

**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;

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“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;

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“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;

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“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;

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“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;

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“proposed work programme” means a programme for the construction and use of a proposed work;

“red main criteria” means that—

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- (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/m² 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;

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“STG site” means any land within the Order limits owned by STDC, SRPL, Teesworks and STDL;

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“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.

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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.

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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.

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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.

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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.

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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.

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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—

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- (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

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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.

Commented [PM19]: Issue 14

Commented [PM20]: Issue 15

(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.

Commented [AC21]: Issue 4

Miscellaneous

39. Schedule 18 (protective provisions for the protection of third party apparatus) does not apply to apparatus to which this Schedule applies.

Commented [AC22]: Issue 16 - issuing copies of notice and information to all STG entities

Commented [AC23]: Issue 17 - article 43(5)-(6) of the draft Development Consent Order

Applicant's Submissions

1. **Issue 1 – definition of apparatus**
- 1.1 The definition of apparatus is sufficiently broad enough to protect all of the assets that a STG entity owns or maintains within the Order Limits. This definition is standard and is generally consistent with other definitions of apparatus within the draft DCO (see for example paragraph 2 of Schedules 16, 19, 20, 26, 27, 28, 31, 34, 39, 40 [REP7-018]) and other orders, such as the Net Zero Teesside Order 2024 (see, for example paragraphs 18 (National Grid Electricity Transmission), 33 (National Gas Transmission PLC), 48 (Air Products PLC), 72 (CF Fertilisers UK Limited), 133 (Northern Powergrid (Northeast) PLC), 188 (Sabic Petrochemicals UK Limited), 214 (Sembcorp Utilities (UK) Limited), 307 (Huntsman Polyurethanes (UK) Limited), 341 (Northumbrian Water Limited) and 353 (Northern Gas Networks Limited) of Parts 3-5, 7, 12, 16-17, 23, 25-26 respectively of Schedule 12).
- 1.2 It is not appropriate to include the phrase 'or which has benefit of rights over the Order Limits', as suggested by STG, as:
 - 1.2.1 the protection of 'specified works' that is contained in paragraph 35 already provides adequate protection for apparatus that may be adversely affected by the authorised development. This is because the definition of 'specified works' is sufficiently broad and comprises apparatus within 15 metres of, or apparatus that 'may in any way be adversely affected' by, the authorised development;
 - 1.2.2 the purpose of protective provisions is to protect physical assets, rather than proprietary rights;
 - 1.2.3 this phrase is not precedented in any development consent orders.
2. **Issue 2 – definition of 'diversion condition'**
- 2.1 The purpose of the diversion condition is to provide the undertaker with sufficient certainty that the diversion works are available, deliverable and cost effective.
- 2.2 At this stage in project development, it is not possible for this definition to include reference to specific technical specifications for potential diversion works. This is the exception with the 'red main criteria' which are defined and been discussed conceptually with STG.
- 2.3 The justification for paragraph (h) of the definition is addressed in issue 12 below.
3. **Issue 3 – definition of 'proposed work'**
- 3.1 The 'proposed work' definition outlines the works that are subject to the provisions for diversion works. These provisions set out a procedure for the STG entity to propose an alternative 'diversion work' instead of works and related land rights that are secured in the Order. This procedure has been referred to in various submissions during the course of the Examination as the 'lift and shift' arrangements.
- 3.2 The works that are included in the 'proposed work' definition are to some extent different to those included in the equivalent provisions in the Net Zero Teesside Order 2024. This is because of the need to account for interactions with the NZT development (and potential overlaps) and STG's future development aspirations of the in relation to the STG site.

- 3.3 The Applicant is generally agreeable for the authorised development that is located within the STG site to be subject to the diversion work provisions. However, this is subject to the following:
- 3.3.1 Work No. 1 should not be included as these works could not be appropriately modified or moved to another location within the Order Limits. The parties agree that Work No. 1 should be excluded from the diversion work provisions;
 - 3.3.2 Work No. 2, 7 and 8 should be excluded from the diversion works provisions as, in comparison to Work No. 3-5, they do not relate to works which could otherwise be dealt with by STG in its role in developing the infrastructure for the Teesworks estate (which would be the reason it would want to divert any specific H2Teeside connection). Works 2, 7 and 8 can and would only be built for the authorised development, and so need to meet the Applicant's requirements, rather than being diverted by STG;
 - 3.3.3 Work No. 6 should be excluded from the diversion works provisions as any amendments to Work No. 6 would require either an amendment to the development consent order or a new development consent order. This is because Work No. 6 requires development consent pursuant to the section 35 direction on 22 December 2022. Such planning approval pathways will cause significant delay to the construction of the authorised development and therefore would impede on the timely delivery of a nationally significant and urgently required project. Please see the Applicant's Second Change Application Report [REP7-011] for commentary on how, if it was required, the diversion of the pipeline route to the west of the Main Site, would be able to be managed, in this context.
 - 3.3.4 Work No. 9 should be excluded from the diversion work provisions as the construction compounds are a time critical component of the authorised development. Any delays to establishing the temporary construction compounds as a result of the process of the diversion works provisions will cause delays for the rest of the authorised development. Further, some modules that will be stored at the temporary construction compounds are very large and have very specific technical requirements. For example, some modules will be 80 metres in length, 23 metres in width, 40 metres in height and will weigh approximately 4,000 tonnes. Moving modules of this size is very complex as it requires specialist equipment and a significant amount of planning and resource to ensure that they can be transported safely. As such, it will be incredibly difficult, to modify the construction compounds that are included in the Order.
- 3.4 In addition, the Applicant has also included the works to, and use of 'AIL access route' in the definition of proposed works that are able to be diverted. The AIL access route forms part of Works No. 10 and is known as 'red main.' The Applicant has included it as a separate item because there are specific diversion conditions that apply to this road. This is because the delivery of AILs are critical to the construction of the authorised development. 'Red main' is the preferred route to do this, but the Applicant is aware that STG may wish to divert the route to be taken. It is therefore critical that any diversion route is technically able to cater for AIL access for the authorised development. These criteria are outlined in the definition of 'red main criteria'.
- 3.5 As a result of including works in the definition that are not limited to the work numbers in Schedule 1 of the draft DCO, the Applicant has made consequential amendments to the

definition of 'proposed land' (i.e. the Applicant's definition does not state 'as shown in the corresponding numbered area on the works plans'). This means that the Applicant's drafting of the 'proposed land' definition is slightly different than STG's preferred wording.

3.6 As such, the Applicant's definition of 'proposed works' comprises works 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. For the above reasons, the Applicant considers this definition is appropriate.

4. **Issue 4 – definition of 'STG entity' and paragraph 38**

4.1 The Applicant's drafting of the 'STG entity' definition is subject to paragraph 38. That paragraph states that any reference to the STG entity means the freehold owner of the relevant part of the STG site. This is consistent with the equivalent definition in the protective provisions determined by the Secretary of State in the Net Zero Teesside Order 2024 (see definition of 'Teesside entity' at paragraph 258 of Part 20 of Schedule 12).

4.2 It is not appropriate for the Applicant's obligations under the protective provisions to apply to all STG entities that have an interest in the relevant STG site, as STG have suggested. This is because:

4.2.1 the position of all of the STG entities may not all align, or may conflict. As a result, it may not be possible for the Applicant to comply with such differing positions. Any conflicts between the STG entities would need to be resolved, potentially through arbitration, which would cause delays in the construction of the authorised development; and

4.2.2 the time taken by the Applicant to carry out the same obligation potentially up to four times with each different STG entity creates an unnecessary burden and could potentially cause delays. This issue is heightened in the event the STG entities do not align on their position.

4.3 In response to STG's concerns that the protective provisions should not be limited to freehold interests, the Applicant inserted paragraph 38(2). This requires the freehold owner of the relevant STG site to consult with the other STG entities that have a land interest in that site. This gives all relevant STG entities an opportunity to be informed about, and consider the Applicant's proposals to discharge its requirements under the protective provisions, as well as discuss these with the other relevant STG entities. This balances the need for the STG entities to have sufficient protection pursuant to the protective provisions without the issues outlined in paragraph 4.2 arising.

5. **Issue 5 - Definition of 'STG site'**

5.1 The Applicant's definition of 'STG site' is limited to the land that the STG entities own freehold that is within the Order limits. This definition is consistent with the protective provisions determined by the Secretary of State in the Net Zero Teesside Order 2024 (see definition of 'Teesside site' at paragraph 258 of Part 20 of Schedule 12).

5.2 It is not appropriate to broaden the definition to include land in which the STG entities have an interest, as STG have suggested. This would unduly broaden the scope of the protective provisions and impose an unreasonable burden on the Applicant to comply with the protective provisions in respect of land interests that may not be impacted by the authorised development, given the broadness of the drafting here. If STG are concerned

about particular land interests that could be affected by the authorised development, these should be identified by them.

6. Issue 6 - consent for works provisions (paragraphs 3 & 4)

6.1 The works to which paragraphs 3-6 of the protective provisions apply comprise 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

6.2 The Applicant has excluded any works within the area of Work No. 1 as the works within this area will be self-contained and within a fenced area which the Applicants would own (in the event the Applicant exercises its compulsory acquisition powers) and in any event, would have sole control over. It is not reasonable or necessary for the protective provisions to effectively give the STG entities control over works that are not near to its interests and where no impact on its operations has been identified. It would mean that STG would be consenting to a matter that would have been approved in the DCO given by the Secretary of State, which is for Work No. 1 to be wholly built on that land. The construction of the Hydrogen Production Facility will mean that STG is no longer able to develop on that land, meaning that there will be no remaining 'interest' or 'asset' that needs to be protected by this provision.

7. Issue 7 – conditions for consent for works (paragraph 5)

7.1 Paragraph 5 limits the conditions that the STG entity can impose on any consent it gives under this paragraph to ensuring the respective authorised developments can co-exist within the STG site. This is also consistent with the equivalent paragraph in the Net Zero Teesside Order 2024 (see paragraph 261 of Part 20 of Schedule 12).

7.2 It is not appropriate for the STG entity to have wide discretion to impose any reasonable requirements or conditions 'as the STG entity may require to be imposed,' as suggested by STG. Even with the limitation of 'reasonableness,' the STG entity could still impose conditions or requirements that effectively results in the authorised development not being able to be constructed.

7.3 This position needs to be seen in the context of what STG's role is in relation to the authorised development. Its primary role is to ensure that the Teesworks estate is able to be redeveloped, and that the authorised development does not prevent that from happening. The Applicant's drafting reflects this role. The Applicant recognises, however, that STG entities also own apparatus, and so has added additional drafting to refer to 'for the protection of apparatus and access to them'. This will put STG in a similar position as other apparatus owning parties.

8. Issue 8 – restriction on DCO powers

8.1 STG have sought to prohibit the Applicant exercising the powers contained in articles 10-16, 18-20 as well as the Applicant's compulsory acquisition powers, temporary possession powers and powers to appropriate, acquire, create, extinguish or override any easement or other interests.

8.2 The Applicant accepts this for articles 10-16, and 18 on the basis that STG will want to manage access and traffic impacts within the Teesworks estate, and that works to trees fit in with the general position of STG being able to approve works in the Protective Provisions.

- 8.3 However in respect of articles 19-20 and controls on land powers, the Applicant strongly refutes such restrictions as they would jeopardise the delivery of the authorised development. These powers are required to ensure the authorised development can be constructed, operated and maintained and also to ensure that the authorised development's nationally significant public benefits can be realised, including supporting the Government's policies in relation to the timely delivery of new generating capacity and achieving ambitious net zero targets.
- 8.4 Furthermore on the Main Site, as discussed above, the Applicant considers that either the compelling case is made for development on that land or it is not, including acquisition powers; and STG should not be given the ability to essentially stymie the development by refusing consent to actually utilise the land for that development.
- 8.5 With the controls in place in the Protective Provisions in respect of controlling impacts of works across the wider Teesworks estate, the impacts to the Teesworks estate, and its ability to be developed, are able to be controlled. With these measures in place, the Applicant ensures that there is no realistic prospect that the exercise of compulsory land powers would have a detrimental impact on the ability of the Teesworks estate to be developed, or STG's apparatus to be protected.
- 8.6 However, the Applicant needs the ability to then deliver those approved works, utilising the land shown on the Order limits. In this context, the Applicant considers that the balance lies clearly in favour of the grant of compulsory acquisition powers, taking into account the measures to avoid, minimise or mitigate the effects of such powers, and noting the substantial public benefits that it considers exist for the authorised development.
- 8.7 The Applicant also refers to the justification for compulsory acquisition powers that is outlined in the Statement of Reasons [CR1-013].
9. **Issue 9 – expenses (paragraph 11)**
- 9.1 The Applicant is agreeable to pay for the reasonable costs of the STG entity outlined in paragraph 11(1). This list of costs is consistent with the equivalent paragraph in the Net Zero Teesside Order 2024 (see paragraph 267(1) of Part 20 of Schedule 12).
- 9.2 The Applicant is not agreeable to extending the scope of paragraph 11(1)(a) to include paragraphs 8 and 9 (using the numbering from the Applicant's protective provisions), as requested by STG. Paragraphs 8 and 9 are not relevant to 'to the authorisation of works details', which is the head of costs provided for in paragraph 11(1)(a). In any event, the Applicant should not be responsible for STG's costs that relate to co-operation as this benefits both the Applicant and STG.
- 9.3 The Applicant has specifically drafted paragraph 11(1)(b) so that the Applicant is not required to pay the costs incurred by the STG entity in pursuing arbitration in relation to the diversion work provisions. Including the costs of arbitration would be a strong disincentive to the STG entity following the diversion work process. It could also lead to unreasonable delays and cost to the undertaker whereby the STG entity would have little to lose by pursuing arbitration, even in a scenario where the outcome of the diversion works process was entirely appropriate and both parties had acted reasonably.
- 9.4 The Applicant has also agreed to insert paragraph 11(1)(e) at the request of STG. However, the Applicant is not agreeable to the inclusion of any additional sub-paragraphs to 11(1)(e), as requested by STG [REP5-088], as the wording already included in 10(1)(e)

is sufficient. The Applicant also notes that paragraphs 11(1)(a)-(e) is already an extensive list of costs and provides sufficient protection for STG. In respect of paragraph 13(1)(e)(ii) of STG's preferred protective provisions, the Applicant notes that any agreements for the diversion and protection of apparatus, including necessary facilities and rights in land has no relevance to 12(1)(e). This is because this paragraph does not refer to diversion works; rather, it relates to the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus.

9.5 Paragraph 11(3) of the Applicant's preferred protective provisions specifies that the STG entity that proposes an alternative to the AIL access route works must incur the costs of construction of such diversion. The Applicant requires certainty as to the availability of these works to construct the authorised development in an efficient and cost effective manner. The benefit of such works would be for STG following the construction of the authorised development. If a STG entity wishes to propose an alternative to what is proposed in the Order, and which the Applicant will be obliged to construct and deliver under the powers in the Order (and pay related compensation) it is reasonable that such cost is incurred by the STG entity.

10. **Issue 10 – indemnity (paragraph 12)**

10.1 The Applicant should not be liable for consequential loss, indirect loss or loss of profits as these losses are far too remote from, and lack a causal link to, the damage or interruption to service of supply of goods contemplated by paragraph 12(1). As such, the exclusion in paragraph 12(2) is appropriate. Paragraph 12(2) is preceded in the bespoke protective provisions in the Net Zero Teesside Order 2024 (see for example 255(2)(b) (Suez Recycling and Recovery UK Limited), 295(2)(b) (The Breagh Pipeline Owners) and 361(4)(b) (Northern Gas Networks Limited) of Parts 19, 21 and 26 respectively of Schedule 12 to the Net Zero Teesside Order 2024).

11. **Issue 11 – Provisions for diversion works (paragraph 13)**

11.1 The Applicant has excluded information that the Applicant reasonably considers as confidential from the scope of information that the STG entity could request from the Applicant per paragraph 13. The Applicant considers it would be unreasonable for the Applicant to disclose such information to a third party and notes that the confidential information that may be retained is limited to the information that the Applicant reasonably considers is confidential.

12. **Issue 12 – proposed diversion notice (definition of proposed diversion notice, paragraph (h) of diversion condition and paragraphs 15-18)**

12.1 The detailed design of the authorised development is yet to be carried out, and discussions with appropriate utility suppliers are yet to occur. It is typical for these aspects to be carried out at a later stage. However, as a result, the Applicant cannot include all of the technical specifications that any diversion work would need to comply with in the definition of diversion condition.

12.2 In these circumstances, the Applicant has included a step before the STG entity can issue a diversion notice, which will enable the parties to determine the relevant technical specifications.

- 12.3 Before the STG entity can issue a diversion notice, it must issue a proposed diversion notice, which must outline 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. Paragraph (h) of 'diversion condition' has been excluded as the technical specifications are to be agreed or determined after the proposed diversion notice is issued.
- 12.4 Within 28 days of receiving the proposed diversion notice, the Applicant considers the diversion work proposed and the applicable and reasonable technical specifications. The Applicant then notifies the STG of those technical specifications and the parties discuss them with a view to reaching agreement. Importantly, the Applicant can only propose technical specifications that are applicable and reasonable to the proposed diversion work. Once the technical specifications are agreed, or determined by arbitration, or if the Applicant does not provide the STG entity with technical specifications, the STG entity can issue a diversion notice. The diversion notice must comply with the agreed or determined technical specifications, unless the Applicant did not provide those specifications.
13. **Issue 13– removal of apparatus owned or maintained by an STG entity (paragraph 33(2))**
- 13.1 Paragraph 33 outlines the procedure for providing alternative apparatus in the event that the Applicant acquires any interest in or takes temporary possession of any land in which any apparatus is placed. If the Applicant 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. This requirement is standard in protective provisions (see for example paragraphs 52(2) (National Gas Transmission PLC), 75(2) (CF Fertilisers UK Limited), 137(2) (Northern Powergrid (Northeast) PLC), 216(2) (Sembcorp Utilities (UK) Limited) of Parts 4, 7, 12, 17 respectively of Schedule 12 to the Net Zero Teesside Order 2024). The Applicant has provided this same protection to other counterparties in the draft development consent order (see for example paragraph 5(2) respectively of Schedules 26-28 (Air Products PLC, CF Fertilisers UK Limited, Northern Powergrid (Northeast) PLC's Protective Provisions)).
- 13.2 The Applicant should not be required to provide the information included in the 'works detail' definition for the alternative apparatus, as requested by STG. The amount of information included in the definition 'works detail' is far greater than the 'plan and section' that is typically required in equivalent paragraphs in protective provisions.
14. **Issue 14 – protection of apparatus owned or maintained by a STG entity (paragraph 35)**
- 14.1 The Applicant has agreed to include this paragraph at the request of STG, notwithstanding that such protections were not included in the protective provisions for the benefit of STG in the Net Zero Teesside Order 2024. The Applicant's preferred form of paragraph 35 is consistent with the protective provisions other statutory undertakers have requested in the H2T project (see for example Schedules 19 (National Grid Electricity Transmission PLC), 20 (National Gas Transmission PLC), 38 (Northern Gas Networks Limited) of the draft Development Consent Order).
- 14.2 STG's preferred drafting includes 'with or without vehicles to inspect, repair, replace and maintain and ensure its continuing safety and operational viability' at the end of paragraph

35(2)(b). The Applicant is not agreeable to this insertion as it is not necessary. Paragraph 35(2)(b) already allows the STG entity to modify the works details for the purpose of providing or securing proper and convenient means of access to apparatus. As such, the wording already provides access for vehicles where that level of access is proper and convenient. Conversely, it may not always be possible for the Applicant to provide access with vehicles, and so being able to impose a condition which requires that to be possible at all times would not be appropriate. .

- 14.3 The Applicant has removed the duplicative drafting from STG’s proposed paragraph 35(4). The Applicant has included a test of reasonableness for the STG entity’s satisfaction in respect of the protective works that are carried out. The Applicant has also included a timeframe for the STG entity to give notice of any protective works that it requires, as a result of the specified works. This ensures the construction of the authorised development is not delayed and the timeframe included is consistent with the timeframes other statutory undertakers require (see for example paragraphs 8(8) and 8(7) of Schedules 19 (National Grid Electricity Transmission PLC’s Protective Provisions) and 20 (National Gas Transmission PLC’ Protective Provisions) respectively [REP7-018]).
- 14.4 The Applicant has also inserted paragraph 35(6) to make it clear that the Applicant can modify any approval sought for the specified works. This is standard wording that is contained in protective provisions.
15. **Issue 15 – protection of apparatus owned or maintained by a STG entity (paragraph 36)**
- 15.1 The Applicant has made minor amendments to paragraph 36(b) so that in non-emergency circumstances, the STG entity can only continue to exercise rights to access and maintain apparatus where it is reasonably necessary to do so. The STG entity must also provide the Applicant at least 28 days prior written notice to enable the parties to discuss timing and co-ordinate their respective works. Requiring prior written notice is precedent in protective provisions (see for example paragraph 91(2)(b)(ii) of Part 8 of Schedule 12 (Exolum Seal Sands LTD and Exolum Riverside LTD’s Protective Provisions) to the Net Zero Teesside Order 2024).
16. **Issue 16 – duplicating notices**
- 16.1 STG has requested that when the Applicant issues one of the STG entities with a notice or information, it must also send a copy to the other STG entities. The Applicant considers this unnecessary, particularly where that notice or information is not relevant to the other STG entities. STG will be able to determine which entities are affected by the relevant notice and distribute the information accordingly. Such requirement places unnecessary burden on the Applicant, and is inconsistent with paragraph 38 of the protective provisions. Paragraph 38 limits the application of the protective provisions to the freeholder owner of the STG site.
17. **Issue 17 – article 43(5)-(6) of the draft Development Consent Order**
- 17.1 STG has sought to disapply paragraphs 5 and 6 of article 43 in the draft Development Consent Order [REP7-018]. These paragraphs include a ‘deemed approval mechanism’ in respect of any applications or requests are submitted to a ‘consenting authority.’ STG is a consenting authority for the purposes of article 43. Article 43 is necessary in order to ensure the timely delivery of a nationally significant project, particularly in the context of the amount of control required by STG in these Protective Provisions. The protective

provisions that benefited the STG entities in the Net Zero Teesside Order 2024 did not disapply the equivalent provision in that order. Furthermore, this article is applicable to protective provisions for various statutory undertakers in other development consent orders (such as Part 12 of Schedule 12 (Northern Powergrid (Northeast) PLC's Protective Provisions) to the Net Zero Teesside Order 2024 and Part 4 of Schedule 15 (National Grid Electricity Distribution (East Midlands) PLC) to the West Burton Solar Project Order 2025). As such, the Applicant does not agree to this disapplication of this article.