

**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 requirements for any offloading procedures; and
- (f) any further particulars provided in response to a request under paragraph 4.

**Commented [PM1]:** Issue 1 - restriction on DCO powers

### **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;
- (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 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.

Commented [PM2]: Issue 2

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 Agreement including obligations under or in connection with the NZT Order.

Commented [PM3]: Issue 3

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 the 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..

Commented [PM4]: Issue 4

(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-paragraph (1)(a) (b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker with 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).

**1. Issue 1 – restrictions on DCO powers**

- 1.1. Redcar Bulk Terminal Limited (**RBT**) has sought in its preferred protective provisions to restrict the Applicant exercising the powers contained within the draft DCO 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.
- 1.2. The Applicant understands that RBT will want to manage access and traffic impacts within the RBT site. 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.
- 1.3. With the controls in place in the protective provisions in respect of controlling impacts of works across the RBT site, the impacts to the RBT site and RBT operations are able to be controlled. The Applicant has agreed to extend the application of these controls to apparatus that provides services to the RBT site and land in the vicinity of the RBT site that the RBT operations rely on. Further, some controls, such as those relating to the provision of alternative access and generally for the protection of the RBT operations protects NZT and RBT's leaseholders, sub-tenants and licensees as well as RBT itself. With these measures in place, the Applicant ensures that there is no realistic prospect that the exercise of compulsory acquisition powers would have a detrimental impact on the ability of the RBT site and RBT operations to function and related apparatus to be protected.
- 1.4. 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.
- 1.5. The Applicant also refers to the justification for compulsory acquisition powers that is outlined in the Statement of Reasons [**CR1-013**].

**2. Issue 2 – consent for works under Schedule (paragraph 4)**

- 2.1. The breadth of the works to which paragraphs 4-8 apply provides appropriate protection for the RBT operations. The works comprise any part of the authorised development which would have an effect on (a) the RBT operations or access to them, (b) any activities on the or to the RBT site and (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 Applicant under paragraph 3 or otherwise, subject to certain exclusions and paragraph 4(2).
- 2.2. The Applicant has inserted drafting clarifying that paragraph 4(1)(c) excludes any proposed works or activities which have been approved under other protective provisions in the Order or in accordance with a related agreement. Paragraph 4(2) provides that, in these circumstances, the Applicant must provide a copy of the approved works details and plans for the proposed works or activities to RBT prior to those works commencing.
- 2.3. The Applicant understands that RBT is not satisfied with the protection afforded to it by paragraph 4(2) and would prefer the original drafting without the Applicant's proposed amendments.
- 2.4. The Applicant notes that other owners of apparatus captured by paragraph 4(1)(c) may have the benefit of separate Protective Provisions or related agreements in relation to the relevant apparatus and paragraph 4(1)(c) would, without clarification, require the Applicant to seek approval from that owner and RBT, as a third party, in respect of the same piece of apparatus.

This is unnecessary, unduly onerous and increases the risk of delay to the delivery of the authorised development.

- 2.5. The inclusion of paragraph 4(1)(c) extends the protections that RBT has the benefit of in the Net Zero Teesside Order 2024 (see paragraphs 178 to 182 in Part 15 of Schedule 12). In this context, the Applicant's proposed drafting is an appropriate and proportionate solution which avoids an unnecessary consenting requirement whilst providing RBT with adequate protection and oversight in relation to works that may affect apparatus owned by third parties.

**3. Issue 3 – conditions on consent for works under Schedule**

- 3.1. Paragraph 6 enables RBT to impose reasonable requirements related in relation to the performance of works under this Schedule for (a) the continuing safety and operational viability of the RBT operations; (b) the avoidance of commercial losses to the RBT operations; and (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.
- 3.2. The Applicant understands that RBT's preferred form of protective provisions also allows it to impose reasonable requirements for the preservation of RBT's ability to comply with contractual and legal obligations given imposed or otherwise existing including obligations under or in connection with the NZT Order. The Applicant currently does not have an understanding of the nature and scope of the existing contractual and legal obligations captured by this proposed drafting which is very broad and uncertain. Accordingly, the Applicant has not included this drafting in the protective provisions.
- 3.3. The Applicant considers that its preferred drafting strikes a reasonable and appropriate balance between affording protection to RBT and limiting the risk that conditions or requirements are imposed upon the works that effectively results in the authorised development not being able to be constructed.

**4. Issue 4 – indemnity**

- 4.1. The indemnity clause contained in paragraph 11 of Schedule 36 to the draft DCO provides sufficient protection to RBT as it covers the scope of damage, service interruption, disruption loss, or denial that RBT may suffer as a result of works referred to in paragraph 4 of the protective provisions.
- 4.2. The Applicant understands that RBT broadly accepts these amendments but wishes to also include coverage for a 'diminution' in service provided.
- 4.3. The Applicant considers that its proposed amendments (covering instances where the services are completely interrupted and where provision is disrupted) adequately caters for unpredictable and unknown consequences from potential impacts of the works and that RBT's proposed additional amendment is unnecessary.
- 4.4. The Applicant has also not included the phrase 'indemnify RBT to' in paragraph 11(1) as it considers that this is unnecessary given the context of the paragraph and the coverage provided by paragraph 11(1)(a) and (b).