3) Where a transfer or grant has been made in accordance with paragraph (1) references in this Order to the undertaker, except in this paragraph (3), include references to the transferee or the lessee.

(4) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(5) Where an agreement has been made in accordance with paragraph (1)—

- (a) the benefit transferred or granted (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker;

- (c) the transferee or lessee is a holding company, associated company or subsidiary of the undertaker; and
  - (d) the transferee or lessee holds a licence under section 7 of the Energy Act 2023<sup>(a)</sup>.
- (6) This paragraph applies where—
- (a) the transferee or lessee is—
    - (i) a person who holds a licence under section 6 (licences authorising supply, etc.) of the 1989 Act<sup>(b)</sup> or section 7 (licensing of public gas transporters)<sup>(c)</sup> of the 1986 Act;
    - (ii) in relation to a transfer or a lease of any works within a highway, a highway authority responsible for the highways within the Order limits; or
    - (iii) in relation to any works to provide a connection between any part of Work No. 6A and a person to whom a supply of hydrogen is to be provided (and including Work No. 6B), that person; or
  - (b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
    - (i) no such claims have been made;
    - (ii) any such claims that have been made have all been compromised or withdrawn;
    - (iii) compensation has been paid in final settlement of all such claims;
    - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
    - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(7) Where the consent of the Secretary of State is not required under paragraph (2), the undertaker must notify the Secretary of State and, where the transfer or grant relates to the STDC area, STDC and Teesworks Limited in writing before transferring or granting a benefit referred to in paragraph (1).

- (8) The notification referred to in paragraph (7) must state—
- (a) the name and contact details of the person to whom the benefit of the powers are to be transferred or granted;
  - (b) subject to paragraph (7), the date on which the transfer is expected to take effect;
  - (c) the powers to be transferred or granted;
  - (d) pursuant to paragraph (4), the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted; and
  - (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(9) The date specified under paragraph (8)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(10) The notice given under paragraph (7) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

### **Application and modification of statutory provisions**

**9.—**(1) The York Potash Harbour Facilities Order 2016 is amended for the purposes of this Order only as set out in Schedule 3 (modifications to and amendments of the York Potash Harbour Facilities Order 2016).

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(a) 2023 c.52.

(b) 1989 c.29. Section 6 was amended by section 30 of the Utilities Act 2000 (c.27), and by section 89(3) of the Energy Act 2004 (c.20). There are other amendments to this section that are not relevant to this Order.

(c) Section 7 was amended by section 5 of the Gas Act 1995 (c.45) and section 76(2) of the Utilities Act 2000 (c.27). There are other amendments to the section that are not relevant to this Order.

(2) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of numbered works 1, 2, 4, 5, 6A, 6B, 8, 9 or 10 and works that may be carried out in association with those numbered works—

- (a) byelaws and directions made under the 1966 Act, the 1974 Order or the 1994 Order which prevent, restrict, condition or require the consent of the Tees Port and Hartlepool Authority or the harbour master to any such works; and
- (b) requirements of section 22 (licensing of works) of the 1966 Act.

(3) The following provisions do not apply in relation to the construction or maintenance of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development—

- (a) section 23 (prohibition of obstructions, etc. in watercourses) of the Land Drainage Act 1991(a);
- (b) section 32 (variation of awards) of the Land Drainage Act 1991(b);
- (c) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991(c);
- (d) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of authority) to the Water Resources Act 1991(d); and
- (e) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(e) in respect of a flood risk activity only.

(4) Regulation 6 of the Hedgerows Regulations 1997(f) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“or (k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

## PART 3

### STREETS

#### **Power to alter layout etc. of streets**

**10.—**(1) The undertaker may for the purposes of the authorised development alter the layout of, or carry out any works in, a street specified in column (2) of Table 1 in Schedule 4 (streets subject to street works) in the manner specified in relation to that street in column (3) of that Table 1.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraph (3), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge; and
- (b) make and maintain passing places.

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(a) 1991 c.59. Section 23 was amended by paragraph 192 of Schedule 22 to the Environment Act 1995 (c.25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c.29) and S.I. 2013/755.

(b) Section 32 was amended by S.I. 2013/755.

(c) Section 66 was amended by paragraphs 25 and 38 of Schedule 2 to the Flood and Water Management Act 2010 and section 86 of the Water Act 2014 (c.21).

(d) 1991 c.57. Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to the 2009 Act and S.I. 2013/755. Paragraph 6 was amended by section 105 of, and paragraph 26 of Schedule 15 to the Environment Act 1995, sections 224, 233 and 321 of and paragraphs 20 and 24 of Schedule 16 and Part 5(B) of Schedule 22 to the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

(e) S.I. 2016/1154. Regulation 12 was amended by S.I. 2018/110.

(f) S.I. 1997/1160.

(3) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(4) Paragraph (3) does not apply where the undertaker is the street authority for a street in which the works are being carried out.

### **Street works**

**11.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus in the street;
- (d) maintain, change the position or remove apparatus in or under the street; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

### **Construction and maintenance of new or altered means of access**

**12.**—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (those parts of the accesses to be maintained by the highway authority) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (those parts of the accesses to be maintained by the street authority) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

- (a) the character of the street including the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

### **Temporary closure of streets and public rights of way**

**13.—**(1) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily close, prohibit the use of, restrict the use of, alter or divert any street or public right of way and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street or public right of way; and
- (b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary closure, prohibition, restriction, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, prohibit the use of, restrict the use of or, for the purposes of sub-paragraph (a) or (b) of this paragraph (3), alter or divert—

- (a) the streets specified in column (2) of Table 4 in Part 1 of Schedule 6 (those parts of the street to be temporarily closed) to the extent specified in column (3) of that Table 4; and
- (b) the public rights of way specified in column (2) of Table 5 in Part 2 of Schedule 6 (those public rights of way to be temporarily closed) to the extent specified in column (3) of that Table 5.

(4) The undertaker must not temporarily close, prohibit the use of, restrict the use of, alter or divert—

- (a) any street or public right of way specified in paragraph (3) without first consulting the street authority; or
- (b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way which has been temporarily closed under the powers conferred by this article and within the Order limits as a temporary working site.

(7) Without prejudice to the requirements of paragraph (4), the undertaker must not exercise the powers in paragraphs (1) and (3) in relation to a road unless it has—

- (a) given not less than four weeks' notice in writing of its intention to do so to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention under sub-paragraph (a).

(8) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (3) of this article in relation to a road has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act, and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.



(9) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

#### **Access to works**

14. The undertaker may, for the purposes of the authorised development—

- (a) form and lay out the means of access, or improve existing means of access, in the locations specified in Schedule 4 (streets subject to street works); and
- (b) with the approval of the relevant planning authority after consultation with the highway authority, 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.

#### **Agreements with street authorities**

15.—(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) construction of any new street including any structure carrying the street;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;
- (e) the execution in the street of any of the authorised development;
- (f) the adoption by a street authority, which is the highway authority, of works—
  - (i) undertaken on a street which is existing publicly maintainable highway; and/or
  - (ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway; and
- (g) any such works as the parties may agree.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

#### **Traffic regulation measures**

16.—(1) Subject to the provisions of this article, the undertaker may at any time, in the interests of safety and for the purposes of, or in connection with the construction of the authorised development, temporarily make provision for traffic regulation measures as specified in columns 3 and 4 of Table 6 of Schedule 7 (traffic regulation measures) including, as relevant, temporarily placing traffic signs and signals and the placing of those traffic signs and signals is deemed to have been permitted by the traffic authority for the purposes of section 65 of the 1984 Act and the Traffic Signs Regulations and General Directions 2016(a).

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(a) S.I. 2016/362.

(2) Subject to the provisions of this article and without limitation to the exercise of powers conferred by paragraph (1), the undertaker may make temporary provision for the purposes of the authorised development—

- (a) as to the speed at which vehicles may proceed along any road;
- (b) permitting, prohibiting or restricting the stopping, parking, waiting, loading or unloading of vehicles on any road;
- (c) as to the prescribed routes for vehicular traffic or the direction of priority of vehicular traffic on any road;
- (d) permitting, prohibiting or restricting the use of vehicular traffic or non-vehicular traffic of any road; and
- (e) suspending or amending in whole or in part any order made, or having effect as if made, under the 1984 Act.

(3) No speed limit imposed by or under this Order applies to vehicles falling within regulation 3(4) of the Road Traffic Exemptions (Special Forces) (Variation and Amendment) Regulations 2011(a) when in accordance with regulation 3(5) of those regulations.

(4) Before exercising the power conferred by paragraph (2) the undertaker must—

- (a) consult with the chief officer of police in whose area the road is situated; and
- (b) obtain the written consent of the traffic authority.

(5) The undertaker must not exercise the powers under paragraph (1) or (2) of this article unless it has—

- (a) given not less than four weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(6) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary closure of streets and public rights of way) or paragraph (1) or (2) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places)(b) of the 1984 Act, and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

(7) In this article—

- (a) subject to sub-paragraph (b), expressions used in it and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

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(a) S.I. 2011/935.

(b) Relevant amendments to section 32 were made by the 1991 Act section 168(1) and Schedule 8, paragraph 39.

## PART 4

### SUPPLEMENTAL POWERS

#### **Discharge of water**

17.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(c), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other terms and expressions, with the exception of the term “watercourse”, used both in this article and in the Water Resources Act 1991(d) have the same meaning as in that Act.

#### **Felling or lopping of trees and removal of hedgerows**

18.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if the undertaker reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons constructing, maintaining or operating the authorised development.

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(a) 1991 c.56. Section 106 was amended by sections 35(8)(a) and 43(2) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99(2), (4), and (5) of the Water Act 2003 (c.37).

(b) S.I. 2016/1154.

(c) 1964 c.40. Paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the Transport and Works Act 1992 (c.42).

(d) 1991 c.57.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of constructing, maintaining or operating the authorised development but subject to paragraph (2), remove any hedgerow within the Order limits that is required to be removed.

(5) In this article, "hedgerow" has the same meaning as in the Hedgerows Regulations 1997(a).

### **Protective works to buildings**

**19.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or
- (b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date that those works are completed.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice in writing of its intention to exercise that right and, in a case falling within sub-paragraph (a), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice in writing within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 46 (arbitration).

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(a) S.I. 1997/1160.

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the date of final commissioning it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance)(a) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

#### **Authority to survey and investigate the land**

**20.**—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits or on any land which may be affected by the authorised development and—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on the land under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such

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(a) As amended by S.I. 2009/1307.

compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

### **Removal of human remains**

**21.—**(1) In this article “specified land” means any land within the Order limits.

(2) Before the undertaker constructs any part of the authorised development or carries out works which will or may disturb any human remains in the specified land it must remove those human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

(3) Before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the specified land; and
- (b) displaying a notice in a conspicuous place on or near the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the relevant planning authority.

(5) At any time within 56 days after the first publication of a notice under paragraph (3) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person’s intention to undertake the removal of the remains.

(6) Where a person has given notice under paragraph (5), and the remains in question can be identified, that person may cause such remains to be—

- (a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or
- (b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(8) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the Order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified, subject to paragraph (10),

the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).

(12) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied that—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(13) In the case of remains in relation to which paragraph (12) applies, the undertaker—

- (a) may remove the remains;
- (b) must apply for direction from the Secretary of State under paragraph (15) as to their subsequent treatment; and
- (c) must deal with the remains in such manner, and subject to such conditions, as the Secretary of State directs.

(14) In this article references to the personal representative of the deceased are to a person or persons who—

- (a) is the lawful executor of the estate of the deceased; or
- (b) is the lawful administrator of the estate of the deceased.

(15) The removal and subsequent treatment of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(16) Any jurisdiction or function conferred on the county court by this article may be carried out in accordance with any directions which may be given by the Secretary of State.

(17) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857<sup>(a)</sup> is not to apply to a removal carried out in accordance with this article.

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(a) 1857 c.81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 section 2 (1 January 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077 Schedule1 paragraphs 1 and 2).

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

**22.**—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it.

(2) This article is subject to article 25 (compulsory acquisition of rights etc.), article 32 (temporary use of land for carrying out the authorised development) and article 42 (Crown rights).

#### **Power to override easements and other rights**

**23.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 156 (benefit of order granting development consent) of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

#### **Time limit for exercise of authority to acquire land compulsorily**

**24.**—(1) After the end of the period of five years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under acquisition of Land Act of 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act (as applied by article 27 (application of the 1981 Act)).

(2) The authority conferred by article 32 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

#### **Compulsory acquisition of rights etc.**

**25.**—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.



(2) The powers of paragraph (1) may also be exercised by a statutory undertaker in any case where the undertaker, with the consent of the Secretary of State, transfers the power to a statutory undertaker pursuant to article 8(2) (consent to transfer benefit of this Order).

(3) The powers of paragraph (1) may also be exercised by a statutory undertaker in any case where the undertaker transfers the power to a statutory undertaker and the Secretary of State's consent is not required pursuant to article 8(6) and the undertaker has notified the Secretary of State and, where the transfer or grant relates to the STDC area, STDC and Teesworks Limited in writing pursuant to article 8(7).

(4) Where in consequence of paragraph (2) or (3), a statutory undertaker exercises the powers in paragraph (1) in place of the undertaker, except in relation to the payment of compensation the liability for which must remain with the undertaker, the statutory undertaker is to be treated for the purposes of this Order, and by any person with an interest in the land affected, as being the undertaker in relation to the acquisition of the rights in question.

(5) In the case of the Order land specified in column (1) of Table 7 in Schedule 8 (land in which new rights etc. may be acquired) and which is shaded blue on the land plans the undertaker's powers of compulsory acquisition under paragraph (1) are limited to the acquisition of such wayleaves, easements, new rights over the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in column (2) of that Table 7 in relation to that land.

(6) The power under paragraphs (1) and (2) to acquire the rights and to impose the restrictive covenants for the benefit of statutory undertakers—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land as may be required for the benefit of any other statutory undertaker; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land as are required for the benefit of any other statutory undertaker.

(7) Subject to section 8 (provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires a right over land or imposes a restrictive covenant under paragraph (1), the undertaker is not to be required to acquire a greater interest in that land.

(8) Schedule 9 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(9) For the purposes of this article and Schedule 8 "statutory undertaker" includes any person who has apparatus within the Order limits.

(10) References in this article to rights over land include 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.

(11) Nothing in this article permits the undertaker to acquire or create rights or impose restrictive covenants in land specified in Schedule 10 (land of which temporary possession may be taken).

(12) This article is subject to article 42 (Crown rights).

### **Private rights**

**26.—**(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over any part of the Order land that is owned by, vested in or acquired by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 34 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs are not to apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested, belongs or benefits.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, restrictions, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Application of the 1981 Act**

27.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 1 (application of Act) for subsection (2) there is substituted—
- “(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”.
- (4) In section 5(2) (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A (time limit for general vesting declaration).
- (6) In section 5B(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily)”.
- (7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 28 (acquisition of subsoil or airspace only), which excludes the acquisition of subsoil or airspace only from this Schedule.”.
- (10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 30 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order).

### **Acquisition of subsoil or airspace only**

**28.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) and paragraph (1) of article 25 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

### **Special category land**

**29.**—(1) On the exercise of the relevant Order powers, the rights to be acquired over the coatham marsh special category land are to vest in the undertaker and is discharged from all rights,

trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those rights.

(2) So much of the special category land as is required for the purposes of exercising the powers pursuant to article 32 (temporary use of land for carrying out the authorised development) or article 33 (temporary use of land for maintaining the authorised development) is temporarily discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those powers, and only for such time as any special category land is being used under article 32 or article 33.

(3) In this article, “relevant Order powers” means articles 22 (compulsory acquisition of land), 25 (compulsory acquisition of rights etc.) and 32 (temporary use of land for carrying out the authorised development).

### **Modification of Part 1 of the 1965 Act**

**30.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily)”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”; and
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 24 (time limit for exercise of authority to acquire land compulsorily) of the H2Teesside Order 202\*”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 28(3) (acquisition of subsoil or airspace only) of the H2Teesside Order 202\*, which excludes the acquisition of subsoil or airspace only from this Schedule.”  
; and
- (b) after paragraph 29, insert—

## **“PART 4**

### **INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 32 (temporary use of land for carrying out the authorised development) or article 33 (temporary use of land for maintaining the authorised development) of the H2Teesside Order 202\*.”.

### **Rights under or over streets**

**31.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order land as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised development**

**32.—**(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take possession of—
  - (i) so much of the land specified in column (1) of Table 8 in Schedule 10 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Table 8;
  - (ii) any other part of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, structures, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land;
- (d) construct any works specified in relation to that land in column (2) of Table 8 in Schedule 10; and
- (e) carry out or construct any mitigation works.

(2) Before taking temporary possession of land for a period of time by virtue of paragraph (1) the undertaker must give a notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(3) The notice in paragraph (2) must specify—

- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of 28 days beginning with the day on which the notice is given;
- (b) subject to paragraph (4) the period for which the undertaker is to take temporary possession of the land, provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i), after the earlier of—
  - (i) where Schedule 10 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 those Work Nos.; or
  - (ii) the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11

of the 1965 Act, made a declaration under section 4 of the 1981 Act or has otherwise acquired or leased the land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to—

- (a) replace a building or any debris removed under this article; or
- (b) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker must not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(10) Nothing in this article precludes the undertaker from—

- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 8 (land in which new rights etc. may be acquired); or
- (b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 28 (acquisition of subsoil or airspace only) or article 31 (rights under or over streets).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 10.

(14) The provisions of the Neighbourhood Planning Act 2017(a) do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development necessary for the authorised development within the Order land.

### **Temporary use of land for maintaining the authorised development**

**33.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;

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(a) 2017 c.20.

- (b) enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
  - (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The notice in paragraph (3) must specify—
- (a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of 28 days beginning with the day on which the notice is given; and
  - (b) subject to paragraph (5) the period for which the undertaker is to take temporary possession of the land, provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.
- (5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.
- (6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but the undertaker is not to be required to replace a building or any debris removed under this article.
- (7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (8) Any dispute as to a person’s entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (9) Nothing in this article affects any liability to pay compensation under section 152 (further provisions as to compensation for injurious affection) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).
- (10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (12) In this article “the maintenance period” means the period of one year beginning with the date of final commissioning.
- (13) The provisions of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development and other development necessary for the authorised development within the Order land.

### **Statutory undertakers**

34. Subject to the provisions of Schedules 15 to 42 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land; and
- (c) create and acquire compulsorily rights or impose restrictions over any Order land belonging to statutory undertakers.

### **Apparatus and rights of statutory undertakers in streets**

**35.** Where a street is altered or diverted or its 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) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedules 15 to 43 (protective provisions), as if this Order had not been made.

### **Recovery of costs of new connections**

**36.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 34 any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 35 (apparatus and rights of statutory undertakers in streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(a); and

“public utility undertaker” has the same meaning as in the 1980 Act.

### **Compulsory acquisition of land – incorporation of the mineral code**

**37.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 are incorporated in this Order subject to the following modifications—

- (a) for “the acquiring authority” substitute “the undertaker”;
- (b) for the “undertaking” substitute “authorised development”; and
- (c) paragraph 8(3) is not incorporated.

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(a) 2003 c.21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations (S.I. 2011/1210).



**PART 6**  
**MISCELLANEOUS AND GENERAL**

**Application of landlord and tenant law**

**38.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

**Planning permission, etc.**

**39.**—(1) It does not constitute a breach of the terms of this Order, if, following the coming into force of this Order, any development is carried out or used within the Order limits in accordance with any planning permission granted (either prior to or after the Order has come into force) under the powers conferred by the 1990 Act, any development consent granted (either prior to or after the Order has come into force) under the powers conferred by the 2008 Act or other equivalent consent.

(2) Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

(3) To the extent any development carried out or used pursuant to a planning permission granted under section 57 (requirement of planning permission) of the 1990 Act, any development consent granted (either prior to or after the Order has come into force) under the powers conferred by the 2008 Act or other equivalent consent, or compliance with any conditions or requirements of that permission or consent is inconsistent with the exercise of any power or right under this Order or the authorised development—

- (a) that inconsistency is to be disregarded for the purposes of establishing whether any development which is the subject matter of that permission or consent is capable of physical implementation; and
- (b) in respect of that inconsistency, no enforcement action under the 1990 Act may be taken in relation to development carried out or used pursuant to that permission or consent whether inside or outside the Order limits.

(4) Any development or any part of a development within the Order limits which is constructed or used under the authority of a permission granted under section 57 of the 1990 Act including permissions falling under paragraph (1) or (3) or otherwise, is deemed not to be a breach of, or

inconsistent with, this Order and does not prevent the authorised development being carried out or used or any other power or right under this Order being exercised.

(5) Any works carried out under this Order are deemed to be work requiring development consent under section 31 (when development consent is required) of the 2008 Act for the purpose of paragraph 7(3) of Schedule 3 to the Flood and Water Management Act 2010(a).

### **Defence to proceedings in respect of statutory nuisance**

**40.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(b) in relation to a nuisance falling within section 79(1) (statutory nuisances and inspections therefor.) of that Act no order is to be made, and no fine may be imposed, under section 82(2) (summary proceedings by persons aggrieved by statutory nuisances) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(c); or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protection of interests**

**41.** Schedules 15 to 43 (protective provisions) have effect.

### **Crown rights**

**42.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

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(a) 2010 c.29.

(b) 1990 c.43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

(c) 1974 c.40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c.22) and section 112(1)(3), paragraphs 33 and 35(1) of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the Electricity Act 1989 (c.29); Section 61 was amended by section 133(2) and Schedule 7 to the Building Act 1984 (c.55), paragraph 1 of Schedule 24 to the Environment Act 1995 (c.25), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c.43).

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

### **Procedure in relation to certain approvals**

**43.**—(1) Where an application is made to, or a request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 11 (appeals to the Secretary of State) has effect.

(4) Schedule 12 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the requirements.

(5) Save for applications made pursuant to Schedule 12 and where stated to the contrary, if within six weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(6) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (5).

### **Certification of plans etc.**

**44.**—(1) The undertaker, as soon as practicable after the making of this Order, must submit to the Secretary of State copies of all documents and plans listed in Table 9 in Schedule 13 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

(2) Where the amendment of any plan or document referred to in paragraph (1) is required to reflect the terms of the Secretary of State's decision to make this Order, that plan or document, in the form amended to the Secretary of State's satisfaction, is the version of the plan or document to be certified under paragraph (1).

(3) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

**45.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post; and

(b) subject to article 3 (electronic communications) by electronic transmission.

(2) If an electronic communication is received outside the recipient's business hours, it is to be taken to have been received on the next working day.

(3) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(4) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978<sup>(a)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(5) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of that land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(6) This article does not exclude the employment of any method of service not expressly provided for by it.

### **Arbitration**

46.—(1) Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State is required under any provision of this Order is not subject to arbitration.

### **Funding for compulsory acquisition compensation**

47.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to the relevant Order land unless it has first put in place, following approval by the Secretary of State, either—

- (a) a guarantee (and the amount of that guarantee) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to the relevant Order land in respect of which a power is to be exercised; or
- (b) an alternative form of security (and the amount of that security) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 22 (compulsory acquisition of land);
- (b) article 25 (compulsory acquisition of rights etc.);
- (c) article 26 (private rights);
- (d) article 28 (acquisition of subsoil or airspace only);
- (e) article 31 (rights under or over streets);
- (f) article 32 (temporary use of land for carrying out the authorised development);
- (g) article 33 (temporary use of land for maintaining the authorised development); and
- (h) article 34 (statutory undertakers).

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(a) 1978 c.30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

(3) A guarantee or alternative form of security given in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

(5) In this article “the relevant Order land” means the part of the Order land in relation to which the undertaker proposes to exercise the powers referred to in paragraph (2).

### **Interface with anglo american permit**

48.—(1) The carrying out of an authorised activity shall not constitute a breach of, or non-compliance with, the anglo american permit.

(2) In this article—

“anglo american permit” means environmental permit number FB3601GS; and

“authorised activity” means any works or activities authorised by this Order, works carried out in connection with the authorised development, or the exercise by the undertaker of functions conferred by this Order.

Signed by authority of the Secretary of State for Energy Security and Net Zero

Address

Date

*Name*

*Title*

Department for Energy Security and Net Zero

# SCHEDULES

## SCHEDULE 1

Article 2

### AUTHORISED DEVELOPMENT

In the Borough of Redcar and Cleveland, the Borough of Stockton-on-Tees and the Borough of Hartlepool a development which is to be treated as development for which development consent is required by direction under sections 35(1) and 35ZA of the 2008 Act, and associated development under section 115(1)(b) of that Act, comprising—

**Work No. 1** – a carbon capture enabled hydrogen production facility of up to 1.2 Gigawatt Thermal (GWth) lower heating value, comprising—

- (a) **Work No. 1A.1** – one carbon capture enabled hydrogen unit of 600 MW, which is designed to capture a minimum rate of 95% of the carbon dioxide emissions of this hydrogen unit operating at full load, comprising—
  - (i) compressors;
  - (ii) pre-treatment facilities including heaters and saturators;
  - (iii) start-up fired heater;
  - (iv) reformers;
  - (v) shift reactors;
  - (vi) carbon dioxide absorber;
  - (vii) amine regeneration system;
  - (viii) methanator;
  - (ix) hydrogen drying unit;
  - (x) pressure swing adsorber;
  - (xi) cooling water circulation system;
  - (xii) steam system;
  - (xiii) auxiliary boiler;
  - (xiv) steam turbine generator;
  - (xv) flare;
  - (xvi) fire water system; and
  - (xvii) emergency diesel generator.
- (b) **Work No. 1A.2** – a second carbon capture enabled hydrogen unit of 600 MW, which is designed to capture a minimum rate of 95% of the carbon dioxide emissions of this hydrogen unit operating at full load, comprising—
  - (i) compressors;
  - (ii) pre-treatment facilities including heaters and saturators;
  - (iii) start-up fired heater;
  - (iv) reformers;
  - (v) shift reactors;
  - (vi) carbon dioxide absorber;
  - (vii) amine regeneration system;
  - (viii) methanator;
  - (ix) hydrogen drying unit;

- (x) pressure swing adsorber;
  - (xi) air separation units;
  - (xii) cooling water circulation system;
  - (xiii) steam system;
  - (xiv) auxiliary boiler;
  - (xv) steam turbine generator;
  - (xvi) flare;
  - (xvii) fire water system; and
  - (xviii) emergency diesel generator.
- (c) **Work No. 1B.1** – water connections and water and effluent treatment plant for Work Nos. 1A.1 and 1A.2, comprising—
- (i) process water treatment plant;
  - (ii) demineralisation plant;
  - (iii) bio-treatment plant;
  - (iv) effluent treatment plant; and
  - (v) water networks, pipework, cables, racks, infrastructure, instrumentation and utilities including connections between Work Nos. 1A.1 and 1A.2 and parts of Work Nos. 4 and 5.
- (d) **Work No. 1B.2** – water connections and water and effluent treatment plant for Work No. 1A.2, comprising—
- (i) process water treatment plant;
  - (ii) demineralisation plant;
  - (iii) bio-treatment plant;
  - (iv) effluent treatment plant; and
  - (v) water networks, pipework, cables, racks, infrastructure, instrumentation and utilities including connections between Work No. 1A.2 and parts of Work Nos. 4 and 5.
- (e) **Work No. 1C** – above ground pressurised hydrogen storage including high pressure compression and let down facilities.
- (f) **Work No. 1D** – administration, control room, gatehouse and stores, comprising—
- (i) administration and control buildings and gatehouse; and
  - (ii) workshop and stores buildings;
- (g) **Work No. 1E.1** – connections and ancillary works in connection with Work Nos. 1A.1, 1A.2, 1B.1, 1B.2, 1C and 1D—
- (i) above ground installations;
  - (ii) ancillary plant, buildings, enclosures, structures and substations;
  - (iii) pipework, pipe runs and pipe racks;
  - (iv) firefighting equipment, buildings and distribution pipework;
  - (v) lubrication oils storage facilities;
  - (vi) permanent plant laydown area for operation and maintenance activities;
  - (vii) chemical storage including tanks;
  - (viii) nitrogen storage facilities;
  - (ix) carbon dioxide vents; and
  - (x) mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities including connections between Work Nos. 1A.1, 1A.2 and 1C and parts of Work Nos. 2, 3, 6, 7 and 8; and

- (h) **Work No. 1E.2** – connections and ancillary works in connection with Work Nos. 1A.2 and 1B.2—
  - (i) above ground installations;
  - (ii) ancillary plant, buildings, enclosures, structures and substations;
  - (iii) pipework, pipe runs and pipe racks;
  - (iv) firefighting equipment, buildings and distribution pipework;
  - (v) lubrication oils storage facilities;
  - (vi) permanent plant laydown area for operation and maintenance activities;
  - (vii) chemical storage including tanks;
  - (viii) nitrogen storage facilities; and
  - (ix) mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities including connections between Work Nos. 1A.2 and 1B.2 and parts of Work Nos. 2, 3, 6, 7 and 8.

**Work No. 2** – a gas connection, being works for the transport of natural gas to Work Nos. 1E.1 and 1E.2, comprising—

- (a) **Work No. 2A** – high pressure gas pipelines, connecting Work No. 2B to the above ground installation at Work Nos. 1E.1 and 1E.2, comprising—
  - (i) high-pressure gas supply pipelines of up to 600 millimetres nominal bore diameter;
  - (ii) cathodic protection posts;
  - (iii) marker posts; and
  - (iv) electrical supply cables, transformers and control systems cables;
- (b) **Work No. 2B** – above ground installations relating to Work No. 2A, comprising—
  - (i) a compound for National Gas Transmission plc’s apparatus, comprising—
    - (aa) an offtake connection from the National Transmission System;
    - (bb) above and below ground valves, flanges and pipework;
    - (cc) remotely operated valve and valve bypass;
    - (dd) an above or below ground pressurisation bridle;
    - (ee) instrumentation and electrical kiosks; and
    - (ff) telemetry and communications equipment;
  - (ii) compounds for the undertaker’s apparatus, comprising—
    - (aa) above and below ground valves, flanges and pipework;
    - (bb) isolation valves;
    - (cc) pipeline inline gauge launching facility;
    - (dd) instrumentation and electrical kiosks; and
    - (ee) telemetry and communications equipment; and
  - (iii) in connection with Work No. 2B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, closed circuit television cameras and columns; and
- (c) **Work No. 2C** – works to bring back to use and recommission an existing high pressure gas pipeline of up to 600 millimetres nominal bore diameter, connecting Work No. 2B to the above ground installation at an existing gas supply network, comprising—
  - (i) cathodic protection posts;
  - (ii) marker posts; and
  - (iii) electrical supply cables, transformers and control systems cables.



**Work No. 3** – electrical connection works for the import of electricity from electricity transmission networks to Work Nos. 1E.1 and 1E.2, comprising—

- (a) **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.
- (b) **Work No. 3B.1** – above ground installation connecting Work No. 3A to Pellet-Sinter substation, including above ground works within the substation;
- (c) **Work No. 3B.2** – above ground installation connecting Work No. 3A to Tod Point substation, including above ground works within the substation; and
- (d) **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—

- (a) **Work No. 6A** – underground and overground pipelines of up to 600mm nominal bore diameter for the transport of hydrogen gas connecting to Work No. 6B; and
- (b) **Work No. 6B** – above ground installations connecting Work No. 6A to:
  - (i) existing gas transmission system and gas distribution networks including tunnel head; and
  - (ii) tie-in points to connect to premises or land to which a supply of hydrogen is to be provided;

**Work No. 7** – a carbon dioxide export pipeline, comprising—

- (a) **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
- (b) **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 access and highway improvements and use relating to Work Nos. 1, 2, 3, 4, 5, 6A, 6B, 7, 8 and 10.

In connection with and in addition to Work Nos. 1 to 10, further ancillary development comprising such other works or operations for the purposes of or in connection with the construction, operation and maintenance of the authorised development but only within the Order limits and insofar as they are unlikely to give rise to any materially new or materially different environmental effects which are worse than those assessed in the environmental statement, including—

- (a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including works to existing drainage systems;

- (b) electrical, gas, potable water supply, carbon dioxide, foul water drainage and telecommunications infrastructure connections and works, and works to alter the position of services and utilities connections;
- (c) hardstanding and hard landscaping;
- (d) soft landscaping, including embankments and planting;
- (e) biodiversity enhancement measures;
- (f) security fencing, gates, boundary treatment and other means of enclosure;
- (g) external lighting, including lighting columns;
- (h) gatehouses;
- (i) closed circuit television cameras and columns and other security measures;
- (j) site establishment and preparation works, including—
  - (i) site clearance (including vegetation removal, demolition of existing buildings and structures);
  - (ii) earthworks (including soil stripping and storage and site levelling) and excavations;
  - (iii) remediation works;
  - (iv) the creation of temporary construction access points;
  - (v) the alteration of the position of services and utilities; and
  - (vi) works for the protection of buildings and land;
- (k) temporary construction compounds, including—
  - (i) materials and plant storage and laydown areas;
  - (ii) contractor facilities;
  - (iii) generators;
  - (iv) concrete batching facilities;
  - (v) vehicle and cycle parking facilities;
  - (vi) pedestrian and cycle routes and facilities;
  - (vii) offices and staff welfare facilities;
  - (viii) security fencing and gates;
  - (ix) external lighting;
  - (x) roadways and haul routes;
  - (xi) wheel wash facilities; and
  - (xii) signage;
- (l) vehicle parking and cycle storage facilities;
- (m) accesses, roads and pedestrian and cycle routes; and
- (n) tunnelling, boring, piling and drilling works and management of arisings.

## SCHEDULE 2 REQUIREMENTS

Articles 2 and 4

### **Commencement of the authorised development**

1.—(1) The authorised development must not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development must not commence unless the undertaker has given the relevant planning authority fourteen days' notice of its intention to commence the authorised development.

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

2.—(1) Notice of the intended start of commissioning of Work No. 1A.1 must be given to the relevant planning authority no later than fourteen days prior to the date that commissioning is started.

(2) Notice of the intended start of commissioning of Work No. 1A.2 must be given to the relevant planning authority no later than fourteen days prior to the date that commissioning is started.

(3) Notice of the intended date of final commissioning of Work No. 1A.1 must be given to the relevant planning authority no later than fourteen days prior to the date of final commissioning.

(4) Notice of the intended date of final commissioning of Work No. 1A.2 must be given to the relevant planning authority no later than fourteen days prior to the date of final commissioning.

### **Detailed design**

3.—(1) No part of the authorised development comprised in Work No. 1 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;
- (b) finished floor levels;
- (c) hard standings; and
- (d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian routes.

(2) No part of the authorised development comprised in Work No. 2A or Work No. 2C may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC, Sembcorp and the NSMP entities, approved by the relevant planning authority—

- (a) the route and method of installation of the high-pressure gas supply pipeline and any electrical supply, telemetry and other apparatus;
- (b) the number and location of cathodic protection posts and marker posts;
- (c) surface water drainage; and
- (d) works involving trenchless technologies including their location.

(3) No part of the authorised development comprised in Work No. 2B may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC, Sembcorp and the NSMP entities, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures, and all of which must be no higher than 4 metres above ground level;
- (b) hard standings; and
- (c) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities.

(4) No part of the authorised development comprised in Work No. 3 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

- (a) the route and method of installation of the electrical cables and control system cables;
- (b) works to create new or improve any existing substation including electrical cables, connections to the existing busbars and new, upgraded or replacement equipment; and
- (c) works involving trenchless technologies including their location.

(5) No part of the authorised development comprised in Work No. 4 may commence, save for the permitted preliminary works, until details of the route and method of construction of the water supply pipelines for that part have been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(6) No part of the authorised development comprised in Work No. 5 may commence, save for the permitted preliminary works, until details of the route and method of construction of any new wastewater pipelines for that part have been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(7) No part of the authorised development comprised in Work No. 6A may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

- (a) the route and method of installation of the hydrogen distribution network and any electrical supply, telemetry and other apparatus;
- (b) the number and location of cathodic protection posts and marker posts; and
- (c) works involving trenchless technologies including their location.

(8) No part of the authorised development comprised in Work No. 6B may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures of the hydrogen distribution network above ground installations, and all of which must be no higher than 4 metres above ground level;
- (b) hard standings; and
- (c) internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities.

(9) No part of the authorised development comprised in Work No. 7A may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC, approved by the relevant planning authority—

- (a) the route and method of installation of the carbon dioxide export pipeline and any electrical supply, telemetry and other apparatus; and
- (b) the number and location of cathodic protection posts and marker posts.

(10) No part of the authorised development comprised in Work No. 7B may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC, approved by the relevant planning authority—

- (a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures of the above ground installation;

- (b) hard standings; and
- (c) internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities.

(11) No part of the authorised development comprised in Work No. 8 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and, after consultation with STDC and Sembcorp, approved by the relevant planning authority—

- (a) the route and method of installation of the oxygen and nitrogen pipelines and any electrical supply, telemetry and other apparatus; and
- (b) the number and location of cathodic protection posts and marker posts.

(12) Work Nos. 1, 2, 3, 4, 5, 6, 7 and 8 must be carried out in accordance with the design parameters in Schedule 14 (design parameters) and carried out in accordance with the approved details, unless otherwise agreed with the relevant planning authority.

### **Landscape and biodiversity management plan**

4.—(1) No part of the authorised development may commence until a landscape and biodiversity management plan for the construction of that part has been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of—

- (a) measures to protect existing shrub and tree planting that is to be retained;
- (b) details of any trees and hedgerows to be removed; and
- (c) biodiversity and habitat mitigation and impact avoidance.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) No part of the authorised development may be commissioned until a landscape and biodiversity management plan for that part has been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—

- (a) implementation and management of any shrub and tree planting;
- (b) measures to enhance and maintain existing shrub and tree planting that is to be retained;
- (c) measures to enhance biodiversity and habitats;
- (d) an implementation timetable; and
- (e) landscape and biodiversity management, maintenance and monitoring.

(6) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

(7) The plans submitted and approved pursuant to sub-paragraphs (1) and (4) must be—

- (a) in substantial accordance with the outline landscape and biodiversity management plan; and
- (b) implemented and maintained as approved during the construction or operation (as relevant) of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

## **Public rights of way**

5.—(1) No public rights of way may be temporarily diverted or closed until a management plan for the relevant section of the public right of way has been submitted to and approved by the relevant planning authority.

(2) The plan must include details of—

- (a) measures to minimise the length of any sections of public rights of way to be temporarily closed; and
- (b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed or diverted.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

## **External lighting**

6.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement 23) has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed in that part (with the exception of the aviation warning lighting required by virtue of requirement 23) has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraph (1) of this requirement must be in accordance with the indicative lighting strategy (construction) and include measures to minimise and otherwise mitigate any artificial light emissions.

(4) The schemes submitted and approved pursuant to sub-paragraph (2) of this requirement must be in accordance with the indicative lighting strategy (operation) and include measures to minimise and otherwise mitigate any artificial light emissions.

(5) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) must be implemented as approved unless otherwise agreed with the relevant planning authority.

## **Means of enclosure**

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development and the temporary means of enclosure must then be removed in accordance with the programme approved pursuant to sub-paragraph (1).

(3) Prior to the date of final commissioning of each relevant Work No., details of any proposed permanent means of enclosure, must, for each part of the authorised development, be submitted to and approved by the relevant planning authority.

(4) Prior to the date of final commissioning of each relevant Work No., any approved permanent means of enclosure must be completed.

(5) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(6) In this requirement, “means of enclosure” means fencing, walls or other means of boundary treatment and enclosure.

## **Site security**

8.—(1) No part of Work No. 1 may be commissioned until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and approved by the relevant planning authority.

(2) The scheme must be implemented as approved and must be maintained and operated throughout the operation of the relevant part of the authorised development.

## **Fire prevention**

9.—(1) No part of Work No. 1 may commence, save for the permitted preliminary works, until a fire prevention method statement providing details of fire detection measures, fire suppression measures including measures to contain and treat water used to suppress any fire and the location of accesses to all fire appliances in all of the major building structures and storage areas within the relevant part of the authorised development has, for that part, been submitted to and, after consultation with the Health and Safety Executive and the Cleveland Fire Authority, approved by the relevant planning authority.

(2) The authorised development must be implemented in accordance with the approved details and all relevant fire suppression measures and fire appliances must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the relevant part of the authorised development.

## **Drainage**

10.—(1) 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, including means of pollution control in substantial accordance with the construction environmental management plan and the surface water drainage strategy to ensure that the systems remain fully operational throughout the construction of the relevant parts of the authorised development have, for that part, been submitted to, and after consultation with the Environment Agency, the lead local flood authority and STDC, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface water, process effluent and foul water drainage systems, including a water quality risk assessment and programme for their implementation and a surface water maintenance and monitoring plan, must be submitted to and, after consultation with the Environment Agency, the lead local flood authority and STDC, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must—

- (a) be in substantial accordance with the mitigation measures set out in chapter 9 of the environmental statement, flood risk assessment, indicative surface water drainage plan, nutrient neutrality assessment and water framework directive assessment;
- (b) in the case of the process effluent drainage system, provide that case 1B, as described in the nutrient neutrality assessment, is not to be used; and
- (c) provide that amines are not disposed of via a licenced facility into the Teesmouth and Cleveland Coast Special Protection Area and Ramsar site.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

(6) When submitting schemes pursuant to sub-paragraphs (1) and (3) the undertaker may submit separate schemes for the surface and foul water drainage systems.

## **Flood risk mitigation**

11.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction, has, for that part, been submitted to, and after consultation with the Environment Agency, the lead local flood authority and STDC, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency, the lead local flood authority and STDC, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in the flood risk assessment.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

(6) No part of the authorised development may be commissioned until the scheme for the mitigation of flood risk approved under sub-paragraph (3) has been implemented and a flood management plan has been submitted to, and after consultation with the Environment Agency, the lead local flood authority and STDC, approved by the relevant planning authority.

(7) The flood management plan approved pursuant to sub-paragraph (6) must be implemented and maintained throughout the commissioning and operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

## **Contaminated land and groundwater**

12.—(1) Subject to sub-paragraph (8), no part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing 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, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency and STDC, approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must include—

- (a) a preliminary risk assessment (desk top study) and risk assessment that—
  - (i) is supported by a site investigation scheme; and
  - (ii) identifies the extent of any contamination;
- (b) an appraisal of remediation options and a proposal of the preferred option where the risk assessment indicates that remediation is required in order for the relevant area of land not to meet the definition of “contaminated land” under Part 2A (contaminated land) of the Environmental Protection Act 1990(a);
- (c) where the risk assessment carried out under sub-paragraph (a) identifies the need for remediation, a remediation strategy which must include—
  - (i) the preferred option for remediation to ensure that the site will not meet the definition of “contaminated land” under Part 2A (contaminated land) of the Environmental Protection Act 1990; and

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(a) 1990 c.43.



- (ii) a verification plan, providing details of the data to be collected in order to demonstrate that the works set out in the remediation scheme submitted for approval under this sub-paragraph are complete;
- (d) a materials management plan that is in accordance with the prevailing code of practice relevant to such plans, which sets out long-term measures with respect to any contaminants remaining on the site during and after the authorised development is carried out;
- (e) details of how any unexpected contamination will be dealt with;
- (f) an update to the environmental risk assessment including a contaminated land conceptual site model that is informed by any further ground investigation reports and groundwater monitoring in addition to the information in chapter 10 of the environmental statement;
- (g) a long term monitoring and maintenance plan in respect of contamination, including details of (but not limited to) monitoring of groundwater and surface water, appropriate screening criteria, and a time-table of monitoring and submission of monitoring reports, and which must include any necessary contingency action or mitigation measures arising from the matters reported; and
- (h) a plan for managing or otherwise decommissioning any boreholes installed for the investigation of soils, groundwater or geotechnical purposes, including details of how redundant boreholes are to be decommissioned in order to prevent risk of groundwater pollution, how any boreholes that need to be retained for monitoring purposes will be secured, protected and inspected, and including a requirement for appropriate validation records within a report to be submitted to demonstrate that all boreholes which are no longer required have been decommissioned in accordance with best practice.

(3) The authorised development, including any remediation and monitoring, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority following consultation with the Environment Agency.

(4) Where a remediation strategy is required and approved under sub-paragraph (2)(c), following its implementation, a verification report based on the data collected as part of the remediation strategy and demonstrating the completion of the remediation measures must be produced and supplied to the relevant planning authority and the Environment Agency.

(5) Where the verification report produced under sub-paragraph (4) does not demonstrate the completion of the remediation measures, a statement as to how any outstanding remediation measures will be addressed must be supplied to the relevant planning authority and the Environment Agency at the same time as the verification report.

(6) The outstanding remediation measures must be completed to the reasonable satisfaction of the relevant planning authority, after consultation with the Environment Agency and STDC, by the date agreed with that authority.

(7) As an alternative to seeking an approval under sub-paragraph (1), the undertaker may instead 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) which relates to 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.

(8) If a notification under sub-paragraph (7) is—

- (a) approved by the relevant planning authority following consultation with the Environment Agency then the undertaker must implement the previously approved scheme and an approval under sub-paragraph (1) is not required; or
- (b) not approved by the relevant planning authority following consultation with the Environment Agency then an approval under sub-paragraph (1) is required.

(9) Sub-paragraphs (1) to (8) do not apply to any part of the Order limits where the undertaker demonstrates to the relevant planning authority following consultation with the Environment Agency that the relevant part of the Order limits is fit for the authorised development through the

provision of a remedial validation report (which must include a risk assessment, details of any planning permission under which remediation works were carried out and any ongoing monitoring requirements) and the relevant planning authority notifies the undertaker that it is satisfied that the relevant part of the Order limits is fit for the authorised development on the basis of that report.

(10) The undertaker must comply with any ongoing monitoring requirements and any activities identified as necessary by the monitoring contained within the documents submitted to and approved by the relevant planning authority pursuant to sub-paragraph (9).

### **Archaeology**

**13.—**(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with chapter 17 of the environmental statement.

(3) The scheme must identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found and must set out a process for how unexpected finds will be dealt with.

(5) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

- (a) in accordance with the approved scheme; and
- (b) by a suitably qualified person or organisation approved by the relevant planning authority unless otherwise agreed with the relevant planning authority.

### **Protected species**

**14.—**(1) No part of the authorised development may commence until further survey work for that part has been carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part of the authorised development.

(2) Where a protected species is shown to be present, no authorised development of that part must commence until a scheme of protection and mitigation measures has been submitted to and, following consultation with Natural England, approved by the relevant planning authority.

(3) The authorised development must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

(4) In this requirement, “protected species” has the same meaning as in regulations 42 and 46 of the Conservation of Habitats and Species Regulations(a).

### **Construction environmental management plan**

**15.—**(1) 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, after consultation with STDC, approved by the relevant planning authority.

(2) The permitted preliminary works construction environmental management plan submitted must be in substantial accordance with the framework construction environmental management plan, to the extent that it is relevant to the permitted preliminary works.

(3) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan for that part has been submitted to

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(a) S.I. 2017/1012.

and, after consultation with the Environment Agency, Sembcorp and STDC, approved by the relevant planning authority.

(4) The plan submitted and approved in sub-paragraph (3) must be in substantial accordance with the framework construction environmental management plan.

(5) All construction works associated with the authorised development must be carried out in accordance with the relevant approved construction environmental management plan, unless otherwise agreed with the relevant planning authority.

(6) The relevant planning authority must not withhold its approval of a plan under sub-paragraph (3) on the basis that the proposed activities in the plan include 24-hour working, if the activities proposed to be subject to 24-hour working are consistent with those listed in the framework construction environmental management plan.

(7) No part of the authorised development may commence, save for the permitted preliminary works, unless the following plans for that part have been submitted to and, after consultation with the Environment Agency, Sembcorp and STDC, approved by the relevant planning authority—

- (a) site waste management plan (produced in substantial accordance with the outline site waste management plan);
- (b) water management plan (produced in substantial accordance with the outline water management plan);
- (c) lighting strategy (construction) (produced in substantial accordance with the indicative lighting strategy (construction));
- (d) soils management plan;
- (e) pollution prevention plan;
- (f) emergency response plan;
- (g) construction dewatering strategy;
- (h) flood risk management action plan;
- (i) materials management plan;
- (j) hazardous materials management plan, including an asbestos management plan;
- (k) invasive plant species management plan;
- (l) bird mitigation and monitoring plan (produced following consultation by the undertaker with Natural England);
- (m) groundwater risk assessment;
- (n) UXO emergency response plan;
- (o) foundation works risk assessment;
- (p) hydraulic fracture risk assessment;
- (q) drilling method statement;
- (r) HDD collapse clean-up plan; and
- (s) a scheme for the notification of any significant construction impacts on local residents and for handling of any complaints received from local residents relating to construction impacts.

(8) The plans may be submitted under sub-paragraph (7) using a combination of any of the following methods—

- (a) appended to the construction environmental management plan submitted and approved under sub-paragraph (3);
- (b) submitted as separate, individual plans; or
- (c) where a number of the related sub-sets of plans listed in sub-paragraph (7) have been merged into fewer documents as required and reasonably practicable to achieve the desired effect as set out in the framework construction environmental management plan.

(9) All construction works associated with the authorised development must be carried out in accordance with the plans approved under sub-paragraph (7) unless otherwise agreed with the relevant planning authority.

### **Protection of highway surfaces**

16.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

### **Extended planned shutdown maintenance period**

17.—(1) Prior to the authorised development's first extended planned shutdown maintenance period, an environmental and traffic management plan for that period must be submitted and, after consultation with National Highways on matters relating to traffic management, approved by the relevant planning authority.

(2) The plan in sub-paragraph (1) must be implemented as approved unless otherwise agreed with the relevant planning authority.

(3) Prior to each subsequent extended planned shutdown maintenance period, a statement must be submitted to the relevant planning authority to either confirm no changes or notify changes to environmental and traffic management plan submitted in sub-paragraph (1).

(4) If the statement in sub-paragraph (3) is a notification of changes to the plan, then these changes must be approved, after consultation with National Highways to the extent that the changes relate to traffic management, by the relevant planning authority before that extended planned shutdown maintenance period can begin.

### **Construction traffic management plan**

18.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan for that part has been submitted to and, after consultation with National Highways, the relevant highway authority, the NSMP entities and STDC, approved by the relevant planning authority.

(2) The plan submitted and approved must be in substantial accordance with the framework construction traffic management plan.

(3) The plan submitted and approved must include—

- (a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;
- (b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;
- (c) details of the activities to be undertaken to inform major users of highways in the area of the local highways authority about the impact of works to be undertaken to highways as part of the authorised development;
- (d) the construction programme, including the profile of activity across the day;

- (e) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture;
- (f) details of how the undertaker will seek to engage with the undertaker as defined in the Net Zero Teesside Order 2024 and the developer of HyGreen Teesside to manage cumulative construction transport impacts;
- (g) details of the monitoring to be undertaken; and
- (h) a construction workers travel plan (which must be substantially in accordance with the framework construction workers travel plan).

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Construction hours**

**19.**—(1) Construction work and the delivery or removal of materials, plant and machinery relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

- (a) 0700 to 1900 hours on Monday to Friday; and
- (b) 0700 to 1300 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) do not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

- (a) do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with requirement 20;
- (b) are carried out with the prior approval of the relevant planning authority, including as part of a construction environmental management plan approved under requirement 15; or
- (c) are associated with an emergency.

(3) The restrictions in sub-paragraph (1) do not apply to the delivery of abnormal indivisible loads, where this is—

- (a) associated with an emergency; or
- (b) carried out with the prior approval of the relevant planning authority, including as part of a construction traffic management plan approved under requirement 18.

(4) Sub-paragraph (1) does not preclude—

- (a) mobilisation and de-mobilisation periods from 0600 to 0700 and from 1900 to 2000 Monday to Friday;
- (b) mobilisation and de-mobilisation periods from 0600 to 0700 and from 1300 to 1400 on a Saturday; or
- (c) 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.

### **Control of noise - construction**

**20.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise during the construction of that part of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The scheme submitted and approved must specify—

- (a) each location from which noise is to be monitored;
- (b) the method of noise measurement;
- (c) 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;
- (d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and
- (e) the noise control measures to be employed.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Piling and penetrative foundation design**

**21.**—(1) No part of the authorised development may commence, save for the 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, after consultation with the Environment Agency, Natural England and STDC, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

### **Restoration of land used temporarily for construction**

**22.**—(1) 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 only for construction must, for each relevant Work No. of the authorised development, be submitted to and, after consultation with STDC, approved by the relevant planning authority.

(2) The land must be restored within one year of the date of final commissioning of each relevant Work No. (or such longer period as the relevant planning authority may approve) in accordance with the restoration scheme approved pursuant to sub-paragraph (1).

(3) The scheme submitted pursuant to sub-paragraph (1) must take into account the updated environmental risk assessment and any further ground investigation reports and groundwater monitoring required by requirement 12(2)(f).

### **Aviation warning lighting**

**23.**—(1) No part of the authorised development comprised within Work No. 1 may commence, save for the permitted preliminary works, until details of the aviation warning lighting to be installed for that part during construction and operation have been submitted to, and after consultation with the Civil Aviation Authority, approved by the relevant planning authority.

(2) The aviation warning lighting approved pursuant to sub-paragraph (1) must be installed and operated in accordance with the approved details.

### **Air safety**

**24.** No part of Work No. 1 may commence, save for the permitted preliminary works, until details of the information that is required by the Defence Geographic Centre of the Ministry of Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

### **Local liaison group**

25.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until the undertaker has established, or has convened jointly with either both or one of the undertaker as defined in The Net Zero Teesside Order 2024 and the promoter of HyGreen Teesside, a group to liaise with local residents and organisations about matters relating to the authorised development (a ‘local liaison group’).

(2) The undertaker must invite the relevant planning authority, STDC, the NSMP entities and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison group.

(3) The undertaker must provide a secretariat service and provide either an appropriate venue for the local liaison group meetings to take place or means by which the local liaison group meetings can take place electronically.

(4) The local liaison group must—

- (a) include representatives of the undertaker and its contractors; and
- (b) 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.

(5) In this requirement, “convened” means either the undertaker establishing a new group or becoming part of an existing local liaison group established pursuant to requirement 29 of The Net Zero Teesside Order 2024.

### **Employment, skills and training plan**

26.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The plan approved pursuant to sub-paragraph (1) must be implemented and maintained during the construction of the authorised development unless otherwise agreed by the relevant planning authority.

(3) No part of Work No. 1 may be commissioned until a plan detailing arrangements to promote employment opportunities during operation of the authorised development has been submitted to and approved by the relevant planning authority.

(4) The plan approved pursuant to sub-paragraph (3) must be implemented and maintained during the operation of the authorised development unless otherwise agreed by the relevant planning authority.

(5) The plans submitted pursuant to sub-paragraphs (1) and (3) may be submitted jointly with either both or one of the undertaker as defined in The Net Zero Teesside Order 2024 and the promoter of HyGreen Teesside.

### **Carbon dioxide transport and storage**

27.—(1) No part of the authorised development other than the permitted preliminary works may commence until evidence of the following (or such licence or consent as may replace those listed) has been submitted to and approved by the relevant planning authority—

- (a) that the carbon dioxide storage licence has been granted; and
- (b) that an environmental permit has been granted for Work No. 1A.1.

### **Decommissioning**

28.—(1) Within 12 months of the date that a Work No. permanently ceases operation (or such longer period as may be agreed in writing with the relevant planning authority), the undertaker must submit to the relevant planning authority for its approval (following consultation with the

Environment Agency, Sembcorp, CF Fertilisers and, on matters relating to traffic management arrangements pursuant to sub-paragraph (6)(h), National Highways)—

- (a) a decommissioning environmental management plan for that part; and
- (b) evidence that any necessary planning consents have been granted for decommissioning in relation to that part.

(2) Prior to the start of decommissioning works for any part of the authorised development, the undertaker must carry out surveys to determine the presence or absence of protected species, notable species and invasive non-native species in that part of the authorised development to inform the plan submitted pursuant to sub-paragraph (1)(a).

- (3) No decommissioning works must be undertaken until the relevant planning authority has—
  - (a) approved the plan for that part submitted pursuant to sub-paragraph (1)(a); and
  - (b) confirmed in writing that it is satisfied as to the evidence submitted for that part pursuant to sub-paragraph (1)(b).

(4) Where the relevant planning authority notifies the undertaker that the information submitted pursuant to sub-paragraph (1) is not approved, the undertaker must within a period of 2 months from the notice (or such other period as may be agreed with the relevant planning authority) make a further submission pursuant to sub-paragraph (1) to 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 paragraph 5(1) of Schedule 13 (procedure for discharge of requirements).

(5) Where the undertaker has submitted an appeal pursuant to paragraph 5(1) of Schedule 13 against the decision of the relevant planning authority to not approve the information submitted pursuant to sub-paragraph (1), and the Secretary of State notifies the undertaker that the appeal has been dismissed, the undertaker must within a period of 2 months from receiving the notice from the Secretary of State (or such other period as may be agreed with the relevant planning authority) make a further submission pursuant to sub-paragraph (1) to the relevant planning authority.

- (6) The plan submitted pursuant to sub-paragraph (1)(a) must include details of—
  - (a) the buildings to be demolished and the apparatus to be removed;
  - (b) where apparatus is proposed to be left in-situ and not removed, the steps to be taken to decommission such apparatus and ensure it remains safe;
  - (c) the means of removal of the materials resulting from the decommissioning works;
  - (d) the phasing of the demolition and removal works;
  - (e) any restoration works to restore the land to a condition agreed with the relevant planning authority;
  - (f) the phasing of any restoration works;
  - (g) a timetable for the implementation of the plan;
  - (h) traffic management arrangements during any demolition, removal and remediation works;
  - (i) the monitoring and control of noise;
  - (j) waste management measures required; and
  - (k) how the undertaker has applied the waste hierarchy.

(7) The plan submitted pursuant to sub-paragraph (1)(a) must be implemented as approved unless otherwise agreed with the relevant planning authority.

### **Requirement for written approval**

29. Where under any of the above requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.



### **Approved details and amendments to them**

**30.**—(1) All details submitted for the approval of the relevant planning authority under these requirements must reflect the principles set out in the documents certified under article 44 (certification of plans etc.).

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

### **Amendments agreed by the relevant planning authority**

**31.**—(1) Where the words “unless otherwise agreed by the relevant planning authority” appear in the above requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

### **Consultation with South Tees Development Corporation**

**32.** Where a requirement specifies that the relevant planning authority must consult STDC that 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 in the relevant planning authority’s opinion could affect the STDC area.

### **Requirements deemed to be discharged under The Net Zero Teesside Order 2024**

**33.**—(1) Requirement 3 (detailed design) or 10 (surface and foul water drainage) in this Schedule may be deemed to be discharged in respect of any part of the authorised development where—

- (a) the requirements in the relevant paragraph of requirement 3 (detailed design) or 11 (surface and foul water drainage) of The Net Zero Teesside Order 2024 has been discharged pursuant to The Net Zero Teesside Order 2024;
- (b) the discharge of the requirements in the relevant paragraph of requirement 3 or 11 in paragraph (a) satisfies all of the relevant requirements in relation to the requirements in the relevant paragraph of requirement 3 or requirement 10 in this Order; and
- (c) the discharge of the requirements in the relevant paragraph of requirement 3 or 10 of this Order is in respect of infrastructure that is—
  - (i) to be constructed, maintained and operated in the form as discharged pursuant to The Net Zero Teesside Order 2024; and
  - (ii) also to be utilised in the form as discharged pursuant to The Net Teesside Order 2024 for the purposes of the authorised development.

(2) Sub-paragraph (1) is subject to obtaining the approval of the relevant planning authority.

(3) Where the requirements in the relevant paragraph of requirement 3 or 10 of this Order requires the relevant planning authority to consult with a third party, then that third party must be consulted before giving approval under sub-paragraph (2).

### **Highway accesses**

**34.**—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified temporary means of access between any part of

the Order limits and the public highway to be used by vehicular traffic during construction, and the means of and a programme for reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority and STDC, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details and, unless approved pursuant to sub-paragraph (3) to be retained permanently, reinstated in accordance with the approved programme, unless otherwise agreed with the relevant planning authority.

(3) Prior to the date of final commissioning of each relevant Work No. details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent means of access to a highway to be used by vehicular traffic must, for each part of the authorised development, be submitted to and, after consultation with the highway authority and STDC, approved by the relevant planning authority.

(4) The highway accesses approved pursuant to sub-paragraph (3) must be constructed in accordance with the details approved, unless otherwise agreed with the relevant planning authority.

### **Operational traffic management plan**

**35.**—(1) No part of the authorised development may be commissioned until an operational traffic management plan has, for that part, been submitted to and, after consultation with National Highways, approved by the relevant planning authority.

(2) The plan submitted for approval under sub-paragraph (1) must include—

- (a) information on the staff numbers and proposed shift times for the operational phase of the authorised development;
- (b) an assessment of the impacts to the strategic road network on the basis of the information provided under paragraph (a);
- (c) measures in relation to operational travel movements consistent with the principles of the measures set out in section 6.0 (travel plan measures) of the framework construction workers travel plan; and
- (d) arrangements for monitoring operational traffic impacts.

## SCHEDULE 3

Article 9

### MODIFICATIONS TO AND AMENDMENTS OF THE YORK POTASH HARBOUR FACILITIES ORDER 2016

1. Article 34 is deleted and replaced with “Schedules 7 to 13 have effect”.
2. After Schedule 12 insert new Schedule 13—

#### “SCHEDULE 13

#### FOR THE PROTECTION OF THE H2T UNDERTAKER

##### **Interpretation**

1. For the protection of the H2T Undertaker, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

“Anglo American Apparatus” means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area;

“expert” means a person appointed pursuant to paragraph 12(b);

“H2T Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by the H2T Undertaker within the Shared Area;

“H2T Order” means the H2Teesside Order 202\*;

“H2T Project” means the construction, operation or maintenance of the authorised development as is defined by the H2T Order;

“H2T Specified Works” means so much of the H2T Project as is within the Shared Area;

“H2T Undertaker” means the undertaker as defined by the H2T Order;

“Land Plans” means the land plans as defined by the H2T Order;

“Parties” means the H2T Undertaker and the undertaker;

“Plans” includes sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the shared area;

“Property Documents” means any leases, licences or other documents by virtue of which Anglo American has an interest in, on or over land as at the date of the H2T Order;

“Respective Projects” means the H2T Project and the authorised development;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero or any successor in function;

“Shared Area” means the land coloured blue on the Shared Area Plan so far within the H2T Order limits;

“Shared Area Plan” means the plan which is certified as the H2 Teesside Anglo American Shared Area Plan by the Secretary of State under article 44 (certification of plans etc.) for the purposes of the H2T Order; and

“Specified Works” means so much of the authorised development as is within the Shared Area.

### **Consent to works in the shared area**

3.—(1) Where the consent or agreement of the H2T Undertaker is required under the provisions of this Schedule the undertaker must give at least 21 days written notice to the H2T Undertaker of the request for such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with the request which must identify—

- (a) the land that will or may be affected;
- (b) which Works Nos. from the Order any powers sought to be used or works to be carried out relate to;
- (c) the identity of the contractors carrying out the work;
- (d) the proposed programme for the power to be used or works to be carried out; and
- (e) the named point of contact for the undertaker for discussions in relation to the information supplied and the consenting process.

(2) The H2T Undertaker must notify the undertaker within 14 days of the receipt of the written notice under sub-paragraph (1) of—

- (a) any information it reasonably requires to be provided in addition to that proposed to be supplied by the undertaker under sub-paragraph (1);
- (b) any particular circumstances with regard to the construction or operation of the H2T Project it requires to be taken into account;
- (c) the named point of contact for the H2T Undertaker for discussions in relation to the information supplied and the consenting process; and
- (d) the specific person who will be responsible for confirming or refusing the consent or agreement.

(3) Any request for consent under paragraphs 5(1), 6(1) and 6(2) must be accompanied by the information referred to in sub-paragraph (1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to sub-paragraph (5), where conditions are included in any consent granted by the H2T Undertaker pursuant to this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by the H2T Undertaker.

(5) Wherever in this Schedule provision is made with respect to the agreement approval or consent of the H2T Undertaker, that approval or consent must be in writing and subject to such reasonable terms and conditions as the H2T Undertaker may require including conditions requiring protective works to be carried out, but must not be unreasonably refused or delayed and for the purposes of these provisions it will be deemed to be reasonable for any consent to be refused if it would—

- (a) compromise the safety and operational viability of the H2T Project (where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by the H2T Undertaker to provide an understanding of the matters raised); and/or
- (b) prevent the ability of the H2T Undertaker to have uninterrupted access to the H2T Project; and/or
- (c) make regulatory compliance more difficult or expensive,

provided that before the H2T Undertaker can validly refuse consent for any of the reasons set out in sub-paragraphs (a) and (c) it must first give the undertaker seven days' notice of such intention and consider any representations made in respect of such refusal by the undertaker to the H2T Undertaker within that seven day period.

(6) The seven day period referred to in the proviso to sub-paragraph (5) must be added to the period of time within which any request for agreement, approval or consent is required to be responded to pursuant to the provisions of this Schedule.

(7) In the event that—

- (a) the undertaker considers that the H2T Undertaker has unreasonably withheld its authorisation or agreement under paragraphs 5(1), 6(1) and/or 6(2); or
- (b) the undertaker considers that the H2T Undertaker has given its authorisation under paragraphs 5(1), 6(1) and/or 6(2) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 14.

(8) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to the H2T Undertaker by recorded delivery and addressed to Chris Daykin, BP Hydrogen & CCU, Chertsey Road, Sunbury on Thames, Middlesex TW16 7LN and copied to Clare Haley, Senior Counsel, bp, Chertsey Road, Sunbury on Thames, Middlesex, TW16 7LN (or the equivalent named individual holding those positions at the time of the notice) and by email to [chris.daykin@uk.bp.com](mailto:chris.daykin@uk.bp.com) and [clare.haley@uk.bp.com](mailto:clare.haley@uk.bp.com).

(9) In the event that the H2T Undertaker does not respond in writing to a request for approval or consent or agreement within 28 days of its receipt of the postal request then the undertaker may serve upon the H2T Undertaker written notice requiring the H2T Undertaker to give their decision within a further 28 days beginning with the date upon which the H2T Undertaker received written notice from the undertaker and, subject to compliance with sub-paragraph (10), if by the expiry of the further 28 day period the H2T Undertaker has failed to notify the undertaker of its decision the H2T Undertaker is deemed to have given its consent, approval or agreement without any terms or conditions.

(10) Any further notice given by the undertaker under sub-paragraph (9) must include a written statement that the provisions of sub-paragraph (9) apply to the relevant approval or consent or agreement.

### **Co-operation**

4. Insofar as the H2T Specified Works are or may be undertaken concurrently with the Specified Works within the Shared Area, the undertaker must—

- (a) co-operate with the H2T Undertaker with a view to ensuring—
  - (i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and
  - (ii) that access for the purposes of the construction and operation of the H2T Project is maintained for the H2T Undertaker and its contractors, employees, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

### **Regulation of works within the shared area**

5.—(1) The undertaker must not carry out the Specified Works without the prior written consent of the H2T Undertaker obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under paragraph 3(5) the H2T Undertaker requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the reasonable satisfaction of the H2T Undertaker.

(3) Nothing in paragraph 3 or this paragraph 5 precludes the undertaker from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any of the Specified Works, new Plans in respect of the Specified Works in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 3 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 14(b) and the expert in determining the dispute gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 12.

(5) The undertaker must give to the H2T Undertaker not less than 28 days' written notice of its intention to commence the construction of any of the Specified Works and, not more than 14 days after completion of their construction, must give the H2T Undertaker written notice of the completion.

(6) The undertaker is not required to comply with sub-paragraphs (1) to (5) above in a case of emergency, (being actions required directly to prevent possible death or injury) but in that case it must give to the H2T Undertaker notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 3 and 5 in so far as is reasonably practicable in the circumstances.

(7) The undertaker must at all reasonable times during construction of the Specified Works allow the H2T Undertaker and its officers, employees, servants, contractors, and agents access to the Specified Works and all reasonable facilities for inspection of the Specified Works.

(8) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from the H2T Undertaker requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(9) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (8) above, the H2T Undertaker may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(10) The undertaker must not exercise the powers conferred by the Order or undertake the Specified Works to prevent or interfere with the access by the H2T Undertaker to the H2T Specified Works unless first agreed in writing by the H2T Undertaker.

(11) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Specified Works the access to any of the H2T Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the H2T Specified Works as will enable the H2T Undertaker to construct, maintain or operate the H2T Project no less effectively than was possible before the obstruction.

(12) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Specified Works request up-to-date written confirmation from the H2T Undertaker of the location of any part of its then existing or proposed H2T Specified Works.

### **Regulation of powers over the shared area**

6.—(1) The undertaker must not exercise the powers granted under the Order so as to hinder or prevent the construction, operation or maintenance of the H2T Specified Works without the prior written consent of the H2T Undertaker.

(2) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (3) below, over or in respect of the Shared Area otherwise than with the prior written consent of the H2T Undertaker.

(3) The articles referred to in sub-paragraph (2) above are—

- (a) article 10 (street works);
- (b) article 11 (temporary stopping up of streets);
- (c) article 12 (access to works);
- (d) article 14 (discharge of water); and
- (e) article 15 (protective works to buildings).

(4) In the event that the H2T Undertaker withholds its consent pursuant to sub-paragraph (2) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

### **Constructability Principles**

7.—(1) Subject to sub-paragraph (3), the undertaker must in respect of the Specified Works (unless otherwise agreed, or in an emergency relating to potential death or serious injury, or where it would render the H2T Specified Works, H2T Apparatus, Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties)—

- (a) carry out the Specified Works in such a way that will not prevent or interfere with the continued construction of the H2T Specified Works, or the maintenance or operation of the H2T Apparatus unless the action leading to such prevention or interference has the prior written consent of H2T Undertaker;
- (b) ensure that works carried out to, or placing of Anglo American Apparatus beneath, roads along which construction or maintenance access is required by the H2T Undertaker in respect of any H2T Apparatus will be of adequate specification to bear the loads;
- (c) prior to the carrying out any of the Specified Works in any part of any Shared Area—
  - (i) submit a construction programme and a construction traffic and access management plan in respect of that area to the H2T Undertaker and obtain agreement thereof from the H2T Undertaker (noting that a single construction traffic and access management plan may be completed for one or more parts of each Shared Area or more than one Shared Area and may be subject to review if agreed between the Parties) and without prejudice to the generality of sub-paragraph (i) the plans must include such measures and construction practices or processes as are necessary to satisfactorily address the relevant issues in relation to construction traffic and access management during construction that are set out in this paragraph 7;
  - (ii) provide a copy to the H2T Undertaker any relevant construction environmental management plan approved under Requirement 6 which relate to construction activities in the Shared Area;
  - (iii) where applicable, confirm to the H2T Undertaker in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time; and
  - (iv) at all times construct the Specified Works in compliance with the relevant approved construction traffic and access management plan;
- (d) update on a monthly basis the construction programme approved under sub-paragraph (c)(i) and supply a copy of the updated programme to the H2T Undertaker every month;
- (e) notify the H2T Undertaker of any incidence which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;
- (f) report to the H2T Undertaker of any environmental incidents which occur as a consequence of or are found in association with the carrying out of the Specified Works including the identification of contamination or hazards to construction;
- (g) provide comprehensive, as built, drawings of the Specified Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Specified Works or if required by the H2T Undertaker earlier than three months of the date of completion, providing reasonable information

regarding the layout of the Specified Works in the shared area in question, subject to the H2T Undertaker providing reasonable notice to the undertaker;

- (h) other than in respect of land in which the undertaker has a freehold interest, following the completion of each of the Specified Works unless otherwise agreed in writing by the H2T Undertaker fully reinstate the affected area (with the exception only of the retention of the permanent elements of the Specified Works) and remove all waste/surplus materials;
- (i) in respect of land in which the undertaker has a freehold interest following the completion of each of the Specified Works the area affected must not be left in such a state as to adversely affect the construction, maintenance and operation of the H2T Specified Works;
- (j) obtain the prior written consent of the H2T Undertaker for the use of any re-cycled aggregate material within the Shared Area;
- (k) prior to carrying out any works in plots 13/1, 13/2 and 13/3 of the Land Plans and adjacent waterside, obtain the H2T Undertaker's approval for such works, such approval not to be unreasonably withheld or delayed and will consider (l); and
- (l) ensure the H2T Undertaker has unhindered land and waterside access (as applicable) to plots 13/1, 13/2 and 13/3 of the Land Plans, including the ability to berth and/or moor vessels to the existing infrastructure.

(2) Any spoil from the H2T Specified Works or the Specified Works (including contaminated material) must be dealt with in accordance with a spoil management plan to be agreed between the Parties in advance of the work by either Party generating such spoil beginning.

(3) In the event that the H2T Undertaker notifies the undertaker in writing that the H2T Undertaker will not construct part of the H2T Specified Works ("H2T Abandoned Works"), the undertaker can construct, operate and maintain the Specified Works without regard to and without complying with paragraphs 7(1) and 7(2) insofar as those paragraphs apply to the H2T Abandoned Works.

(4) In considering a request for any consent under the provisions of this Schedule, the H2T Undertaker must not—

- (a) request an additional construction traffic and access management plan or a spoil management plan if such a plan has already been approved pursuant to sub-paragraph (1)(c)(i) (as relevant in respect of a traffic and access management plan) or agreed pursuant to sub-paragraph (2) in respect of a spoil management plan); and
- (b) refuse consent for reasons which conflict with the contents of documents approved by the H2T Undertaker pursuant to the provisions of this paragraph and paragraph 8.

### **Interface Design Process**

**8.—**(1) Prior to the seeking of any consent under this Schedule, the undertaker must, unless the H2T Undertaker has brought forward works in that part of the Shared Area before the undertaker, participate in a design and constructability review for that part of the Shared Area which shall, at a minimum (unless otherwise agreed), include the following matters—

- (a) a Front End Engineering Design (FEED) level indicative construction work-pack;
- (b) a hazard and operability study; and
- (c) a construction hazard study.

(2) Unless otherwise agreed, the undertaker must submit the outcome of the design and constructability review referred to in sub-paragraph (1) to the H2T Undertaker for approval prior to the seeking of any consent under this Schedule.



(3) The undertaker must at all times design and construct the Specified Works in compliance with the relevant approved design and constructability review pursuant to sub-paragraph (2).

(4) The undertaker may undertake a single design and constructability review process for one or more parts of the Shared Area and any approved design and constructability review may be amended if agreed by the H2T Undertaker.

(5) In considering any request for consent or approval under this Schedule, the H2T Undertaker must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless the H2T Undertaker reasonably believes that the relevant agreed design and constructability review is materially out of date or is inapplicable due to a change in either the authorised development or the H2T Project.

### **Miscellaneous provisions**

**9.**—(1) The undertaker and the H2T Undertaker must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Schedule.

(2) The undertaker must pay to the H2T Undertaker the reasonable expenses incurred by the H2T Undertaker in connection with the consenting processes under this Schedule, including the approval of plans, inspection of any Specified Works or the alteration or protection of the H2T Specified Works.

### **Indemnity**

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction, maintenance or operation of any Specified Works, or failure thereof, any damage is caused to any H2T Apparatus used in connection with the H2T Specified Works or damage is caused to any part of the H2T Specified Works or there is any interruption in any service provided, or the operations of the H2T Undertaker, or in the supply of any goods, by the H2T Undertaker, the undertaker must—

- (a) bear and pay the costs reasonably incurred by H2T Undertaker in making good such damage or restoring the service, operations or supply; and
- (b) compensate the H2T Undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the H2T Undertaker, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of the H2T Undertaker, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by the H2T Undertaker.

(3) The H2T Undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The H2T Undertaker must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, the H2T Undertaker must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(5) The undertaker shall not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that the H2T Undertaker has not used its reasonable endeavours to mitigate and/or minimise that claim accordance with sub-paragraph (4).

(6) The fact that any work or thing has been executed or done with the consent of the H2T Undertaker and in accordance with any conditions or restrictions prescribed by the H2T Undertaker or in accordance with any plans approved by the H2T Undertaker or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 12 does not relieve the undertaker from any liability under this paragraph.

(7) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by the H2T Undertaker.

### **Dispute resolution**

**11.** Article 40 (arbitration) does not apply to provisions of this Schedule.

**12.** Any difference in relation to the provisions in this Schedule must be referred to—

- (a) a meeting of BP Vice President Hydrogen and Carbon Capture and Storage in the United Kingdom and the Project Manager, Anglo American Woodsmith Mine and the Company Secretary of Anglo American to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one Party to the other; and
- (b) in the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the H2T Undertaker and the undertaker or, in the absence of agreement identified by the President of the Law Society, who must be sought to be appointed within 28 days of the notification of the dispute.

**13.** The fees of the expert appointed pursuant to paragraph 12(b) are to be payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

**14.** The expert must—

- (a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) allow each Party an opportunity to comment on the submissions made by the other provided they are received within 21 days of the receipt of the submissions referred to in sub-paragraph (a) above;
- (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to sub-paragraph (a) above; and
- (d) give reasons for the decision.

**15.** The expert must consider where relevant—

- (a) the development outcomes sought by the H2T Undertaker and the undertaker;
- (b) the ability of the H2T Undertaker and the undertaker to achieve the outcomes referred to in sub-paragraph (a) above in a timely and cost-effective manner;
- (c) any increased costs on any Party as a result of the matter in dispute;
- (d) whether under the H2T Order or the Order, the H2T Undertaker's or the undertaker's outcomes could be achieved in any alternative manner without the H2T Specified Works being materially compromised in terms of increased cost or increased length of programme; and
- (e) any other important and relevant considerations.

**16.** Any determination by the expert is final and binding which the Parties must comply with and is enforceable by the Parties by injunction except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to

and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the President of the Law Society.”.

SCHEDULE 4

Articles 10, 11 and 14

STREETS SUBJECT TO STREET WORKS

Table 1

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>	<i>(3)</i> <i>Description of the street works</i>
In the Borough of Stockton-on-Tees	A1185	Works for the improvement of the access at the point marked B4 and B4a on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Works for the improvement of the access at the point marked C1 and C1a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D1 and D1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D2 and D2a on sheet 3 of the access and right of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D3 and D3a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D4 and D4a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Works for the improvement of the access at the point marked D5 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Pipeline works beneath the width of the highways for the proposed pipeline crossing between the points X and X1 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E2 and E2a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E3 and E3a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E4 on sheet 5 of the access and

		rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the installation of a new access at the point marked E5 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked E6 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Works for the installation of a new access at the point marked E7 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Huntsman Drive	Works for the improvement of the access at the point marked F1 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked G1 and G1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked G2 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked H1 and H1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked H2 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Works for the installation of a new access at the point marked I1 and I1a on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Works for the improvement of the access at the point marked I2 on sheet 1 of the access and rights of way plans
In the Borough of Redcar and Cleveland	Trunk Road (A1085)	Works for the improvement of the access at the point marked K1 on sheet 8 of the access and rights of way plans
In the Borough of Stockton-on-Tees	New Road	Pipeline works above the width of the highway for the proposed pipeline crossing at the point marked L1 on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Works for the improvement of the access at the point marked M1 and M1a on sheet 4 of the

		access and rights of way plans
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## SCHEDULE 5

Article 12

### ACCESS

#### PART 1

#### THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE HIGHWAY AUTHORITY

**Table 2**

<i>(1)</i> Area	<i>(2)</i> Street	<i>(3)</i> Description of relevant part of access
In the Borough of Stockton-on-Tees	A1185 / unnamed private track	That part of the access cross-hatched in blue at the point marked B4a on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in blue at the point marked C1a on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in blue at the point marked D1a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in blue at the point marked D2a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / Sembcorp Linkline Corridors private access track	That part of the access cross-hatched in blue at the point marked D3a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in blue at the point marked D4a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in blue at the point marked E2 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in blue at the point marked E3a on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked G1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-	Nelson Avenue / unnamed	That part of the access cross-

on-Tees	private track	hatched in blue at the point marked H1a on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275) / unnamed private track	That part of the access cross-hatched in blue at the point marked I1a on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in blue at the point marked M1a on sheet 4 of the access and rights of way plans

## PART 2

### THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

**Table 3**

<i>(1)</i> Area	<i>(2)</i> Street	<i>(3)</i> Description of relevant part of access
In the Borough of Stockton-on-Tees	A1185 / unnamed private track	That part of the access cross-hatched in red at the point marked B4 on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in red at the point marked C1 on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D1 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D2 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / Sembcorp Linkline Corridors private access track	That part of the access cross-hatched in red at the point marked D3 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D4 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178) / unnamed private track	That part of the access cross-hatched in red at the point marked D5 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access cross-hatched in red at the point marked E2 on sheet 3 of the



		access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / Sabic Brine Fields Site private access track	That part of the access cross-hatched in red at the point marked E3 on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / Seal Sands Power Station private access track	That part of the access cross-hatched in red at the point marked E4 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in red at the point marked E5 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access cross-hatched in red at the point marked E6 on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road / new private track	That part of the access cross-hatched in red at the point marked E7 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Huntsman Drive / unnamed private track	That part of the access cross-hatched in red at the point marked F1 on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in red at the point marked G1 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in red at the point marked G2 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access cross-hatched in red at the point marked H1 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access cross-hatched in red at the point marked H2 on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275) / unnamed private track	That part of the access cross-hatched in red at the point marked I1 on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275) / unnamed private track	That part of the access cross-hatched in red at the point marked I2 on sheet 1 of the access and rights of way plans
In the Borough of Redcar and Cleveland	Trunk Road (A1085) / unnamed private track	That part of the access cross-hatched in red at the point marked K1 on sheet 8 of the

		access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178) / PD Teesport Ltd private access track	That part of the access cross-hatched in red at the point marked M1 on sheet 4 of the access and rights of way plans

SCHEDULE 6

Article 13

TEMPORARY CLOSURE OF STREETS AND PUBLIC RIGHTS OF WAY

PART 1

THOSE PARTS OF THE STREET TO BE TEMPORARILY CLOSED

**Table 4**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to temporary closure of use</i>	<i>(3)</i> <i>Extent of temporary closure of use of street</i>
In the Borough of Stockton-on-Tees	A1185	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked BG and BH on sheets 2 and 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked CA and CB on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked DA and DB on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked DC and DD on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EA and EB on sheet 3 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EC and ED on sheet 3

		of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EE and EF on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EG and EH on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Seal Sands Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked EI and EJ on sheet 6 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Huntsman Drive	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked FA and FB on sheet 5 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked GA and GB on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Nelson Avenue	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked HA and HB on sheets 1 and 2 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked IA and IB on sheet 1 of the access and rights of way plans
In the Borough of Stockton-on-Tees	New Road	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked LA and LB on sheet 1

		of the access and rights of way plans
In the Borough of Stockton-on-Tees	Tees Road (A178)	Temporarily close, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked MA and MB on sheet 4 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Unnamed private track	Temporarily close, prohibit the use of, restrict the use of, alter or divert the private access between the points marked Z11 and Z12 on sheets 2 and 3 of the access and rights of way plans

## PART 2

### THOSE PUBLIC RIGHTS OF WAY TO BE TEMPORARILY CLOSED

**Table 5**

<i>(1)</i> Area	<i>(2)</i> Public right of way subject to temporary prohibition or restriction of use	<i>(3)</i> Extent of temporary prohibition or restriction of use of the public right of way
In the Borough of Redcar and Cleveland	Public footpath – England Coast Path / Teesdale Way LDR	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked W1 and W2 on sheet 8 of the access and rights of way plans
In the Borough of Redcar and Cleveland	Public bridleway – England Coast Path / Teesdale Way LDR	Temporarily close, prohibit the use of, restrict the use of, alter or divert the bridleway between the points marked W3 and W4 on sheet 8 of the access and rights of way plans
In the Borough of Stockton-on-Tees	Public footpath – England Coast Path	Temporarily close, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked W7 and W8 on sheet 3 of the access and rights of way plans

SCHEDULE 7

Article 16

TRAFFIC REGULATION MEASURES

**Table 6**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street</i>	<i>(3)</i> <i>Description of traffic regulation measures</i>	<i>(4)</i> <i>Traffic regulation measure reference as shown on the temporary traffic regulation measures plan</i>
In the Borough of Stockton-on-Tees	A1185	Contraflow between points BG and BH, and temporary 30mph speed limit and parking restrictions between points BG1 and BH1	TM05
In the Borough of Stockton-on-Tees	Tees Road (A178)	Contraflow between points CA and CB, and temporary 30mph speed limit and parking restrictions between points CA1 and CB1	TM06
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Contraflow between points DA and DB, and temporary 30mph speed limit and parking restrictions between points DA1 and DB1	TM07
In the Borough of Stockton-on-Tees	Seaton Carew Road (A178)	Contraflow between points DC and DD, and temporary 30mph speed limit and parking restrictions between points DC1 and DD1	TM08
In the Borough of Stockton-on-Tees	Seal Sands Road	Contraflow between points EA and EB, and temporary 30mph speed limit and parking restrictions between points EA1 and EB1	TM09
In the Borough of Stockton-on-Tees	Seal Sands Road	Contraflow between points EC and ED, and temporary 30mph speed limit and parking restrictions between points EC1	TM10

		and ED1	
In the Borough of Stockton-on-Tees	Cowpen Bewley Road	Contraflow between points GA and GB, and temporary 30mph speed limit and parking restrictions between points GA1 and GB1	TM11
In the Borough of Stockton-on-Tees	Nelson Avenue	Contraflow between points HA and HB, and parking restrictions between points HA1 and HB1	TM12
In the Borough of Stockton-on-Tees	Belasis Avenue (B1275)	Contraflow between points IA and IB, and temporary 30mph speed limit and parking restrictions between points IA1 and IB1	TM13
In the Borough of Redcar and Cleveland	Trunk Road (A1085)	Lane closure between points JC and JD, and temporary 30mph speed limit and parking restrictions between points JC1 and JD	TM14
In the Borough of Redcar and Cleveland	Trunk Road (A1085)	Lane closure between points KA and KB and temporary 30mph speed limit and parking restrictions between points KA1 and KB	TM15
In the Borough of Stockton-on-Tees	New Road	Road closure between points LA and LB	TM16
In the Borough of Stockton-on-Tees	New Road	Contraflow between points LA and LB, and temporary 30mph speed limit and parking restrictions between points LA1 and LB1	TM17

## LAND IN WHICH NEW RIGHTS ETC. MAY BE ACQUIRED

**Interpretation**

In this Schedule—

“Work No. 1A.1 infrastructure” means any works or development comprised within Work No. 1A.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1A.1 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 1A.2 infrastructure” means any works or development comprised within Work No. 1A.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1A.2 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 1B.1 infrastructure” means any works or development comprised within Work No. 1B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1B.1 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 1B.2 infrastructure” means any works or development comprised within Work No. 1B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1B.2 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 1C infrastructure” means any works or development comprised within Work No. 1C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1C on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 1D infrastructure” means any works or development comprised within Work No. 1D, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1D on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 1E.1 infrastructure” means any works or development comprised within Work No. 1E.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1E.1 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 1E.2 infrastructure” means any works or development comprised within Work No. 1E.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 1E.2 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 2A infrastructure” means any works or development comprised within Work No. 2A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2A on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 2B infrastructure” means any works or development comprised within Work No. 2B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2B on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 2C infrastructure” means any works or development comprised within Work No. 2C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2C on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;



“Work No. 3A infrastructure” means any works or development comprised within Work No. 3A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3A on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 3B.1 infrastructure” means any works or development comprised within Work No. 3B.1, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.1 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 3B.2 infrastructure” means any works or development comprised within Work No. 3B.2, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.2 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 3B.3 infrastructure” means any works or development comprised within Work No. 3B.3, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3B.3 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 4 infrastructure” means any works or development comprised within Work No. 4, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 4 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 5 infrastructure” means any works or development comprised within Work No. 5, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 5 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 6A infrastructure” means any works or development comprised within Work No. 6A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6A on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 6B infrastructure” means any works or development comprised within Work No. 6B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6B on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 7A infrastructure” means any works or development comprised within Work No. 7A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 7A on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 7B infrastructure” means any works or development comprised within Work No. 7B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 7B on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 8 infrastructure” means any works or development comprised within Work No. 8, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

“Work No. 10 access and highway improvements” means any works or development comprised within Work No. 10, including any other necessary works or development permitted within the area delineated as Work No. 10 on the works plans including the alteration, diversion or construction of statutory undertakers’ apparatus;

**Table 7**

<i>(1)</i>	<i>(2)</i>
<i>Plot numbers shown on Land Plans</i>	<i>Purposes for which rights over land may be acquired or restrictive covenants may be</i>

	<i>imposed</i>
The following plots shown coloured pink on the land plans— 13/16, 13/19, 13/20, 13/21, 13/23, 14/1, 14/2, 14/3, 14/4, 14/5	For and in connection with the Work No. 1A.1 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1A.1 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1A.1 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1A.1 infrastructure, or interfere with or obstruct access from and to the Work No. 1A.1 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 13/16, 13/19, 13/21, 13/23, 14/1, 14/2, 14/9	For and in connection with the Work No. 1A.2 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pas and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1A.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1A.2 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1A.2 infrastructure, or interfere with or obstruct access from and to the Work No. 1A.2 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 13/16, 13/20, 14/4, 14/5	For and in connection with the Work No. 1B.1 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1B.1 infrastructure, together with the right to install, retain, use, maintain, alter,

	<p>replace and remove the Work No. 1B.1 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1B.1 infrastructure, or interfere with or obstruct access from and to the Work No. 1B.1 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots shown coloured pink on the land plans— 13/19, 13/21, 13/23, 14/1, 14/2, 14/9</p>	<p>For and in connection with the Work No. 1B.2 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1B.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1B.2 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1B.2 infrastructure, or interfere with or obstruct access from and to the Work No. 1B.2 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots shown coloured pink on the land plans— 13/16, 13/19, 13/21, 13/23, 14/1, 14/2, 14/3, 14/4</p>	<p>For and in connection with the Work No. 1C infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1C infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1C infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1C infrastructure, or interfere with or obstruct access from and to the Work No. 1C infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the</p>

	surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 13/16, 13/19, 13/20, 13/21, 13/23, 14/1, 14/2, 14/3, 14/4, 14/5, 14/9	For and in connection with the Work No. 1D infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1D infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1D infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1D infrastructure, or interfere with or obstruct access from and to the Work No. 1D infrastructure, including the right to prevent or remove the whole of any building, or any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 13/16, 13/20, 14/1, 14/2, 14/3, 14/4, 14/5, 14/9	For and in connection with the Work No. 1E.1 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1E.1 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 1E.1 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1E.1 infrastructure, or interfere with or obstruct access from and to the Work No. 1E.1 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 13/16, 13/20, 14/1, 14/2, 14/9	For and in connection with the Work No. 1E.2 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 1E.2 infrastructure, together with

	<p>the right to install, retain, use, maintain, alter, replace and remove the Work No. 1E.2 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 1E.2 infrastructure, or interfere with or obstruct access from and to the Work No. 1E.2 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots shown coloured blue on the land plans— 9/5, 9/7, 9/9, 9/10, 13/17, 13/18, 13/22, 14/6, 14/7, 14/8, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9, 15/17, 15/25, 15/26, 15/27, 15/28, 15/29, 15/30, 15/43, 15/47, 15/48, 15/49, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/70, 15/71, 15/72, 15/87, 15/88, 15/90, 15/93, 15/94, 15/97, 15/98, 15/103, 15/104, 15/105, 15/106, 15/107, 15/110, 15/111, 15/113</p>	<p>For and in connection with the Work No. 2A infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 2A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2A infrastructure, or interfere with or obstruct access from and to the Work No. 2A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots shown coloured pink on the land plans— 13/20, 14/5, 15/69</p>	<p>For and in connection with the Work No. 2A infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 2A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2A infrastructure, or interfere with or obstruct access from and to the Work No. 2A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots shown coloured pink on the land plans— 9/8, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 15/69</p>	<p>For and in connection with the Work No. 2B infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2B infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 2B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2B infrastructure, or interfere with or obstruct access from and to the Work No. 2B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or</p>

	remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 9/2, 9/3, 9/4, 9/5, 9/48, 9/49, 9/50, 10/48, 11/1, 11/2, 11/3, 11/22c, 11/25a, 11/28, 11/29, 11/31, 11/45a, 11/53, 11/60, 11/62a, 11/65, 11/70, 11/101, 11/102, 11/123, 11/124, 11/132, 11/133, 11/137, 12/2, 12/3, 12/4, 12/6, 15/82, 15/84, 15/86, 15/87, 15/88, 15/106, 15/244, 15/245	For and in connection with the Work No. 2C infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the bringing back into use, recommissioning and maintenance of the Work No. 2C infrastructure, together with the right to lay, retain, use, maintain, alter, replace and remove the Work No. 2C infrastructure, and a right of support for it as well as a right to use the Work No. 2C infrastructure, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2C infrastructure, or interfere with or obstruct access from and to the Work No. 2C infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plot shown coloured pink on the land plans— 11/66	
The following plots shown coloured blue on the land plans— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/13, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 14/38, 14/39, 14/6, 14/7, 14/8, 15/1, 15/10, 15/103, 15/104, 15/105, 15/106, 15/107, 15/11, 15/110, 15/111, 15/113, 15/12, 15/13, 15/14, 15/140, 15/141, 15/15, 15/16, 15/160, 15/163, 15/164, 15/165, 15/166, 15/17, 15/18, 15/19, 15/20, 15/21, 15/22, 15/23, 15/24, 15/25, 15/26, 15/27, 15/28, 15/29, 15/3, 15/30, 15/31, 15/32, 15/33, 15/34, 15/35, 15/36, 15/37, 15/38, 15/39, 15/4, 15/40, 15/41, 15/42, 15/43, 15/45, 15/47, 15/48, 15/49, 15/5, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/60, 15/61, 15/63, 15/7, 15/70, 15/71, 15/8, 15/87, 15/88, 15/9, 15/90, 15/93, 15/94, 15/97, 15/98	For and in connection with the Work No. 3A infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 3A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 3A infrastructure, or interfere with or obstruct access from and to the Work No. 3A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 13/20, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 14/5, 15/157	
The following plots shown coloured pink on the land plans— 14/49	For and in connection with the Work No. 3B.1 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with

	<p>the laying, installation, use and maintenance of the Work No. 3B.1 infrastructure, together with the rights to install, retain, use, maintain, alter, replace and remove the Work No. 3B.1 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 3B.1 infrastructure, or interfere with or obstruct access from and to the Work No. 3B.1 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots shown coloured pink on the land plans— 15/157</p>	<p>For and in connection with the Work No. 3B.2 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3B.2 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 3B.2 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 3B.2 infrastructure, or interfere with or obstruct access from and to the Work No. 3B.2 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots coloured pink on the land plans— 14/16, 14/17, 14/18, 14/19, 14/20, 14/21</p>	<p>For and in connection with the Work No. 3B.3 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3B.3 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 3B.3 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 3B.3 infrastructure, or interfere with or obstruct access from and to the Work No. 3B.3 infrastructure, including the right to prevent or remove the whole of any</p>

	building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 14/30, 14/31, 14/32, 14/33, 14/34, 14/35, 14/36, 14/37, 14/38, 14/39, 14/40, 14/41, 14/42, 14/43, 14/44, 14/45, 14/46, 14/47, 14/48, 14/6, 14/7, 14/8, 15/10, 15/11, 15/12, 15/13, 15/14, 15/15, 15/16, 15/17, 15/18, 15/19, 15/20, 15/235, 15/236, 15/237, 15/238, 15/239, 15/240, 15/241, 15/242, 15/243, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9	For and in connection with the Work No. 4 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 4 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 4 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 13/20, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 14/5	
The following plots shown coloured blue on the land plans— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/14, 14/23, 14/25, 14/26, 14/27, 14/28, 14/29, 14/30, 14/31, 14/32, 14/33, 14/34, 14/35, 14/37, 14/38, 14/39, 14/6, 14/7, 14/8, 15/10, 15/11, 15/12, 15/13, 15/14, 15/15, 15/16, 15/17, 15/18, 15/19, 15/20, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9	For and in connection with the Work No. 5 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 5 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 5 infrastructure, or interfere with or obstruct access from and to the Work No. 5 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 13/20, 14/16, 14/17, 14/18, 14/19, 14/20, 14/21, 14/5	
The following plots shown coloured blue on the land plans— 1/12, 1/13, 1/19, 1/20, 1/22, 1/24, 1/26, 1/30, 1/43, 1/44, 1/5, 1/6, 1/7, 10/1, 10/10, 10/14, 10/15, 10/16, 10/25, 10/26, 10/28, 10/38, 10/39, 10/43, 10/45, 11/10, 11/100, 11/101, 11/102, 11/103, 11/104, 11/105, 11/106,	For and in connection with the Work No. 6A infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all



<p>11/107, 11/108, 11/109, 11/110, 11/111, 11/112, 11/113, 11/114, 11/115, 11/116, 11/117, 11/118, 11/119, 11/12, 11/120, 11/121, 11/122, 11/123, 11/124, 11/125, 11/127, 11/13, 11/130, 11/131, 11/132, 11/133, 11/135, 11/15, 11/16, 11/19, 11/23, 11/26, 11/27, 11/29, 11/31, 11/33, 11/36, 11/38, 11/43, 11/44, 11/47, 11/5, 11/52, 11/53, 11/54, 11/57, 11/59, 11/60, 11/61, 11/63, 11/64, 11/65, 11/67, 11/68, 11/69, 11/70, 11/71, 11/72, 11/73, 11/74, 11/75, 11/76, 11/77, 11/78, 11/79, 11/8, 11/80, 11/81, 11/82, 11/83, 11/84, 11/85, 11/86, 11/87, 11/88, 11/89, 11/90, 11/91, 11/92, 11/93, 11/94, 11/95, 11/96, 11/97, 11/98, 11/99, 12/2, 12/3, 12/4, 12/5, 13/12, 13/13, 13/17, 13/18, 13/22, 14/14, 14/6, 14/7, 14/8, 15/100, 15/101, 15/102, 15/103, 15/104, 15/105, 15/106, 15/107, 15/108, 15/109, 15/110, 15/111, 15/112, 15/113, 15/114, 15/115, 15/116, 15/127, 15/128, 15/129, 15/130, 15/131, 15/132, 15/133, 15/134, 15/135, 15/136, 15/137, 15/138, 15/14, 15/140, 15/141, 15/142, 15/143, 15/144, 15/145, 15/147, 15/148, 15/15, 15/151, 15/153, 15/154, 15/155, 15/156, 15/16, 15/160, 15/163, 15/164, 15/165, 15/166, 15/17, 15/173, 15/177, 15/178, 15/179, 15/18, 15/182, 15/183, 15/184, 15/186, 15/187, 15/188, 15/189, 15/19, 15/195, 15/20, 15/209, 15/21, 15/210, 15/211, 15/212, 15/213, 15/214, 15/215, 15/216, 15/22, 15/220, 15/221, 15/222, 15/223, 15/224, 15/226, 15/23, 15/231, 15/24, 15/25, 15/26, 15/27, 15/28, 15/29, 15/3, 15/30, 15/31, 15/32, 15/33, 15/34, 15/35, 15/36, 15/37, 15/38, 15/39, 15/4, 15/40, 15/41, 15/42, 15.43, 15/45, 1546, 1547, 15/48, 15/49, 15/5, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/60, 15/61, 15/62, 15/70, 15/71, 15/72, 15/73, 15/74, 15/75, 15/76, 15/77, 15/78, 15/79, 15/80, 15/81, 15/82, 15/85, 15/86, 15/97, 15/88, 15/89, 15/90, 15/91, 15/92, 15/93, 15/94, 15/95, 15/96, 15/97, 15/98, 15/99, 18/1, 18/4, 18/7, 19/19, 19/2, 19/22, 19/24, 19/26, 19/28, 19/3, 19/32, 19/36, 19/6, 2/1, 2/13, 2/14, 2/15, 2/17, 2/18, 2/2, 2/22, 2/23, 2/26, 2/27, 2/29, 2/32, 2/33, 2/38, 2/39, 2/42, 2/45, 2/47, 2/48, 2/5, 2/52, 2/53, 2/54, 2/55, 2/56, 2/57, 2/58, 2/59, 2/60, 2/61, 2/63, 2/8, 20/1, 20/17, 20/6, 21/3, 3/1, 3/10, 3/11, 3/12, 3/2, 3/3, 3/6, 3/7, 3/9, 5/1, 5/106, 5/12, 5/13, 5/16, 5/17, 5/18, 5/2, 5/23, 5/25, 5/27, 5/28, 5/29, 5/30, 5/32, 5/35, 5/36, 5/37, 5/38, 5/39, 5/4, 5/40, 5/41, 5/42, 5/44, 5/45, 5/48, 5/49, 5/5, 5/50, 5/51, 5/54, 5/55, 5/56, 5/57, 5/58, 5/59, 5/62, 5/63, 5/64, 5/65, 5/70, 5/8, 5/90, 5/92, 6/10, 6/11, 6/12, 6/13, 6/2, 6/5, 6/8, 7/1, 7/10, 7/11, 7/12, 7/13, 7/14, 7/15, 7/16, 7/17, 7/18, 7/19, 7/2, 7/20, 7/21, 7/22, 7/23, 7/24, 7/25, 7/3, 7/38, 7/39, 7/4, 7/40b, 7/41, 7/5, 7/6, 7/7, 7/8, 7/9, 9/11, 9/12, 9/13,</p>	<p>times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 6A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6A infrastructure, or interfere with or obstruct access from and to the Work No. 6A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
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9/15, 9/17, 9/18, 9/19, 9/21, 9/27, 9/30, 9/32, 9/33, 9/38, 9/40	
The following plots shown coloured pink on the land plans— 13/20, 14/5, 15/157, 15/69, 20/11	
The following plots shown coloured pink on the land plans— 1/36, 7/40, 10/9, 11/126, 11/128, 11/129, 11/134, 11/56, 11/58, 11/66, 15/146, 15/149, 15/150, 15/152, 19/4, 19/5, 2/35, 2/36, 2/37, 20/11, 5/21, 9/16, 9/41	For and in connection with the Work No. 6B infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6B infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 6B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6B infrastructure, or interfere with or obstruct access from and to the Work No. 6B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 13/17, 13/18, 13/22, 14/10, 14/10a, 14/11, 14/12, 14/14, 14/23, 14/24, 14/25, 14/26, 14/27, 14/28, 14/29, 14/6, 14/7, 14/8, 15/17, 15/25, 15/26, 15/3, 15/4, 15/5, 15/7, 15/8, 15/9	For and in connection with the Work No. 7A infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 7A infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 7A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7A infrastructure, or interfere with or obstruct access from and to the Work No. 7A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 13/20, 14/5	
The following plots shown coloured pink on the land plans— 14/16, 14/17, 14/18, 14/19, 14/20, 14/21	For and in connection with the Work No. 7B infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with

	<p>the laying, installation, use and maintenance of the Work No. 7B infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 7B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 7B infrastructure, or interfere with or obstruct access from and to the Work No. 7B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots shown coloured blue on the land plans— 13/17, 13/18, 13/22, 14/14, 14/6, 14/7, 14/8, 15/100, 15/101, 15/102, 15/103, 15/104, 15/105, 15/106, 15/107, 15/108, 15/109, 15/110, 15/111, 15/112, 15/113, 15/114, 15/115, 15/116, 15/117, 15/119, 15/120, 15/121, 15/127, 15/131, 15/133, 15/134, 15/135, 15/136, 15/14, 15/15, 15/16, 15/17, 15/18, 15/19, 15/20, 15/21, 15/22, 15/23, 15/24, 15/25, 15/26, 15/27, 15/28, 15/29, 15/3, 15/30, 15/31, 15/32, 15/33, 15/34, 15/35, 15/37, 15/39, 15/4, 15/40, 15/41, 15/42, 15/43, 15/47, 15/48, 15/49, 15/5, 15/50, 15/51, 15/52, 15/53, 15/54, 15/55, 15/56, 15/64, 15/70, 15/71, 15/87, 15/88, 15/89, 15/90, 15/91, 15/92, 15/93, 15/94, 15/95, 15/96, 15/97, 15/98, 15/99, 16/10, 16/11, 16/12, 16/13, 16/14, 16/15, 16/18, 16/8, 16/9</p>	<p>For and in connection with the Work No. 8 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 8 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots shown coloured pink on the land plans— 13/20, 14/5, 15/69</p>	<p>For and in connection with the Work No. 8 infrastructure, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the authorised development, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 8 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>
<p>The following plots shown coloured blue on the land plans— 1/1, 1/2, 1/29, 10/11, 10/12, 10/13, 10/17, 10/29, 10/30, 10/31, 10/32, 10/33, 10/34, 10/35, 10/36, 10/4, 10/40, 10/42, 10/7, 11/1, 11/18, 11/2, 11/20, 11/28, 11/3, 11/35, 11/36, 11/37, 11/38, 11/6, 11/7, 14/36, 15/170, 15/171, 15/172, 15/232, 15/83, 15/84, 16/1, 16/16, 16/2, 16/22, 16/23, 16/24, 16/25, 16/26, 16/27, 16/28, 16/29, 16/3, 16/5, 16/6, 16/7, 18/5, 19/1, 19/16, 19/18, 19/23, 19/30, 19/7, 19/8, 20/19, 20/2, 20/5, 21/1, 21/13, 3/15, 3/16, 3/17, 5/46, 5/52, 5/53, 5/60, 5/61, 5/66, 5/67, 5/72, 5/73, 5/74, 5/96, 7/26, 7/27, 7/28, 8/1, 8/10, 8/11, 8/12, 8/2, 8/3, 8/4, 8/5, 8/6, 8/7, 8/8, 8/9, 9/1, 9/2, 9/3, 9/36, 9/4, 9/46, 9/47, 9/6</p>	<p>For and in connection with the Work No. 10 access and highway improvements, the right to create, maintain or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant, machinery and equipment, at all times and for all purposes in connection with the laying, installation, use and maintenance of the authorised development, together with the right to install, retain, use, maintain, alter, replace and remove the Work No. 10 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 10 infrastructure, or interfere with or obstruct access from and to the authorised development, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.</p>

**MODIFICATION OF COMPENSATION AND COMPULSORY  
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS  
AND IMPOSITION OF NEW RESTRICTIVE COVENANTS**

*Compensation enactments*

**1.** The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

**2.—**(1) Without limitation to the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for “land is acquired or taken from” substitute “a right or restrictive covenant over land is purchased from or imposed on”; and
- (b) for “acquired or taken from him” substitute “over which the right is exercisable or the restrictive covenant enforceable”.

**3.—**(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) to the H2Teesside Order 202\*; and
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 9 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) to the H2Teesside Order 202\* to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.”.

*Application of Part 1 of the 1965 Act*

**4.** Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 30 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 22 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 25 (compulsory acquisition of rights etc.)—

- (a) with the modification specified in paragraph 5; and

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(a) 1973 c.26.

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or
- (b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 of the 1965 Act there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (persons without powers to sell their interests);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified as to secure that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry)(a), 11B (counter-notice requiring possession to be taken on a specified date)(b), 12 (unauthorised entry)(c) and 13 (entry on warrant in the event of obstruction)(d) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will etc.)(e) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 30(3) (modification of Part 1 of the 1965 Act) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to

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(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).

(b) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c.22).

(c) Section 12 was amended by section 56(2) of and part 1 of Schedule 9 to, the Courts Act 1971 (c.23).

(d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

(e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c.34) and S.I. 2009/1307.

exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

## “SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

### *Introduction*

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act (execution of declaration) as applied by article 27 (application of the 1981 Act) of the H2Teesside Order 202\* in respect of the land to which the notice to treat relates.

(2) But see article 28(3) (acquisition of subsoil or airspace only) of the H2Teesside Order 202\* which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

### *Counter-notice requiring purchase of land*

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

### *Response to counter-notice*

5. On receiving a counter-notice, the acquiring authority must decide whether to—

- (a) withdraw the notice to treat,
- (b) accept the counter-notice, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

### *Determination by Upper Tribunal*

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

- 11.** In making its determination, the Upper Tribunal must take into account—
- (a) the effect of the acquisition of the right or the imposition of the covenant,
  - (b) the use to be made of the right or covenant proposed to be acquired or imposed, and
  - (c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

**12.** If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

**13.** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

**14.—(1)** If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”.

SCHEDULE 10

Article 32

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

**Table 8**

<i>(1)</i> <i>Plot numbers shown on Land Plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
<p>1/10, 1/11, 1/14, 1/15, 1/16, 1/17, 1/18, 1/21, 1/23, 1/25, 1/27, 1/28, 1/3, 1/37, 1/38, 1/39, 1/4, 1/40, 1/41, 1/42, 1/45, 1/8, 1/9, 10/2, 10/24, 10/27, 10/37, 10/41, 10/44, 10/8, 11/11, 11/136, 11/14, 11/17, 11/21, 11/22, 11/22a, 11/22b, 11/24, 11/25, 11/30, 11/32, 11/34, 11/4, 11/41, 11/42, 11/45, 11/45b, 11/45c, 11/46, 11/48, 11/49, 11/50, 11/51, 11/55, 11/62, 11/9, 12/1, 13/12a, 13/15, 15/233, 15/234, 18/11, 18/12, 18/13, 18/14, 18/15, 18/6, 18/8, 18/9, 19/17, 19/20, 19/21, 19/25, 19/27, 19/29, 19/31, 19/33, 19/34, 19/35, 19/37, 2/10, 2/11, 2/12, 2/16, 2/19, 2/20, 2/21, 2/24, 2/25, 2/28, 2/3, 2/30, 2/31, 2/34, 2/4, 2/40, 2/41, 2/43, 2/44, 2/46, 2/49, 2/50, 2/51, 2/6, 2/62, 2/7, 2/9, 20/12, 20/13, 20/14, 20/15, 20/16, 20/18, 20/4, 20/7, 21/10, 21/11, 21/12, 21/14, 21/2, 21/4, 21/5, 21/6, 21/7, 21/8, 3/13, 3/14, 3/4, 3/5, 3/8, 5/10, 5/102, 5/103, 5/104, 5/107, 5/108, 5/11, 5/14, 5/15, 5/19, 5/20, 5/22, 5/24, 5/26, 5/3, 5/31, 5/33, 5/34, 5/43, 5/47, 5/6, 5/68, 5/69, 5/7, 5/71, 5/72, 5/73, 5/74, 5/75, 5/80, 5/83, 5/84, 5/85, 5/91, 5/93, 5/99, 5/9, 6/1, 6/3, 6/6, 6/7, 6/9, 7/36, 7/37, 7/40a, 9/14, 9/22, 9/23, 9/24, 9/26, 9/28, 9/29, 9/31, 9/34, 9/35, 9/37, 9/39, 9/42</p>	<p>Temporary use to facilitate carrying out of Work No. 6</p>
<p>15/118, 15/122, 15/123, 16/17, 16/19, 16/20, 16/21</p>	<p>Temporary use to facilitate carrying out of Work No. 8</p>
<p>1/31, 10/21, 10/22, 10/23, 10/46, 10/47, 13/3, 19/10, 19/9, 5/84</p>	<p>Temporary use as construction compound, laydown, construction use and access required to facilitate construction of the authorised development</p>
<p>1/32, 10/18, 10/19, 10/20, 10/3, 10/46, 10/47, 10/5, 10/6, 11/39, 11/40, 13/1, 13/8, 13/10, 13/11, 13/2, 13/4, 13/5, 13/6, 13/7, 15/124, 15/125, 15/126, 16/4, 17/1, 17/10, 17/2, 17/3, 17/4, 17/5, 17/6, 17/7, 17/8, 17/9, 19/11, 19/12, 20/3, 21/9, 5/105, 5/98, 5/99, 6/4, 7/29, 7/30, 7/31, 7/32, 7/33, 7/34, 8/13, 9/20, 9/25, 9/43, 9/44, 9/45</p>	<p>Temporary use to facilitate access to and highway improvements in relation to the authorised development</p>



## APPEALS TO THE SECRETARY OF STATE

1. In this Schedule, “local authority” means the relevant planning authority, the relevant local highway authority, the relevant traffic authority or a street authority.

- 2.—(1) The undertaker may appeal to the Secretary of State in the event that a local authority—
- (a) refuses an application for any approval under this Order required by—
    - (i) article 10(3) (power to alter layout etc. of streets);
    - (ii) article 13(4) (temporary closure of streets and public rights of way);
    - (iii) article 14 (access to works);
    - (iv) article 16 (traffic regulation measures);
    - (v) article 20(4) (authority to survey and investigate the land); or
  - (b) grants an approval for any approval required by an article or paragraph mentioned in paragraph (a) subject to conditions;
  - (c) refuses an application for a permit under a permit scheme, or grants such a permit subject to conditions; or
  - (d) issues a notice further to sections 60 or 61 of the Control of Pollution Act 1974.
- (2) The appeal process applicable under sub-paragraph (1) is as follows—
- (a) any appeal by the undertaker must be made within 30 working days of the date of the notice of the decision, or the date by which a decision was due to be made, as the case may be;
  - (b) the undertaker must submit the appeal documentation (comprising the relevant application to the local authority, a copy (where it has been provided to the undertaker) of the local authority’s reason for its decision and the undertaker’s reasons as to why the appeal should be granted) to the Secretary of State and must on the same day provide copies of the appeal documentation to the local authority;
  - (c) as soon as practicable after receiving the appeal documentation, the Secretary of State must appoint a person to consider the appeal (“the appointed person”) and must notify the appeal parties (the undertaker and the local authority whose decision is subject to the appeal) of the identity of the appointed person, a start date and the address to which all correspondence for their attention should be sent;
  - (d) the local authority must submit their written representations to the appointed person in respect of the appeal within 10 working days of the start date;
  - (e) the appeal parties must ensure that copies of their written representations and any other representations as sent to the appointed person are sent to each other on the day on which they are submitted to the appointed person;
  - (f) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations under paragraph (d); and
  - (g) the appointed person must make a decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable but in any event no later than 30 working days from the deadline for receipt of written representations under paragraph (f).
- (3) The appointment of the person under sub-paragraph (2)(c) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.
- (4) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal, the appointed person must as soon as practicable notify the appeal parties in writing specifying the further information required, the

appeal party from whom the information is sought, and the date by which the information is to be submitted.

(5) Any further information required under sub-paragraph (4) must be provided by the party from whom the information is sought to the appointed person and to other appeal parties by the date specified by the appointed person.

3.—(1) The appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day.

(2) The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the agreed date but must otherwise be in accordance with the process and time limits set out in paragraphs 2(2)(c) to 2(2)(f).

4.—(1) On an appeal under this paragraph, the appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the local authority (whether the appeal relates to that part of it or not),

and may deal with the application as if it had been made to the appointed person in the first instance.

(2) The appointed person may proceed to a decision of an appeal taking into account such written representations as have been sent within the relevant time limits and in the sole discretion of the appointed person such written representations as have been sent outside the relevant time limits.

(3) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears to the appointed person that there is sufficient material to enable a decision to be made on the merits of the case.

(4) The decision of the appointed person on an appeal is final and binding on the parties, and a court may entertain proceedings for questioning the decision only if the proceedings are brought by a claim for judicial review.

(5) Except where a direction is given under sub-paragraph (6) requiring some or all of the costs of the appointed person to be paid by the local authority, the reasonable costs of the appointed person must be met by the undertaker.

(6) The appointed person may give directions as to the costs of the appeal and as to the parties by whom such costs are to be paid.

(7) In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance about planning appeals and award costs first published on 3 March 2024 by the Department for Communities and Local Government, as updated from time to time, or any circular or guidance which may from time to time replace it.

## PROCEDURE FOR DISCHARGE OF REQUIREMENTS

**1. In this Schedule—**

“requirement consultee” means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

“start date” means the date of the notification given by the Secretary of State under paragraph 5(2)(b).

**Applications made under requirement**

2.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

- (a) the day immediately following that on which the application is received by the authority;
- (b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 3; or
- (c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 5, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a requirement included and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

- (a) and is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or
- (b) it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

**Further information and consultation**

3.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within

10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five working days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five working days of receipt of such a request and in any event within 15 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

## **Fees**

4.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulations 16(1)(b) and 18A of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(a) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

- (a) the application being rejected as invalidly made; or
- (b) the relevant planning authority failing to determine the application within eight weeks from the relevant date in paragraph 1 unless—
  - (i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or
  - (ii) a longer period of time for determining the application has been agreed pursuant to paragraph 2 of this Schedule.

## **Appeals**

5.—(1) The undertaker may appeal in the event that—

- (a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;
- (b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 2(3);
- (c) on receipt of a request for further information pursuant to paragraph 3 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or
- (d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

- (a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

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(a) S.I. 2012/2920 was amended by Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) (Amendment) Regulations 2023/1197.

- (b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;
- (c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;
- (d) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to paragraph (c);
- (e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to paragraph (d); and
- (f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appeal to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in sub-paragraphs (2)(c) to (2)(e) apply.

(5) The appointed person may—

- (a) allow or dismiss the appeal; or
- (b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not), and may deal with the application as if it had been made to the appointed person in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the Planning Practice Guidance

about planning appeals and award costs first published on 3 March 2014, by the Department for Communities and Local Government as updated from time to time or any circular or guidance which may from time to time replace it.

SCHEDULE 13

Article 44

DOCUMENTS AND PLANS TO BE CERTIFIED

**Table 9**

<i>(1)</i> <i>Document name</i>	<i>(2)</i> <i>Document reference</i>	<i>(3)</i> <i>Revision number</i>	<i>(4)</i> <i>Date</i>
access and rights of way plans	2.5	3a	February 2025
application guide	1.2	13	February 2025
book of reference	3.1	7a	February 2025
change application report	7.3	0	October 2024
change application report - appendices	7.4	0	October 2024
environmental statement	Non-Technical Summary, 6.1 Volume I, 6.2 Volume II, 6.3 Volume III, 6.4	- - - -	As listed in the application guide
framework construction environmental management plan	5.12	6a	February 2025
framework construction traffic management plan	5.16	3	January 2025
framework construction workers travel plan	5.15	1	October 2024
[H2 Teesside Anglo American Shared Area Plan]	*	*	*
[H2 Teesside STDC Agreement Area Plan]	*	*	*
indicative lighting strategy (construction)	5.12.3	0	March 2024
indicative lighting strategy (operation)	5.8	0	March 2024
indicative surface water drainage plan	2.12	1	October 2024
land plans	2.2	3a	February 2025
nutrient neutrality assessment	5.13	0	March 2024
NZT/NEP/H2T Shared Area Plan	8.47	0	February 2025
outline landscape and biodiversity management plan	5.9	3a	February 2025
outline site waste management plan	5.12.1	0	March 2024
outline water	5.12.2	0	March

management plan			2024
[Sembcorp Protection Corridor protective provisions supporting plans]	*	*	*
special category land and crown land plans	2.3	3a	February 2025
temporary traffic regulation measures plan	2.13	3	February 2025
water framework directive assessment	5.14	0	March 2024
works plans	2.4	4a	February 2025



SCHEDULE 14

Requirement 3

DESIGN PARAMETERS

Table 10

<i>Component</i>	<i>Length (m)</i>	<i>Width / diameter (including platforms, ladders and walkways if present) (m)</i>	<i>Height (m) (Above Ordnance Datum (AOD))</i>
Flare Stack	–	4.0 (flare 1.0 and platform 4.0)	108 (max) 73 (min)
Auxiliary Boiler	35	20	18 (max)
Auxiliary Boiler Stack	–	2.0 diameter	78 (min and max)
Start-Up Fired Heater Stack	–	2.0 diameter	53 (max) 43 (min)
Carbon Dioxide Absorber Column	–	5.5 diameter (top section) 8.5 diameter (bottom section)	59 (max)
Other Production Plant	–	–	36 (max)
Flash Vessels	–	–	73 (max)
Air Separation Unit (ASU)	20	8	60 (max)
New electrical substation at Tod Point	–	–	22 (max)
National Grid Tod Point substation extension (northern bay)	–	–	22 (max)
National Grid Tod Point substation extension (southern bay)	–	–	22 (max)

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned, or unless any other provisions in Schedules 15 to 43 of this Order apply to the utility undertaker concerned.

2. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that utility undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(a); and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the utility undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“utility undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the 1989 Act;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (g) water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs and by whom it is maintained.

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(a) 1991 c.56.

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The utility undertaker in question must, after alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case, it must give to the utility undertaker in question notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are required.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker.

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by a utility undertaker.

(3) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**11.** Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PROTECTIVE PROVISIONS FOR THE PROTECTION OF  
OPERATORS OF ELECTRONIC COMMUNICATIONS CODE  
NETWORKS

1.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator, or unless any other provisions in Schedule 15 or Schedules 17 to 43 of this Order apply to the operator.

(2) In this Schedule—

“the 2003 Act” means the Communications Act 2003(a);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in section 106 (application of the electronic communications code) of the 2003 Act;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

2. The exercise of the powers of article 34 (statutory undertakers) is subject to Part 10 (undertakers’ works affecting electronic communications apparatus) of the electronic communications code.

3.—(1) Subject to sub-paragraphs (2) to (4), if as a result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by an operator.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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(a) 2003 c.21.

(4) Any difference arising between the undertaker and the operator under this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

4. This Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

5. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF THIRD PARTY APPARATUS

1. For the protection of third parties with apparatus, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the third party, or unless any other provisions in this Schedules 15, 16 or 18 to 43 of this Order apply to the apparatus.

2. In this Schedule—

“affected apparatus” means the apparatus within the Order limits or apparatus which has the benefit of rights (including access) over the Order limits vested in the third party, including cables, mains, pipelines, plant and ancillary apparatus;

“alternative apparatus” means alternative apparatus adequate to enable the third party to carry out its operations in a manner not less efficient than previously;

“restricted works” means any works forming any part of the authorised development that will or may affect the affected apparatus or access to them including—

- (a) all works within 6 metres of the affected apparatus;
- (b) the crossing of the affected apparatus by other utilities; and
- (c) the use of explosives with 400 metres of the affected apparatus,

whether carried out by the undertaker or any third party in connection with the authorised development;

“third party” means a company with apparatus that is affected by the authorised development; and

“works details” means—

- (a) plans and sections;
- (b) a method statement describing—
  - (i) the exact position of the works;
  - (ii) the level at which the works are proposed to be constructed or renewed;
  - (iii) the manner of the works’ construction or renewal including details of excavation, positioning of plant etc.;
  - (iv) the position of all affected apparatus;
  - (v) by way of detailed drawings, every alteration proposed to be made to or close to any such affected apparatus;
  - (vi) any intended maintenance regime;
  - (vii) details of the proposed method of working and timing of execution of works;
  - (viii) details of vehicle access routes for construction and operational traffic; and
  - (ix) any other information reasonably required by the third party to assess the works;
- (c) where the restricted works will or may be situated on, over, under or within 6 metres measured in any direction of the affected apparatus, or (wherever situated) impose any load directly upon the affected apparatus or involve embankment works within 6 metres of the affected apparatus, the method statement must also include—
  - (i) the position of the affected apparatus; and
  - (ii) by way of detailed drawings, every alteration proposed to be made to the affected apparatus; and
- (d) any further particulars provided in response to a request under paragraph 3.



### **Consent of restricted works under this Schedule**

3.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and the third party, not less than 30 days before commencing the execution of any restricted works, the undertaker must submit to the third party the works details for the restricted works and such further particulars as the third party may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by the third party.

(3) Any approval of the third party required under this paragraph 3 must not be unreasonably withheld or delay but may be given subject to such reasonable requirements as the third party may require to be made for—

- (a) the continuing safety and operational viability of the affected apparatus; and
- (b) the requirement for the third party to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected apparatus.

(4) Any approval of the third party required under this paragraph 3 including any reasonable requirements required by the third party under sub-paragraph (3), must be made in writing within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and the third party) beginning with the date on which the works details were submitted to the third party under sub-paragraph (1) or the date on which any further particulars requested by the third party under sub-paragraph (1) were submitted to the third party (whichever is the later).

(5) The authorised development must be executed only in accordance with the works details approved by the third party under this paragraph 3 including any reasonable requirements notified to the undertaker in accordance with sub-paragraph (3) and the third party shall be entitled to watch and inspect the execution of those works.

(6) Where there has been a reference to an arbitrator in accordance with paragraph 9 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions in the decision of the arbitrator under paragraph 9.

(7) If the third party in accordance with sub-paragraph (3) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any of the affected apparatus and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the affected apparatus had been required by the undertaker under sub-paragraph (1).

(8) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and the third party) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details submitted, and having done so the provisions of this paragraph 3 apply to and in respect of the new works details.

### **Prohibition of acquisition and interference**

4. Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which the third party has an easement, right, operations, assets or other interests (together “the third party’s rights”)—

- (a) where the third party’s rights do not provide or require access over, in or under the Order limits there is no restriction on the exercise of such rights; and
- (b) where the third party’s rights do provide or reasonably require access in, on or under the Order limits,

the third party may exercise those rights where reasonably necessary—

- (i) in an emergency without notice; and

- (ii) in non-emergency circumstances having first given the undertaker prior written notice in order to allow the parties to liaise over timing and coordination of their respective works during the period of temporary possession.

### **Removal of apparatus/access**

5.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in any land in which any affected apparatus is placed or over which access to any affected apparatus is enjoyed or requires that affected apparatus is relocated or diverted, that affected apparatus must not be removed under this Schedule, and any right of the third party to maintain that affected apparatus in that land and to gain access to it must not be extinguished (or otherwise made less advantageous), until alternative apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation, and access to it has been provided to the reasonable satisfaction of the third party in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any affected apparatus placed in that land, the undertaker must give to the third party written notices of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the third party reasonably needs to remove any of its affected apparatus) the undertaker must, subject to sub-paragraph (3), afford to the third party the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the third party must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the third party and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The third party must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to the third party of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any affected apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the third party that it desires itself to execute any work, or part of any work, in connection with the construction or removal of affected apparatus in any land controlled by the undertaker, that work, instead of being executed by the third party must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the third party.

### **Facilities and rights for alternative apparatus**

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to the third party facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for affected apparatus to be removed, those facilities and rights must be granted—

- (a) upon such terms and conditions as may be agreed between the undertaker and the third party or in default of agreement settled by arbitration in accordance with article 46 (arbitration); and

- (b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted are, in the opinion of the arbitrator less favourable on the whole to the third party than the facilities and rights enjoyed by it in respect of the affected apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to the third party as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Expenses**

7.—(1) Subject to the following provisions of this paragraph 7, the undertaker must pay to the third party the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by the third party in, or in connection with—

- (a) undertaking its obligations under this Order including—
  - (i) the execution of any works under this Order including for the protection of the affected apparatus; and
  - (ii) the review and assessment of works details in accordance with paragraph 3;
- (b) the watching of and inspecting the execution of the restricted works; and
- (c) imposing reasonable requirements in accordance with paragraph 3(3).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), the third party must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

### **Indemnity**

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to the affected apparatus, or there is any interruption in any service provided, or in the supply of any goods, by the third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the third party in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the third party for any other expenses, loss, damages, penalty or costs incurred by the third party, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of the third party, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by an operator.

(3) The third party must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The third party must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 8 applies.

(5) If requested to do so by the undertaker, the third party must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 8 for claims reasonably incurred by the third party.

## **Arbitration**

9.—(1) The undertaker and the third party shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Order in accordance with the following provisions of this paragraph.

(2) Any difference or dispute arising between the undertaker and the third party under this Schedule must, unless otherwise agreed in writing between the undertaker and the third party, be referred to and settled by arbitration in accordance with article 46 (arbitration).

(3) Where there has been a reference to an arbitrator in accordance with sub-paragraph (1) and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under sub-paragraph (1).

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF  
NATIONAL GRID ELECTRICITY TRANSMISSION PLC AS  
ELECTRICITY UNDERTAKER**

**Application**

1. For the protection of National Grid as referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

**Interpretation**

2. In this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid; together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised works” has the same meaning as is given to the term “authorised development” in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and for the purposes of this Schedule includes the use and maintenance of the authorised works and construction of any works authorised by this Schedule;

“commence” and “commencement” has the same meaning as in article 2(1) (interpretation) of this Order except for the purposes of this Schedule only where it shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment;

“deed of consent” means a deed of consent, crossing agreement, deed of variation or new deed of grant agreed between the parties acting reasonably in order to vary or replace existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the terms of this Schedule;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Grid (such approval not to be unreasonably withheld or delayed) setting out the necessary measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for National Grid’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“Incentive Deduction” means any incentive deduction National Grid Electricity Transmission plc receives under its electricity transmission licence which is caused by an event on its

transmission system that causes electricity not to be supplied to a demand customer and which arises as a result of the authorised works;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid; construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Grid” means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

“NGESO” means as defined in the STC;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“parent company” means a parent company of the undertaker acceptable to and which shall have been approved by National Grid acting reasonably;

“specified works” means any of the authorised works or activities undertaken in association with the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 6(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in development near overhead lines EN43-8 and HSE’s guidance note 6 “Avoidance of Danger from Overhead Lines”;

“STC” means the System Operator Transmission Owner Code prepared by the electricity Transmission Owners and NGESO as modified from time to time;

“STC Claims” means any claim made under the STC against National Grid Electricity Transmission plc arising out of or in connection with the de-energisation (whereby no electricity can flow to or from the relevant system through the generator or interconnector’s equipment) of a generator or interconnector party solely as a result of the de-energisation of plant and apparatus forming part of National Grid Electricity Transmission plc’s transmission system which arises as a result of the authorised works;

“Transmission Owner” means as defined in the STC; and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

## **On Street Apparatus**

3. Except for paragraphs 4 (apparatus of National Grid in affected streets), 8 (retained apparatus: protection), 9 (expenses) and 10 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

## **Apparatus of National Grid in affected streets**

4.—(1) Where any street is stopped up under article 10 (power to alter layout etc. of streets), article 11 (street works), article 12 (construction and maintenance of new or altered means of access), if National Grid has any apparatus in the street or accessed via that street National Grid has the same rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to National Grid, or procure the granting to National Grid of, legal easements reasonably satisfactory to National Grid in respect of such apparatus and access to it prior to the stopping up of any such street or highway but nothing in this paragraph affects any right of the undertaker or National Grid to require the removal of that apparatus under paragraph 6

or the power of the undertaker, subject to compliance with this sub-paragraph, to carry out works under paragraph 8.

(2) Notwithstanding the temporary closure or diversion of any highway under the powers of article 13 (temporary closure of streets and public rights of way), National Grid is at liberty at all times to take all necessary access across any such closed highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure or diversion was in that highway.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

### **Removal of apparatus**

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Grid to its satisfaction (taking into account paragraph 7(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

## **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for National Grid facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter may be referred to arbitration in accordance with paragraph 14 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus: protection**

8.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity assets.

(2) In relation to any works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;
- (f) any intended maintenance regimes; and
- (g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

- (a) details of any cable trench design including route, dimensions, clearance to pylon foundations;
- (b) demonstration that pylon foundations will not be affected prior to, during and post construction;
- (c) details of load bearing capacities of trenches;
- (d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;
- (f) written details of the operations and maintenance regime for any cable, including frequency and method of access;
- (g) assessment of earth rise potential if reasonably required by National Grid's engineers; and



- (h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of up to and including 26 tonnes in weight.
- (4) The undertaker must not commence any works to which sub-paragraphs (2) or (3) apply until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraph (4)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraphs (6) or (8); and
  - (b) must not be unreasonably withheld.
- (6) In relation to any work to which sub-paragraphs (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (7) Works executed under sub-paragraphs (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraphs (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.
- (8) Where National Grid requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works (or any relevant part thereof) for which protective works are required and National Grid shall give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).
- (9) If National Grid in accordance with sub-paragraphs (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3, 6 and 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).
- (10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the works for which a plan has been submitted for specified works (or part thereof), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.
- (11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.
- (12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

## **Expenses**

9.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid within 30 days of receipt of an itemised invoice or claim from National Grid all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus

which may be required in consequence of the execution of any authorised works including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 6(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 14 to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(6) Where reasonably anticipated charges, costs or expenses have been paid by the undertaker pursuant to sub-paragraph (1), if the actual charges, costs or expenses incurred by National Grid are less than the amount already paid by the undertaker National Grid will repay the difference to the undertaker as soon as reasonably practicable.

### **Indemnity**

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised works by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised works) or property of National Grid or there is any interruption in any service provided, or in the supply of any goods by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand accompanied by an invoice or claim from National Grid the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and
- (b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party and including STC Claims or an Incentive Deduction other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of National Grid, its officers, servants, contractors or agents;
- (b) any authorised works and/or any other works authorised by this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised works yet to be executed and not falling within this sub-section (b) will be subject to the full terms of this Schedule including this paragraph; and
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Grid must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) National Grid must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where

it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control and if reasonably requested to do so by the undertaker National Grid must provide an explanation of how the claim has been minimised, where relevant or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

### **Enactments and agreements**

11. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Cooperation**

12.—(1) Where in consequence of the proposed construction of any part of the authorised works, the undertaker or National Grid requires the removal of apparatus under paragraph 6(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker shall use its best endeavours to coordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and taking into account the need to ensure the safe and efficient operation of National Grid's undertaking and National Grid shall use its best endeavours to cooperate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

13. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

14. Save for differences or disputes arising under paragraphs 6(2), 6(4), 7(1) and 8 any difference or dispute arising between the undertaker and National Grid under this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 46 (arbitration).

### **Notices**

15. Notwithstanding article 45 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 8 must be submitted using the LSBUD system (<https://lsbud.co.uk/>) or to such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

### Application

1. For the protection of National Gas as referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

### Interpretation

2. In this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2(1) (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

“commence” and “commencement” has the same meaning as in article 2(1) (interpretation) of this Order save that for the purposes of this Schedule only shall include any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres measured in any direction of any apparatus;

“functions” includes powers and duties;

“ground mitigation scheme” means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary mitigation measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Gas’s approval a ground mitigation scheme;

“ground subsidence event” means any ground subsidence identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas including construct, use, repair, alter, inspect, renew or remove the apparatus;

“National Gas” means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the 1986 Act;

“Network Code” means the network code prepared by National Gas pursuant to Standard Special Condition A11(3) of its Gas Transporter’s Licence, which incorporates the Uniform Network Code, as defined in Standard Special Condition A11(6) of National Gas’s Gas Transporters Licence, as both documents are amended from time to time;

“Network Code Claims” means any claim made against National Gas by any person or loss suffered by National Gas under the Network Code arising out of or in connection with any failure by National Gas to make gas available for off take at, or a failure to accept gas tendered for delivery from, any entry point to or exit point from the gas national transmission system as a result of the authorised works or any costs and/or expenses incurred by National Gas as a result of or in connection with, it taking action (including purchase or buy back of capacity) for the purpose of managing constraint or potential constraint on the gas national transmission system which may arise as a result of the authorised works;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise;
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 7(2) or otherwise; and/or
- (c) includes any of the activities that are referred to in section 8 of T/SP/SSW/22 (National Gas’s policies of safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties”); and

“undertaker” means the undertaker as defined in article 2(1) of this Order.

### **On Street Apparatus**

3. Except for paragraphs 4 (apparatus of National Gas in streets subject to temporary closure), 9 (retained apparatus), 10 (expenses) and 11 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

### **Apparatus of National Gas in streets subject to temporary closure**

4. Notwithstanding the temporary closure or diversion of any street under the powers of article 13 (temporary closure of streets and public rights of way), National Gas will be at liberty at all times to take all necessary access across any such closed street and/or to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

### **Protective works to buildings**

5. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

## **Acquisition of land**

6.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker may not—

- (a) appropriate or acquire or take temporary possession of any land or apparatus; or
- (b) appropriate, acquire, extinguish, interfere with or override any easement, other interest or right and/or apparatus of National Gas,

otherwise than by agreement not to be unreasonably withheld.

(2) Sub-paragraph (1) does not apply to any interest in any land or apparatus of National Gas which a third party owns or is the beneficiary of.

(3) As a condition of an agreement between the parties in sub-paragraph (1), prior to the carrying out of any part of the authorised development (or in such other timeframe as may be agreed between National Gas and the undertaker) that is subject to the requirements of this Schedule that will cause any conflict with or breach the terms of any easement or other legal or land interest of National Gas or affect the provisions of any enactment or agreement regulating the relations between National Gas and the undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as National Gas reasonably requires enter into such deeds of consent upon such terms and conditions as may be agreed between National Gas and the undertaker acting reasonably and which must be no less favourable on the whole to National Gas unless otherwise agreed by National Gas, and it will be the responsibility of the undertaker to procure and/or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised development.

(4) Save where otherwise agreed in writing between National Gas and the undertaker, the undertaker and National Gas agree that where there is any inconsistency or duplication between the provisions set out in this Schedule relating to the relocation and/or removal of apparatus/including but not limited to the payment of costs and expenses relating to such relocation and/or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by National Gas and/or other enactments relied upon by National Gas as of right or other use in relation to the apparatus, then the provisions in this Schedule shall prevail.

(5) Any agreement or consent granted by National Gas under paragraph 12 or any other paragraph of this Schedule, shall not be taken to constitute agreement under sub-paragraph (1).

## **Removal of apparatus**

7.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to National Gas to its satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere other than in land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, National Gas must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such a manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

### **Facilities and rights for alternative apparatus**

**8.**—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for National Gas facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Gas under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 15 (arbitration) of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

**9.**—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.



(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) and (2) must be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (5) as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved as part of the plan approved pursuant to this paragraph, must be carried out to National Gas's satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraph (4) or (6) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3, 7 and 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of the specified works (or part thereof), a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in Part 3 of the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (11) at all times;

(11) At all times when carrying out any works authorised under the Order, National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(-G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 10.

## **Expenses**

**10.**—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas on demand all charges, costs and expenses reasonably anticipated within the following three months or reasonably and properly incurred by National Gas in, or in connection with, the inspection,

removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any authorised development including without limitation—

- (a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas—
  - (i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 7(3); or
  - (ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works; and
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 15 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents the benefit.

## Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Gas, or there is any interruption in any service provided by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

- (a) bear and pay on demand the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and
- (b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party and including Network Code Claims other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, employees, servants, contractors or agents; and
- (b) any part of the authorised development and/or any other works authorised by this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the 2008 Act or article 8 (consent to the transfer benefit of the Order) subject to the proviso that once such works become apparatus (“new apparatus”), any authorised development yet to be executed and not falling within this paragraph (b) will be subject to the full terms of this Schedule including this paragraph; and/or
- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering its representations.

(5) National Gas must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph applies where it is within National Gas’s reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas’s control and, if reasonably requested to do so by the undertaker, National Gas must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

### **Enactments and agreements**

12. Save to the extent provided for to the contrary elsewhere in this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Schedule affects the provision of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Cooperation**

13.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Gas requires the removal of apparatus under paragraph 7(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker must use its best endeavours to coordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas must use its best endeavours to cooperate with the undertaker for that purpose.

(2) For the avoidance of doubt, whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

### **Access**

14. If, in consequence of the agreement reached in accordance with paragraph 6(1) or powers granted under this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

### **Arbitration**

15. Save for the differences or disputes arising under paragraphs 7(2), 7(4), 8(1) and 9, any difference or dispute arising between the undertaker and National Gas under this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 46 (arbitration).

### **Notices**

16. Notwithstanding article 45 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 9 must be submitted using the LSBUD system or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

2.—(1) In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587), whose registered office is at Waterloo General Office, London, United Kingdom, SE1 8SW and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited’s railway undertaking;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“protective works” means any works specified by the engineer under paragraph 5(4);

“railway operational procedures” means procedures specified under any access agreement (as defined in Part 1, section 83(1) of the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or related works, apparatus or equipment;

“regulatory consents” means any consent or approval required under—

- (a) the Railways Act 1993(a);
- (b) the network licence; and/or
- (c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development;

“specified work” means so much of any of the authorised development as is situated upon, across, under over or within 15 metres of, or may in any way adversely affect, railway

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(a) 1993 c.43.

property and, for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of authorised development); and

“undertaker” has the same meaning as in article 2 (interpretation) of this Order.

3.—(1) Where under this Schedule Network Rail is required to give its consent, or approval in respect of any matter, that consent, or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) Insofar as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) cooperate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

4. The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 46 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated their disapproval of those plans and the ground of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer’s reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which are expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified works is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

**10.** The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

**11.—(1)** In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to paragraph (a).



(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3) the testing of the authorised development causes EMI, then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and
- (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses reasonably suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a), any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 46 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

**12.—**(1) If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

(2) Regardless of anything in sub-paragraph (1), on receipt of a notice given by Network Rail pursuant to sub-paragraph (1), the undertaker may respond in writing to Network Rail requesting

Network Rail to take the steps as may be reasonably necessary to put the specified work the subject of the notice in such state of maintenance as not adversely to affect railway property. If Network Rail agrees to undertake the steps it must give to the undertaker reasonable notice of its intention to carry out such steps, and the undertaker must pay to Network Rail the reasonable costs of doing so.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction, maintenance or operation of a specified work or the failure thereof;
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others within the control of the undertaker whilst engaged upon a specified work;
- (c) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others within the control of the undertaker whilst accessing to or egressing from the authorised development;
- (d) in respect of any such damage caused to or additional maintenance required to railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others within the control of the undertaker; or
- (e) in respect of costs incurred by Network Rail in complying with any railway operational procedures or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

- (a) give the undertaker reasonable written notice of any such claims or demands;
- (b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and
- (c) take such steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 15 applies. If requested to do so by the undertaker, Network Rail is to provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker is to only be liable under this paragraph 15 for claims reasonably incurred by Network Rail.

(3) If the undertaker withholds consent pursuant to sub-paragraph (2)(b) it may have sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand, and the undertaker must give Network Rail notice of it having sole conduct at the same time as refusing consent.

(4) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (1) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (1) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (5).

(7) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**16.** Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable pursuant to this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

**17.** In the assessment of any sums payable to Network Rail under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

**18.** The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works and land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**19.** Nothing in this Order, or in any enactment incorporated with or applied by this Order prejudices or affects the operation of Part 1 of the Railways Act 1993.

**20.** The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail in a format specified by Network Rail.

**21.** In relation to any dispute arising between the undertaker and Network Rail under this Schedule, it must, unless otherwise agreed in writing between the undertaker and Network Rail, be referred to and settled by arbitration in accordance with article 46 (arbitration).

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE  
ENVIRONMENT AGENCY**

1.—(1) The following provisions apply for the protection of the Agency unless otherwise agreed in writing between the undertaker and the Agency.

(2) In this Schedule—

“Agency” means the Environment Agency or, in paragraph 3, where the undertaker has made a request under paragraph 2(1), the team confirmed by the Environment Agency under paragraph 2(2);

“construction” includes execution, placing, altering, replacing, relaying and removal and excavation and “construct” and “constructed” is construed accordingly;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“emergency” means an occurrence which presents a risk of—

- (a) serious flooding;
- (b) serious detrimental impact on drainage; or
- (c) serious harm to the environment.

“fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” has the same meaning given in section 113 of the Water Resources Act 1991(a);

“non-tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016(b);

“plans” includes plans, sections, elevations, drawings, specifications, programmes, proposals, calculations, method statements and descriptions;

“remote defence” means any berm, wall or embankment that is constructed for the purposes of preventing or alleviating flooding from, or in connection with, any main river;

“sea defence” means any bank, wall, embankment (any berm, counterwall or cross-wall connected to any such bank, wall or embankment), barrier, tidal sluice and other defence, whether natural or artificial, against the inundation of land by sea water or tidal water, including natural or artificial high ground which forms part of or makes a contribution to the efficiency of the defences of the Agency’s area against flooding, but excludes any sea defence works which are for the time being maintained by a coast protection authority under the provisions of the Coast Protection Act 1949(c) or by any local authority or any navigation, harbour or conservancy authority;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within—

- (a) 16 metres of the base of a sea defence which is likely to—
  - (i) endanger the stability of, cause damage or reduce the effectiveness of that sea defence; or

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(a) 1991 c.57. Section 113 was amended by section 100 of and Schedule 24 to Environment Act 1995 (c.25), section 59 of the Water Act 2014 (c.21) and S.I. 2013/755.

(b) S.I. 2016/1154.

(c) 1949 c.74.

- (ii) interfere with the Agency’s access to or along that sea defence or the Agency’s ability to undertake works to ensure the efficacy of that sea defence;
  - (b) 8 metres of the base of a remote defence which is likely to—
    - (i) endanger the stability of, cause damage or reduce the effectiveness of that remote defence; or
    - (ii) interfere with the Agency’s access to or along that remote defence;
  - (c) 16 metres of a drainage work involving a tidal main river;
  - (d) 8 metres of a drainage work involving a non-tidal main river;
  - (e) any distance of a drainage work and is otherwise likely to—
    - (i) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
    - (ii) affect the flow, purity or quality of water in any main river or other surface waters;
    - (iii) cause obstruction to the free passage of fish or damage to any fishery;
    - (iv) affect the conservation, distribution or use of water resources; or
    - (v) affect the conservation value of the main river and habitats in its immediate vicinity;
 or which involves—
  - (f) an activity that includes dredging, raising or taking of any sand, silt, ballast, clay, gravel or other materials from or off the bed or banks of a drainage work (or causing such materials to be dredged, raised or taken), including hydrodynamic dredging or desilting; and
  - (g) any quarrying or excavation within 16 metres of a drainage work which is likely to cause damage to or endanger the stability of the banks or structure of that drainage work; and
- “tidal main river” has the meaning given in paragraph 2(1) of Part 1 of Schedule 25 to the Environmental Permitting (England and Wales) Regulations 2016.

**Submission and approval of plans**

2.—(1) Before beginning to construct any specified work, the undertaker may submit a request in writing for the Agency to confirm and provide details about which team within the Agency is to receive and approve plans of the specified work.

(2) The Agency must confirm and provide details of which team within the Agency is to receive and approve plans of the specified work within 14 days of the receipt of the undertaker’s request submitted under sub-paragraph (1).

(3) Details to be provided by the Agency under sub-paragraph (2) must include a contact name, postal address and email address for the undertaker to use to submit plans of the specified work pursuant to paragraph 3.

3.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency for approval plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 13.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) subject to sub-paragraph (5), is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans or such later date as is agreed between the Agency and the undertaker and if further particulars have been requested pursuant to sub-paragraph (1) the period between the making of this request and the provision of further particulars in response to it shall not be taken into account in the calculation of the 2 months for the purposes of this sub-paragraph; and

(c) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or for nature conservation or the prevention of environmental harm in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

(5) In the case of a refusal, the Agency must at the same time provide reasons for the grounds of that refusal.

### **Construction of protective works**

4. Without limiting paragraph 3, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

### **Timing of works and service of notices**

5.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 4 must be constructed—

(a) without unreasonable delay in accordance with the plans approved under this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

### **Works not in accordance with this Schedule**

6.—(1) If there is any failure by the undertaker to obtain approval or comply with conditions imposed by the Agency in accordance with these protective provisions and where the Agency acting reasonably considers it necessary to avoid any of the risks specified in sub-paragraph (2) the Agency may serve written notice requiring the undertaker to cease all or part of the specified works as may be specified within the notice within the period specified in the notice (which period must be reasonable in the circumstances), and the undertaker must cease constructing the specified works or part thereof until such time as it has obtained the consent or complied with the condition specified within the notice served.

(2) The risks specified in sub-paragraph (1) are—

(a) risk of flooding;

(b) risk of harm to the environment;

(c) risk of detrimental impact on drainage; and

(d) damage to the fishery.

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5) if, within a reasonable period, being not less than 28 days beginning with the date when a notice under sub-paragraph (3) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined in accordance with paragraph 13.

### **Maintenance of works**

7.—(1) Subject to sub-paragraph (5), the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any reasonable expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 13.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work expressly authorised in the approval of specified works plans and carried out in accordance with the provisions of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

### **Remediating impaired drainage work**

8. If by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make

good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

### **Agency access**

9. If by reason of the construction of any specified work or the failure of any such work, the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must notify the Agency immediately and provide suitable alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction occurred and such alternative access must be made available as soon as reasonably practicable after the undertaker becomes aware of such obstruction, except in the case of an emergency in which case the undertaker must provide such alternative means of access on demand.

### **Free passage of fish**

10.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage within the period specified in the notice.

(3) If, the undertaker fails to take such steps as are described in the notice served under subparagraph (2), the Agency may take those steps and any expenditure incurred by the Agency in so doing is recoverable from the undertaker.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

### **Indemnity**

11. The undertaker indemnifies the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur—

- (a) in the examination or approval of plans under this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule; and
- (c) in carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

12.—(1) The undertaker is responsible for and indemnifies the Agency against all costs and losses, liabilities, claims and demands not otherwise provided for in this Schedule which may be reasonably incurred or suffered by the Agency by reason of, or arising out of—

- (a) the construction, operation or maintenance of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction, operation or maintenance of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—



- (a) “costs” includes—
  - (i) expenses and charges;
  - (ii) staff costs and overheads; and
  - (iii) legal costs;
- (b) “losses” includes physical damage;
- (c) “claims” and “demands” includes as applicable—
  - (i) costs (within the meaning of paragraph (a) incurred in connection with any claim or demand; and
  - (ii) any interest element of sums claimed or demanded; and
- (d) “liabilities” includes—
  - (i) contractual liabilities;
  - (ii) tortious liabilities (including liabilities for negligence or nuisance);
  - (iii) liabilities to pay statutory compensation or for breach of statutory duty; and
  - (iv) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(3) The Agency must give to the undertaker reasonable notice of any such claim or demand and must not settle or compromise a claim without the agreement of the undertaker and that agreement must not be unreasonably withheld or delayed.

(4) If the undertaker withholds consent pursuant to sub-paragraph (3) it may have sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand, and the undertaker must give the Agency notice of it having sole conduct at the same time as refusing consent.

(5) The Agency must at all times take reasonable steps to prevent and mitigate any such claims, demands, proceedings, costs, damages, expenses or loss.

(6) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, must not relieve the undertaker from any liability under the provisions of this Schedule.

(7) Nothing in this paragraph imposes any liability on the undertaker with respect to any costs, charges, expenses, damages, claims, demands or losses to the extent that they are attributable to the neglect or default of the Agency, its officers, servants, contractors or agents.

## **Disputes**

13. Any dispute arising between the undertaker and the Agency under this Schedule must, if the parties agree, be determined by arbitration under article 46 (arbitration), but failing that agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Energy Security and Net Zero or its successor acting jointly on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF SUEZ  
RECYCLING AND RECOVERY UK LIMITED**

1. For the protection of Suez, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Suez.

2. In this Schedule—

“restricted works” means any works forming any part of the authorised development that will or may temporarily or permanently disrupt access to the Suez operations;

“Suez” means Suez Recycling and Recovery UK Limited (company number 02291198), whose registered office is at Suez House, Grenfell Road, Maidenhead, Berkshire, SL6 1ES and any successor in title;

“Suez operations” means the assets and operations within the Order limits vested in Suez;

“Suez site” means the land within the Order limits owned by Suez; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 3.

**Consent of restricted works under this Schedule**

3. Before commencing the restricted works, the undertaker must submit to Suez the works details for the restricted works and such further particulars as Suez may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

4. The restricted works are not to be commenced until the works details in respect of the restricted works submitted under paragraph 3 have been approved by Suez.

5. Any approval of Suez required under paragraph 4 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Suez may require to have reasonable access to the Suez site.

6.—(1) The restricted works must be carried out in accordance with the works details approved under paragraph 4 and any requirements imposed on the approval under paragraph 5.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 8 and the arbitrator gives approval for the works details, the restricted works must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 8.

**Indemnity**

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to Suez operations, or there is any interruption in any service provided, or in the supply of any goods, by or to Suez, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Suez in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Suez for any other expenses, loss, damages, penalty or costs incurred by Suez, by reason or in consequence of any such damage or interruption.

- (2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—
- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Suez, its officers, employees, servants, contractors or agents; or
  - (b) any indirect or consequential loss or loss of profits by Suez.
- (3) Suez must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (4) Suez must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 7 applies.
- (5) If requested to do so by the undertaker, Suez must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).
- (6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by Suez.

### **Arbitration**

**8.** Any difference or dispute arising between the undertaker and Suez under this Schedule must, unless otherwise agreed in writing between the undertaker and Suez, be referred to and settled by arbitration in accordance with article 46 (arbitration).

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF INEOS  
NITRILES (UK) LIMITED**

1. For the protection of INEOS, the following provisions have effect, unless otherwise agreed in writing between the undertaker and INEOS.

2. In this Schedule—

“INEOS” means INEOS Nitriles (UK) Limited (company number 06238238), whose registered office is at Biz Hub, Belasis Business Centre Coxwold Way, Belasis Business Park, Billingham, TS23 4EA and any successor in title or function to the INEOS operations;

“INEOS operations” means the operations or property within Order limits vested in INEOS, including the pipeline crossing the Order limits owned and operated by INEOS used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-Lines Act 1962(a);

“parties” means the undertaker and INEOS, and “party” shall be construed accordingly;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic;
- (d) schedules of work and risk assessments for the proposed work; and
- (e) any further particulars provided in response to a request under paragraph 3.

**Consent under this Schedule**

3. Before commencing any part of the authorised development which may have an effect on the operation or maintenance of the INEOS operations or access to them, access to any land owned by INEOS that is adjacent to the Order limits, or which would otherwise be located on land within the INEOS operations, the undertaker must submit to INEOS the works details for the proposed works and such further particulars as INEOS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

4. No works comprising of any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them, access to any land owned by INEOS that is adjacent to the Order limits, or which would otherwise be located on land within the INEOS operations are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by INEOS.

5.—(1) Any approval of INEOS required under paragraph 4 must not be unreasonably withheld or delayed but may be—

- (a) reasonably refused if it materially constrains INEOS’ vehicular accessways to the River Tees more than the existing access points as at the date of the Order; or
- (b) given subject to such reasonable requirements as INEOS may require to be made for—
  - (i) the continuing safety, or operational activity of the INEOS operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a

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(a) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c. 16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

reasoned explanation will be provided by INEOS to substantiate the need for these requirements);

- (ii) the continuing safe operation of infrastructure not belonging to INEOS but within or adjacent to the INEOS operations, including reasonable access at all times for inspection, maintenance and repair, etc whether that be by INEOS or by any party with rights in the land or infrastructure on or in the land; and
- (iii) the requirement for INEOS to have—
  - (aa) reasonable emergency access with or without vehicles to the INEOS operations at all times;
  - (bb) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation of the INEOS operations; and
  - (cc) reasonable access with or without vehicles to the River Tees at all times.

(2) Any approval of INEOS required under paragraph 3 including any reasonable requirements required by INEOS under sub-paragraph (1), must be made in writing within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and INEOS) beginning with the date on which the works details were submitted to INEOS under paragraph 3 or the date on which any further particulars requested by INEOS under paragraph 3 were submitted to INEOS (whichever is the later).

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 4 and any requirements imposed on the approval under sub-paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 9 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 9.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and INEOS) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details submitted, and having done so the provisions of paragraphs 3 to 5 apply to and in respect of the new works details.

### **Compliance with requirements, etc. applying to the INEOS operations**

6. In undertaking any works in relation to the INEOS operations or exercising any rights relating to or affecting the INEOS operations, the undertaker must comply with such reasonable conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the INEOS operations.

### **Indemnity**

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the works referred to in paragraph 3, any damage is caused to the INEOS operations or there is any interruption in any service provided, or in the supply of any goods, by INEOS, the undertaker must—

- (a) bear and pay the cost reasonably incurred by INEOS in making good such damage or restoring the supply; and
- (b) make reasonable compensation to INEOS for any other expenses, loss, damages, penalty or costs incurred by INEOS, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of INEOS, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by INEOS.

(3) INEOS must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromises or of any proceedings necessary to resist the claim or demand.

(4) INEOS must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 7 applies.

(5) If requested to do so by the undertaker, INEOS must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by INEOS.

### **Costs**

**8.**—(1) Subject to the following provisions of this paragraph 8, the undertaker must pay to INEOS the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by INEOS in, or in connection with—

- (a) undertaking its obligations under this Order including—
  - (i) the execution of any works under this Order including for the protection of the affected apparatus; and
  - (ii) the review and assessment of works details in accordance with paragraph 3;
- (b) the watching of and inspecting the execution of the works approved under paragraph 4; and
- (c) imposing reasonable requirements in accordance with paragraph 5.

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), INEOS must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

### **Dispute resolution**

**9.** Any difference or dispute arising between the undertaker and INEOS under this Schedule must, unless otherwise agreed in writing between the undertaker and INEOS, be referred to and settled by arbitration in accordance with article 46 (arbitration).

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF NAVIGATOR TERMINALS SEAL SANDS LIMITED

1. For the protection of Navigator Terminals, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Navigator Terminals.

2. In this Schedule—

“Navigator Terminals” means Navigator Terminals Seal Sands Limited (company number 00829104), whose registered office is Oliver Road, Grays, RM20 3ED and Navigator Terminals North Tees Limited (company number 09889506), whose registered office is Oliver Road, Grays, RM20 3ED and any successor in title or function to the Navigator Terminals operations;

“Navigator Terminals operations” means the operations within the Order limits vested in Navigator Terminals including the pipeline crossing the Order limits operated by Navigator Terminals used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-Lines Act 1962(a); and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works (including, but not limited to, the details for managing any contamination and contaminated land relevant to the proposed work and arrangements for remediating the said contamination);
- (c) details of vehicle access routes for construction and operational traffic;
- (d) schedules of work and risk assessments for the proposed work; and
- (e) any further particulars provided in response to a request under paragraph 3.

### Consent under this Schedule

3. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Navigator Terminals operations or all necessary and existing access to them, or access to any land owned by Navigator Terminals that is adjacent to the Order limits, the undertaker must submit to Navigator Terminals the works details for the proposed works and such further particulars as Navigator Terminals may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require for approval by Navigator Terminals.

4. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Navigator Terminals operations or access to them, or access to any land owned by Navigator Terminals that is adjacent to the Order limits, are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by Navigator Terminals.

5. Any approval of Navigator Terminals required under paragraph 4 must not be unreasonably withheld or delayed and a determination shall be provided within 28 days from the day when the last such works details (including any additional details reasonably required within the 28 day period following submission of works details as referred to in paragraph 3 above) are provided

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(a) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

pursuant to paragraph 3 but may be given subject to such reasonable requirements as Navigator Terminals may require to be made for—

- (a) avoiding any material impact on the Navigator Terminals operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by Navigator Terminals to substantiate the need for these requirements); and
- (b) the requirement for Navigator Terminals to have reasonable access with or without vehicles at all times to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Navigator Terminals operations.

**6.—**(1) The authorised development must be carried out with good and suitable materials in a good and workmanlike manner in accordance with the works details approved under paragraph 4 and any requirements imposed on the approval under paragraph 9 and all other statutory and other requirements or regulations.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 9 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 9.

### **Costs**

**7.—**(1) Subject to the following provisions of this paragraph 7, the undertaker must pay to Navigator Terminals the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Navigator Terminals in, or in connection with—

- (a) undertaking its obligations under this Order including—
  - (i) the execution of any works under this Order including for the protection of the affected apparatus; and
  - (ii) the review and assessment of works details in accordance with paragraph 3;
- (b) the watching of and inspecting the execution of the works approved under paragraph 4; and
- (c) imposing reasonable requirements in accordance with paragraph 5.

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1) Navigator Terminals must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

### **Indemnity**

**8.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to the Navigator Terminals operations, or there is any interruption in any service provided, or in the supply of any goods, by Navigator Terminals, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Navigator Terminals in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Navigator Terminals for any other expenses, loss, damages, penalty or costs incurred by Navigator Terminals, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Navigator Terminals, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by Navigator Terminals.

(3) Navigator Terminals must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker



which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Navigator Terminals must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 8 applies.

(5) If requested to do so by the undertaker, Navigator Terminals must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 8 for claims reasonably incurred by Navigator Terminals.

### **Arbitration**

9. Any difference or dispute arising between the undertaker and Navigator Terminals under this Schedule must, unless otherwise agreed in writing between the undertaker and Navigator Terminals, be referred to and settled by arbitration in accordance with article 46 (arbitration).

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF AIR PRODUCTS PLC

1. For the protection of Air Products Plc, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Air Products.

2. In this Schedule—

“Air Products” means Air Products Public Limited Company (company number 00103881), Air Products (BR) Limited (company number 02532156) and Air Products Renewable Energy Limited (company number 08443239) whose registered offices are at Hersham Place Technology Park, Molesey Road, Walton on Thames, Surrey, KT12 4RZ and any successor in title to the apparatus;

“alternative apparatus” means such altered and relocated pipeline(s) adequate to enable Air Products to carry out its operations;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by Air Products for the purposes of gas supply; and

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

### **Precedence of the 1991 Act in respect of apparatus in streets**

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Air Products are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary closure, prohibition, restriction, alteration or diversion of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), Air Products is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure, prohibition, or restriction, alteration, diversion or use was in that street.

### **Removal of apparatus**

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that either Air Products’ apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of Air Products to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed, tested and is in operation, and access to it has been provided, to the reasonable satisfaction of Air Products as appropriate in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Air Products written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order, Air Products reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Air Products the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are

mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Air Products must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between Air Products and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) Air Products must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to Air Products of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Air Products that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Air Products, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Air Products.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

### **Co-operation**

6. The undertaker and Air Products will use reasonable endeavours to resolve any potential conflicts or impacts of the authorised development upon the apparatus and/or the alternative apparatus whilst maintaining use of any apparatus (except as agreed by the undertaker and Air Products for the commissioning and decommissioning of the apparatus) by or for the benefit of Air Products.

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Air Products facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Air Products or in default of agreement settled by arbitration in accordance with article 46.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Air Products than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Air Products as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to Air Products a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Air Products for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Air Products is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Air Products under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Air Products in accordance with sub-paragraph (1) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 5(1) to 5(7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case, it must give to Air Products notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonably practicable in the circumstances.

### **Expenses and costs**

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Air Products the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration, reinstatement, testing or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution or pursuance of any such works as are referred to in paragraph 5(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, and which is not reused as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 to be necessary,

then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Air Products by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(2); and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Air Products in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Air Products any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**10.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works authorised by this Schedule, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Air Products, or there is any interruption in the use of such apparatus or property including any service provided, or in the supply of any goods, by Air Products, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Air Products in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Air Products for any other expenses, loss, damages, penalty or costs incurred by Air Products, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Air Products, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by Air Products.

(3) Air Products must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Air Products must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 10 applies.

(5) If requested to do so by the undertaker, Air Products must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by Air Products.

### **Application of Schedule to certain apparatus**

**11.** This Schedule and Schedule 39 cannot both apply to the same apparatus, and to the extent that both Schedules do or may apply, only Schedule 39 applies to that apparatus and to any matter arising in relation to the interaction of that apparatus and the authorised development.

### **Enactments and agreements**

**12.** Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Air Products in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF CF  
FERTILISERS UK LIMITED**

1. For the protection of CF Fertilisers, the following provisions have effect, unless otherwise agreed in writing between the undertaker and CF Fertilisers.

2. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable CF Fertilisers to undertake its operations on the CF Fertilisers site in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by CF Fertilisers;

“CF Fertilisers” means CF Fertilisers UK Limited (company number 03455690), whose registered office is at Head Office Building, Ince, Chester, Cheshire, CH2 4LB and any successor in title to the CF Fertilisers site;

“CF Fertilisers Operations” means the assets and operations within the Order limits vested in CF Fertilisers;

“CF Fertilisers site” means any of the Order land in which CF Fertilisers owns the freehold interest;

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

“restricted works” means any works forming any part of the authorised development that will or may affect the apparatus or access to them including—

- (a) all works within 6 metres of the apparatus;
- (b) the crossing of the apparatus by other utilities; and
- (c) the use of explosives within 400 metres of the apparatus,  
whether carried out by the undertaker or any third party in connection with the authorised development;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of the vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 7.

**Precedence of the 1991 Act in respect of apparatus in streets**

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and CF Fertilisers are regulated by the provisions of Part 3 (Streets) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), CF Fertilisers is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

## **Removal of apparatus/access**

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any operational apparatus is placed or over which access to any operational apparatus is enjoyed or requires that operational apparatus is relocated or diverted, that operational apparatus must not be removed under this Schedule, and any right of CF Fertilisers to maintain that operational apparatus in that land and to gain access to it must not be extinguished (or otherwise made less advantageous), until alternative apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation, and access to it has been provided, to the reasonable satisfaction of CF Fertilisers in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any operational apparatus placed in that land, the undertaker must give to CF Fertilisers written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order CF Fertilisers reasonably needs to remove any of its operational apparatus) the undertaker must, subject to sub-paragraph (3), afford to CF Fertilisers the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, CF Fertilisers must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between CF Fertilisers and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) CF Fertilisers must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to CF Fertilisers of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to CF Fertilisers that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by CF Fertilisers, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of CF Fertilisers.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

## **Facilities and rights for alternative apparatus**

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to CF Fertilisers facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted—

- (a) upon such terms and conditions as may be agreed between the undertaker and CF Fertilisers or in default of agreement settled by arbitration in accordance with article 46; and

(b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to CF Fertilisers than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to CF Fertilisers as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Consent of restricted works under this Schedule**

7.—(1) Not less than 28 days before starting the execution of any restricted works the removal of which has not been required by the undertaker under paragraph 5(1), the undertaker must submit to CF Fertilisers the works details for the restricted works and such further particulars as CF Fertilisers may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by CF Fertilisers.

(3) Any approval of CF Fertilisers required under sub-paragraph (1) must not be unreasonably withheld or delay but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the alternation or otherwise for the protection of the apparatus, or for securing access to it, and CF Fertilisers is entitled to watch and inspect the execution of those works.

(4) The works referred to in sub-paragraph (1) must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with paragraph 11 and the arbitrator give approval for the works details, the works referred to in sub-paragraph (1) must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 11.

(6) If CF Fertilisers in accordance with sub-paragraph (3) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any operational apparatus and gives written notice to the undertaker of that requirement, sub-paragraphs (1) to (7) apply as if the removal of the operational apparatus had been required by the undertaker under paragraph 5(1).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time, but in no case less than 28 days before commencing the execution of any restricted works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to CF Fertilisers notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonably practicable in the circumstances.

### **Notices**

8. Any notices to be served on the undertaker or CF Fertilisers must be served in writing on the registered office address and on the General Counsel at CF Fertilisers, Ince, Chester, Cheshire, CH2 4LB.



## Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CF Fertilisers the reasonable expenses incurred by it in, or in connection with, the removal, inspection, alteration or protection of any operational apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(1).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated and agreed after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 (arbitration) to be necessary,

then, if such placing involves cost in the construction of works under this Schedule exceeding which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, of at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to CF Fertilisers by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) The provisions of sub-paragraph (3) shall only apply where the alteration is at the election of CF Fertilisers and not where such change to the existing type, capacity, dimensions or depth is as a result of industry requirements, legislation or environmental or health and safety considerations.

(5) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(1); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to CF Fertilisers in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on CF Fertilisers any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works referred to in paragraph 7 to this Schedule any damage is caused to CF Fertilisers' Operations, or there is any interruption in any service provided, or in the supply of any goods, by CF Fertilisers, the undertaker must—

- (a) bear and pay the cost reasonably incurred by CF Fertilisers in making good such damage or restoring the supply; and
- (b) make reasonable compensation to CF Fertilisers for any other expenses, loss, damages, penalty or costs incurred by CF Fertilisers, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

(a) any damage or interruption to the extent that it is attributable to the act, neglect or default of CF Fertilisers, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by CF Fertilisers.

(3) CF Fertilisers must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) CF Fertilisers must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 10 applies.

(5) If requested to do so by the undertaker, CF Fertilisers must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by CF Fertilisers.

### **Arbitration**

11. Any difference or dispute arising between the undertaker and CF Fertilisers under this Schedule must, unless otherwise agreed in writing between the undertaker and CF Fertilisers, be referred to and settled by arbitration in accordance with article 46 (arbitration).

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF  
NORTHERN POWERGRID (NORTHEAST) PLC**

1. For the protection of Northern Powergrid the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

2. In this Schedule—

“alternative apparatus” means alternative and/or replacement apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will give access to such apparatus;

“functions” includes powers and duties;

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

“Northern Powergrid” means Northern Powergrid (Northeast) Plc (company number 02906593), whose registered office is at Lloyds Court, 78 Grey Street, Newcastle upon Tyne, NE1 6AF; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include any measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impact of the works on the apparatus or Northern Powergrid’s undertaking within the Order limits.

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (Street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), Northern Powergrid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid’s apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of Northern Powergrid to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement which shall include rights to retain and subsequently maintain the apparatus being replaced or diverted for the lifetime of that alternative apparatus, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to

remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 16.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 16, and after the grant to Northern Powergrid of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

**6.—**(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 16.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**7.—**(1) Not less than ninety days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 35 days before commencing the execution of any works, a new

plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonable practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonable practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable and proper expenses incurred by Northern Powergrid—

- (a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2); and
- (b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all, provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 5(1) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Schedule has nil value, no sum will be deducted from the amount payable under this sub-paragraph (1).

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 16 to be necessary, then, if such placing involves cost in the construction or works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess save where it is not possible on account of project time limits and/or supply issues to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker, provided that the apparatus is the lowest cost alternative available that fulfils the requirements.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(2); and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northern Powergrid in respect of works by virtue of sub-paragraph (1), is to be reduced by the amount which represents that benefit if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Northern Powergrid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course.

**9.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Powergrid in making good such damage and restoring the supply; and
- (b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Northern Powergrid, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by Northern Powergrid.

(3) Northern Powergrid must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Northern Powergrid must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 9 applies.

(5) If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 9 for claims reasonably incurred by Northern Powergrid.

**10.** Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**11.** Without prejudice to the generality of the protective provisions in this Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this Schedule without limitation—

- (a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 8;
- (b) costs incurred in fulfilling its obligations in paragraph 5(3);
- (c) fees incurred in settling and completing and registering any documentation to secure rights for its diverted or relocated apparatus; and
- (d) costs and expenses of contractors required to undertake any works for which Northern Powergrid is responsible and of purchasing the necessary cabling and associated apparatus,

provided that Northern Powergrid must use reasonable endeavours to minimise to a proper and reasonable level any charges, costs, fees and expenses to the extent that they are incurred.

**12.** Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 11 within 15 days following receipt of such estimates by the undertaker. The undertaker must confirm its agreement to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 16.

**13.** Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to Northern Powergrid pursuant to paragraph 11 for the benefit of its statutory undertaking.

**14.** If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

**15.—(1)** Northern Powergrid may from time to time and at least monthly from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed.

(2) Invoices issued to the undertaker for payment must—

- (a) specify the approved purchase order number; and
- (b) be supported by timesheets and narratives that demonstrate that the work invoiced has been completed in accordance with the agreed estimate.

(3) The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate other than where agreed under paragraph 14 above or determined in accordance with paragraph 16.

**16.** Any difference or dispute arising between the undertaker and Northern Powergrid under this Schedule must, unless otherwise agreed in writing between the undertaker and Northern Powergrid, be referred to and settled by arbitration in accordance with article 46 (arbitration).

**17.** Prior to carrying out any works within the Order limits Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF ANGLO AMERICAN

1. For the protection of Anglo American the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

“AA Property Arrangements” means the Deed of Grant entered into by Redcar Bulk Terminal Limited and York Potash Processing & Ports Limited dated 6 July 2018 and the Deed of Grant entered into by Redcar Bulk Terminal Limited, York Potash Limited and York Potash Processing & Ports Limited dated 26 June 2019;

“Anglo American” means the parties with the benefit of the York Potash Order (being Anglo American Woodsmith Limited and Anglo American Crop Nutrients Limited) and Anglo American Woodsmith (Teesside) Limited;

“Anglo American Apparatus” means the pipeline, cables, structures which are or are to be owned, occupied or maintained by Anglo American within the Shared Area;

“Anglo American Specified Works” means so much of the Woodsmith Project as is within the Shared Area;

“EA Permit 1” means the environmental permit issued by the Environment Agency pursuant to the Environmental Permitting (England and Wales) Regulations 2016 under reference EPR/FB3601GS in respect of the landfill site at Bran Sands (formerly Waste Management Licence EAWML60092);

“EA Permit 2” means the environmental permit issued by the Environment Agency pursuant to the Environmental Permitting (England and Wales) Regulations 2016 under reference EPR/NB3498VD in respect of the discharge of trade effluent arising from the construction and operation of the Woodsmith Project;

“Eston Triangle Area” means the land comprised in plots 16/29, 15/83, 15/245, 15/80, 15/79, 15/81, 15/76, 15/78, 15/77, 15/75, 15/74, 15/73, 15/85, 15/86, 15/244, 15/84, 15/87, 15/88, 15/71 and 15/70 identified in the Land Plans;

“expert” means a person appointed pursuant to paragraph 14(b);

“H2T Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by the undertaker that is within the Shared Area;

“NWL Facility” means the Northumbrian Water Limited Bran Sands Wastewater Treatment Plant;

“Parties” means the undertaker and Anglo American;

“Plans” includes sections, drawings, specifications, design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the Shared Area;

“Property Documents” means any leases, licences or other documents by virtue of which Anglo American has an interest in, on or over land as at the date of the Order;

“Respective Projects” means the authorised development and the Woodsmith Project;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero or any successor in function;

“Shared Area” means the land coloured blue on the Shared Area Plan so far within the Order limits;

“Shared Area 1” means the land comprising plots 13/7, 13/2, 13/3, 13/1, 13/6, 13/5 and 13/4 on the Land Plans;



“Shared Area 2” means the land comprising 12/2, 15/76, 15/70, 15/73, 11/78, 11/79, 11/80, 11/81, 11/83, 11/82, 11/84, 11/85, 11/88, 11/86, 11/87, 11/128, 11/89, 11/90, 11/91, 11/92, 11/93, 11/94, 11/129, 11/113, 11/122, 11/130, 12/3, 11/132, 15/79, 11/114, 15/87, 11/97, 11/98, 11/131, 11/95, 11/96, 11/99, 15/74, 15/72, 15/77, 15/75, 16/29, 15/83, 11/67, 11/69, 11/71, 11/123, 12/5, 12/1, 11/124, 11/125, 15/82, 12/4, 11/127, 15/88, 11/135, 11/134, 11/112, 11/126, 11/111, 11/121, 15/80, 11/133, 11/136, 15/78, 15/84, 15/81, 15/85, 15/71, 12/6, 15/244, 15/245 and 15/86 on the Land Plans;

“Shared Area 3” means the land comprising plots 15/53, 15/52, 15/51, 15/54, 15/47, 15/55, 15/48, 15/50, 15/49, 15/69 and 15/56 on the Land Plans;

“Shared Area 4” means the land comprising plots 15/40, 15/31, 15/30, 15/41, 15/42, 15/27 and 15/43 on the Land Plans;

“Shared Area 5” means the land comprising plots 15/38, 15/45, 15/140, 15/178, 15/182, 15/186, 15/183, 15/189, 15/166, 15/165, 15/163 and 15/195 on the Land Plans;

“Shared Area 6” means the land comprising plots 18/5, 15/153, 15/221, 15/226, 15/223, 15/129, 15/136, 15/216, 15/212, 15/156, 15/145, 15/138, 15/144, 15/127, 15/148, 15/220, 15/154, 15/211, 15/215, 15/134, 15/132, 15/91, 15/90, 15/94, 15/92, 15/93, 15/95, 15/96, 15/97, 15/99, 15/98, 15/100, 15/103, 15/102, 15/104, 15/106, 15/105, 15/101, 15/108, 15/107, 15/109, 15/110, 15/111, 15/112, 15/114, 15/113, 15/130, 19/18, 19/22, 19/28, 15/231, 19/21, 19/27, 19/23, 19/25, 18/6, 18/9, 18/11, 18/12, 18/13, 15/131, 15/135, 15/133, 18/8, 19/26, 15/146, 15/149, 15/147, 15/150, 15/152, 15/209, 15/222, 15/210, 15/213, 15/224, 15/214, 15/89, 18/1, 19/19, 15/233, 15/234, 15/232, 15/143, 15/155, 15/142, 15/137, 15/128, 19/20, 18/7, 19/17, 19/16, 19/24, 15/151 and 18/5 on the Land Plans;

“Shared Area Plan” means the plan which is certified as the H2 Teesside Anglo American Shared Area Plan by the Secretary of State under article 44 (certification of plans etc.) for the purposes of this Order;

“Specified Works” means so much of the authorised development as is within the Shared Area;

“STDC Agreement Area” means the area coloured orange on the plan which is certified as the H2 Teesside STDC Agreement Area Plan by the Secretary of State under article 44 (certification of plans etc.) for the purposes of this Order;

“Woodsmith Project” means the construction, operation, or maintenance of development authorised by the York Potash Order or by any planning permission or development consent order issued whether before or after the date of this Agreement as part of the Woodsmith Project such development comprising—

- (a) an underground mine at Sneatonthorpe for the mining of polyhalite;
- (b) a Mineral Transport System being a tunnel from the mine to Teesside;
- (c) a Material Handling Facility at Wilton International, Teesside; and
- (d) Harbour Facilities at Teesside including an overland conveyor between the Material Handling Facility and the Redcar Bulk Terminal and the harbour authorised by the York Potash Order and planning permissions; and

“York Potash Order” means the York Potash Harbour Facilities Order 2016 and any amended or replacement order including York Potash Harbour Facilities (Amendment) Order 2022 and reference to “York Potash Order” includes Planning Permission Reference R/2021/0409/FFM in respect of such part of the Woodsmith Project.

### **Consent to works in the shared area**

**3.—**(1) Where the consent or agreement of Anglo American is required under the provisions of this Schedule the undertaker must give at least 21 days written notice to Anglo American of the request for such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with the request which must identify—

- (a) the land that will or may be affected;

- (b) which Works Nos. from the Order any powers sought to be used or works to be carried out relate to;
- (c) the identity of the contractors carrying out the works on behalf of that entity;
- (d) the proposed programme for the power to be used or works to be carried out; and
- (e) the named point of contact for the undertaker for discussions in relation to the information supplied and the consenting process.

(2) Anglo American must notify the undertaker within 14 days of the receipt of the written notice under sub-paragraph (1) of—

- (a) any information it reasonably requires to be provided in addition to that proposed to be supplied by the undertaker under sub-paragraph (1);
- (b) any particular circumstances with regard to the construction or operation of the Woodsmith Project it required to be taken into account;
- (c) the named point of contact for Anglo American for discussions in relation to the information supplied and the consenting process; and
- (d) the specific person who will be responsible for confirming or refusing the consent or agreement.

(3) Any request for consent under paragraphs 5(1), 6(1) and 6(2) must be accompanied by the information referred to in sub-paragraph (1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to sub-paragraph (5), where conditions are included in any consent granted by Anglo American pursuant to this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Anglo American.

(5) Wherever in this Schedule provision is made with respect to the agreement approval or consent of Anglo American, that approval or consent must be in writing and subject to such reasonable terms and conditions as Anglo American may require including conditions requiring protective works to be carried out, but must not be unreasonably refused or delayed and for the purposes of these provisions it will be deemed to be reasonable for any consent to be refused if it would—

- (a) compromise the safety and operational viability of the Woodsmith Project (where the conditions proposed or any refusal relate to such matters, a reasoned explanation or other form of evidence will be provided by Anglo American to provide an understanding of the matters raised); and/or
- (b) prevent the ability of Anglo American to have uninterrupted access to the Woodsmith Project;
- (c) cause a breach of the obligations under, or conditions attached to, the EA Permit 1 and EA Permit 2 or render compliance with the obligations under, or conditions attached to, the EA Permit 1 and EA Permit 2—
  - (i) materially more difficult; and/or
  - (ii) materially more expensive;
- (d) make regulatory compliance materially more difficult or expensive; and/or
- (e) cause a breach of, or prevent compliance with, any obligations to other parties contained in any Property Documents,

provided that before Anglo American can validly refuse consent for any of the reasons set out in paragraphs (a) to (e) it must first give the undertaker seven days' notice of such intention and consider any representations made in respect of such refusal by the undertaker to Anglo American in that seven day period.

(6) The seven day period referred to in the proviso to sub-paragraph (5) must be added to the period of time within which any request for agreement, approval or consent is required to be responded to pursuant to the provisions of this Schedule.

(7) In the event that—

- (a) the undertaker considers that Anglo American has unreasonably withheld its authorisation or agreement under paragraph 5(1), 6(1) and/or 6(2); or
- (b) the undertaker considers that Anglo American has given its authorisation under paragraph 5(1), 6(1) and/or 6(2) subject to unreasonable conditions,

the undertaker may refer the matter to dispute resolution under paragraph 14.

(8) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to Anglo American by recorded delivery and addressed to—

- (a) Project Manager, Woodsmith Mine, Sneaton, Whitby, YO22 5BF; and
- (b) Company Secretary, Anglo American, 17 Charterhouse Street, London, EC1N 6RA.

(9) In the event that Anglo American does not respond in writing to a request for approval or consent or agreement within 28 days of its receipt of the postal request then the undertaker may serve upon Anglo American written notice requiring Anglo American to give their decision within a further 28 days beginning with the date upon which Anglo American received written notice from the undertaker and, subject to compliance with sub-paragraph (1), if by the expiry of the further 28 day period Anglo American has failed to notify the undertaker of its decision Anglo American is deemed to have given its consent, approval or agreement without any terms or conditions.

(10) Any further notice given by the undertaker under sub-paragraph (9) must include a written statement that the provisions of sub-paragraph (9) apply to the relevant approval or consent or agreement.

#### **Co-operation**

4. Insofar as the Anglo American Specified Works are or may be undertaken concurrently with the Specified Works within any part of the Shared Area, the undertaker must—

- (a) co-operate with Anglo American with a view to ensuring—
  - (i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and
  - (ii) that access for the purposes of the construction, operation and maintenance of the Woodsmith Project is maintained for Anglo American and its employees, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

#### **Regulation of works within the shared area**

5.—(1) The undertaker must not carry out the Specified Works without the prior written consent of Anglo American obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under paragraph 3(5) Anglo American requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the reasonable satisfaction of Anglo American.

(3) Nothing in paragraph 3 or this paragraph 5 precludes the undertaker from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any Specified Work, new Plans in respect of that Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 3 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 14(b) and the expert in determining the dispute gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 14.

(5) The undertaker must give to Anglo American not less than 28 days' written notice of its intention to commence the construction of any of the Specified Works and, not more than 14 days after completion of their construction, must give Anglo American written notice of the completion.

(6) The undertaker is not required to comply with sub-paragraphs (1) to (5) above in a case of emergency (being actions required directly to prevent possible death or injury) but in that case it must give to Anglo American notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraph 3 and this paragraph 5 insofar as is reasonably practicable in the circumstances.

(7) The undertaker must at all reasonable times during construction of the Specified Works allow Anglo American and its officers, employees, servants, contractors, and agents access to the Specified Works and all reasonable facilities for inspection of the Specified Works.

(8) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Anglo American requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(9) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (8) above, Anglo American may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(10) The undertaker must not exercise the powers conferred by the Order or undertake the Specified Works to prevent or interfere with the access by Anglo American to the Anglo American Specified Works unless first agreed in writing by Anglo American.

(11) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Specified Works the access to any of the Anglo American Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the Anglo American Specified Works as will enable Anglo American to construct, maintain or use the Woodsmith Project no less effectively than was possible before the obstruction.

(12) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Specified Works request up-to-date written confirmation from Anglo American of the location of any part of its then existing or proposed Anglo American Specified Works.

### **Regulation of powers over the shared area**

**6.—**(1) The undertaker must not exercise the powers granted under the Order so as to hinder or prevent the construction, operation or maintenance of the Anglo American Specified Works without the prior written consent of Anglo American.

(2) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (3) below over or in respect of the Shared Area otherwise than with the prior written consent of Anglo American.

(3) The articles referred to in sub-paragraph (2) above are—

- (a) article 10 (power to alter layout etc. of streets);
- (b) article 11 (street works);
- (c) article 12 (construction and maintenance of new or altered means of access);
- (d) article 13 (temporary closure of streets and public rights of way);
- (e) article 14 (access to works);
- (f) article 16 (traffic regulation matters);
- (g) article 17 (discharge of water);
- (h) article 18 (felling or lopping of trees and removal of hedgerows); and
- (i) article 19 (protective works to buildings).

(4) In the event that Anglo American withholds its consent pursuant to sub-paragraph (2) above it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

### **Constructability principles**

7.—(1) Subject to sub-paragraph (4), the undertaker in respect of the specified works (unless otherwise agreed, or in an emergency relating to potential death or serious injury, or where it would render the Specified Works, H2T Apparatus, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties) must—

- (a) in respect of all Shared Areas—
  - (i) carry out the works in such a way that will not prevent or interfere with the continued construction of the Anglo American Specified Works, or the maintenance or operation of the Anglo American Apparatus unless the action leading to such prevention or interference has the prior written consent of Anglo American;
  - (ii) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by Anglo American in respect of any Anglo American Apparatus (including the overland conveyor) will be of adequate specification to bear the loads;
  - (iii) prior to the undertaker carrying out any of the Specified Works in any part of any Shared Area, the undertaker must in respect of the Specified Work concerned—
    - (aa) submit a construction programme and a construction traffic and access management plan in respect of that area to Anglo American and obtain agreement thereof from Anglo American (noting that a single construction traffic and access management plan may be completed for one or more parts of each Shared Area or more than one Shared Area and may be subject to review if agreed between the Parties) and without prejudice to the generality of sub-paragraph (i) the plans must include such measures and construction practices or processes as are necessary to satisfactorily address the relevant issues in relation to construction traffic and access management during construction that are set out in this paragraph 7;
    - (bb) provide a copy to Anglo American any relevant construction quality assurance plan, construction management and execution plan and construction environmental management plan approved under Requirement 15(3) and plans approved under Requirement 15(7) which relate to construction activities in the Shared Area;
    - (cc) where applicable, confirm to Anglo American in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time; and
    - (dd) obtain the agreement of Anglo American to the location of any temporary construction compounds where such areas are not those referred to in table 5-2 “construction programme and management” of chapter 5 of the environmental statement;
  - (iv) update on a monthly basis the construction programme approved under paragraph (iii)(aa) and supply a copy of the updated programme to Anglo American every month;
  - (v) at all times construct the Specified Works in compliance with the relevant agreed construction programme and construction traffic and access management plan;
  - (vi) notify Anglo American of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Disease and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;

- (vii) report to Anglo American of any environmental incidents which occur as a consequence of or are found in association with the carrying out of the Specified Works including the identification of contamination or hazards to construction;
  - (viii) provide comprehensive, as built, drawings of the Specified Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Specified Works or if required by Anglo American earlier than three months of the date of completion, providing reasonable information regarding the layout of the H2T Works in the Shared Area in question, subject to Anglo American providing reasonable notice to the undertaker;
  - (ix) following the completion of each of the Specified Works unless otherwise agreed in writing by Anglo American fully reinstate the affected area (with the exception only of the retention of the permanent elements of the Specified Works) and remove all waste/surplus materials; and
  - (x) obtain the prior written consent of Anglo American for the use of any recycled aggregate material within the Shared Area;
- (b) in respect of Shared Area 1, construct the Specified Works in such a way that—
- (i) access is maintained for Anglo American at all times to carry out all activities associated with the operation and maintenance of its ship loader, the outloading and conveyor circuit; and
  - (ii) no works are carried out in that part of Shared Area 1 which is the subject of the AA Property Arrangements;
- (c) in respect of Shared Area 2, construct the Specified Works in such a way that—
- (i) the access required by Anglo American through Shared Area 2 for the construction, maintenance and operation of the quay authorised by the York Potash order is safeguarded at all times;
  - (ii) Anglo American has access to operate and maintain—
    - (aa) the discharge facility in compliance with its obligations under EA Permit 2; and
    - (bb) the landfill (including but not limited to the leachate chambers and monitoring boreholes) in compliance with its obligations under EA Permit 1;
  - (iii) continuing use of and access for Anglo American and third parties to, and along, the pipeline corridor with Shared Area 2 is maintained at all times;
  - (iv) the Anglo American owned private access road around the perimeter of the NWL Facility remains open to all permitted users unless otherwise agreed in writing with Anglo American for all purposes;
  - (v) Anglo American's right of access along the Eston Triangle Area is safeguarded; and
  - (vi) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 2 is not impaired;
- (d) in respect of Shared Area 3, construct the Specified Works in such a way that—
- (i) Anglo American's access to the access road through Shared Area 3 is maintained at all times;
  - (ii) Anglo American has access to operate, manage and maintain the landfill (including but not limited to the monitoring boreholes and the YLEM Gas Management Facility) in compliance with its obligations under EA Permit 1;
  - (iii) the Anglo American owned private access road around the perimeter of the NWL Facility remains open to all existing users unless otherwise agreed in writing with Anglo American for all purposes; and
  - (iv) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 3 is not impaired;
- (e) in respect of Shared Area 4, construct the Specified Works in such a way that—

- (i) use by Anglo American of laydown areas within Shared Area 4 in connection with construction activities for the Woodsmith Project is appropriately protected;
- (ii) access to the rail crossing point within or adjacent to Shared Area 4 for Anglo American is safeguarded;
- (iii) Anglo American's access to the access road through Shared Area 4 is maintained at all times;
- (iv) Anglo American has access to operate, manage and maintain the landfill (including but not limited to the monitoring boreholes and the YLEM Gas Management Facility) in compliance with its obligations under EA Permit 1; and
- (v) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 4 is not impaired;
- (f) in respect of Shared Area 5, construct the Specified Works in such a way that the construction, operation and maintenance of any overland conveyor to be located within Shared Area 5 is not impaired; and
- (g) in respect of Shared Area 6, construct the Specified Works in such a way that the construction, operation and maintenance of, and access to, any overland conveyor to be located within Shared Area 6 is not impaired, other than during the construction of the Specified Works.

(2) Unless otherwise agreed, the undertaker must not do anything within the Shared Areas 2, 3, 4, 5 and 6 which will constrain the ability of Anglo American to construct and operate an overland conveyor along the route which is the subject of the STDC Agreement Area or do anything which will compromise the construction, operational efficiency or maintenance of that conveyor or make the construction, operation or maintenance of it materially more expensive (unless such difference in cost (including any difference attributable to delay) is agreed to be provided by the undertaker).

(3) Any spoil from the Anglo American Specified Works or the Specified Works (including contaminated material) must be dealt with in accordance with a spoil management plan to be agreed between the Parties in advance of the work by either Party generating such spoil beginning.

(4) In the event that Anglo American notifies the undertaker in writing that Anglo American will not construct any part of the Anglo American Specified Works ("Anglo American Abandoned Works"), the undertaker can construct, operate and maintain the Specified Works without regard to and without complying with sub-paragraphs (1) to (3) insofar as those paragraphs apply to the Anglo American Abandoned Works.

(5) Sub-paragraphs (1)(b) to (1)(g) do not permit Anglo American to do anything to the Specified Works and H2T Apparatus which have been constructed in accordance with an approval given by Anglo American pursuant to paragraphs 3 or 5 or determined by an expert in accordance with paragraph 14.

(6) In considering a request for any consent under the provisions of this Schedule, Anglo American must not—

- (a) request an additional construction traffic and access management plan or a spoil management plan if such a plan has already been approved pursuant to sub-paragraph (1)(a)(iii)(aa) (as relevant in respect of a traffic and access management plan) or agreed pursuant to sub-paragraph (3) (in respect of a spoil management plan); and
- (b) refuse consent for reasons which conflict with the contents of documents approved by Anglo American pursuant to the provisions of this paragraph and paragraph 8.

### **Interface Design Process**

**8.—**(1) Prior to the seeking of any consent under this Schedule, the undertaker must, unless Anglo American has brought forward works in that part of the Shared Area before the undertaker, participate in a design and constructability review for that part of the Shared Area which shall, at a minimum (unless otherwise agreed), include the following matters—

- (a) a Front End Engineering Design (FEED) level indicative construction work-pack;

- (b) a hazard and operability study;
- (c) a construction hazard study; and
- (d) in respect of any part of the Shared Area which is to accommodate the overland conveyor, information to demonstrate that the relevant Specified Works account for the interface with any overland conveyor located in that part of the Shared Area.

(2) Unless otherwise agreed, the undertaker must submit the outcome of the design and constructability review referred to in sub-paragraph (1) to Anglo American for approval prior to the seeking of any consent under this Schedule.

(3) The undertaker must at all times design and construct the Specified Works in compliance with the relevant approved design and constructability review pursuant to sub-paragraph (2).

(4) The undertaker may undertake a single design and constructability review process for one or more parts of the Shared Area and any approved design and constructability review may be amended if agreed by Anglo American.

(5) In considering any request for consent or approval under this Schedule, Anglo American must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless Anglo American reasonably believes that the relevant agreed design and constructability review is materially out of date or is inapplicable due to a change in either the authorised development or the Woodsmith Project.

### **Design Principles**

**9.** The Specified Works must be designed in such a way (unless otherwise agreed by Anglo American)—

- (a) that the location and design of the Specified Works do not interfere with the operation and maintenance of all monitoring boreholes, leachate chambers nor the integrity of landfill that are the subject of EA Permit 1 and EA Permit 2, so not materially conflict with the ability of Anglo American to comply with the obligations of EA Permit 1 and EA Permit 2; and
- (b) so as not to conflict with the ability of Anglo American to construct and preserve the optionality of Anglo American to proceed with the construction of the southern tower for the overland conveyor in the location authorised by the York Potash Order or the conveyor towers in the alternative locations within Shared Area 4 until such time as Anglo American notifies the undertaker in writing.

### **Maintenance and Operational Principles**

**10.** The Specified Works must be maintained and operated in such a way that (unless otherwise agreed, in an emergency, or where it would render the Specified Works, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties)—

- (a) Anglo American has unhindered access to manage the discharge facility within the NWL Facility and to empty their leachate chambers so as to be able to comply with its obligations under the EA Permit 1 and EA Permit 2;
- (b) Anglo American (together with NWL) has unhindered access to monitor the gas monitoring facility located within the NWL Facility so as to be able to comply with its obligations under the EA Permit 1 and EA Permit 2;
- (c) the operation of any overland conveyor located within those Shared Areas is not impaired; and
- (d) Anglo American is able to access any overland conveyor within those Shared Areas.



## Miscellaneous provisions

11.—(1) The undertaker and Anglo American must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Schedule.

(2) The undertaker must pay to Anglo American the reasonable expenses incurred by Anglo American in connection with the consenting processes under this Schedule, including the approval of plans, inspection of any Specified Works or the alteration or protection of the Anglo American Specified Works.

## Indemnity

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction, maintenance or operation of any Specified Works, or failure thereof, any damage is caused to any Anglo American Apparatus used in connection with the Anglo American Specified Works or damage is caused to any part of the Anglo American Specified Works or there is any interruption in any service provided, or the operations of Anglo American, or in the supply of any goods, by Anglo American, the undertaker must—

- (a) bear and pay the costs reasonably incurred by Anglo American in making good such damage or restoring the service, operations or supply; and
- (b) compensate Anglo American for any other reasonable expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Anglo American, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Anglo American, its officers, employees, servants, contractors or agents; and
- (b) any indirect or consequential loss or loss of profits by Anglo American.

(3) Anglo American must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

- (a) keep Anglo American fully informed of the developments and material elements of the proceedings;
- (b) take account of the views of Anglo American before taking any action in relation to the claim;
- (c) not bring the name of Anglo American or any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and
- (d) not pay or settle such claims without the prior written consent of Anglo American such consent not to be unreasonably withheld or delayed.

(5) Anglo American must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies.

(6) If requested to do so by the undertaker, Anglo American must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(7) The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by Anglo American.

(8) The undertaker shall not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that Anglo American has not used its reasonable endeavours to mitigate and/or minimise that claim in accordance with sub-paragraph (5).

(9) The fact that any work or thing has been executed or done with the consent of Anglo American and in accordance with any conditions or restrictions prescribed by Anglo American or in accordance with any plans approved by Anglo American or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 14 does not relieve the undertaker from any liability under this paragraph.

### **Dispute Resolution**

13. Article 46 (arbitration) does not apply to the provisions of this Schedule.

14. Any difference in relation to the provision in this Schedule must be referred to—

- (a) a meeting BP Vice President Hydrogen & Carbon Capture and Storage in the United Kingdom or BP Director Hydrogen in the United Kingdom and the Project Manager, Anglo American Woodsmith Mine and the Company Secretary of Anglo American to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one Party to the other; and
- (b) in the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the undertaker and Anglo American or, in the absence of agreement identified by the President of the Law Society, who must be sought to be appointed within 28 days of the notification of the dispute.

15. The fees of the expert appointed pursuant to paragraph 14(b) are to be payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

16. Where appointed pursuant to paragraph 14(b), the expert must—

- (a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) allow each Party an opportunity to comment on the submissions made by the other provided that they are received within 21 days of the receipt of the submissions referred to in sub-paragraph (a);
- (c) issue a decision within 42 days of receipt of the submissions submitted pursuant to sub-paragraph (a); and
- (d) give reasons for the decision.

17. The expert must consider where relevant—

- (a) the development outcomes sought by the undertaker and Anglo American;
- (b) the ability of the undertaker and Anglo American to achieve the outcomes referred to in paragraph (a) in a timely and cost-effective manner;
- (c) any increased costs on any Party as a result of the matter in dispute;
- (d) whether under this Order or the York Potash Order, the undertaker's or Anglo American's outcomes could be achieved in any alternative manner without the Specified Works being materially compromised in terms of increased cost or increased length of programme; and
- (e) any other important and relevant considerations.

18. Any determination by the expert is final and binding which the Parties must comply with and is enforceable by the Parties by injunction except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the Law Society.

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF SOUTH TEES GROUP

1. For the protection of the South Tees Group, the following provisions have effect, unless otherwise agreed in writing between the undertaker and, in relation to that entity's interests, STG entity.

2.—(1) In this Schedule—

“AIL access route land” means plot 13/11 so far as required in relation to Work No. 10;

“AIL access route works” means Work No. 10 within the AIL access route land;

“alternative apparatus” means appropriate alternative apparatus adequate to enable the STG entity to undertake its operations on the STG site in a manner not less efficient than previously;

“apparatus” means apparatus (including cables, mains, pipelines, plant and ancillary apparatus) within the Order limits and which is apparatus belonging to or maintained by a STG entity;

“diversion condition” means that in relation to the relevant diversion work—

- (a) in relation to a proposed work which is required for the construction of the authorised development, that it in the reasonable opinion of the undertaker enables the authorised development to be constructed and commissioned;
- (b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that in the reasonable opinion of the undertaker, it enables the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;
- (c) its cost is reasonable having regard to the nature and scale of the relevant proposed work;
- (d) planning permission is not required, or has been granted, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;
- (e) such other consents, licences or authorisations as are required for the diversion work have been obtained, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;
- (f) the STG entity can grant adequate interest in land or a licence to the undertaker to use, maintain and operate the diversion work for its intended purpose as part of the authorised development and if relevant to carry out the diversion work;
- (g) the diversion work—
  - (i) is already constructed and available for use by the undertaker; or
  - (ii) where a diversion work is to be carried out, whether by the STG entity or the undertaker, it can be carried out and completed in accordance with and without detriment to the undertaker's programme for the construction of the authorised development;
- (h) the diversion work complies with the technical specifications agreed or determined by arbitration pursuant to paragraph 17; and
- (i) in relation only to the AIL access route works that the diversion work complies with the red main criteria;

“diversion notice” means a notice from the STG entity to the undertaker under paragraph 18;

“diversion work” means works, development or use of land associated with the diversion of a proposed work;

“diversion works agreement” means an agreement between the STG entity and the undertaker in relation to a diversion work which provides—

- (a) adequate interest in land to allow the undertaker to use and where relevant maintain and operate the diversion work for its intended purpose as part of or in connection with the authorised development; and
- (b) where relevant, that the undertaker can carry out the diversion work or that the STG entity must carry out the diversion work, in either case in accordance with the undertaker’s programme for the construction of the authorised development;

“identified power” means a power conferred by the following in relation to a proposed work—

- (a) article 22 (compulsory acquisition of land);
- (b) article 23 (power to override easements and other rights);
- (c) article 25 (compulsory acquisition of rights etc.)
- (d) article 26 (private rights);
- (e) article 28 (acquisition of subsoil and airspace only);
- (f) article 32 (temporary use of land for carrying out the authorised development);
- (g) article 33 (temporary use of land for maintaining the authorised development); and
- (h) article 34 (statutory undertakers),

or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or any powers conferred by section 4 (execution of declaration) of the 1981 Act as applied by this Order;

“information notice” means a notice issued by the undertaker under paragraph 20(c) that additional information is reasonably required before it can decide whether to agree to a diversion work;

“proposed diversion notice” means a notice from the STG entity to the undertaker pursuant to paragraph 14 that outlines the diversion work proposed and how the diversion work proposed satisfies so far as relevant each part of the diversion condition, except for paragraph (h) of that definition;

“proposed land” means the land within the STG site required for a proposed work;

“proposed work” means Work Nos. 3, 4, 5 and 10, AIL access route works or the use of the AIL access route land for construction vehicles for the authorised development to the extent the work is located within the STG site;

“proposed work programme” means a programme for the construction and use of a proposed work;

“red main criteria” means that—

- (a) the diversion work must be along a route that must connect to plot 13/2 at the same location as the existing road;
- (b) the diversion work must connect into the construction areas required for the construction of the authorised development at a location required by the undertaker acting reasonably;
- (c) the diversion work must accommodate cargo of 80 metres in length, with an axle width of 15 metres, with 4 metres of overhang each side, and with a total width of 23 metres;
- (d) the diversion work must allow a minimum centre line turning radius of 25 metres and a minimum outer turning radius (to the limit of the vehicle/load) of 55 metres;
- (e) the longitudinal slope of the diversion work must not exceed 5% with a maximum of 3% for gradient;
- (f) the transverse slope of the diversion work must not exceed 1.5%; and
- (g) the diversion work must have a minimum ground bearing capacity of 100kN/m<sup>2</sup> and sufficient protection provided if it crosses underground facilities;

“the respective authorised developments” means the authorised development and the South Tees Group development respectively;

“South Tees Group” means STDC, STDL, SRPL and Teesworks;

“the South Tees Group development” means development authorised by any planning permission or development consent order granted in relation to the STG site (or generally by permitted development rights), or prospective development planned in relation to the STG site;

“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 33(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 33(2) or otherwise.

“SRPL” means Steel River Power Limited (company number 14753711) whose registered office is at Wynyard Park House, Wynyard Avenue, Wynyard, Billingham, United Kingdom, TS22 5TB;

“STDC” means South Tees Development Corporation, whose headquarters are at Teesside Airport Business Suite, Teesside International Airport, Darlington, DL2 1NJ;

“STDC area” means the administrative area of STDC;

“STDL” means South Tees Developments Limited (company number 11747311) whose registered office is at Teesside Airport Business Suite, Teesside International Airport, Darlington, United Kingdom, DL2 1NJ;

“STG entity” means subject to paragraph 38 an entity within the South Tees Group which owns or holds an interest in land in the part of the STG site to which the provisions of this Schedule apply, and any successor in title to that entity;

“STG site” means any land within the Order limits owned by STDC, SRPL, Teesworks and STDL;

“Teesworks” means Teesworks Limited (company number 12351851) whose registered office is at Venture House, Aykley Heads, Durham, England, DH1 5TS;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed design;
- (c) details of the proposed method of working
- (d) details of the programme and timing of execution of the works;
- (e) details of vehicle access routes for construction and operational traffic; and
- (f) any further particulars provided in response to a request under paragraph 3; and

“work notice” means a notice setting out details of a proposed work (sufficient to allow consideration of a potential diversion work and including a programme) and the exercise of an identified power in respect of any part of the proposed land.

(2) For the purposes of this Schedule, a diversion work or associated interest in land is capable of meeting the diversion condition notwithstanding that—

- (a) it is longer in distance than the relevant proposed work it is replacing; or
- (b) in the case of vehicular or staff access, it increases the time taken to travel to the authorised development compared to the relevant proposed work it is replacing,

provided that a diversion work or associated interest in land may not be considered to be adequate where in the reasonable opinion of the undertaker an increase in distance or time (whichever is relevant) would—

- (a) incur unreasonable cost, having regard to both the nature and scale of the relevant proposed work, and the nature and scale of the impact on the South Tees Group development; or
- (b) have a material adverse impact on the timetable for the delivery of the authorised development in accordance with the undertaker's construction programme.

### **Consent for works**

3. Before commencing the construction of any part of the authorised development including any permitted preliminary works within the STG site other than any works within the area of Work No. 1, the undertaker must first submit to the STG entity for its approval the works details for the work and such further particulars as the STG entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.

4. No works comprising any part of the authorised development including any permitted preliminary works within the STG site other than any works within the area of Work No. 1 are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by the STG entity.

5. Any approval of the STG entity required under paragraph 3 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements or conditions in relation to the works details for the protection of apparatus and access to them and to ensure that the respective authorised developments can co-exist within the STG site.

6. The authorised development must be carried out in accordance with the works details approved under paragraph 3 and any requirements or conditions imposed on the approval under paragraph 5 or where there has been a reference to an arbitrator in accordance with paragraph 37 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator.

7. The undertaker must not exercise any of the powers contained in articles 10 to 16 and 18 of this Order within the STG site without the prior written approval of the STG entity, such approval not to be unreasonably withheld or delayed.

### **Co-operation**

8. The STG entity must provide the undertaker with information the undertaker reasonably requests in relation to the South Tees Group development and which the undertaker reasonably needs (and which is reasonably available for disclosure by the STG entity) in order to understand the interactions between the respective authorised developments or to design, build and operate the authorised development.

9. The undertaker must provide the STG entity with information the STG entity reasonably requests in relation to the authorised development and which the STG entity reasonably needs (and which is reasonably available for disclosure by the undertaker) in order to understand the interactions between the respective authorised developments or to design, build and operate the South Tees Group development.

10.—(1) This paragraph applies insofar as—

- (a) the construction of the authorised development may be undertaken on the STG site concurrently with demolition or site preparation works undertaken by the STG entity;
- (b) the construction of the respective authorised developments may be undertaken on the STG site concurrently; or
- (c) the construction, operation or maintenance of one of the respective authorised developments would have an effect on the construction, operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and the STG entity must—

- (a) co-operate with each other with a view to ensuring—
  - (i) the co-ordination of construction programming and the carrying out of the respective authorised developments;
  - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, the STG entity and their respective employees, contractors and sub-contractors; and
  - (iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and the STG entity; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

## **Expenses**

**11.—(1)** Subject to the following provisions of this paragraph, the undertaker must repay to the STG entity the reasonable costs and expenses incurred by them in, or in connection with—

- (a) the authorisation of works details in accordance with paragraphs 3 to 6;
- (b) the process in relation to proposed works and diversion works set out in paragraphs 13 to 27;
- (c) where the relevant diversion work is provided by the STG entity and solely for the use of the undertaker in connection with the authorised development, the construction of a diversion work provided instead of the relevant proposed work;
- (d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider STG site, a proportion of the cost of construction of a diversion work provided instead of the H2T (temporary and permanent works) site access route works or the water connection works, such proportion to be agreed between the undertaker and the STG entity acting reasonably or to be determined by arbitration pursuant to paragraph 37; and
- (e) the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in accordance with paragraphs 33 and 34.

(2) Prior to incurring any expenses associated with the activities outlined in this paragraph 11, the STG entity must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the costs to be incurred.

(3) The expenses associated with the activities outlined in paragraph 11 so far as they relate to the procurement of diversion work instead of the AIL access route works will be incurred by the entity that serves the relevant diversion notice.

## **Indemnity**

**12.—(1)** Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, use, maintenance or failure of any of the works referred to in paragraph 3 and approved under paragraph 4, or any diversion or removal works carried out by the undertaker, any damage is caused to the STG site (including apparatus or other property of a STG entity), or there is any interruption in any service provided, or in the supply of any goods, by the STG entity, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the STG entity in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the STG entity for any other expenses, loss, damages, penalty or costs incurred by the STG entity, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of the STG entity, its officers, employees, servants, contractors or agents; and
- (b) any indirect or consequential loss or loss of profits by the STG entity.

(3) The STG entity must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The STG entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 12 applies.

(5) If requested to do so by the undertaker, the STG entity must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by the STG entity.

### **Provision for diversion work**

**13.** The undertaker must—

- (a) as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development—
  - (i) provide to the STG entity details of its proposed work programme; and
  - (ii) provide such further particulars relating to the proposed works as the STG entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the STG entity, other than information that the undertaker reasonably considers is confidential, within a period of 30 days of a request by the STG entity or such longer period as the STG entity and the undertaker may agree; and
- (b) prior to exercising an identified power in respect of any part of the proposed land issue a work notice to the STG entity for that part.

**14.** If the undertaker intends to change the timing of the proposed work as set out in a proposed work programme issued to the STG entity or the timing of the proposed works set out in a work notice the undertaker must notify the STG entity as soon as reasonably practicable and where the undertaker decides to change timing which was specified in a work notice it must issue a revised work notice to the STG entity,

**15.** The STG entity may issue a proposed diversion notice to the undertaker at any time prior to 30 days after the later of—

- (a) the date of issue of the work notice under paragraph 13(b); or
- (b) the date of issue of the most recent work notice under paragraph 14,

unless the STG entity and the undertaker, acting reasonably, agree such longer period prior to the expiry of the relevant 30 day period.

**16.** Within 28 days of receiving the proposed diversion notice, the undertaker may provide the STG entity with the reasonable technical specifications that are applicable to the proposed diversion work.

**17.—(1)** Within 28 days of receiving the technical specifications provided pursuant to paragraph 16, the STG entity must consider the technical specifications and during that period the parties must use reasonable endeavours to agree the technical specifications that are applicable to the diversion work that is the subject of the proposed diversion notice, and the STG entity must notify the undertaker before the end of that period as to whether it agrees the technical specifications.



(2) If the STG entity and the undertaker parties do not agree the relevant technical specifications pursuant to sub-paragraph (1), the matter is to be settled in accordance with paragraph 37.

**18.** The STG entity may issue a notice (a “diversion notice”) to the undertaker—

- (a) after the 28 day period specified in paragraph 16, in the event that the undertaker does not provide the STG entity with the reasonable technical specifications pursuant to paragraph 16; or
- (b) after the technical specifications are agreed or determined by arbitration pursuant to paragraph 17.

**19.** A diversion notice must set out—

- (a) the diversion work proposed; and
- (b) how the diversion work proposed satisfies so far as relevant each part of the diversion condition.

**20.** If a diversion notice is issued to the undertaker before the expiry of the period under paragraph 15, the undertaker must notify the STG entity no later than 30 days after the date of receipt of the diversion notice confirming whether the undertaker—

- (a) agrees to the diversion work;
- (b) does not agree to the diversion work; or
- (c) requires additional information to consider whether it agrees to the diversion work (an “information notice”).

**21.** In making the decision under paragraph 20 the undertaker must act reasonably and may only issue a notice stating that it does not agree to the diversion work where it considers that the diversion condition is not satisfied.

**22.** Where the undertaker gives an information notice to the STG entity, that notice must set out what additional information is required by the undertaker to decide whether or not it agrees to the diversion notice.

**23.** Where the undertaker notifies the STG entity under paragraph 20(b) that it does not agree to a diversion work, that notice must set out the reasons why the undertaker does not agree that the diversion work satisfies the diversion condition along with an indication of what would be required to make it satisfy the diversion condition.

**24.** If the undertaker issues an information notice to the STG entity, the STG entity may submit further information to the undertaker within 30 days of receipt of the information notice.

**25.** If the STG entity submits further information to the undertaker within 30 days of receipt of the information notice, the undertaker must consider the further information and paragraph 20 applies again provided that the undertaker is not obliged to consider any further information that is received by the undertaker—

- (a) more than 30 days after the date of the information notice issued by the undertaker under paragraph 20(c); or
- (b) in any case 150 days from the date of the undertaker’s work notice under paragraph 13(b) or if relevant 150 days from the date of any revised work notice issued by the undertaker under paragraph 14.

**26.** If the undertaker issues notice to the STG entity under paragraph 20(b) confirming that it does not agree to the diversion notice, the STG entity may submit a further diversion notice to the undertaker to address the undertaker’s reasons for refusal under paragraph 20, provided that the undertaker is not obliged to consider any further diversion notice that is received by the undertaker—

- (a) more than 30 days after the date of the notice issued by the undertaker under paragraph 20(b); or

- (b) in any case 150 days from the date of the undertaker's work notice under paragraph 13(b) or if relevant 150 days from the date of any further work notice issued by the undertaker under paragraph 14.

**27.** If the undertaker issues a notice under paragraph 20(c) the STG entity and the undertaker must use reasonable endeavours to enter into a diversion works agreement within 30 days of the notice on such terms as may be agreed between them, and where a planning permission is still to be obtained for the diversion work, the STG entity must use reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertaker's programme for the construction of the authorised development.

**28.—(1)** Subject to sub-paragraphs (2) and (3), if a diversion works agreement is not entered into within the 30 day period set out in paragraph 27 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) the STG entity or the undertaker may within 15 days of the end of that period refer the matter to arbitration under paragraph 37.

(2) If a diversion works agreement is not entered into within the 30 day period set out in paragraph 27 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) because any planning permission required for the diversion work has still not been obtained, and in the reasonable opinion of the undertaker the planning permission is not likely to be obtained in order to allow the diversion work to be carried out without material delay to the undertaker's programme, the undertaker may issue a notice to the STG entity confirming that it is not entering into the diversion works agreement.

(3) A notice issued by the undertaker under sub-paragraph (2) shall have the same effect as a notice issued by the undertaker under paragraph 26.

**29.** If a reference is made to arbitration under paragraph 37 the arbitrator must determine whether the terms of the diversion works agreement can reasonably be in accordance with the diversion condition and if it can then the arbitrator must determine the terms of the diversion works agreement and which must be in accordance with the diversion condition.

**30.** Where the arbitrator determines that the terms of the diversion works agreement can be in accordance with the diversion condition the STG entity and the undertaker must use all reasonable endeavours to enter into the diversion works agreement on the terms determined by the arbitrator within 15 days of the arbitrator's decision.

**31. If—**

- (a) a diversion works agreement is entered into within the 30 day period set out in paragraph 27; or
- (b) a reference to arbitration is made in accordance with paragraph 37 and a diversion works agreement is entered into within the 15 day period in paragraph 30,

the undertaker must not exercise the identified powers in respect of the relevant proposed land.

**32.—(1) If—**

- (a) no diversion notice is issued by the STG entity to the undertaker before the expiry of the period under paragraph 15;
- (b) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues a notice not agreeing to the diversion work under paragraph 20(b), and no further diversion notice is issued by the STG entity to the undertaker prior to the dates set out in paragraph 26;
- (c) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues an information notice, and no further information is provided by the STG entity to the undertaker prior to the dates set out in paragraph 25;
- (d) paragraph 27 applies and the STG entity and the undertaker do not enter into a diversion works agreement within the 30 day period set out in that paragraph and no reference to arbitration is made prior to the expiry of the period in paragraph 28;

- (e) the arbitrator determines under paragraph 37 that the terms of the diversion works agreement cannot reasonably be in accordance with the diversion condition; or
- (f) paragraph 30 applies and the STG entity has not executed and unconditionally released for completion a diversion works agreement within the 10 day period set out in that paragraph,

the undertaker may exercise the identified powers in respect of the relevant proposed land in order to (as relevant) carry out, use, maintain, operate or decommission the relevant proposed work.

(2) For the avoidance of doubt, in circumstances where sub-paragraph (1) applies, this does not obviate the need for the undertaker to comply with paragraphs 3 to 6 in respect of the relevant proposed work.

### **Removal of apparatus owned or maintained by a STG entity**

**33.—**(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or takes temporary possession of any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of the relevant STG entity to operate, access and maintain that apparatus in that land must not be extinguished, suspended or overridden until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the STG entity in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the STG entity advance written notice of that requirement, together with plan and section for the work proposed, including the proposed position of the alternative apparatus to be provided or constructed, and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the STG entity reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to the STG entity to its reasonable satisfaction (taking into account paragraph 34(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the STG entity must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the STG entity to seek compulsory purchase powers.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the STG entity and the undertaker or settled by arbitration in accordance with paragraph 37.

(5) The STG entity must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration) and the grant to the STG entity of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

**34.—**(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for the STG entity facilities and rights in land for the construction, use, maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the STG

entity or settled by arbitration in accordance with paragraph 37 and which must be no less favourable on the whole to the STG entity than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the STG entity.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the STG entity than the facilities and rights enjoyed by it in respect of the apparatus to be removed (as agreed between the undertaker and the STG entity, or failing agreement, in the opinion of the arbitrator), then the undertaker and the STG entity must agree appropriate compensation for the extent to which the new facilities and rights render the STG entity less able to effectively carry out its activities or require it to do at greater cost.

(3) If the amount of compensation cannot be agreed, the matter may be referred to arbitration in accordance with paragraph 37 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of appropriate compensation by the undertaker to the STG entity as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Protection of apparatus owned or maintained by a STG entity**

**35.**—(1) Where the undertaker seeks approval under paragraph 3 of this Schedule in relation to any specified works, the works details submitted under paragraph 3 must describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(2) As part of its approval under paragraph 3, the STG entity may require (and the undertaker must comply with) such modifications to the works details for specified works as may be reasonably necessary for the purpose of—

- (a) securing its apparatus against interference or risk of damage, and to ensure its continuing safety and operational viability; and
- (b) providing or securing for the STG entity proper and convenient means of access to any apparatus.

(3) The STG entity will be entitled to watch and inspect the execution of specified works, where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(4) Where the STG entity requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved under paragraph 3, must be carried out to the STG entity's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) and the STG entity shall give notice of its requirement for such works within 30 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(5) If the STG entity, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 3 to 6 apply as if the removal of the apparatus had been required by the undertaker.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of the works for which a plan has been submitted for specified works (or part thereof), a new plan for such works, instead

of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(7) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the STG entity notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraphs (2) and (4) insofar as is reasonably practicable in the circumstances.

(8) In this paragraph, “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works, believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

**36.** Where the undertaker takes temporary possession of any land or carries out survey works on land within which is situated apparatus owned or operated by a STG entity, the STG entity’s rights to access and maintain the apparatus are not overridden or suspended by this Order and the STG entity may continue to exercise those rights—

- (a) in an emergency without notice; and
- (b) in non-emergency circumstances where reasonably necessary, having first given the undertaker at least 28 days prior written notice in order to allow the parties to liaise over timing and coordination of their respective works during the period of temporary possession.

### **Arbitration**

**37.** Any difference or dispute arising between the undertaker and the STG entity under this Schedule must, unless otherwise agreed in writing between the undertaker and the STG entity, be referred to and settled by arbitration in accordance with article 46 (arbitration).

### **Interpretation**

**38.—**(1) Any reference to the STG entity in this Schedule means the freehold owner of the relevant part of the STG site.

(2) The relevant STG entity which is the freehold owner referred to in sub-paragraph (1) must consult with all other STG entities that have an interest in the relevant part of the STG site in relation to any obligations, approvals or other functions which the freeholder has pursuant to this Schedule.

### **Miscellaneous**

**39.** Schedule 18 (protective provisions for the protection of third party apparatus) does not apply to apparatus to which this Schedule applies.

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF  
NORTHUMBRIAN WATER LIMITED**

1. For the protection of NWL, the following provisions, unless otherwise agreed in writing between the undertaker and NWL, have effect.

2. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable NWL to fulfil its statutory functions in no less efficient a manner than previously;

“apparatus” means the following items belonging to or maintained by NWL within the Order limits—

(a) in the case of NWL’s water undertaking—

- (i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or “accessories” (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by NWL for the purposes of water supply; and
- (ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and

(b) in the case of NWL’s sewerage undertaking—

- (i) any sewer, drain or disposal works vested in NWL under the Water Industry Act 1991(a); and
- (ii) any sewer, drain or disposal works which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and includes a sludge main, “disposal main” (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

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

“NWL” means Northumbrian Water Limited (company number 02366703), whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

“plan” includes sections, drawings, specifications and method statements; and

“the standard protection strips” means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres;
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres; and
- (e) 6.5 metres where it is a sewer.

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(a) 1991 c.56.

### **Protection strips**

3. The undertaker must not within the standard protection strips interfere with or build over any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with NWL, such agreement not to be unreasonably withheld or delayed, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

### **Protection of NWL Apparatus**

4. Without prejudice to the generality of the foregoing, the alteration, extension, removal or re-location of any apparatus shall not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2016(a) or other replacement legislation and any other associated consents are obtained; and
- (b) if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc. in certain cases) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NWL and NWL has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed and must be given within 28 days from the date the plan of works proposed has been submitted; and
- (c) in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NWL for—
  - (i) the continuing safety and operational viability of the apparatus (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by NWL to substantiate the need for these requirements); and
  - (ii) the requirement for NWL to secure reasonable access to the apparatus.

5. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until NWL has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter apparatus.

6. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable NWL to maintain or use the apparatus no less effectively than was possible before such obstruction.

7. The undertaker, in the case of powers conferred by the Order for the protective work to buildings, must exercise those powers so as not to obstruct or render less convenient the access to any apparatus belonging to NWL without the written consent of NWL.

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(a) S.I. 2016/1154.

### **Unmapped sewers / other apparatus**

**8.**—(1) Where the undertaker identifies any apparatus which may belong to or be maintainable by NWL but which does not appear on any statutory map kept for the purpose by NWL, it shall inform NWL of the existence and location of the apparatus as soon as reasonably practicable.

(2) If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to NWL and afforded the same protection as other NWL assets.

### **Indemnity**

**9.**—(1) Subject to sub-paragraphs (5) and (6), if for any direct reason or in direct consequence of the construction of any of the works by or at the direction of the undertaker referred to in paragraphs 3 to 7 any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NWL, or there is any interruption in any service provided, or in the supply of any goods, by NWL, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NWL in making good any damage or restoring the supply; and
- (b) make reasonable compensation to NWL for any other expenses, loss, damages, penalty or costs reasonably incurred by NWL, by direct reason or in direct consequence of any such damage or interruption.

(2) NWL must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 9 applies. If requested to do so by the undertaker, NWL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 9 for claims reasonably incurred by NWL.

(3) Any dispute arising between the undertaker and NWL under this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

(4) The fact that any act or thing may have been done by NWL on behalf of the undertaker or in accordance with a plan approved by NWL or in accordance with any requirement of NWL or under its supervision does not, subject to sub-paragraph (5) excuse the undertaker from liability under the provisions of sub-paragraph (1) unless NWL fails to carry out and execute the works properly with due care and attention and in a skilful and professional manner or in a manner that does not accord with the approved plan.

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

(6) NWL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Duty to cooperate**

**10.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or NWL requires the removal of apparatus or NWL makes requirements for the protection or alteration of apparatus, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NWL's undertaking and NWL must use all reasonable endeavours to co-operate with the undertaker for that purpose.



**11.** Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NWL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**12.** Prior to carrying out any works within the Order limits (as defined in the Order) NWL must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE BREAGH PIPELINE OWNERS

1. For the protection of the Breagh Pipeline Owners, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the Breagh Pipeline Owners.

2. In this Schedule—

“Breagh Pipeline” means the twenty inch (20”) diameter pipeline and associated three inch (3”) monoethylene glycol pipeline and fibre-optic cable extending from the field known as the Breagh field located in UKCS blocks 42/12a and 42/13a to the onshore gas reception and processing terminal known as the Teesside Gas Processing Plant (located in Seal Sands, Teesside) owned by the Breagh Pipeline Owners and operated by the Breagh Pipeline Operator used at various times for the passage of natural gas and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962(a);

“Breagh Pipeline Operations” means the operations or property, including the leasehold interests, rights of access and easements relating to the construction and operation of the Breagh Pipeline, within the Order limits vested in the Breagh Pipeline Owners and/or the Breagh Pipeline Operator;

“Breagh Pipeline Operator” means the person, firm or company designated by the Breagh Pipeline Owners to operate the Breagh Pipeline on their behalf, being, at the date of this Order, INEOS E&P (UK) Limited (company number 04376184), whose registered address is at Anchor House, 15-19 Britten Street, London, SW3 3TY and including any successor or assign in such capacity;

“Breagh Pipeline Owners” means any company that owns the Breagh Pipeline being, at the date of this Order, INEOS UK SNS Limited (company number 01021338) and ONE-DYAS UK LIMITED (company number 03531783), whose registered address is Anchor House, 15-19 Britten Street, London, SW3 3TY in respect of INEOS UK SNS Limited and 8th Floor, 100 Bishopsgate, London, EC2N 4AG in respect of ONE-DYAS UK LIMITED, and including any successors and assignees in such capacity; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 3.

### Consent under this Schedule

3. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of or access to the Breagh Pipeline or the Breagh Pipeline Operations, the undertaker must submit to the Breagh Pipeline Owners the works details for the proposed works and such further particulars as the Breagh Pipeline Owners may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

4. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of or access to the Breagh Pipeline or the Breagh Pipeline

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(a) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

Operations are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by the Breagh Pipeline Owners.

5.—(1) Any approval of the Breagh Pipeline Owners required under paragraph 4 must not be unreasonably withheld or delayed and must be given within 28 days from the date the works details are submitted under paragraph 3, but may be given subject to such reasonable requirements as the Breagh Pipeline Owners may require to be made for—

- (a) the continuing safety and operational viability of the Breagh Pipeline (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by the Breagh Pipeline Owners to substantiate the need for these requirements); and
- (b) the requirement for the Breagh Pipeline Owners to have—
  - (i) uninterrupted and unimpeded emergency access with or without vehicles to the Breagh Pipeline and the Breagh Pipeline Operations at all times; and
  - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Breagh Pipeline and the Breagh Pipeline Operations.

(2) Where the Breagh Pipeline Owners can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the Breagh Pipeline and the Breagh Pipeline Operations they are entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the Breagh Pipeline Owners that the authorised development will not significantly adversely affect the safety of the Breagh Pipeline and Breagh Pipeline Operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 4 and any requirements imposed on the approval under sub-paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 8 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 8.

### **Compliance with requirements, etc. applying to the Breagh Pipeline and the Breagh Pipeline Operations**

6. In undertaking any works in relation to the Breagh Pipeline and the Breagh Pipeline Operations or exercising any rights relating to or affecting the Breagh Pipeline and the Breagh Pipeline Operations, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the Breagh Pipeline and the Breagh Pipeline Operations.

### **Indemnity**

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to the Breagh Pipeline and the Breagh Pipeline Operations or there is any interruption in any service provided, or in the supply of any goods, by the Breagh Pipeline Owners, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the Breagh Pipeline Owners in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the Breagh Pipeline Owners for any other expenses, loss, damages, penalty or costs incurred by the Breagh Pipeline Owners, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of the Breagh Pipeline Owners, its officers, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by the Breagh Pipeline Owners.

(3) The Breagh Pipeline Owners must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The Breagh Pipeline Owners must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 7 applies.

(5) If requested to do so by the undertaker, the Breagh Pipeline Owners must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by the Breagh Pipeline Owners.

### **Arbitration**

**8.** Any difference or dispute arising between the undertaker and the Breagh Pipeline Owners under this Schedule must, unless otherwise agreed in writing between the undertaker and the Breagh Pipeline Owners, be referred to and settled by arbitration in accordance with article 46 (arbitration).

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF CATS  
NORTH SEA LIMITED**

**Application**

1. For the protection of CATS, the following provisions have effect, unless otherwise agreed in writing between the undertaker and CATS.

**Interpretation**

2. In this Schedule—

“CATS” means CATS North Sea Limited (company number 09250798), whose registered address is Suite 17th Floor, 50 Broadway, London, United Kingdom, SW1H 0BL and any successor in title or function to the CATS pipelines;

“CATS pipeline(s)” means the following pipelines, owned by CATS and operated by Wood UK Ltd—

- (a) The 36” CATS pipeline (PL-774) transporting high pressure natural gas 411.84km (404km subsea, 7.84km onshore) from the CATS Riser Platform, located in the Central Graben Development of the North Sea, to processing facilities at the CATS Terminal in Teesside;
- (b) Onshore 6” Condensate export pipeline (PL-937) transporting natural gas condensate 2.87km from the CATS Terminal to Sabic, North Tees plant;
- (c) Onshore 6” Condensate export pipeline (PL-938) transporting natural gas condensate 2.45km from the CATS Terminal to the Navigator Terminals storage site;
- (d) Onshore 6” Propane pipeline (CAT-Pipeline-04) transporting propane 1.09km from the CATS Terminal to ConocoPhillips storage site;
- (e) CAT-Pipeline-05 6” Butane pipeline transporting butane 1.09km from the CATS Terminal to ConocoPhillips storage site;

“CATS requirements” means the requirements applicable for works undertaken within 50 metres of the CATS pipelines as set out in the—

- (a) CATS Wayleaves Guidance for Landowners and Third Parties, Doc Number: CAT-PPI-PRC-019;
- (b) CATS Conditions and Restrictions for Work Activities in Close Proximity to CATS Pipelines, Doc Number: CAT-PPI-PRC-020; and
- (c) CATS Procedures for the Excavation and Backfill of CATS Pipelines, Doc Number: CAT-PPI-PRC-021,

or any updates or amendments thereto as notified to the undertaker in writing;

“work details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 3.

**Consent under this Schedule**

3. Before commencing any part of the authorised development within 50 metres of the CATS pipelines, the undertaker must submit to CATS the works details for the proposed works and such

further particulars as CATS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require in line with the CATS requirements.

4. No works comprising any part of the authorised development within 50 metres of the CATS pipelines are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by CATS.

5.—(1) Any approval of CATS required under paragraph 4 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CATS may require to be made having regard to the CATS requirements.

(2) Where CATS consider that the authorised development will adversely affect the safe operation of the CATS pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of CATS that the authorised development will not adversely affect the safe operation of the CATS pipeline.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 4 and any requirements imposed on the approval under sub-paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 13 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 13.

6. Where formal consent is required under the CATS requirements for works within the wayleave of the CATS pipelines (between 3.5 metres to 7.5 metres either side of the pipeline, depending on location), approval given by CATS under paragraph 4 constitutes formal consent for the purposes of the CATS requirements.

#### **Compliance with the CATS requirements**

7. In the undertaking any works or exercising any rights within 50 metres of the CATS pipelines, the undertaker must comply with such conditions, requirements or regulations as are set out in the CATS requirements.

8. No explosives for blasting are to be used within 400 metres of any part of the CATS pipeline(s) or associated installations, until the details in respect of those works have been submitted to and approved by CATS, such approval not to be unreasonably withheld or delayed and shall be deemed to have been given if no response is received from CATS within 60 days of a request having been made by the undertaker.

#### **Monitoring for damage to pipelines**

9.—(1) When undertaking any works or exercising any rights within 50 metres of the CATS pipelines, the undertaker must monitor the CATS pipelines to establish whether damage has occurred.

(2) Where any damage occurs to the CATS pipelines as a result of the works, the undertaker must immediately cease all work in the vicinity of the damage and must notify CATS to enable repairs to be carried out to the reasonable satisfaction of CATS.

(3) If damage has occurred to the CATS pipelines as a result of the works the undertaker will, at the request and election of CATS—

- (a) afford CATS all reasonable facilities to enable it to fully and properly repair and test the CATS pipelines and pay to CATS its costs incurred in doing so including the costs of testing the effectiveness of the repairs and cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected pipeline as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the reasonable

satisfaction of CATS to have effectively repaired the affected pipeline before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where CATS agrees otherwise in writing) provide CATS with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of any works within 50 metres of the CATS pipelines if damage is found to have occurred to any of the CATS pipelines as a result of the relevant works, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then CATS is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

**10.—**(1) If any damage occurs to a CATS pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and CATS must be notified immediately.

(2) Where there is a leakage or escape, the undertaker must immediately—

- (a) evacuate all personnel from the immediate vicinity of the leak;
- (b) inform CATS;
- (c) prevent any approach by the public;
- (d) shut down any machinery and other sources of ignition within at least 350 metres from the leakage; and
- (e) assist emergency services as may be requested.

## **Indemnity**

**11.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to the CATS Pipelines, or there is any interruption in any service provided, or in the supply of any goods, by CATS, the undertaker must—

- (a) bear and pay the cost reasonably incurred by CATS in making good such damage or restoring the supply; and
- (b) make reasonable compensation to CATS for any other expenses, loss, damages, penalty or costs incurred by CATS, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of CATS, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by CATS.

(3) CATS must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) CATS must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 11 applies.

(5) If requested to do so by the undertaker, CATS must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph for claims reasonably incurred by CATS.

## **Costs**

**12.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CATS the reasonable expenses incurred by them in, or in connection with, the inspection, removal, alteration or protection of any CATS pipeline which may be required in consequence of the execution of any such works referred to or approved under this Schedule, including without limitation—

- (a) authorisation of works details in accordance with paragraphs 3 to 6;
- (b) the engagement of an engineer and their observation of the authorised works affecting the CATS pipelines and the provision of safety advice in accordance with the CATS requirements; and
- (c) any reasonable costs incurred by CATS in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary.

(2) Prior to incurring any fees, costs, charges or expenses associated with the activities outlined in sub-paragraph (1), CATS must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the fees, costs, charges or expenses to be incurred.

(3) Any fees, costs, charges and expenses reasonably incurred by the operating partner of the CATS pipeline (who for the time being is Wood Group UK Limited) shall not be notifiable costs in terms of sub-paragraph (2).

## **Arbitration**

**13.** Any difference or dispute arising between the undertaker and CATS under this Schedule must, unless otherwise agreed in writing between the undertaker and CATS, be referred to and settled by arbitration in accordance with article 46 (arbitration).



**PROTECTIVE PROVISIONS FOR THE PROTECTION OF SABIC  
PETROCHEMICALS UK LIMITED**

**Benefit of protective provisions**

1. The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.

**Interpretation**

2.—(1) In this Schedule—

“access roads” means the access roads within the Order limits—

- (a) giving access to pipelines or the protected crossing; or
- (b) within or giving access to the North Tees facilities;

“affected assets” means—

- (a) apparatus which would be physically affected by the relevant works;
- (b) the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and
- (c) in relation to the exercise of the identified powers, any apparatus in the protected land which would be affected by the exercise of that power;

“alternative apparatus” means new apparatus to be provided by the undertaker to replace existing apparatus which the undertaker intends to remove, such new apparatus to be to a specification and standard which will serve SABIC in a manner which is no less effective or efficient than previously;

“apparatus” means pipelines, cables and drains owned or operated by SABIC and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any cathodic protection, coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962 as if the pipelines were a “pipe-line” in section 65(1) of that Act<sup>(a)</sup>;

“construction access plan” means a plan identifying how access will be maintained to apparatus the protected crossing, and to and within the North Tees Facilities during the proposed construction or maintenance work including—

- (a) any restrictions on general access by SABIC, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;
- (c) details of how the needs and requirements of SABIC (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;
- (d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for SABIC; and

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(a) 1962 c.58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

(e) details of how reasonable access with or without vehicles will be retained or an alternative provided for SABIC to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;

“construction or maintenance works” means any works to construct, maintain or decommission the authorised development;

“damage” includes all damage to apparatus including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

“engineer” means an independent engineer appointed by SABIC for the purposes of this Order;

“identified powers” means the powers conferred by the following provisions of this Order—

(a) article 11 (street works);

(b) article 12 (construction and maintenance of new or altered means of access);

(c) article 13 (temporary closure of streets and public rights of way);

(d) article 14 (access to works);

(e) article 17 (discharge of water);

(f) article 20 (authority to survey and investigate the land);

(g) article 22 (compulsory acquisition of land);

(h) article 23 (power to override easements and other rights);

(i) article 25 (compulsory acquisition of rights etc.);

(j) article 26 (private rights);

(k) article 28 (acquisition of subsoil or airspace only);

(l) article 31 (rights under or over streets);

(m) article 32 (temporary use of land for carrying out the authorised development); and

(n) article 33 (temporary use of land for maintaining the authorised development);

“major works” means works by SABIC requiring the closure, diversion or regulation of any roads serving the apparatus, the protected crossing and the North Tees Facilities;

“North Tees Facilities” means the site at North Tees Works at which SABIC operates various facilities;

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

“owner” means—

(a) in relation to the pipeline corridor, any person—

(i) with an interest in a pipeline in the pipeline corridor;

(ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or

(iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;

(b) in relation to the access roads, any person—

(i) with an interest in the access roads; or

(ii) with private rights of way on or over the access roads;

(c) in relation to the protected crossing, any person—

(i) with an interest in the protected crossing;

(ii) with rights in relation to the protected crossing; or

(iii) with pipelines in or comprising the protected crossing; and

(d) in relation to protected land means any person falling within paragraphs (a) to (c) above;

“pipeline corridor” means the Sembcorp Protection Corridor as defined in Schedule 42 of this Order;

“pipeline” means any apparatus owned or operated by SABIC located in the pipeline corridor or in or comprising the protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;

“pipeline survey” means a survey of the pipeline corridor and the protected crossing to establish (if not known)—

- (a) the precise location of the pipeline and the protected crossing;
- (b) the specification of the pipelines and protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey;
- (c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;
- (d) the precise location of any easement widths or rights (where it is reasonably possible to establish this);

“protected crossing” means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

“protected land” means such parts of the Order land as fall within—

- (a) the access roads;
- (b) the pipeline corridor;
- (c) the protected crossing; and
- (d) the North Tees Facilities;

“relevant work” means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

“SABIC” means—

- (a) SABIC UK Petrochemicals Limited (company number 03767075) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF; and
- (b) SABIC Tees Holdings Limited (company number 06009440) whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF,

and any successor in title to SABIC’s rights and interests in the protected land;

“specified person” means—

- (a) Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited;
- (b) Company Secretary, SABIC Tees Holdings Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC Tees Holdings Limited, or

such other person or address within the United Kingdom as each of those persons may notify to the undertaker in writing;

“temporary crossing point” means a point where construction traffic will cross over a pipeline and, unless the pipeline is under a carriageway of adequate standard of construction, any proposed reinforcement of that crossing;

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of any proposed temporary crossing points;
- (c) details of how the undertaker proposes to indicate the location of the easement widths taken from the actual location of the pipelines shown on the pipeline survey during construction of the authorised development, including any fencing or signage;
- (d) details of methods and locations of any piling proposed to be undertaken under paragraph 11;

- (e) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 12;
- (f) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 13;
- (g) details of the location of any pipelines affected by the oversailing provisions in paragraph 14, including details of the proposed clearance;
- (h) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;
- (i) details of the undertaker and their principal contractors' management of change procedures;
- (j) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (k) details of the electrical design of the authorised works in sufficient detail to allow an independent specialist to assess whether AC interference from the authorised development may cause damage to the pipeline;
- (l) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (m) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;
- (n) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and
- (o) any further particulars provided in accordance with paragraph 4(2).

(2) Where this Schedule provides that the acknowledgement, approval, agreement, consent or authorisation of SABIC or the specified persons is required for any thing (or that any thing must be done to SABIC's reasonable satisfaction—

- (a) that acknowledgement, approval, agreement, consent or authorisation (or intimation that the matter in question has been done to SABIC's reasonable satisfaction) shall not be unreasonably withheld or delayed; and
- (b) the grant or issue of such acknowledgement, approval, consent or authorisation (or intimation) by any one or more of the entities which constitute SABIC or the persons who constitute the specified persons as defined in sub-paragraph (1) (as the case may be) shall constitute approval, agreement, consent or authorisation on behalf of all of them.

### **Pipeline survey**

**3.**—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect the protected crossing the undertaker must—

- (a) carry out and complete the pipeline survey; and
- (b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys.

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

## **Authorisation of works details affecting pipelines or protected crossing**

4.—(1) Before commencing any part of a relevant work the undertaker must submit to SABIC the works details in respect of any affected asset.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as SABIC may, within 30 days from the receipt of the works details under sub-paragraph (1), reasonably require.

(3) Where the undertaker submits works details under sub-paragraph (1) or further particulars under sub-paragraph (2), the specified persons shall immediately provide the undertaker with a written acknowledgement of receipt in respect of those works details or further particulars (as the case may be).

5. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

- (a) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by SABIC; or
- (b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an arbitrator under paragraph 7(4); or
- (c) authorisation is deemed to have been given in accordance with paragraph 7(1).

6.—(1) Any authorisation by SABIC required under paragraph 5(a) may be given subject to such reasonable conditions as SABIC may require to be made for—

- (a) the continuing safety and operation or viability of the affected asset; and
- (b) the requirement for SABIC to have—
  - (i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and
  - (ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 5 and any conditions imposed on the authorisation under paragraph 6(1).

(3) Where there has been a reference to arbitration in accordance with paragraphs 7(2) and 31 and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the aware of the arbitrator under paragraph 7(3).

7.—(1) In the event that—

- (a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgement of receipt from a specified person under paragraph 4(3) and no further particulars have been requested under paragraph 4(2); or
- (b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgement of receipt from a specified person of the further particulars supplied under paragraph 4(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) If the undertaker considers that—

- (a) any further particulars requested by SABIC under paragraph 4(2) are not reasonably required;
- (b) SABIC has unreasonably withheld its authorisation under paragraph 6(1); or
- (c) SABIC has given its authorisation under paragraph 6(1) subject to unreasonable conditions,

the undertaker may refer the matter to an arbitrator for determination under paragraph 31.

- (3) Where the matter is referred to arbitration under sub-paragraph (2)(a)—
- (a) the arbitrator is to determine whether or not the further particulars must be provided by the undertaker; and
  - (b) the undertaker is not required to provide them unless directed so to do by the arbitrator.
- (4) Where the matter is referred to arbitration under sub-paragraph (2)(b) or (2)(c) the arbitrator is to determine whether or not authorisation should be given and, if so the conditions which should reasonably be attached to the authorisation under paragraphs 6(1)(a) and 6(1)(b).

### **Notice of works**

**8.** The undertaker must provide to SABIC a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

### **Further provisions about works**

- 9.—**(1) Before carrying out a relevant work the undertaker must—
- (a) provide SABIC with baseline data which will be used in the cathodic protection assessment of any existing pipeline; and
  - (b) carry out a pipeline settlement and stress analysis to demonstrate any potential pipeline movement will not present an integrity risk to the affected asset.
- (2) The pipelines must be located by hand digging prior to the use of mechanical excavation provided that any excavation outside of 2 metres of the centreline of a pipeline may be dug by mechanical means.

**10.** No explosives are to be used within the protected land.

**11.—**(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to SABIC for approval in accordance with paragraph 4.

**12.—**(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by SABIC under paragraph 4.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to SABIC under paragraph 4.

**13.—**(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to SABIC.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to a pipeline which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to SABIC a capitalised sum representing the increase of the costs (if any)

which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewing any such alterations or additions.

(6) In the event of a dispute as to—

- (a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or
- (b) the amount of any payment under sub-paragraph (5),

the undertaker or SABIC may refer the matter for arbitration under paragraph 31.

**14.—**(1) A minimum clearance of 500 millimetres in respect of above ground apparatus and 600 millimetres in respect of buried apparatus must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

(2) No manholes or chambers are to be built over or round the pipelines.

### **Monitoring for damage to affected assets**

**15.—**(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets within the Order limits to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify SABIC to enable repairs to be carried out to the reasonable satisfaction of SABIC.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of SABIC—

- (a) afford SABIC all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to SABIC its costs incurred in doing so including the costs of testing the effectiveness of the repairs, any cathodic protection and any further works or testing shown by that testing to be reasonably necessary; or
- (b) fully and properly repair the affected assets as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of SABIC to have effectively repaired the affected assets before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where SABIC agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then SABIC is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

**16.—**(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and SABIC must be notified immediately.

(2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

- (a) remove all personnel from the immediate vicinity of the leak;
- (b) inform SABIC;
- (c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and
- (d) assist emergency services as may be requested.

### **Compliance with requirements, etc. applying to the protected land**

17.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting SABIC as an owner of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

- (a) introduced after the date on which the notice of the works was given under paragraph 8; or
- (b) determined by arbitration following a determination under paragraph 31 to unreasonably—
  - (i) create significant engineering, technical or programming difficulties; or
  - (ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

### **Access for construction and maintenance**

18.—(1) Before carrying out any construction or maintenance works affecting SABIC's access rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with SABIC.

(2) The undertaker must take account of the responses to any consultation referred to in sub-paragraph (1) before approving the construction access plan.

19.—(1) In preparing a construction access plan under paragraph 18 the undertaker must—

- (a) establish the programme for SABIC's major works in the pipeline corridor and the North Tees Facilities and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) where it proposes to restrict or extinguish SABIC's access to the protected land or any pipeline first provide an alternative or replacement means of access which is not materially less advantageous to SABIC.

(2) Where a reference is made to arbitration under paragraph 31 in relation to any disagreement about a construction access plan, in addition to the criteria set out in paragraph 31(5) the arbitrator must have regard to—

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for SABIC to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on SABIC.

(3) In this paragraph, "programmed", in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are



programmed to be carried out provided that the period covered by such dates must be the length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

**20.**—(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on SABIC.

(2) Where SABIC or the undertaker refers the construction access plan to arbitration for determination under paragraph 31, no works affecting access rights over the access roads may commence until that determination has been provided.

(3) In carrying out construction or maintenance works the undertaker must at all times comply with the construction access plan.

### **Mitigation in respect of SABIC apparatus, etc.**

**21.**—(1) The undertaker must not in the exercise of the identified powers acquire, appropriate, extinguish, suspend or override any rights of SABIC in the protected land if the authorised development can reasonably and practicably be carried out without such acquisition, appropriation, extinguishment, suspension or override.

(2) The undertaker must in the exercise of the identified powers at all times act so as to minimise, as far as reasonably practicable, any detrimental effects on SABIC, including any disruption to access and supplies and other services that are required by them in order to carry out their operations.

**22.**—(1) SABIC's apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of the alternative apparatus have been granted to SABIC.

(2) If alternative apparatus is to be provided under sub-paragraph (1)—

(a) paragraphs 4 to 20 of this Schedule shall apply as if the details of that alternative apparatus and the carrying out of the works to provide and construct the alternative apparatus constituted the carrying out of a relevant work, subject to the following amendments—

(i) in paragraph 8 the notice period of “not less than 28 days” will be replaced with a period of “not less than 3 calendar months unless otherwise agreed with SABIC”; and

(ii) in paragraph 6(1) there shall be added immediately before paragraph 6(1)(a) a new paragraph (aa) as follows—

“(aa) without prejudice to paragraph (a), the timing of the works to construct and bring into operation the alternative apparatus so as to reduce so far as reasonably possible the detrimental effects on SABIC's operations;”

(b) the undertaker will have special regard to its obligations under paragraph 21(2).

(3) Any alternative apparatus to be constructed under this Schedule must be constructed in such manner and in such line or situation as may be authorised or deemed to be authorised under paragraph 5.

(4) Where under sub-paragraph (1) facilities and rights must be granted to SABIC those facilities and rights must be on such terms and conditions as may be agreed between the undertaker and SABIC or in default of agreement determined by an arbitrator under paragraph 31, and such terms must be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(5) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, or the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by SABIC in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of

compensation by the undertaker to SABIC as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

### **Insurance**

**23.—**(1) Before carrying out any part of the authorised development on the protected land, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer against its liabilities under paragraph 25 in accordance with the terms and level of cover as may be agreed in writing between the undertaker and SABIC or, in the case of dispute, in accordance with the terms and level of cover determined by an arbitrator under paragraph 31, and evidence of that insurance must be provided on request to SABIC.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify SABIC of details of the terms of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to the authorised development affecting SABIC during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover as may be agreed in writing between the undertaker and SABIC or at such level as may otherwise be determined by an arbitrator under paragraph 31.

**24.** If SABIC has a dispute about the proposed insurance (including the terms of level of cover) to be provided under paragraph 23—

- (a) SABIC may refer the matter to an arbitrator for determination under paragraph 31; and
- (b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 31 is completed, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

### **Costs**

**25.—**(1) The undertaker must repay to SABIC all reasonable fees, costs, charges and expenses reasonably incurred by SABIC in relation to these protective provisions in respect of—

- (a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;
- (b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 8;
- (c) responding to the consultation on piling under paragraph 11;
- (d) considering the effectiveness of any compacting which has taken place under paragraph 13, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;
- (e) the repair and testing of a pipeline or protected crossing under paragraph 15;
- (f) considering and responding to consultation in relation to the construction access plan under paragraph 18 and providing details of their programme for major works to the undertaker under paragraph 19;
- (g) dealing with any request for consent, approval or agreement by the undertaker under paragraph 22; and
- (h) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 23,

including the reasonable costs incurred by SABIC in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.

(2) Subject to the following provisions of this paragraph, if by reason or in consequence of the construction of any of the works referred to in paragraph 4, any damage is caused to the affected assets or property of SABIC, or there is any interruption in any service provided, or in the supply of any goods, by SABIC, the undertaker must—

- (a) bear and pay the cost reasonably incurred by SABIC in making good such damage or restoring the supply; and
- (b) make reasonable compensation to SABIC for any other expenses, loss, damages, penalty or costs incurred by SABIC, by reason or in consequence of any such damage or interruption.

(3) Nothing in sub-paragraphs (1) or (2) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of SABIC, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by SABIC.

(4) SABIC must give the undertaker reasonable notice of any claim or demand under this paragraph and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) SABIC must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Schedule and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Schedule.

(6) In the assessment of any sums payable to SABIC under this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, SABIC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

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

### **Further protection in relation to the exercise of powers under the Order**

**26.** The undertaker must give written notice to SABIC of the terms and level of cover of any guarantee or alternative form of security put in place under article 47 (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

**27.** The undertaker must give written notice to SABIC if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer benefit of this Order), and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

28. The undertaker, must when requested to do so by SABIC, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) in electronic form.

29. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to SABIC.

30. Where SABIC has provided an email address for service in respect of a specified person, article 45(1)(a) (service of notices) will not apply to the service of any notice under this Schedule, which must instead be effected by electronic means.

### **Arbitration**

31.—(1) Article 46 (arbitration) applied to this Schedule subject to the following provisions of this paragraph.

(2) Subject to sub-paragraph (4), the fees of the arbitrator are payable by the parties in such proportions as the arbitrator may determine or, in the absence of such determination, equally.

(3) The arbitrator must—

- (a) invite the parties to make a submission in writing and copied to the other party to be received by the arbitrator within 21 days of the arbitrator's appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission under paragraph (a);
- (c) issue a decision within 42 days of receipt of—
  - (i) the submissions under paragraph (b); or
  - (ii) if no submissions are submitted under that paragraph, the submissions under paragraph (a); and
- (d) give reasons for the arbitrator's decision.

(4) If the arbitrator does not issue the decision within the time required by sub-paragraph (3)(c) then—

- (a) the arbitrator is not entitled to any payment in respect of their fees; and
- (b) the matter in question shall immediately be referred to a new arbitrator in which case—
  - (i) the parties shall immediately upon the new arbitrator's appointment provide the new arbitrator with copies of the written submissions and comments previously provided under sub-paragraphs (3)(a) and (3)(b);
  - (ii) no further submissions or comments may be requested by or provided to the new arbitrator in addition to those provided pursuant to sub-paragraph (i); and
  - (iii) the new arbitrator shall then proceed to comply with sub-paragraphs (3)(c) and (3)(d).

(5) An arbitrator appointed for the purposes of this Schedule must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effect that the consent in question would have on SABIC's operations and the operations of the UK ethylene production and supply industry;
- (e) the likely duration and financial and economic consequences of any cessation of or interruption of ethylene production and supply including the costs associated with the restoration of production;
- (f) the ability of SABIC to undertake its operations or development in a timely and cost-effective manner, including any statutory or regulatory duties, requirements or obligations;

- (g) whether this Order provides any alternative powers by which the undertaker could reasonably achieve the development outcome sought in a manner that would reduce or eliminate adverse effects on SABIC and the UK ethylene production and supply industry;
- (h) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (i) any other important and relevant considerations.

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF PD  
TEESPORT LIMITED**

1. For the protection of PD Teesport, the following provisions have effect, unless otherwise agreed in writing between the undertaker and PD Teesport.

2. In this Schedule—

“PD Teesport” means PD Teesport Limited (company number 02636007) and any successor in title or function to the PD Teesport operations;

“PD Teesport operations” means the port operations or property (including all freehold, leasehold, easements, wayleaves, licences and other rights) vested in PD Teesport Limited (or any related company whose assets or operations are impacted by the construction, maintenance and operation of the authorised development), including access to and from those operations or activities via Tees Dock Road and access, use and occupation of the Redcar Bulk Terminal as well as access over Seal Sands Road;

“road user(s)” means any person who has a—

- (a) right to use Seal Sands Road (including parties authorised by PD Teesport);
- (b) need to use Seal Sands Road to access property or facilities owned, operated or occupied by them; and
- (c) need to use Seal Sands Road or in connection with undertaking their business operations or statutory functions;

“Seal Sands Road” means any part of Seal Sands Road within the Order limits;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access route for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 3.

**Consent under this Schedule**

3. Before commencing any part of the authorised development—

- (a) that would have an effect on the PD Teesport operations;
- (b) located on or in immediate proximity of the PD Teesport operations; or
- (c) that would affect the use of Seal Sands Road by PD Teesport and road users (such access to be along the existing highway route at Seal Sands Road),

the undertaker must submit to PD Teesport the works details for the proposed works and such further particulars as PD Teesport may, within 21 days from the day on which the works details are submitted under this paragraph, reasonably require.

4. No works comprising any part of the authorised development—

- (a) that would have an effect on the PD Teesport operations;
- (b) located on or in immediate proximity of the PD Teesport operations; or
- (c) located on or in immediate proximity of the PD Teesport operations so as to affect use of Seal Sands Road by PD Teesport and road users (such access to be along the existing highway route at Seal Sands Road),

are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by PD Teesport, such approval to be provided no later than 21 days from

the later of the details of the proposed works being provided or the provision of the last such further particulars as may have been requested by PD Teesport in respect of the works.

5. Any approval of PD Teesport required under paragraph 4 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as PD Teesport may require to be made for—

- (a) the continuing safety, operational activity or business interests of the PD Teesport operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation or other form of evidence will be provided by PD Teesport to substantiate the need for these requirements); and
- (b) the requirement for PD Teesport to have uninterrupted and unimpeded access (including river access) to PD Teesport operations at all times.

6. The authorised development must be carried out in accordance with the works details approved under paragraph 4 and any requirements imposed on the approval under paragraph 5.

7. Where there has been a reference to an arbitrator in accordance with paragraph 9 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 9.

### **Indemnity**

8.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to the PD Teesport operations, or there is any interruption in any service provided, or in the supply of any goods, by PD Teesport, the undertaker must—

- (a) bear and pay the cost reasonably incurred by PD Teesport in making good such damage or restoring the supply; and
- (b) indemnify PD Teesport for any other expenses, loss (including loss of profits), damages, penalty, claims, investigations, demands, charges, actions, notices, proceedings, orders, awards, judgments, damages, other liabilities and expenses (including legal fees, expenses and fines) or costs incurred of any kind or nature whatsoever by them, by reason or in consequence of any such damage or interruption.

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

(3) PD Teesport must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

- (a) keep PD Teesport fully informed of the developments and material elements of the proceedings;
- (b) take account of the views of PD Teesport before taking any action in relation to the claim;
- (c) not bring the name of PD Teesport or any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and
- (d) not pay or settle such claims without the prior written consent of PD Teesport, such consent not to be unreasonably withheld or delayed.

(5) PD Teesport must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 8 applies.

(6) If requested to do so by the undertaker, PD Teesport must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(7) The undertaker shall only be liable under this paragraph 8 for claims reasonably incurred by PD Teesport.

### **Arbitration**

9. Any difference or dispute arising between the undertaker and PD Teesport under this Schedule must, unless otherwise agreed in writing between the undertaker and PD Teesport, be referred to and settled by arbitration in accordance with article 46 (arbitration).



**PROTECTIVE PROVISIONS FOR THE PROTECTION OF REDCAR  
BULK TERMINAL LIMITED**

1. For the protection of RBT, the following provisions have effect, unless otherwise agreed in writing between the undertaker and RBT.

2. In this Schedule—

“apparatus” means any mains, pipes, cables or other apparatus within the Order limits to provide gas, water, waste, electricity and/or electronic communications to the RBT site and /or land within the vicinity of the RBT site which is relied on or used for the RBT operations together with any replacement of that apparatus pursuant to the Order;

“alternative access” means appropriate alternative road or rail access which enables RBT, NZT and RBT’s leaseholders, sub-tenants and licensees to access the RBT operations and RBT site in a manner no less efficiently than previously by means of RBT’s existing road and rail accesses;

“alternative apparatus” means appropriate alternative apparatus which enables gas, water, waste, electricity and electronic communications supply which is relied on or used for the RBT operations to be provided in a manner no less efficiently than previously by existing apparatus;

“NZT” means the Net Zero Teesside project currently operated by Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited, acting pursuant to the NZT Order;

“NZT Order” means The Net Zero Teesside Order 2024;

“offloading procedure” means the procedure whereby the undertaker, its employees, contractors or sub-contractors are offloading materials, plant or machinery required for the authorised development at the wharf within the RBT site, such procedure to commence when the undertaker, its employees, contractors or sub-contractors have commenced docking the relevant vessel at the wharf for the purposes of such offloading;

“RBT” means Redcar Bulk Terminal Limited (company number 07402297), whose registered address is Time Central, 32 Gallowgate, Newcastle Upon Tyne, Tyne and Wear, United Kingdom, NE1 4BF and any successor in title or function to the RBT operations;

“the RBT operations” means the port business and other operations of RBT, its leaseholders, sub-tenants and licensees carried out upon or partly upon the RBT site, including RBT’s obligations to third parties such as (but not limited to) NZT;

“the RBT site” means land and property within the Order limits, vested in RBT;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working, management measures and locations on the RBT site;
- (c) details of the timing of execution of works and any interference this may cause to the RBT operations;
- (d) details of any management measures (including details of access routes for vehicles to undertake) which must be put in place to ensure that road and rail traffic is still able to access the RBT operations and the RBT site (unless it would be unsafe to do so in which case such details must provide details of how alternative access is to be provided);
- (e) details of lifting and scheduling activities on the RBT site, including the programming and access requirement for any offloading procedures; and
- (f) any further particulars provided in response to a request under paragraph 4.

### **Interference with apparatus and access**

3.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is removed, interrupted, severed or disconnected, that apparatus must not be removed, interrupted, severed or disconnected until details of the alternative apparatus have been approved by RBT and the alternative apparatus has been constructed at the undertaker's cost and is in operation to the satisfaction of RBT.

(2) The undertaker must ensure that RBT shall hold the same facilities and rights that it holds for the apparatus in respect of the alternative apparatus.

(3) Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), the undertaker shall ensure that the party responsible for any apparatus is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

(4) The provisions of this paragraph do not apply to apparatus in respect of which the relations between the undertaker and the party responsible for the apparatus in question are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

(5) The undertaker shall not interfere with any road or rail accesses which RBT benefits from until the undertaker has consulted in writing with RBT on full details of adequate management measures (including details of access routes for vehicles to undertake) which must be put in place to ensure that road and rail traffic is still able to access the RBT operations and the RBT site.

(6) If the undertaker uses its powers under the Order to temporarily extinguish or permanently acquire any right of road or rail access which RBT benefits from the undertaker must provide at its own cost an alternative access prior to the extinguishment or acquisition of that right of access and ensure that RBT shall hold the equivalent rights for that access in respect of an alternative access.

### **Consent under this Schedule**

4.—(1) Before commencing—

- (a) any part of the authorised development which would have an effect on the RBT operations or access to them; or
- (b) any activities on or to the RBT site; or
- (c) any part of the authorised development which may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 3 or otherwise (excluding any proposed works or activities which have been approved under other protective provisions included in the Order or in accordance with a related agreement),

the undertaker must submit to RBT the works details and plans for the proposed works or activities and such further particulars as RBT may, not less than 21 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) Where the proposed works or activities have been approved under other protective provisions included in the Order or in accordance with a related agreement, the undertaker must provide a copy of the approved works details and plans for the proposed works or activities to RBT prior to those works commencing.

5. No—

- (a) works comprising any part of the authorised development which would have an effect on the RBT operations or access to them; or
- (b) activities on the RBT site,

are to be commenced until the works details in respect of those works or activities submitted under paragraph 4 have been approved by RBT.

6. Any approval of RBT required under paragraph 5 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made including for—

- (a) the continuing safety and operational viability of the RBT operations;
- (b) the avoidance of commercial losses to the RBT operations;
- (c) the requirement for RBT, NZT and RBT's leaseholders, sub-tenants and licensees to have reasonable access to the RBT site at all times; and
- (d) the preservation of RBT's ability to comply with contractual and legal obligations given, imposed or otherwise existing prior to the date of this Order including obligations under or in connection with the NZT Order.

7. Without limiting paragraph 6, it is not reasonable for RBT to give approval pursuant to paragraph 6 subject to requirements which restrict or interfere with the undertaker's access to the wharf and roadways within the RBT site during an offloading procedure save to the extent required by obligations entered into or existing prior to the date of the Order.

8.—(1) The authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the works details approved under paragraph 5 and any requirements imposed on the approval under paragraph 6.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 14 and the arbitrator gives approval for the works details, the authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 14.

### **Co-operation**

9. Insofar as the construction of any part of the authorised development or activities on the wharf and roadways within the RBT site, and the operation or maintenance of the RBT operations or access to them would have an effect on each other, the undertaker and RBT must—

- (a) co-operate with each other with a view to ensuring—
  - (i) the co-ordination of activities and programming to allow the authorised development, the undertaker's activities on the wharf and roadways within the RBT site (including offloading procedures) and the RBT operations to continue;
  - (ii) that reasonable access for the purposes of constructing the authorised development and the undertaker's activities on the wharf and the roadways within the RBT site (including offloading procedures) is maintained for the undertaker, its employees, contractors and sub-contractors; and
  - (iii) that operation of the RBT operations and access to the RBT site is maintained for RBT, NZT and RBT's leaseholders, sub-tenants and licensees at all times; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the RBT operations, the construction of the authorised development and the undertaker's activities on the wharf and roadways within the RBT site (including offloading procedures).

10. The undertaker must pay to RBT—

- (a) a cost agreed with RBT for the daily use of the RBT site and RBT services in consequence of the construction of any works referred to in paragraph 4 and use of the RBT site by the undertaker; and
- (b) the reasonable costs and expenses incurred by RBT in connection with the approval of plans, inspection and approval of any works details.

### **Indemnity**

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 4 or by the use of the RBT site by the

undertaker (including as a result of any offloading procedures) any damage is caused to the RBT site (including the wharf, roadways, any buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption or disruption in any service provided, or in the provision by RBT or denial of any services, or in any loss of service from apparatus that is affected by the authorised development the undertaker must—

- (a) bear and pay the cost reasonably incurred by RBT in making good such damage or restoring the provision by RBT of such service or making good any interruption or disruption of any services; and
- (b) make compensation to RBT for any other expenses, loss, damages, penalty or costs reasonably incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or disruption or denial of any service provided by RBT.

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

(3) RBT must give the undertaker reasonable notice of any third party claim or demand that has been made against it in respect of the matters in sub-paragraphs (1)(a) and (1)(b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker such consent not to be unreasonably withheld provided that if withholding such consent, the undertaker shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) RBT must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 11 applies where it is within RBT's reasonable ability to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of RBT's control.

(5) If reasonably requested to do so by the undertaker, RBT must provide a reasonable explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

### **Transfer of benefit of Order**

12. Within 28 days after the date of any transfer or grant under article 8 (consent to transfer benefit of Order), the undertaker who made the transfer or grant must serve notice on RBT containing the name and address of the transferee or lessee, the extent of the transfer or grant and, in the case of a grant, the period for which it is granted and the extent of benefits and rights granted.

### **Notices**

13. Regardless of article 45 (service of notices) a notice required to be served on RBT under this Schedule must be served also on RBT marked for the attention of Peter Rowson, Managing Director, Redcar Bulk Terminal, Lackenby Main Office, Lackenby, Middlesbrough, TS6 7RP and copied to Simon Melhuish-Hancock, UK General Counsel, SSI at Redcar Bulk Terminal, Lackenby Main Office, Lackenby, Middlesbrough, TS6 7RP in the manner provided by article 45 (service of notices).

### **Arbitration**

14. Any difference or dispute arising between the undertaker and RBT under this Schedule must, unless otherwise agreed in writing between the undertaker and RBT, be referred to and settled by arbitration in accordance with article 46 (arbitration).

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF TEESSIDE  
GAS & LIQUIDS PROCESSING, TEESSIDE GAS PROCESSING  
PLANT LIMITED & NORTHERN GAS PROCESSING LIMITED**

1. For the protection of TGLP, TGPP and NGPL, the following provisions have effect, unless otherwise agreed in writing between the undertaker and TGLP, TGPP and NGPL.

2. In this Schedule—

“alternative access agreement” means a contractually binding agreement providing the undertaker with an alternative access to plots 9/6, 9/7, 9/8, 9/9 and 9/10, utilising land outside of plots 9/3 and 9/2;

“affiliates” means, as to a specified party, any other party that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such specified party. For the purposes of this definition, the concept of “control”, when used with respect to any specified party, shall signify the possession of the power to direct the management and policies of such party, whether through the ownership of voting securities or partnership of other ownership interests;

“design package” means the package of documents to be provided to the NSMP entity for consultation and agreement in accordance with the design approval process in paragraphs 6 to 11 comprising of—

- (a) the design documents, being all plans, levels and setting out information, drawings, specifications, details, reports, calculations, records and other construction and design and related documents and information (including any software necessary to view them) prepared or to be prepared by or on behalf of the undertaker in relation to the relevant works and/or the site of the relevant works;
- (b) a detailed methodology of the proposed method of working including timing of execution of the relevant works; and
- (c) for relevant works package A the traffic management plan or detail demonstrating how the relevant works would be delivered in accordance with an already approved traffic management plan,

which package shall be updated from time to time with the approval of the NSMP entity in accordance with the provisions of this Schedule;

“includes” or “including” means includes without limitation or including without limitation, as applicable;

“NGPL” means Northern Gas Processing Limited (company number 2866642) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL;

“NGPL freehold” means the freehold property registered under Land Registry title number CE160127;

“NSMP entity” means together TGLP, TGPP, and NGPL and any successor in title or function to the NSMP operations in whole or in part from time to time. Reference to an NSMP entity shall be to one or more of these entities and reference to NSMP entities will be to all of the foregoing, as the context admits;

“NSMP group” means the NSMP entity and its affiliates and its and their directors, officers, employees, contractors, sub-contractors, representatives and agents;

“NSMP operations” means all or any part of operations of the NSMP entities within Teesside from time to time including the ownership and enjoyment of all NSMP rights and NSMP property and the operation of all energy and other infrastructure at or relating to NSMP property, which currently comprises a plant to process gas from the UK North Sea and includes the NSMP pipelines;

“NSMP pipelines” means the low and high pressure pipelines owned and/or operated and/or used by the NSMP entities and/or over which the NSMP entities have rights from time to time within Teesside which are used (or have been used or are intended to be used) at various times for the passage of natural gas and/or liquid natural gas and/or other products (including butane, propane and condensate output) and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of “pipe-line”) of the Pipe-lines Act 1962(a);

“NSMP property” means all property owned and/or enjoyed by an NSMP entity with Teesside from time to time, including the TGLP freehold and NGPL freehold itself together with the NSMP rights;

“NSMP requirements” means, with respect to relevant work package A—

- (a) the continuing safety and uninterrupted and unimpeded operation and perpetuation of the NSMP operations;
- (b) uninterrupted and unimpeded emergency access with or without vehicles to the NSMP operations; and
- (c) the requirement for the NSMP entity and its employees, contractor, sub-contractors, agents and assigns to have at all times during the construction of the authorised development 24 hour unhindered access, utilities and servicing to all parts of the NSMP operations including in relation to access on foot, and with cars, light commercial vehicles and heavy goods vehicles with abnormal loads;

“NSMP rights” means without limitation all rights, benefits and privileges owned or enjoyed by an NSMP entity or in relation to which an NSMP entity has a benefit, whether legal, equitable, contractual or otherwise in existence from time to time relating to the NSMP entities, their business, operations and property including access, utilities, services (including surface water drainage) and all rights relating to the NSMP pipelines;

“parties” means the relevant NSMP entity and the undertaker;

“relevant works” mean any part of relevant works package A and relevant works package B;

“relevant works package A” means works included in Work Nos. 2A, 2C or 10 of the authorised development or access in connection with those works numbers, on plots 9/2, 9/3, 9/4, 9/5, 9/48, 9/49, 9/50, 10/48 or 11/137, and access in connection with works on plots 9/6, 9/7, 9/8, 9/9 and 9/10;

“relevant works package B” means those parts of the authorised development, whether within the TGLP freehold, within the Order limits or otherwise, which would have a potential effect on the operation, safety, or maintenance of or access to the NSMP operations, excluding relevant works package A;

“TGLP” means Teesside Gas & Liquids Processing (company number 02767808) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL, and any successor in title or function and any successor in title to the TGLP freehold;

“TGLP freehold” means the freehold properties registered under Land Registry title numbers CE160125 and CE168304, within which plots 9/3, 9/4, 9/5 and 9/48 are situated;

“TGPP” means Teesside Gas Processing Plant Limited (company number 05740797) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1h 0BL; and

“traffic management plan” means the undertaker’s detailed traffic management plans for the relevant works package A and which will set out access arrangements for the relevant works package A in relation to plots 9/2, 9/3, 9/4, 9/5 and 9/48 and access in connection with works on plots 9/6, 9/7, 9/8, 9/9 and 9/10 and Seal Sands Road (including but not limited to plans ensuring 24 hour unhindered access for the period of construction of the relevant works package A for the NSMP entity, its employees, contractors, sub-contractors, agents and

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(a) 1962 c. 58. Section 65 was amended by paragraph 8 of Schedule 1 to Gas (Third Party Access and Accounts) Regulations 2000/1937, paragraph 6 of Schedule 2 to Energy Act 2011 (c.16) and paragraph 5 of Schedule 1 to Storage of Carbon Dioxide (Access to Infrastructure) Regulations 2011/2305.

assigns whether by cars, light commercial vehicles, heavy vehicles carrying abnormal loads and emergency services vehicles) for each stage or phase of the relevant works package A.

3. No relevant works are to be commenced until the design package has been developed and submitted by the undertaker and approved or deemed approved by the NSMP entity in accordance with the design approval process at paragraphs 6 to 11 below.

4.—(1) Following approval or deemed approval of the design package, the undertaker will submit any proposed changes (other than those which will have no adverse impact on the NSMP operations) to any of the documentation or drawings comprising the approved design package in accordance with the change approval process at paragraphs 12 to 16 below and prior to the changes being implemented.

(2) The undertaker shall only implement such changes to the documentation or drawings (as applicable) as are agreed in writing in advance with the NSMP entity under the change approval process.

(3) Following any such changes to the design package having been approved or deemed approved the undertaker shall provide the NSMP entity with an updated electronic copy of the design package as changed.

5. The undertaker will design and carry out or will procure that the relevant works are designed and carried out in all respects in accordance with the approved design package (subject to any changes agreed as part of the change approval process).

#### **Approval Process – Part A Design Approval Process**

6. This Part A sets out the approval process to be followed in respect of the consultation and agreement of the design package.

7. The undertaker shall submit the design package to the NSMP entity for consultation, review and approval.

8.—(1) Following submission of the design package to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity within 20 business days of receipt by the NSMP entity of the design package.

(2) As part of that consultation the parties agree to adhere to the following—

- (a) the NSMP entity must, within 20 business days of the date of receipt of the design package, notify in writing the undertaker—
  - (i) of its approval of all or any part of the design package; or
  - (ii) of its disapproval of all or any part of the design package and the reasons for disapproval of any part of the design package; or
  - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings;
- (b) Within 20 business days of the undertaker providing any further information pursuant to paragraph (a)(iii) above or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to paragraph (a)(ii) or (a)(iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the design package.
- (c) If agreement on the design package and approval by the NSMP cannot be reached before the relevant period pursuant to paragraph (a) or (b) above (or such alternative timescales as are agreed between the parties), the matter will be treated as a dispute to be resolved in accordance with paragraph 28 of this Schedule unless otherwise agreed by the parties.

9. In the event the NSMP entity does not provide any response to the undertaker in accordance with the timescale set out in paragraph 8(2)(a) or 8(2)(b) the NSMP entity shall be deemed to have given their approval to the design package.

10. Once approved, the undertaker shall issue one paper copy and one electronic copy of the documents comprised within the approved design package and shall compile and maintain a register of the date and contents of the submission of the design package.

11. With respect to the relevant works package A, the undertaker may either submit the traffic management plan for agreement as part of the design package, or it may submit the traffic management plan in advance of a design package in which case the design approval process set out in Part A and the change approval process set out in Part B of this Schedule shall apply as though references to “design package” were to “traffic management plan”.

## **Part B – Change Approval Process**

12. This Part B sets out the approval process to be followed in respect of the consultation and agreement of any changes (other than those which will have no adverse impact on the NSMP operations) required to the design package after its approval under the design approval process above.

13. The undertaker shall submit any such change require to the design package (other than those which will have no adverse impact on the NSMP operations) (a “change request”) to the NSMP entity for consultation, review and approval.

14.—(1) Following submission of the change request to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity of the change request within ten working days of receipt by the NSMP entity of the change request.

(2) As part of that consultation the parties agree to adhere to the following—

- (a) the NSMP entity must, within ten business days of the date of receipt of the change request notify in writing the undertaker—
  - (i) of its approval of all or any part of the change request;
  - (ii) of its disapproval of all or any part of the change request including reasons for disapproval of any part of the change request; or
  - (iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings;
- (b) within five business days of the undertaker providing any further information pursuant to paragraph (a)(iii) above, or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to paragraph (a)(ii) or (a)(iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the change request; and
- (c) if agreement between the parties cannot be reached before the end of the relevant period pursuant to paragraph (a) or (b) above (or such alternative timescales as are agreed between the parties) the matter will be treated as a dispute to be resolved in accordance with paragraph 28 of this Schedule.

15. In the event the NSMP entity does not provide a response to the undertaker in accordance with the timescales set out in paragraph 14(2)(a) or 14(2)(b) above, the NSMP entity shall be deemed to have given their approval to the change request.

16. Once approved, the undertaker shall issue one (1) paper copy and one (1) electronic copy of the documents comprising any approved change request and compile and maintain a register of the date and contents of any such change request.



## **Part C – Approval Principles**

17. Any approval of the NSMP entity required under Part A or Part B of this Schedule must not (subject to paragraphs 18 and 19 below) be unreasonably withheld or delayed but may be given subject to the NSMP requirements (with respect to relevant works package A) and in considering any request to agree or approve details under Part A or B the NSMP entity must make its decision in accordance with—

- (a) with respect to relevant works package A, the approval principles set out at paragraphs 18 to 21 of this Schedule; and
- (b) with respect to relevant works package B, the approval principles set out at paragraphs 22 and 23 of this Schedule.

### **Approval Principles: Relevant Works Package A**

18.—(1) Where the NSMP entity can reasonably demonstrate that any part of the relevant works package A will materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of the NSMP entity that such part of relevant works package A will not materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations, having regard to the measures of any approved or proposed traffic management plan.

(2) A material adverse effect includes any impediment, diminution, restriction or interruption on the NSMP entity's access to the access road which runs across plots 9/2, 9/3 and 9/4.

19. Subject to paragraph 20 below, it shall be reasonable for the NSMP entity to withhold approval to any works comprised in relevant works package A—

- (a) which shall include physical works on, depositing of materials on or stopping up of plots 9/2, 9/3 and 9/4 but not the passage of reasonable construction traffic over these plots (which shall be subject to any approved traffic management plan or any traffic management plan submitted as part of the design package);
- (b) which involve any resurfacing or redevelopment of the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold unless a working method has been submitted and approved by the NSMP entity which amongst any other requirements of the NSMP entity demonstrates access will be continuously maintained and will be no less convenient for the NSMP entity;
- (c) which require access for construction traffic over the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold, other than—
  - (i) over plots 5/46, 9/1, 9/2, 9/3, 9/4 and 9/5 as strictly required for construction of Work No. 2A within plot 9/5; or
  - (ii) over plots 5/46, 9/1, 9/2 and 9/3 as strictly required for the implementation of Work Nos. 2A, 2B and 10A.1 on plots 9/6, 9/7, 9/8, 9/9 and 9/10,in each case subject to the approved traffic management plan or any proposed traffic management plan submitted as part of the relevant design package;
- (d) which include any construction or laydown area on the TGLP freehold, other than a temporary laydown area within plot 9/5 for materials required for the construction of Work No. 2A within plot 9/5; or
- (e) which requires the stopping up of Seal Sands Road or the private road (parts of which runs through plots 9/2, 9/3 and 9/4) either temporarily or permanently.

20. It will be unreasonable for the NSMP entity to withhold approval under paragraphs 19(a) and 19(c) on grounds relating to access to the NSMP operations (as required under the NSMP requirements) if the design package submitted demonstrates that relevant works package A will be undertaken in accordance with any approved traffic management plan.

**21.** The undertaker and the NSMP entity must, in carrying out their obligations in relation to the traffic management plan and approval of the design package for relevant works package A—

- (a) co-operate with each other with a view to ensuring—
  - (i) the compatibility of the authorised development and the NSMP operations;
  - (ii) the co-ordination of the construction programming of the authorised development and the NSMP operations; and
  - (iii) the achievement of the NSMP requirements; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised development and the NSMP operations, having regard always to the NSMP requirements.

### **Approval Principles: Relevant Works Package B**

**22.** It shall be reasonable for the NSMP entity to withhold approval to any works comprised in relevant works package B, or to impose conditions on any approval having regard to the requirement for—

- (a) uninterrupted and unimpeded emergency access with or without vehicles to the NSMP operations at all times; and
- (b) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the NSMP operations.

**23.** The undertaker and the NSMP entity must, in carrying out their obligations in relation to the approval of the design package for the relevant works package B—

- (a) co-operate with each other with a view to ensuring—
  - (i) the compatibility of the authorised development and the NSMP operations; and
  - (ii) the co-ordination of the construction programming of the authorised development and the NSMP operations; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised development and the NSMP operations, having regard always to the approval principles in paragraph 22.

### **Compliance with requirements, etc. applying to the NSMP operations**

**24.** If any circumstance arises resulting from relevant works package A which causes any interruption to the operation or maintenance of or access to the NSMP operations or damage to the NSMP property the undertaker shall procure its immediate remediation.

**25.** In undertaking any works in relation to the NSMP operations or exercising any rights relating to or affecting the NSMP operations, the undertaker must comply with such conditions, requirements or regulations relating to uninterrupted operation and access, health, safety, security and welfare as are operated in relation to access to or activities in the NSMP operations, provided the same are provided to the undertaker prior to approval of the design package.

**26.** For the benefit of NSMP, the undertaker must not exercise the powers granted under this Order so as to hinder or prevent access via the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold other than as expressly provided for in an approved traffic management plan or approved design package.

### **Indemnity**

**27.—**(1) Subject to sub-paragraphs (2) and (3), if by any reason or in consequence of the construction of any of the works referred to in paragraph 3 any damage is caused to NSMP operations or there is any interruption in any service provided, or in the supply of any goods, by the NSMP entity, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the NSMP entity in making good such damage or restoring the supply; and
- (b) make reasonable compensation to the NSMP entity for any other expenses, loss, damage, penalty or costs incurred by the NSMP entity, by reason or in consequence of any such damage or interruption.

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

(3) The NSMP entity must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The NSMP entity must use its reasonable endeavours to mitigate in whole or in part any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies.

### **Arbitration**

**28.** Any difference or dispute arising between the undertaker and the NSMP entity under this Schedule must, unless otherwise agreed in writing between the undertaker and the NSMP entity, be referred to and settled by arbitration in accordance with article 46 (arbitration).

### **Access to plots 9/6, 9/7, 9/8, 9/9 or 9/10**

**29.** The undertaker must not use plots 9/4, 9/5 or 9/48 to access plots 9/6, 9/7, 9/8, 9/9 or 9/10.

**30.** The undertaker must not use plots 9/2, 9/3 or 9/48 to access plots 9/6, 9/7, 9/8, 9/9 or 9/10 if an alternate access agreement has been concluded.

**31.** Where an alternative access agreement has been concluded, reference to plots 9/6, 9/7, 9/8, 9/9 or 9/10 in the definitions of “relevant works package A” and “traffic management plan” is taken to be deleted.

## **SCHEDULE 37**

Article 41

### **PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTHERN GAS NETWORKS LIMITED**

#### **Application**

**1.** For this protection of the Northern Gas Networks Limited the following provisions shall, unless otherwise agreed in writing between the undertaker and Northern Gas Networks Limited, have effect.

#### **Interpretation**

**2.** In this Schedule—

“alternative apparatus” means appropriate alternative apparatus to the reasonable satisfaction of Northern Gas Networks to enable Northern Gas Networks to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to Northern Gas Networks which it uses for the purposes of its undertaking;

“functions” includes powers and duties;

“in” in a context referring to works, apparatus or alternative apparatus in land includes a reference to such works, apparatus or alternative apparatus under, over, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;

“Northern Gas Networks” means Northern Gas Networks Limited (company number 05167070), whose registered office is at 1100 Century Way, Colton, Leeds, LS15 8TU;

“plan” or “plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

“works” means all works carried out by the undertaker to construct, lay, render operational, maintain, repair, renew, inspect and replace the authorised development or any part thereof including without limitation ancillary works of excavation, resurfacing, protecting, testing and drainage works, as affect apparatus.

3. Except for paragraphs 4 (apparatus of statutory undertaker in stopped up streets), 7 (retained apparatus: protection), 8 (expenses) and 9 (indemnity), this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Gas Networks are regulated by the provisions of Part 3 of the 1991 Act.

#### **Apparatus of statutory undertaker in stopped up streets**

4. Notwithstanding the temporary closure or diversion of any street under the powers conferred by article 13 (temporary closure of streets and public rights of way), Northern Gas Networks is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street, subject always to the undertaker’s unimpeded ability to carry out the works.

#### **Removal or diversion of apparatus**

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in land in which the apparatus is placed, that apparatus must not be removed under this Schedule or otherwise, and any right of Northern Gas Networks to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Northern Gas Networks in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal or diversion of any apparatus placed in that land, it must give to Northern Gas Networks written notice of that requirement, together with a plan of the works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. Northern Gas Networks must reasonably approve these details. The undertaker must afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) the maintenance of that apparatus,

and after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration) and after the grant to Northern Gas Networks of any such facilities and rights, Northern Gas Networks must complete the works and bring the alternative apparatus into operation and subsequently remove any apparatus required to be removed by the undertaker and must use its reasonable endeavours to meet the undertaker’s proposed timeline, and in any event must do so without undue delay, in accordance with the details provided by the undertaker under this sub-paragraph or as otherwise reasonably agreed by the undertaker.

(3) If, in consequence of the works carried out by the undertaker, Northern Gas Networks reasonably needs to remove or divert any of its apparatus, it must without undue delay give the undertaker written notice of that requirement, together with a plan of the work proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The undertaker must reasonably approve these details and must afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) the maintenance of that apparatus,

and after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration) and after the grant to Northern Gas Networks of any such facilities and rights, Northern Gas Networks must complete the works and bring the alternative apparatus into operation and subsequently remove any apparatus required to be removed by the undertaker without undue delay and in accordance with the approved details and timeline.

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraphs (2) and (3) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Gas Networks must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible take such steps as are reasonable in the circumstances (at the undertaker's expense) to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(5) Paragraphs 8 (expenses) and 9 (indemnity) of this Schedule apply to removal or diversions works under this paragraph 5, subject to Northern Gas Networks providing to the undertaker in advance and in writing (to the extent practicable) a reasonable cost estimate for works that it proposes to carry out.

#### **Facilities and rights for alternative apparatus**

6.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Northern Gas Networks facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Gas Networks or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus in the land of the undertaker, and the terms and conditions to which those facilities and rights are to be granted, are less favourable on the whole to Northern Gas Networks than the facilities and rights enjoyed by it in respect of the apparatus to be removed (as agreed between the undertaker and Northern Gas Networks, or failing agreement, in the opinion of the arbitrator), then the undertaker and Northern Gas Networks must agree appropriate compensation for the extent to which the new facilities and rights render Northern Gas Networks less able to effectively carry out its undertaking or require it to do at greater cost.

(3) If the amount of compensation cannot be agreed, the matter must be settled by arbitration in accordance with article 46 (arbitration) and the arbitrator must make provision for the payment of appropriate compensation by the undertaker to Northern Gas Networks as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### **Retained apparatus: protection**

7.—(1) Not less than 28 days before commencing the execution of any works that will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the removal or diversion of which apparatus has not been required by the undertaker under paragraph 5(2) or otherwise or by Northern Gas Networks under

paragraph 5(3), the undertaker must submit to Northern Gas Networks a plan showing the works and the apparatus.

(2) The plan to be submitted to Northern Gas Networks under sub-paragraph (1) shall be detailed including a method statement describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant etc;
- (d) the position of all apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any apparatus.

(3) Subject to sub-paragraph (4) the undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) or (2) apply until Northern Gas Networks has given written approval of the plan so submitted.

(4) Any approval of Northern Gas Networks required under sub-paragraph (3)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and
- (b) must not be unreasonably withheld or delayed.

(5) In relation to works to which sub-paragraph (1) applies, Northern Gas Networks may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of producing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order to which this paragraph 7 applies must be executed only in accordance with the relevant plan, notified under sub-paragraph (1) and approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement between the undertaker and Northern Gas Networks. Northern Gas Networks is entitled to watch and inspect the execution of those works.

(7) Where Northern Gas Networks requires any protective works or subsidence monitoring to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature), Northern Gas Networks must give the undertaker notice of such requirement in its approval under sub-paragraph (3), and—

- (a) such protective works must be carried out to Northern Gas Networks' reasonable satisfaction prior to the carrying out of the relevant part of the works;
- (b) ground subsidence monitoring must be carried out in accordance with a scheme approved by Northern Gas Networks (such approval not to be unreasonably withheld or delayed), which shall set out—
  - (i) the apparatus which is to be subject to such monitoring;
  - (ii) the extent of land to be monitored;
  - (iii) the manner in which ground levels are to be monitored;
  - (iv) the timescales of any monitoring activities; and
  - (v) the extent of ground subsidence which, if exceeded, must require the undertaker to submit for Northern Gas Networks' approval a ground subsidence mitigation scheme in respect of such subsidence; and
- (c) if a subsidence mitigation scheme is required, it must be carried out as approved (such approval not to be unreasonably withheld or delayed).

(8) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the relevant works a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(9) The undertaker must not be required to comply with sub-paragraphs (1) or (2) in the case of emergency but in that case it must give to Northern Gas Networks notice as soon as is reasonably practicable and a plan of those works shall comply with the other requirements in this paragraph insofar as is reasonably practicable in the circumstances provided that it always complies with sub-paragraph (10).

(10) At all times when carrying out any works authorised under the Order that may or will affect the apparatus, the undertaker must comply with the statutory undertaker's policies for safe working in proximity to gas apparatus including the "Specification for safe working in the vicinity of Northern Gas Networks, Gas pipelines and associated installation requirements for third parties NGN/SPSSW22" and the Health and Safety Executive guidance document "HS(G)47 Avoiding Danger from underground services".

## **Expenses**

**8.—**(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Gas Networks the charges, costs and expenses reasonably incurred by Northern Gas Networks in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of any such works as are required and approved under this Schedule, including without limitation—

- (a) any costs reasonably incurred or compensation properly paid by Northern Gas Networks in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that Northern Gas Networks elects to use compulsory purchase powers to acquire any necessary rights under paragraph 5(4);
- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any works carried out pursuant to this Schedule; and
- (g) any statutory loss of supply payments under the 'Guaranteed Standards of Service' regime that the statutory undertaker may incur in consequence of the works, but in the event that such payments are likely to become payable, the statutory undertaker must give the undertaker notice as soon as reasonably practicable of the payments and the likely amount.

(2) Northern Gas Networks must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, loss, demands and penalties capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, Northern Gas Networks must provide an explanation of how the claimed expenses have been minimised or details to substantiate the cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable to pay expenses that have been reasonably incurred by Northern Gas Networks.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal and not including the costs (if any) of disposing that apparatus.

(4) If in accordance with the provisions of this Schedule—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

then, if this incurs greater expense than would have been incurred by a like-for-like (or as closed as practicable to like-for-like) replacement at the same depth, the undertaker shall not be liable for this additional expense.

(5) For the purposes of sub-paragraph (4) an extension to apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to and approved under this Schedule.

(6) An amount which apart from this sub-paragraph would be payable to Northern Gas Networks in respect of works by virtue of sub-paragraph (1), if the works include placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Northern Gas Networks any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

### **Indemnity**

9.—(1) Subject to sub-paragraphs (2), (3) and (4), and without detracting from paragraph 8 above, if by reason or in consequence of the construction of any works referred to and approved under this Schedule, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Gas Networks, or there is any interruption in any service provided, or in the supply of any goods, by Northern Gas Networks, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Northern Gas Networks in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Northern Gas Networks for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Northern Gas Networks on behalf of the undertaker or in accordance with a plan approved by Northern Gas Networks or in accordance with any requirement of Northern Gas Networks as a consequence of the authorised development or under its supervision shall not (subject to sub-paragraph (4)), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless Northern Gas Networks fails to carry out and execute the works properly with the due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Northern Gas Networks must use its reasonable endeavours to mitigate in whole or in part, and to minimise any costs, expenses, loss, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, Northern Gas Networks must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 9 for claims reasonably incurred by Northern Gas Networks.

(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the neglect or default of Northern Gas Networks, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by the statutory undertaker.

(5) Northern Gas Networks must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker (not to be unreasonably withheld or delayed) which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Enactments and agreements**

10. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Gas Networks in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.



## **Co-operation**

11. Where in consequence of the proposed construction of any of the works under this Schedule, the undertaker or Northern Gas Networks requires the removal of apparatus in accordance with the provisions of this Schedule, each party must use reasonable endeavours to co-ordinate the execution of such works in the interests of safety and the efficient and economic execution of such works, taking into account the absolute need to ensure the safe and efficient operation of Northern Gas Networks' undertaking and its apparatus.

## **Access**

12. If in consequence of the powers granted under this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Northern Gas Networks to maintain or use the apparatus no less effectively than was possible before such obstruction.

## **Arbitration**

13. Any difference or dispute arising between the undertaker and Northern Gas Networks under this Schedule must, unless otherwise agreed in writing between the undertaker and Northern Gas Networks, be determined by arbitration in accordance with the article 46 (arbitration).

## **Works falling outside of development authorised by the Order**

14.—(1) Nothing in this Schedule shall require the undertaker to carry out works or requires the undertaker to enable Northern Gas Networks to carry out works, that are not authorised by the Order.

(2) Northern Gas Networks must not request any alteration, diversion, protective work or any other work which is not authorised to be carried out under this Order (but for the avoidance of doubt, it may elect to carry out such works itself under any other planning permissions, permitted development rights or statutory powers (including those of compulsory acquisition) available to it).

## **Cathodic protection testing**

15. Where in the reasonable opinion of either party—

- (a) the authorised development might interfere with the existing cathodic protection forming part of the apparatus; or
- (b) the apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

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

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF LIGHTHOUSE GREEN FUELS LIMITED

1. For the protection of Lighthouse Green Fuels the following provisions have effect, unless otherwise agreed in writing between the undertaker and Lighthouse Green Fuels.

2. In this Schedule—

“Lighthouse Green Fuels” means Lighthouse Green Fuels Limited (company number 10773515) whose registered office is at 1 to 6 Lombard Street, London, England, EC3V 9AA and any successor in title or function to the apparatus;

“alternative apparatus” means such alternative or relocated mains, pipes, cables or other apparatus adequate to enable Lighthouse Green Fuels to carry out its operations;

“apparatus” means any mains, pipes, cables or other apparatus serving, belonging to, or maintained by Lighthouse Green Fuels as at the date of the Order; and

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

### **Precedence of the 1991 Act in respect of apparatus in streets**

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and Lighthouse Green Fuels are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary closure, prohibition, restriction, alteration or diversion of use of streets under the powers conferred by article 13 (temporary closure of streets and public rights of way), Lighthouse Green Fuels are at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the closure, prohibition, or restriction, alteration, diversion or use was in that street.

### **Removal of apparatus**

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that either Lighthouse Green Fuels’ apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of Lighthouse Green Fuels to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed, tested and is in operation, and access to it has been provided, to the reasonable satisfaction of Lighthouse Green Fuels as appropriate in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Lighthouse Green Fuels written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order, Lighthouse Green Fuels reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Lighthouse Green Fuels the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such

apparatus is to be constructed, Lighthouse Green Fuels must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between Lighthouse Green Fuels and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) Lighthouse Green Fuels must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to Lighthouse Green Fuels of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Lighthouse Green Fuels that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Lighthouse Green Fuels, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Lighthouse Green Fuels.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

### **Co-operation**

6. The undertaker and Lighthouse Green Fuels will use reasonable endeavours to resolve any potential conflicts or impacts of the authorised development upon the apparatus and/or the alternative apparatus whilst maintaining use of any apparatus (except as agreed by the undertaker and Lighthouse Green Fuels for the commissioning and decommissioning of the apparatus) by or for the benefit of Lighthouse Green Fuels.

### **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to Lighthouse Green Fuels facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Lighthouse Green Fuels or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Lighthouse Green Fuels than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Lighthouse Green Fuels as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Retained apparatus**

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 5(2), the undertaker must submit to Lighthouse Green Fuels a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Lighthouse Green Fuels for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Lighthouse Green Fuels is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Lighthouse Green Fuels under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Lighthouse Green Fuels in accordance with sub-paragraph (1) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 5(1) to 5(7) apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Lighthouse Green Fuels notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) insofar as is reasonably practicable in the circumstances.

### **Expenses and costs**

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Lighthouse Green Fuels the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration, reinstatement, testing or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution or pursuance of any such works as are referred to in paragraph 5(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, and which is not re-used as part of the alternative apparatus that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 46 to be necessary,

then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Lighthouse Green Fuels by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 5(2); and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Lighthouse Green Fuels in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Lighthouse Green Fuels any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works authorised by this Schedule any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Lighthouse Green Fuels, or there is any interruption in the use of such apparatus or property including any service provided, or in the supply of any goods, by Lighthouse Green Fuels, the undertaker must—

- (a) bear and pay the reasonable costs incurred by Lighthouse Green Fuels in restoring such use, making good such damage or restoring the supply; and
- (b) make reasonable compensation to Lighthouse Green Fuels for any other expenses, loss, damages, penalty or costs incurred by Lighthouse Green Fuels, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of Lighthouse Green Fuels, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by Lighthouse Green Fuels.

(3) Lighthouse Green Fuels must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Lighthouse Green Fuels must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 10 applies.

(5) If requested to do so by the undertaker, Lighthouse Green Fuels must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by Lighthouse Green Fuels.

### **Enactments and agreements**

**11.** Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Lighthouse Green Fuels in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

### **Application of Schedule to certain apparatus**

**12.** This Schedule and Schedule 26 cannot both apply to the same apparatus, and to the extent that both Schedules do or may apply, only this Schedule applies to that apparatus and to any matter arising in relation to the interaction of that apparatus and the authorised development.

### **Access to Huntsman Drive**

**13.** Lighthouse Green Fuel's access along Huntsman Drive will not be prevented as a result of the construction or operation of the authorised development unless in the event of an emergency.

## **Interaction with the Tees Valley Project**

14.—(1) The undertaker must use reasonable endeavours to avoid any conflict arising between the carrying out, maintenance and operation of the authorised development and the Tees Valley Project.

(2) For the purposes of sub-paragraph (1)—

(a) “conflict” does not include any overlap in the land to be occupied or developed by the undertaker and the Tees Valley Project or any overlap in the Order limits and application of compulsory powers under this Order and any order granted for the Tees Valley Project, or any difference between anything required by a requirement of any order granted after the date of the making of this Order for the construction and operation of the Tees Valley Project and the provisions of this Order;

(b) “reasonable endeavours” means—

(i) undertaking consultation with Lighthouse Green Fuels on detailed design and programming of works for the authorised development so that the plans as submitted for approval under the requirements do not unreasonably impeded or interfere with the construction and operation of the Tees Valley Project;

(ii) having regard to the anticipated programme of works for the Tees Valley Project and any reasonable requirements of Lighthouse Green Fuels;

(iii) providing a point of contact for continuing liaison and coordination throughout the construction and operation of the authorised development;

(iv) before submitting any documents or plans to be approved pursuant to a requirement in the Order, providing those documents or plans to Lighthouse Green Fuels that it reasonably requires for information purposes and take reasonable account of any comments made by Lighthouse Green Fuels on those documents or plans, provided that such comments are received by the undertaker within 28 days of Lighthouse Green Fuels receiving the documents or plans; and

(v) complying with sub-paragraph (3),

but does not include the undertaker being required to seek any amendment to or variation of this Order or delay programme critical works once the authorised development has commenced.

(3) The undertaker must cooperate with Lighthouse Green Fuels so as to reasonably ensure the coordination of construction programming, land assembly, and the carrying out of works in connection with the authorised development and the Tees Valley Project.

(4) In this paragraph, “Tees Valley Project” means the proposed waste-to-sustainable aviation fuel facility with on-site generating station capacity of up to 150 MW on the land comprised in and registered under title numbers CE218940 and CE213339.

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF VENATOR MATERIALS UK LIMITED

1. For the protection of Venator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Venator.

### Definitions

2. In this Schedule—

“Venator” means Venator Materials UK Limited (company number 00832447) whose registered office is at Titanium House, Hanzard Drive, Wynyard Park, Stockton on Tees, TS22 5FD and any successor in title or function to the Venator operations;

“Venator operations” means the operations and assets within the Order land vested in Venator and any group company within the meaning of section 1261 of the Companies Act 2006 including, but not limited to, the freehold interest in the Venator Greatham Works; and

“works details” means—

- (a) plans and sections, including the routing of any proposed pipeline;
- (b) details of the proposed method of working and timing of execution of works; and
- (c) any further particulars provided in response to a request under paragraph 3(1).

### Consent under this Schedule

3.—(1) Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Venator operations or access to them, the undertaker must submit to Venator the works details for the proposed work and such further particulars as Venator may reasonably require for the approval by Venator.

(2) No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Venator operations or access to them are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Venator.

(3) Any approval of Venator required under sub-paragraph (2) must not be unreasonably withheld or delayed and shall be provided within 28 days from the day the works details are provided pursuant to sub-paragraph (2) but may be given subject to such reasonable requirements as Venator may require to be made for—

- (a) the continuing safety and operational viability of the Venator operations; or
- (b) the requirement for Venator to have reasonable access with or without vehicles at all times to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Venator operations.

(4) The authorised development must be carried out with good and suitable materials in a good and workmanlike manner in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3) and all other statutory and other requirements or regulations.

(5) Where there has been a reference to an arbitrator in accordance with paragraph 5 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 5.

## **Indemnity**

4.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised development or the works referred to in paragraph 3(2), any damage is caused to the Venator operations, or there is any interruption in any service provided, or in the supply of any goods, by Venator, the undertaker must—

- (a) bear and pay the cost reasonably incurred by Venator in making good such damage or restoring the supply; and
- (b) make reasonable compensation to Venator for any other expenses, loss, damages, penalty or costs incurred by Venator, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to—

- (a) the act, neglect or default of Venator, its officers, employees, servants, contractors or agents; or
- (b) any indirect or consequential loss or loss of profits by Venator.

(3) Venator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Venator must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 4 applies.

(5) If requested to do so by the undertaker, Venator must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 4 for claims reasonably incurred by Venator.

## **Arbitration**

5. Any difference or dispute arising between the undertaker and Venator under this Schedule must, unless otherwise agreed in writing between the undertaker and Venator, be referred to and settled by arbitration in accordance with article 46 (arbitration).



**PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTH  
TEES LIMITED, NORTH TEES LAND LIMITED, NORTH TEES  
LANDFILL SITES LIMITED AND NORTH TEES RAIL LIMITED**

1. For the protection of the NT Group (as defined below), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the NT Group.

2. In this Schedule—

“NT Group” means NTL, NTLL, NTLSL and NTR;

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

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

“NTLSL” means North Tees Landfill Sites Limited (company number 10197479) whose registered office is The Cube, Barrack Road, Newcastle upon Tyne, Tyne and Wear, NE4 6DB and any successor in title to it;

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

“operations” means, for each of NTL, NTLL, NTLSL and NTR, their respective freehold land within the Order limits; and

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 3.

**Consent under this Schedule**

3.—(1) Before commencing any part of the authorised development which would have an effect on the operations or access to any land owned by NTL, NTLL, NTLSL and NTR which is adjacent to the Order limits, the undertaker must submit to the NT Group the works details for the proposed works and such further particulars as the NT Group may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No works comprising any part of the authorised development which would have an effect on the operations or access to any land owned by NTL, NTLL, NTLSL and NTR which is adjacent to the Order limits are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by the NT Group.

(3) Any approval of the NT Group under sub-paragraph (2) must be given in respect of NTL, NTLL, NTLSL and NTR, must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the NT Group may require to be made for them to have reasonable access with or without vehicles to the operations and any land owned by NTL, NTLL, NTLSL and NTR which is adjacent to the Order limits.

(4) The authorised development must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with article 46 (arbitration) and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under article 46.

### **Indemnity**

4.—(1) Subject to sub-paragraphs (2) and (3), if by direct reason or in direct consequence of the construction of any of the works referred to in paragraph 3, any damage is caused to the operations or access to any land owned by NTL, NTLL, NTLSL and NTR which is adjacent to the Order limits is obstructed, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NTL, NTLL, NTLSL and NTR in making good any such damage; and
- (b) make reasonable compensation to NTL, NTLL, NTLSL and NTR for any other expenses, loss, damages, penalty or costs incurred by each of them, by direct reason or in direct consequence of any such damage or interruption.

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

(3) Each of NTL, NTLL, NTLSL and NTR must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Each of NTL, NTLL, NTLSL and NTR must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 4 applies.

(5) If requested to do so by the undertaker, NTL, NTLL, NTLSL and NTR must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 4 for claims reasonably incurred by NTL, NTLL, NTLSL and NTR.

### **Arbitration**

5. Any difference or dispute arising between the undertaker and the NT Group under this Schedule must, unless otherwise agreed in writing between the undertaker and the NT Group (acting together), be referred to and settled by arbitration in accordance with article 46 (arbitration).

### **Apparatus**

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

## PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE SEMBCORP PROTECTION CORRIDOR

### Extent of this Schedule

1.—(1) The provisions of this Schedule have effect for the benefit of owners and operators in the Sembcorp Protection Corridor, owners and operators in the Wilton Complex and Sembcorp unless otherwise agreed in writing between the undertaker and Sembcorp.

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and Sembcorp, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Sembcorp and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to Sembcorp on or before the date of that transfer or grant.

(3) Sub-paragraph (2) applies to any agreement—

- (a) which states that it is “entered into for the purposes of the Sembcorp Protective Provisions”; and
- (b) whether entered into before or after the making of this Order.

(4) Articles 43(5) and 43(6) (procedure in relation to certain approvals) do not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Schedule.

### Interpretation of this Schedule

2. In this Schedule—

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

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

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

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

“owner” means—

- (a) in relation to the Sembcorp Protection Corridor, any person—
  - (i) with an interest in the Sembcorp Protection Corridor;
  - (ii) with rights in, on, under or over the Sembcorp Protection Corridor;
  - (iii) with apparatus in, on or under the Sembcorp Protection Corridor;
- (b) in relation to the Wilton Complex, any owner (as defined in article 2(1) of this Order) or occupier in the Wilton Complex, but who is not a third party owner or operator.

“Sembcorp” means Sembcorp Utilities (UK) Limited (company number 04636301), whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successors in title or function to the Sembcorp operations in, under or over the Sembcorp Protection Corridor;

“Sembcorp operations” means—

- (a) the activities and functions carried on by Sembcorp in the Sembcorp Protection Corridor (including in relation to any access routes and laydown spaces associated with them or it);
- (b) the number 2 river tunnel between Bran Sands and North Tees crossing the Order limits under the River Tees (together with associated headhouses) operated by Sembcorp; and
- (c) other pipes and apparatus (including access routes and laydown spaces associated with such pipes and apparatus) operated—
  - (i) by Sembcorp; or
  - (ii) by any owner or operator within the Sembcorp Protection Corridor; or
  - (iii) for the benefit or on behalf of any owner or operator in the Wilton Complex;

“Sembcorp Protection Corridor” means for the purposes of this Order the area shaded yellow on the Sembcorp Protection Corridor protective provisions supporting plans;

“Sembcorp Protection Corridor protective provisions supporting plans” means the plans which are certified as the Sembcorp Protection Corridor protective provisions supporting plans by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Order;

“third party owner or operator” means an owner or operator of apparatus the subject of the third party protective provisions;

“third party protective provisions” means the protective provisions in Schedules 15 to 43 of this Order;

“Wilton Complex” means the industrial and manufacturing plant shown in blue hatching on the Sembcorp Protection Corridor protective provisions supporting plans;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 3.

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

3.—(1) If the approval of a third party owner or operator is required, sought or obtained under the third party protective provisions on any matter to which this Schedule relates, this does not remove any obligation on the undertaker to seek consent from Sembcorp pursuant to this Schedule in respect of that matter.

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

- (a) the same information provided to the third party owner or operator at the same time; and
- (b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions.

### **Removal of apparatus**

4.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, the apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent rights for the

alternative apparatus have been granted to Sembcorp and, where relevant, the owner or operator of the apparatus.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in the land, it must give to the owner or operator in question and Sembcorp written notice of the requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed, and in that case the undertaker must afford to the owner or operator and Sembcorp the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of the apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between Sembcorp and the undertaker or in default of agreement settled by an arbitrator appointed under paragraph 15.

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an arbitrator under paragraph 15, and after the grant to the owner or operator of any such facilities and rights as are referred to in sub-paragraph 2 and after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996(a), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Schedule subject to any reasonable directions given to or requirements imposed on that owner or operator by Sembcorp.

(5) Notwithstanding sub-paragraph (4), if the undertaker gives notice in writing to the owner or operator in question and Sembcorp that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the owner or operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) If the works are executed by the undertaker in accordance with sub-paragraph (5), the owner or operator of the apparatus and Sembcorp must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3,000 millimetres of the apparatus, without the written agreement of Sembcorp, such agreement not to be unreasonably withheld.

### **Alternative apparatus**

5.—(1) Where, in accordance with this Schedule, the undertaker affords to an owner or operator and Sembcorp facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and Sembcorp or in default of agreement determined by arbitration under paragraph 15, such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling the terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and

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(a) S.I. 1996/825.

- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised development for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to the owner or operator and Sembcorp as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

### **Consent under this Schedule in connection with Sembcorp operations**

6. Before commencing any part of the authorised development which would or may have an effect on the operation or maintenance of the Sembcorp operations or access to them, and in all cases where such works are within 3,000 millimetres of the Sembcorp Protection Corridor, the undertaker must submit to Sembcorp the works details for the proposed works and such further particulars as Sembcorp may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.

7. The works referred to in paragraph 6 must not be commenced until the works details in respect of those works submitted under that paragraph have been approved by Sembcorp.

8. Any approval of Sembcorp required under paragraph 7 must not be unreasonably withheld or delayed, but may be given subject to such reasonable requirements as Sembcorp may require to be made for—

- (a) the continuing safety and operational viability of the Sembcorp operations (for the avoidance of doubt where the reasonable requirements relate to such matters, a reasoned explanation will be provided by Sembcorp to substantiate the need for these requirements); and
- (b) the requirement for Sembcorp to have reasonable access to the Sembcorp operations at all times.

9.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 7 and any requirements imposed on the approval under paragraph 8.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 15 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 15.

### **Insurance**

10.—(1) Before carrying out any works forming part of the authorised development on any part of the Sembcorp Protection Corridor, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer for a sum not less than such level as may be agreed in writing between the undertaker and Sembcorp, and evidence of that insurance must be provided to Sembcorp on request.

(2) Not less than 90 days before carrying out any works forming part of the authorised development on any part of the Sembcorp Protection Corridor or before proposing to change the terms of the insurance policy, the undertaker must notify Sembcorp of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to works or the use of the authorised development affecting the Sembcorp Protection Corridor during the operation of the authorised development at such level as may be agreed in writing between the undertaker and Sembcorp.

(4) Any dispute between the undertaker and Sembcorp regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 15.

### Expenses

11.—(1) Subject to the provisions of this paragraph, the undertaker must pay to the owner or operator in question and Sembcorp (as the case may be) the reasonable expenses incurred by them under this Schedule in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Schedule;
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;
- (d) the design, project management, supervision and implementation of works;
- (e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;
- (f) monitoring the effectiveness of any requirement referred to in paragraph 10 and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those requirements; and
- (g) any other work or thing reasonably required in consequence of the exercise by the undertaker of any power under this Order or by the service by the undertaker of any notice, plan, section or description,

within a reasonable time of being notified by the person in question that it has incurred such expenses, such notification to be provided by the owner or operator or Sembcorp (as the case may be).

(2) Where reasonable and practicable, the person to whom the payment is to be made under this paragraph must notify the undertaker of any anticipated expense as outlined in sub-paragraph (1) and provide an estimate of such costs prior to incurring such expense.

(3) In advance of any payment under sub-paragraph (1) above being made and where reasonably requested by the undertaker, the person to whom the payment is to be made under this paragraph must provide to the undertaker such reasonable evidence of the costs incurred as the undertaker may reasonably request.

(4) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Schedule, that value being calculated after removal.

(5) If in accordance with this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an arbitrator under paragraph 15 to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which from this sub-paragraph would be

payable to the owner or operator in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(6) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (5), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(7) For the purposes of sub-paragraph (5)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been determined.

(8) An amount which apart from this sub-paragraph would be payable to a person in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on that person by deferment of the time for renewal of the apparatus in the ordinary course of that person's business practice, be reduced by the amount that represents that benefit.

## **Indemnity**

12.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development, including without limitation any of the works referred to in paragraph 4 (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or any subsidence resulting from any of these works, any damage is caused to the Sembcorp operations or property of an owner or operator or Sembcorp, or there is any interruption in any service provided, or in the supply of any goods, to or by an owner or operator or Sembcorp, or Sembcorp becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the owner or operator in question or Sembcorp (as the case may be) in making good such damage or restoring the service, supply and/or operations; and
- (b) make reasonable compensation to the owner or operator in question or Sembcorp or to any other person whose supply or operations are affected by the damage or interruption (as the case may be, and in all cases excluding third party owners or operators) for any other expenses, loss, damages, penalty or costs incurred by that person, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the person (or its officers, employees, servants, contractors or agents) who would but for this sub-paragraph be the beneficiary of the indemnification provisions in the said sub-paragraph (1).

(3) The person to whom the liability is owed under sub-paragraph (1) must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The person to whom the liability is owed under sub-paragraph (1) must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 12 applies where it is within the reasonable ability and control to do so.

(5) If requested to do so by the undertaker, the person must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph 12 for claims reasonably incurred by the owner or operator in question or by Sembcorp (as the case may be).



### **Participation in community groups**

**13.**—(1) Before undertaking any works or exercising any powers in this Order relating to or affecting the Sembcorp operations or the Sembcorp Protection Corridor, the undertaker must participate in any relevant consultation groups established or coordinated by Sembcorp.

(2) Before undertaking any construction works affecting the Sembcorp operations or the Sembcorp Protection Corridor, where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Order limits in terms of—

- (a) construction noise and vibration management;
- (b) air quality, including dust emissions;
- (c) waste management;
- (d) traffic management and materials storage on site;
- (e) surface water and groundwater management; or
- (f) artificial light emissions,

the undertaker must participate in any relevant community environmental liaison group that may be established or coordinated by Sembcorp with local residents.

(3) The undertaker must cooperate with Sembcorp to respond promptly to any complaints raised in relation to the construction or operation of the authorised development or the traffic associated with the authorised development.

(4) The undertaker's obligations in sub-paragraphs (1) and (2) are subject to Sembcorp providing reasonable notice to them of the existence of a relevant consultation group or a relevant community environmental liaison group and reasonable notice of the arrangements for meetings of those groups.

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

**14.**—(1) Notice of the intended start of commissioning of the authorised development must be given to Sembcorp no later than 14 days prior to the date that commissioning is started.

(2) Notice of the intended date of final commissioning of each of Work Nos. 2A, 6A, 6B, 8 and 10 must be given to Sembcorp no later than 14 days prior to the date of final commissioning.

### **Arbitration**

**15.** Any difference or dispute arising between the undertaker and an owner or operator or Sembcorp (as the case may be) under this Schedule must, unless otherwise agreed in writing between the undertaker and that person, be referred to and settled by arbitration in accordance with article 46 (arbitration).

### **Additional agreement**

**16.** For the protection of Sembcorp, the Sembcorp operations, the Sembcorp Protection Corridor and the Wilton Complex, the undertaker and Sembcorp have entered into an agreement dated February 2025 containing provisions for the protection and benefit of Sembcorp, the Sembcorp operations, the Sembcorp Protection Corridor and the Wilton Complex in relation to the exercise, operation and use of the authorised development by the undertaker in addition to and which differ from the provisions for the protection of the Sembcorp Protection Corridor set out in this Schedule.

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF NET  
ZERO TEESSIDE POWER LIMITED**

**Interpretation**

1. For the protection of NZT, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

“H2T Apparatus” means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area;

“NZT Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by NZT within the Shared Area;

“NZT Order” means The Net Zero Teesside Order 2024;

“NZT Project” means the construction, operation or maintenance of Project A as is defined by the NZT Order;

“NZT Specified Works” means so much for the NZT Project as is within the Shared Area;

“NZT” means Net Zero Teesside Power Limited (company number 12473751) whose registered office is at Chertsey Road, Sunbury on Thames, Middlesex, United Kingdom, TW16 7BP;

“Parties” means NZT and the undertaker;

“Plans” includes so far as is reasonably relevant: sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the Shared Area;

“Respective Projects” means the NZT Project and the authorised development;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero or any successor in function;

“Shared Area” means the land shown overlapping for the Respective Projects on the Shared Area Plan;

“Shared Area Plan” means the plan which is certified as the NZT/NEP/H2T Shared Area Plan by the Secretary of State under article 44 (certification of plans etc.) of the NZT Order; and

“Specified Works” means so much of the authorised development as is within the Shared Area.

**Consent to works in the shared area**

3.—(1) Where the consent or agreement of NZT is required under the provisions of this Schedule the undertaker must give at least 21 days written notice to NZT of the request for such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with eth request which must identify—

- (a) the land that will or may be affected;
- (b) which Works Nos. as set out in Schedule 1 (authorised development) any powers sought to be used or works to be carried out relate to;
- (c) the proposed programme for the power to be used or works to be carried out; and

(d) the named point of contact for the undertaker for discussion in relation to the information supplied and the consenting process.

(2) NZT must notify the undertaker within 14 days of the receipt of the written notice under sub-paragraph (1) of—

- (a) any information it reasonably requires to be provided in addition to that proposed to be supplied by the undertaker under sub-paragraph (1);
- (b) any particular circumstances with regard to the construction or operation of the NZT Project it requires to be taken into account;
- (c) the named point of contact for NZT for discussions in relation to the information supplied and the consenting process; and
- (d) the specific person who will be responsible for confirming or refusing the consent or agreement.

(3) Any request for consent under paragraph 5(1) must be accompanied by the information referred to in sub-paragraph (1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to sub-paragraph (5), where conditions are included in any consent granted by NZT pursuant to this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by NZT.

(5) Wherever in this Schedule provision is made with respect to the agreement, approval or consent of NZT, that approval or consent must be in writing and may be subject to such reasonable terms and conditions as NZT may require.

(6) Before NZT can validly refuse consent, it must first give the undertaker seven days' notice of such intention and consider any representations made in respect of such refusal by the undertaker to NZT within that seven day period.

(7) The seven day period referred to in the proviso to sub-paragraph (6) must be added to the period of time within which any request for agreement, approval or consent is required to be responded to pursuant to the provisions of this Schedule.

(8) In the event that—

- (a) NZT has unreasonably withheld its authorisation or agreement under paragraph 5(1); or
- (b) the undertaker considers that NZT has given its authorisation under paragraph 5(1) subject to unreasonable conditions,

the undertaker may refer the matter to arbitration under paragraph 8.

(9) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to NZT by recorded delivery and addressed to the Managing Director of Net Zero Teesside Power Limited.

(10) In the event that NZT does not respond in writing to a request for approval or consent or agreement within 28 days then the undertaker may serve upon NZT written notice requiring NZT to give their decision within a further 28 days beginning with the date upon which NZT received written notice from the undertaker and, subject to compliance with sub-paragraph (11), if by expiry of the further 28 day period NZT has failed to notify the undertaker of its decision NZT is deemed to have given its consent, approval or agreement without any terms or conditions.

(11) Any further notice given by the undertaker under sub-paragraph (10) must include a written statement that the provisions of sub-paragraph (10) apply to the relevant approval or consent or agreement.

## **Co-operation**

4. Insofar as the NZT Specified Works are or may be undertaken concurrently with the Specified Works within any part of the Shared Area, the undertaker must—

- (a) co-operate with NZT with a view to ensuring—
  - (i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and

- (ii) that access for the purposes of the construction and operation of the NZT Project is maintained for NZT and its employees, agents, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

### **Regulation of works within the shared area**

5.—(1) The undertaker must not carry out the Specified Works without the prior written consent of NZT obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Nothing in paragraph 3 or this paragraph 5 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any of the Specified Works, new Plans in respect of that Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 3 shall apply to the new Plans.

(3) Where there has been a reference to an arbitrator in accordance with paragraph 8 and the arbitrator gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the arbitrator under paragraph 8.

(4) The undertaker is not required to comply with sub-paragraphs (1) to (3) above in a case of emergency (being actions required directly to prevent possible death or injury) but in that case it must give to NZT notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 3 and 5 insofar as is reasonably practicable in the circumstances.

(5) The undertaker must at all reasonable times during construction of the Specified Works allow NZT and its officers, employees, servants, contractors and agents access to the Specified Works and all reasonable facilities for inspection of the Specified Works.

(6) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from NZT requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(7) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (6), NZT may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(8) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Specified Works the access to any of the NZT Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the NZT Specified Works as will enable NZT to construct, maintain or operate the NZT Project no less effectively than was possible before the obstruction.

(9) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Specified Works request up-to-date written confirmation from NZT of the location of any part of its then existing or proposed NZT Specified Works.

### **Constructability principles**

6. Subject to paragraph 4, the undertaker must (unless otherwise agreed, in an emergency relating to potential death or serious injury, or where it would render the H2T Apparatus, the Specified Works, the NZT Specified Works or NZT Apparatus unsafe, or put the undertaker in breach of its statutory duties or in breach of an obligation or requirement of the Order)—

- (a) carry out the Specified Works in such a way that will not prevent or interfere with the continued construction of the NZT Specified Works, or the maintenance or operation of the NZT Apparatus unless the action leading to such prevention or interference has the prior written consent of NZT;
- (b) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by NZT in respect of any NZT Apparatus will be of adequate specification to bear the loads; and

- (c) notify NZT of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising.

### **Miscellaneous provisions**

7.—(1) NZT and the undertaker must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Schedule.

(2) The undertaker must pay to NZT the reasonable expenses incurred by NZT in connection with the consenting processes under this Schedule, including the approval of plans and inspection of any Specified Works.

### **Dispute resolution**

8. Any difference or dispute arising between the undertaker and NZT under this Schedule must, unless otherwise agreed in writing between the undertaker and NZT, be referred to and settled by arbitration in accordance with article 46 (arbitration).

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF NET  
ZERO NORTH SEA STORAGE LIMITED**

**Interpretation**

1. For the protection of NEP, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Schedule—

“H2T Apparatus” means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area;

“NEP Apparatus” means the pipeline, cables, structures to be owned, occupied or maintained by NEP within the Shared Area;

“NZT Order” means The Net Zero Teesside Order 2024;

“NEP Project” means the construction, operation or maintenance of Project B as is defined by the NZT Order;

“NEP Specified Works” means so much of the NEP Project as is within the Shared Area;

“NEP” means Net Zero North Sea Storage Limited (company number 12473084) whose registered office is at Chertsey Road, Sunbury on Thames, Middlesex, United Kingdom, TW16 7BP;

“Parties” means NEP and the undertaker;

“Plans” includes so far as is reasonably relevant: sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the Shared Area;

“Respective Projects” means the NEP Project and the authorised development;

“Secretary of State” means the Secretary of State for Energy Security and Net Zero or any successor in function;

“Shared Area” means the land shown overlapping for the Respective Projects on the Shared Area Plan;

“Shared Area Plan” means the plan which is certified as the NZT/NEP/H2T Shared Area Plan by the Secretary of State under article 44 (certification of plans etc.) of the NZT Order; and

“Specified Works” means so much of the authorised development as is within the Shared Area.

**Consent to works in the shared area**

3.—(1) Where the consent or agreement of NEP is required under the provisions of this Schedule the undertaker must give at least 21 days written notice to NEP or the request of such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with the request which must identify—

- (a) the land that will or may be affected;
- (b) which Work Nos. as set out in Schedule 1 (authorised development) any powers sought to be used or works to be carried out relate to;
- (c) the proposed programme for the power to be used or works to be carried out; and

(d) the named point of contact for the undertaker for discussions in relation to the information supplied and the consenting process.

(2) NEP must notify the undertaker within 14 days of the receipt of the written notice under sub-paragraph (1) of—

- (a) any information it reasonably requires to be provided in addition to that proposed to be supplied by the undertaker under sub-paragraph (1);
- (b) any particular circumstances with regard to the construction or operation of the NEP Project it requires to be taken into account;
- (c) the named point of contact for NEP for discussions in relation to the information supplied and the consenting process; and
- (d) the specific person who will be responsible for confirming or refusing the consent or agreement.

(3) Any request for consent under paragraph 5(1) must be accompanied by the information referred to in sub-paragraph (1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to sub-paragraph (5), where conditions are included in any consent granted by NEP pursuant to this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by NEP.

(5) Wherever in this Schedule provision is made with respect to the agreement, approval or consent of NEP, that approval or consent must be in writing and may be subject to such reasonable terms and conditions as NEP may require.

(6) Before NEP can validly refuse consent, it must first give the undertaker seven days' notice of such intention and consider any representations made in respect of such refusal by the undertaker to NEP within that seven day period.

(7) The seven day period referred to in the proviso to sub-paragraph (6) must be added to the period of time within which any request for agreement, approval or consent is required to be responded to pursuant to the provisions of this Schedule.

(8) In the event that—

- (a) NEP has unreasonably withheld its authorisation or agreement under paragraph 5(1); or
- (b) the undertaker considers that NEP has given its authorisation under paragraph 5(1) subject to unreasonable conditions,

the undertaker may refer the matter to arbitration under paragraph 8.

(9) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to NEP by recorded delivery and addressed to the Managing Director of Net Zero North Sea Storage Limited.

(10) In the event that NEP does not respond in writing to a request for approval or consent or agreement within 28 days then the undertaker may serve upon NEP written notice requiring NEP to give their decision within a further 28 days beginning with the date upon which NEP received written notice from the undertaker and, subject to compliance with sub-paragraph (11), if by the expiry of the further 28 day period NEP has failed to notify the undertaker of its decision NEP is deemed to have given its consent, approval or agreement without any terms or conditions.

(11) Any further notice given by the undertaker under sub-paragraph (10) must include a written statement that the provisions of sub-paragraph (10) apply to the relevant approval or consent or agreement.

## **Co-operation**

4. Insofar as the NEP Specified Works are or may be undertaken concurrently with the Specified Works within any part of the Shared Area, the undertaker must—

- (a) co-operate with NEP with a view to ensuring—
  - (i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and

- (ii) that access for the purposes of the construction and operation of the NEP Project is maintained for NEP and its employees, agents, contractors and sub-contractors; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

### **Regulation of works within the shared area**

5.—(1) The undertaker must not carry out the Specified Works without the prior written consent of NEP obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Nothing in paragraph 3 or this paragraph 5 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any of the Specified Works, new Plans in respect of that Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 3 shall apply to the new Plans.

(3) Where there has been a reference to an arbitrator in accordance with paragraph 8 and the arbitrator gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the arbitrator under paragraph 8.

(4) The undertaker is not required to comply with sub-paragraphs (1) to (3) above in a case of emergency (being actions required directly to prevent possible death or injury) but in that case it must give to NEP notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 3 and 5 insofar as is reasonably practicable in the circumstances.

(5) The undertaker must at all reasonable times during construction of the Specified Works allow NEP and its officers, employees, servants, contractors and agents access to the Specified Works and all reasonable facilities for inspection of the Specified Works.

(6) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from NEP requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(7) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (6), NEP may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(8) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Specified Works the access to any of the NEP Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the NEP Specified Works as will enable NEP to construct, maintain or operate the NEP Project no less effectively than was possible before the obstruction.

(9) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Specified Works request up-to-date written confirmation from NEP of the location of any part of its then existing or proposed NEP Specified Works.

### **Constructability principles**

6. Subject to paragraph 4, the undertaker must (unless otherwise agreed, in an emergency relating to potential death or serious injury, or where it would render the H2T Apparatus, the Specified Works, the NEP Specified Works or NEP Apparatus unsafe, or put the undertaker in breach of its statutory duties or in breach of an obligation or requirement of the Order)—

- (a) carry out the Specified Works in such a way that will not prevent or interfere with the continued construction of the NEP Specified Works, or the maintenance or operation of the NEP Apparatus unless the action leading to such prevention or interference has the prior written consent of NEP;
- (b) ensure that works carried out to, or placing of H2T Apparatus beneath, roads along which construction or maintenance access is required by NEP in respect of any NEP Apparatus will be of adequate specification to bear the loads; and



- (c) notify NEP of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising.

### **Miscellaneous provisions**

7.—(1) NEP and the undertaker must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Schedule.

(2) The undertaker must pay to NEP the reasonable expenses incurred by NEP in connection with the consenting processes under this Schedule, including the approval of plans and inspection of any Specified Works.

### **Dispute resolution**

8. Any difference or dispute arising between the undertaker and NEP under this Schedule must, unless otherwise agreed in writing between the undertaker and NEP, be referred to and settled by arbitration in accordance with article 46 (arbitration).

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order authorises H2 Teesside Limited to construct, operate and maintain a hydrogen production facility and pipeline network. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and book of reference mentioned in this Order and certified in accordance with article 44 (certification of plans etc.) of this Order may be inspected free of charge during working hours at bp ICBT, Chertsey Road, Sunbury on Thames, Middlesex, TW16 7BP.