

**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.

Commented [AC1]: Issue 1

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.

Commented [AC2]: Issue 2 - Acquisition other than by agreement

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.

Commented [AC3]: Issue 3

(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.

Commented [AC4]: Issue 4 - no interruption

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.

Commented [AC5]: Issue 5

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).

Commented [PM6]: Issue 6

(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).

Commented [AC7]: Issue 7

(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.

Commented [AC8]: Issue 8 - scope of expenses

(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.

Commented [AC9]: Issue 9 - Deduction of Excess Expenses

(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.

Commented [AC10]: Issue 10 - Removal of Deduction where Contractor permitted to dispose of apparatus

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—

Commented [AC11]: Issue 11 - Scope of damage leading to costs

- (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.

Commented [AC12]: Issue 12 - scope of costs

(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.

Commented [AC13]: Issue 13

(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 9 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 9 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.

Commented [AC14]: Issue 14

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.

Commented [AC15]: Issue 15

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.

Commented [PM16]: Issue 16

(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.

Commented [AC17]: Issue 17

Applicant's submissions

1. Issue 1 – Definition of apparatus (paragraph 2)

- 1.1 The form of Protective Provisions (PPs) for the protection of Lighthouse Green Fuels (LGF) contained in Schedule 39 of the draft DCO (DCO PPs) [REP7-018] include a definition of “apparatus” which refers to LGF apparatus as “at the date of the Order”.
- 1.2 LGF have sought to remove this from their preferred form of PPs [REP5a-012] (LGF PPs).
- 1.3 The additional wording is required to provide the applicant with sufficient certainty as to the extent of the apparatus that exists and will be captured by the PPs. This is particularly important given LGF’s forthcoming plans to embark on their own Nationally Significant Infrastructure Project (described as the Tees Valley Project at paragraph 14 of the DCO PPs, which is currently at the pre-application stage) to ensure that these protective provisions do not apply to apparatus constructed pursuant to that project, if consented. The Applicant cannot commit to providing protections to apparatus that does not exist or it does not know about.
- 1.4 Paragraph 14 of the DCO PPs provides sufficient protection for the LGF’s future project. The parties’ intention is to amend paragraph 14 of the DCO PPs through the LGF DCO (if consented) to update the protections afforded to the Tees Valley Project, once further information about that project is known.

2 Issue 2 – Acquisition other than by Agreement

- 2.1 The LGF PPs provide for the inclusion of a new paragraph 5 which imposes a restriction on acquisition of LGF’s apparatus other than by agreement. By contrast, the DCO PPs retain the right to compulsory acquisition powers for the benefit of the proposed development, provided that any right of LGF to maintain that apparatus in such 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 LGF’s reasonable satisfaction (the LGF PPs also contain this language).
- 2.2 The DCO PPs (absent LGF’s proposed paragraph 5) reflect the position that compulsory powers are required and are necessary in order to protect the delivery of the authorised development, being a project of national significance (by virtue of the direction issued pursuant to s 35 of the Planning Act 2008 on 22 December 2022). They also provide appropriate protection for LGF’s operations and interests through the requirements to provide alternative apparatus as outlined above.
- 2.3 The applicant strongly refutes the proposed restrictions on the use of compulsory acquisition powers 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. 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.
- 2.4 The applicant also refers to the justification for compulsory acquisition powers that is outlined in the Statement of Reasons [CR1-013].

3 Issue 3 – Scope of rights for construction of alternative apparatus

- 3.1 The LGF PPs include additional wording as a tailpiece to sub-paragraph 5(2) of the DCO PPs which details the scope of rights to be granted to LGF in respect of the construction of alternative apparatus pursuant to the provisions contained within paragraph 5(2) of the DCO PPs.
- 3.2 The additional wording set out in the LGF PPs is unnecessary. The existing requirement in paragraph 5(2) for the applicant to provide “the necessary facilities and rights for the construction of alternative apparatus” is sufficiently broad. Matters regarding timing of delivery of and the grant of access to such alternative apparatus are addressed under paragraphs 5(1), 5(4) and 5(5).

3.3 The Applicant understands LGF is agreeable to the deletion of additional wording as a tailpiece to sub-paragraph 6(2) in the LGF PPs.

4 Issue 4 - No Interruption

4.1 The LGF PPs have sought to include a new sub-paragraph 5(9) to the DCO PPs which requires the Applicant not to cause/permit any interruption in LGF's ability to use the apparatus/alternative apparatus, this wording is considered unnecessary.

4.2 The processes set out in paragraph 5 of the DCO PPs (which require the applicant to maintain existing apparatus until such time as alternative apparatus has been constructed, tested and is in operation and access to it has been provided) are intended to ensure that there will be no interruption to LGF's operations.

4.3 Furthermore, paragraph 10(1) provides protections to LGF in the event that (notwithstanding the preceding provisions) any damage or interruption is caused to the use of LGF's apparatus.

4.4 The DCO PPs therefore provide LGF with adequate protection whilst ensuring the delivery of the nationally significant project is safeguarded.

4.5 The Applicant understands LGF is agreeable to the deletion of the new sub-paragraph 5(9) to the DCO PPs.

5 Issue 5 – Co-operation (paragraph 6(1))

5.1 The applicant has inserted paragraph 6 to address the co-operation needed between the parties to resolve any potential conflicts between LGF apparatus and the authorised development. The applicant considers this paragraph provides sufficient protection for LGF and notes that this same paragraph has been included in Schedule 26, for the benefit of Lighthouse Green Fuels Limited.

5.2 The LGF PPs include a new sub-paragraph 6(8) to the LGF PPs which goes for beyond the necessary protections for the parties to co-operate.

5.3 This additional wording is considered to be too wide and has the potential to cut across the provisions contained within the remainder of PPs which set out in clear terms the requirements that must be met by both the applicant and LGF to safeguard the delivery of the authorised development without negatively impacting on LGF's operations (see paragraphs 5, 7, and 8), and the means by which LGF will be compensated should the applicant fail to deliver on its obligations (see in particular paragraph 10).

6 Issue 6 – Application of Paragraph 7

6.1 Paragraph 7 is intended to ensure that where the applicant affords LGF facilities and rights for the construction and maintenance of alternative apparatus within the undertaker's land, the terms and conditions on which such facilities/rights are to be granted must either be as agreed between the parties or as settled by arbitration.

6.2 LGF have sought the inclusion of additional wording in paragraph 7(1) of the DCO PPs, the effect of which would be to extend the application of that paragraph beyond the scope of the DCO such that it would apply to any such facilities/rights granted by the Applicant to LGF.

6.3 The amendment sought by LGF goes beyond the scope of the DCO and is therefore considered neither appropriate nor necessary. The purpose of the PPs is to provide LGF with protection in connection with damage/disturbance that may arise as a result of the authorised development and should not extend to matters outside of the DCO.

6.4 The Applicant understands LGF is agreeable to the deletion of the additional wording it initially proposed to paragraph 7(1) of the DCO PPs.

7 Issue 7 – Costs and losses (paragraph 9(1))

7.1 The Applicant understands LGF is agreeable to the insertion of 'reasonable' in paragraph 8(1) of the DCO PPs.

7.2 LGF have sought to amend paragraph 9(1) of the DCO PPs to include reference to the undertaker being responsible for LGF's reasonable "costs and losses" in connection with the removal/diversion of apparatus (pursuant to sub-paragraph 5(2) of the DCO PPs), in addition to the expenses already referred to.

- 7.3 This additional wording is unnecessary and cuts across the wording of paragraph 10 of the DCO PPs which already sets out the terms on which LGF will be protected against costs and losses incurred in respect of damage to and/or interruption in the use of apparatus or property arising out the works authorised by the PPs.
- 7.4 Inclusion of the additional wording proposed by LGF in the DCO PPs would pose a risk of inconsistency between paragraphs 9 and 10 as each paragraph is subject to its own terms and exclusions which are reflective of the issues that the relevant paragraph is intended to address.
- 7.5 Furthermore, it is noted that there is precedent for the approach taken in the DCO PPs of separating provisions which (i) protect against expenditure associated specifically with the removal/alternative of apparatus from those that (ii) relate more broadly to the potential costs/losses that may arise as a result of damage/interruption in the use of apparatus, property or the supply of goods as a result of the authorised development (see for example the bespoke Protective Provisions at paragraphs 55-56 (Air Products PLC) and 85-86 (CF Fertilisers UK Limited) of Parts 5 and 7 respectively of Schedule 12 to the Net Zero Teesside Order).

8 Issue 8 – Scope of expenses

- 8.1 LGF have sought to include a list of costs and expenses that LGF can seek to recover from the applicant under the PPs as a tailpiece to sub-paragraph 9(1). This is unnecessary.
- 8.2 Sub-paragraph 9(1) in the DCO PPs (absent the list proposed by LGF) already sets out the scope of expenses that the applicant must repay to ALGF.
- 8.3 The list is sufficiently broad to cover the types of expenses LGF may incur as a result of the works being referred to.

9 Issue 9 – Deduction of excess expenses

- 9.1 LGF have sought amendments to paragraph 9(3) to limit the scope of deductions from expenses it receives arising from excess expenditure to the extent that such excess expenditure relates to the inability to obtain the existing type, capacity or dimensions of apparatus, or to place such replacement apparatus at the existing depth.
- 9.2 The Applicant considers that the wording it proposes strikes the right balance between the parties – if the apparatus is improved through being replaced by the undertaker, compared to that which is there at present, then LGF does receive a benefit. The reason for the improvement (such as LGF are seeking to introduce) should not be relevant to whether that benefit is taken into account under paragraph 9(3). Paragraph 9(3)(b) makes provision for referral to an arbitrator where there is a dispute as to whether the placing of apparatus of a particular type, capacity or dimension or the placing of apparatus at that depth is necessary. This in turn determines whether the relevant deduction for excess expenditure will apply.
- 9.3 Furthermore, it is noted that there is precedent for limiting the wording of paragraph 9(3)(b) in the DCO PPs to exclude LGFs additional wording (see for example the bespoke Protective Provisions at paragraphs 55(3)(b) (Air Products PLC) and 85(3) (CF Fertilisers UK Limited) of Parts 5 and 7 respectively of Schedule 12 to the Net Zero Teesside Order).

10 Issue 10 - Removal of Deduction where Contractor permitted to dispose of apparatus

- 10.1 LGF have sought the inclusion of a new sub-paragraph 9(6) in the DCO PPs to the effect that where they have appointed a contractor to remove apparatus and have permitted that contractor to dispose of the apparatus in exchange for a reduction in the costs and expenses charged by the contractor, no further deduction should be made to the expenses paid to LGF pursuant paragraph 9(2) of the DCO PPs.
- 10.2 These amendments are not considered reasonable and are not agreed by the applicant. The applicant would have no input or oversight into the identity of the relevant contractor, or the value attributed to the apparatus by LGF and the contractor (and which would be reflected in the price to be paid to the contractor) and there is therefore a risk that the relevant apparatus could be undervalued and / or affect the costs which LGF seeks to pass through to the applicant

pursuant to this Schedule. The wording proposed by LGF is also inconsistent with paragraph 9(2) of the DCO PPs.

- 10.3 Furthermore, it is noted that there is precedent for not limiting ability to apply the deduction under paragraph 9(2) of the DCO PPs in the manner being sought by LGF (see for example the bespoke Protective Provisions at paragraphs 55(2) (Air Products PLC) and 85(2) (CF Fertilisers UK Limited) of Parts 5 and 7 respectively of Schedule 12 to the Net Zero Teesside Order).

11 Issue 11 – Scope of damage leading to costs

- 11.1 LGF have sought the inclusion of additional wording in paragraph 10(1) to expand the scope of events leading to damage in respect of which the costs provisions will apply. The changes being sought are unnecessary and are not agreed by the applicant.
- 11.2 The scope of damage set out in paragraph 10(1) of the DCO PPs is considered to be sufficiently broad to protect LGF. Furthermore, it is noted that there is precedent for limiting the wording of these provisions to mirror that set out in the DCO PPs, without the additional wording being sought by LGF (see for example the bespoke Protective Provisions at paragraphs 56(1) (Air Products PLC) and 86(1) (CF Fertilisers UK Limited), of Parts 5 and 7 respectively of Schedule 12 to the Net Zero Teesside Order).

12 Issue 12 – Scope of costs

- 12.1 The Applicant should not be responsible for paying for any unreasonable costs incurred by LGF, hence the inclusion of ‘reasonable’ in paragraphs 10(1)(a). This is also consistent with paragraph 10(6) of the protective provisions. The Applicant understands LGF is agreeable to the insertion of ‘reasonable’ in paragraph 10(1)(b), so it is not clear why LGF is resisting the inclusion in 10(1)(a).
- 12.2 Further, the inclusion of ‘reasonableness’ in paragraphs 10(1)(a) is preceded in various bespoke protective provisions (see, for example paragraphs 56, 68, 86, 94, 102, 141, 157, 208(2)(b), 224, 255, 268, 295, 304, 327, 348, 361, 371 and 400 of Parts 5-9, 12-13, 16-17, 19-23 and 25-28 respectively of Schedule 12 to the Net Zero Teesside Order).

13 Issue 13 – Consequential losses

- 13.1 LGF have sought to remove the exclusion of liability by the applicant for consequential and indirect losses and loss of profits. This amendment is not agreed.
- 13.2 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 10(1). As such, the exclusion in paragraph 10(2) is appropriate. Paragraph 10(2) is preceded in various bespoke protective provisions in the Net Zero Teesside Order (see for example, paragraphs 109(2)(b), 125(3), 255(2)(b), 295(2)(b), 338(2)(b) and 361(4)(b) of Parts 10-11, 19, 21, 24 and 26 respectively of Schedule 12 to the Net Zero Teesside Order).

14 Issue 14 - Application of Schedule to Certain Apparatus (paragraph 12)

- 14.1 The LGF PPs do not include paragraph 12 from the DCO PPs. The provision has been added to clarify which protective provisions apply to any particular piece of apparatus.
- 14.2 The Applicant understands LGF is agreeable to the insertion of paragraph 12 of the DCO PPs.

15 Issue 15 – Access (paragraph 13)

- 15.1 The Applicant has inserted paragraph 13 to address LGF’s concerns about ensuring that LGF’s access along Huntsman Drive is maintained, except for in an emergency. The Applicant understands that LGF is agreeable to the insertion of paragraph 13 of the DCO PPs.

16 Issue 16 – Meaning of ‘reasonable endeavours’ in paragraph 14(2)(b)

- 16.1 LGF have proposed additional wording to be inserted into paragraph 14(2)(b) of the DCO PPs, which states that ‘reasonable endeavours’ may require the Applicant to seek an amendment of any document or plan approved under a requirement of any work where construction of that work has not been commenced by the undertaker. The Applicant has not agreed to this due to additional cost and time that would be required to amend a document or plan that has already been

approved by the consenting authority. Furthermore, any amendments that are requested by LGF may not be acceptable to the consenting authority which would exacerbate the increased cost and delays.

16.2 The Applicant understands that LGF would like an opportunity to review any documents and plans that are to be approved and therefore has amended paragraph 14(2)(b)(iv), so that the Applicant must provide any documents or plans to LGF that are relevant to LGF for information purposes. The Applicant is required to take reasonable account of any comments LGF provides to the Applicant in relation to these plans and documents. The Applicant understands that LGF is agreeable to:

16.2.1 the deletion of the additional wording LGF initially proposed to be inserted into paragraph 14(2)(b) of the DCO PPs; and

16.2.2 the insertion of the phrase 'and take reasonable account of any comments made by Lighthouse Green Fuels on those documents or plans' in paragraph 14(2)(b)(iv).

16.3 The Applicant has also inserted a timeframe for LGF to provide the Applicant with its comments on the plans and documents. This is to ensure that no delays are caused as a result of any delay in LGF providing its comments. The Applicant considers that 28 days for LGF to review the plans and documents is an acceptable timeframe.

17 Issue 17 – description of 'Tees Valley Project' (paragraph 14(4))

17.1 The Applicant has included the description of the 'Tees Valley Project' by reference to the information that is currently available on the Planning Inspectorate's website for LGF's future DCO project. By contrast, the LGF PPs describe the 'Tees Valley Project' as 'the development of all or part of TV1 and TV2 including any apparatus serving TV1 and TV2'. The Applicant considers that the description in the LGF PPs is far too broad. The Applicant is agreeable to include protections for LGF's future DCO project as it has some level of knowledge about that project. By contrast, the Applicant does not currently know about any other development aspirations or planning applications that LGF proposes to progress. The Applicant cannot, and should not be required to protect future development of which the Applicant is not aware.

17.2 The reference to apparatus is not necessary as paragraphs 1-12 of the DCO PPs already provide sufficient protection to LGF's existing apparatus. Any future apparatus that is part of LGF's future DCO project is included in the definition that is included in the DCO PPs.

17.3 As noted above, the parties' intention is to amend paragraph 14 of the DCO PPs through the LGF DCO (if consented) to update the protections afforded to the Tees Valley Project, once further information about that project is known.

17.4 The Applicant understands LGF is agreeable to the description of the land that is included in paragraph 14(4) of the DCO PPs. CE218940 and CE213339 are the land titles for the land that LGF described as 'TV1' and 'TV2'.