

PROTECTIVE PROVISIONS FOR THE PROTECTION OF OWNERS AND OPERATORS OF THE LINKLINE CORRIDOR

Extent of this Part

213.—(1) The provisions of this Part have effect for the benefit of owners and operators of the Linkline Corridor unless otherwise agreed in writing between the undertaker and any owner, in relation to that entity's interests.

(2) Except to the extent as may be otherwise agreed in writing between the undertaker and any owner, where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of Order)—

- (a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between NT Group and the transferee or grantee (as the case may be); and
- (b) written notice of the transfer or grant must be given to NT Group on or before the date of that transfer or grant.

(3) Sub-paragraph (2) applies to any agreement—

- (a) which states that it is “entered into for the purposes of the Sembcorp Protective Provisions”; and
- (b) whether entered into before or after the making of this Order.

(4) Article 43 (*procedure in relation to certain approvals*) paragraphs (4) and (5) do not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Part.

Interpretation of this Part

214. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to serve the owner of the apparatus in question in a manner no less efficient than previously;

“apparatus” means mains, pipes, cables, sewers, drains, ditches, watercourses or other apparatus and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or on land;

“operator” means any person who is responsible for the construction, operation, use, inspection, adjustment, alteration, repair, maintenance, renewal, removal or replacement of any apparatus or alternative apparatus in the Linkline Corridor or has rights to the use of such apparatus or alternative apparatus, but who is not an owner in relation to the Linkline Corridor or the Wilton Complex and is not a third party owner or operator;

“owner” means—

(a) in relation to the Linkline Corridor, any person—

- (i) with an interest in the Linkline Corridor;
- (ii) with rights in, on, under or over the Linkline Corridor; or
- (iii) with apparatus in, on or under the Linkline Corridor;

but who is not a third party owner or operator;

“Sembcorp” means Sembcorp Utilities (UK) Limited, with Company Registration Number 04636301, whose registered office is at Sembcorp UK Headquarters, Wilton International, Middlesbrough, Cleveland, TS90 8WS and any successor in title or function to the Sembcorp operations in, under or over the Linkline Corridor;

“the Sembcorp operations” means—

- (a) the activities and functions carried on by Sembcorp in the Linkline Corridor (including in relation to any access routes and laydown spaces associated with them or it);
- (b) the number 2 river tunnel between Bran Sands and North Tees crossing the Order limits under the River Tees (together with associated headhouses) operated by Sembcorp; and
- (c) other pipes and apparatus (including access routes and laydown spaces associated with such pipes and apparatus) operated—
 - (i) by Sembcorp; or

by any owner or operator within the Linkline Corridor;

“NTL” means North Tees Limited (company number 05378625) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NTR” means North Tees Rail Limited (company number 10664592) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NTLL” means North Tees Land Limited (company number 08301212) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NT Group” means NTL, NTR and NTLL and their interests in the Linkline Corridor to the extent show on the "Link Line Corridor Plan";

“operations” means, for each of NTL, NTR and NTLL, their respective interests within the Linkline Corridor; and

"Linkline Corridor Plan" means the plan showing the extents of NTG's interests in the Linkline Corridor show edged red.

“operations” means, for each of NTL, NTR and NTLL, their respective freehold land within the Order limits;

“Linkline Corridor” means the area edged black and shaded yellow on the Linkline Corridor protective provisions supporting plans;¹

“Linkline Corridor protective provisions supporting plans” means the plans which are certified as the Linkline Corridor protective provisions supporting plans by the Secretary of State under article 44 (certification of plans etc) for the purposes of this Order;

“third party owner or operator” means an owner or operator of apparatus the subject of the third party protective provisions;

“third party protective provisions” means the protective provisions in Parts 1 to 42 of this Schedule;

“works details” means—

- (a) plans and sections;
- (b) details of the proposed method of working and timing of execution of works;
- (c) details of vehicle access routes for construction and operational traffic; and
- (d) any further particulars provided in response to a request under paragraph 215.

Separate approvals by third party owners or operators

215.—(1) If the approval of a third party owner or operator is required, sought or obtained under the third party protective provisions on any matter to which this Part of this Schedule relates, this does not remove any obligation on the undertaker to seek consent from Sembcorp pursuant to this Part in respect of that matter.

¹ We note that "Sembcorp Protection Corridor" was defined with reference to a specific plan in the Net Zero Teesside DCO which NTG have not had sight of. The plan appended to these draft Protective Provisions shows the extent of the Sembcorp Protection Corridor in which NTG has an interest "NTL Link Line Corridor Plan".

(2) Where the undertaker seeks consent for works details from a third party owner or operator pursuant to the third party protective provisions that also require consent from Sembcorp under this Part, the undertaker must provide Sembcorp with—

- (a) the same information provided to the third party owner or operator at the same time; and
- (b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions

Removal of apparatus

216.—(1) If, in exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which any apparatus is placed, the apparatus must not be removed, and any right to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation and equivalent rights for the alternative apparatus have been granted to Sembcorp and, where relevant, the owner or operator of the apparatus.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in the land, it must give to the owner or operator in question and Sembcorp written notice of the requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed; and in that case the undertaker must afford to the owner or operator and Sembcorp the necessary facilities and rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus in other land of the undertaker and subsequently for the maintenance of the apparatus.

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between Sembcorp, and the undertaker or in default of agreement settled by an arbitrator appointed under paragraph 227.

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an arbitrator under paragraph 227, and after the grant to the owner or operator of any such facilities and rights as are referred to in sub-paragraph (2) and after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part subject to any reasonable directions given to or requirements imposed on that owner or operator by Sembcorp and NT Group.

(5) Notwithstanding sub-paragraph (4), if the undertaker gives notice in writing to the owner or operator in question and Sembcorp that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the owner or operator, must be executed by the undertaker without unnecessary delay to an appropriate standard and in a safe manner.

(6) If works are executed by the undertaker in accordance with sub-paragraph (5), the owner or operator of the apparatus and Sembcorp and NT Group must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

(7) Nothing in sub-paragraph (5) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 3,000 millimetres of the apparatus, without the written agreement of Sembcorp such agreement not to be unreasonably withheld.

Alternative apparatus

217.—(1) Where, in accordance with this Part, the undertaker affords to an owner or operator and Sembcorp facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and Sembcorp or in default of agreement determined by arbitration under

paragraph 227, such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

(2) In settling the terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised development for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator materially worse than the rights enjoyed by them in respect of the apparatus to be removed, the arbitrator must make such provision for the payment of compensation by the undertaker to the owner or operator and Sembcorp as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

Consent under this Part in connection with Sembcorp and NT Group operations

218. Before commencing any part of the authorised development which would or may have an effect on the operation or maintenance of the Sembcorp and NT Group operations or access to them, and in all cases where such works are within 3,000 millimetres of the Linkline Corridor, the undertaker must submit to Sembcorp and NT Group the works details for the proposed works and such further particulars as Sembcorp and NT Group may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.

219. The works referred to in paragraph 218 must not be commenced until the works details in respect of those works submitted under that paragraph have been approved by Sembcorp.

220. Any approval of Sembcorp required under paragraph 219 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Sembcorp may require to be made for—

- (a) the continuing safety and operational viability of the Sembcorp operations; and
- (b) the requirement for Sembcorp to have reasonable access to the Sembcorp operations at all times.

221.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 219 and any requirements imposed on the approval under paragraph 220.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 227 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 227.

Insurance

222.—(1) Before carrying out any works forming part of the authorised development on any part of the Linkline Corridor, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer for a sum not less than such level as may be agreed in writing

between the undertaker and Sembcorp and NT Group, and evidence of that insurance must be provided to Sembcorp and NT Group on request.

(2) Not less than 90 days before carrying out any works forming part of the authorised development on any part of the Linkline Corridor or before proposing to change the terms of the insurance policy, the undertaker must notify Sembcorp and NT Group of details of the terms or cover of the insurance policy that it proposes to put in place including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to works or the use of the authorised development affecting the Linkline Corridor during the operation of the authorised development at such level as may be agreed in writing between the undertaker and Sembcorp and NT Group.

Any dispute between the undertaker and Sembcorp and NT Group regarding the terms, cover or insured level of the insurance policy shall be resolved in accordance with paragraph 226.

Expenses

223.—(1) Subject to the provisions of this paragraph, the undertaker must pay to the owner or operator in question and Sembcorp and NT Group (as the case may be) the reasonable expenses incurred by them under this Part in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part;
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;
- (d) the design, project management, supervision and implementation of works;
- (e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;
- (f) monitoring the effectiveness of any requirements referred to in paragraph 219 and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those requirements; and

any other work or thing reasonably required in consequence of the exercise by the undertaker of any power under this Order or by the service by the undertaker of any notice, plan, section or description, within a reasonable time of being notified by the person in question that it has incurred such expenses, such notification to be provided by the owner or operator or Sembcorp and NT Group (as the case may be).

(2) Where reasonable and practicable, the person to whom the payment is to be made under this paragraph must notify the undertaker of any anticipated expense as outlined in sub-paragraph (1) and provide an estimate of such costs prior to incurring such expense.

(3) In advance of any payment under sub-paragraph (1) above being made and where reasonably requested by the undertaker, the person to whom the payment is to be made under this paragraph must provide to the undertaker such reasonable evidence of the costs incurred as the undertaker may reasonably request.

(4) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part, that value being calculated after removal.

(5) If in accordance with this Part—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an arbitrator under paragraph [227] to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the owner or operator in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(6) In determining whether the placing of apparatus of a type or capacity or of particular dimensions or the placing of apparatus at a particular depth, as the case may be, are necessary under sub-paragraph (5), regard must be had to current health and safety requirements, current design standards, relevant good practice and process design specification.

(7) For the purposes of sub-paragraph (5)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(8) An amount which apart from this sub-paragraph would be payable to a person in respect of works by virtue of sub-paragraph (1) must, if it confers a financial benefit on that person by deferment of the time for renewal of the apparatus in the ordinary course of that person's business practice, be reduced by the amount that represents that benefit.

Indemnity

224.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development, including without limitation any of the works referred to in paragraph 216 (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or any subsidence resulting from any of these works, any damage is caused to the Sembcorp operations or property of an owner or operator or Sembcorp or NT Group, or there is any interruption in any service provided, or in the supply of any goods, to or by an owner or operator or Sembcorp or NT Group, or Sembcorp or NT Group becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay the cost reasonably incurred by the owner or operator in question or Sembcorp and NT Group (as the case may be) in making good such damage or restoring the service, supply and/or operations; and
- (b) make reasonable compensation to the owner or operator in question or Sembcorp and NT Group or to any other person whose supply or operations are affected by the damage or interruption (as the case may be, and in all cases excluding third party owners or operators) for any other expenses, loss, damages, penalty or costs incurred by that person, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the person (or its officers, employees, servants, contractors or agents) who would but for this sub-paragraph be the beneficiary of the indemnification provisions in the said sub-paragraph (1).

(3) The person to whom the liability is owed under sub-paragraph (1) must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) The person to whom the liability is owed under sub-paragraph (1) must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 224 applies where it is within its reasonable ability and control so to do. If requested to do so by the undertaker, the person must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall

only be liable under this paragraph 224 for claims reasonably incurred by the owner or operator in question or by Sembcorp and NT Group (as the case may be).

Notice of start and completion of commissioning

226.—(1) Notice of the intended start of commissioning of the authorised development must be given to Sembcorp and NT Group no later than fourteen days prior to the date that commissioning is started.

(2) Notice of the intended date of final commissioning of each of Work Nos. [] must be given to NT Group and Sembcorp no later than fourteen days prior to the date of final commissioning.

Arbitration

227. Any difference or dispute arising between the undertaker and an owner or operator or Sembcorp or NT Group (as the case may be) under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and that person, be referred to and settled by arbitration in accordance with article 47 (arbitration).

FOR THE PROTECTION OF NORTH TEES LIMITED, NORTH TEES RAIL LIMITED AND NORTH TEES LAND LIMITED

368. For the protection of the NT Group (as defined below), the following provisions have effect, unless otherwise agreed in writing between the undertaker and the NT Group.

369. In this Part of this Schedule—

“**access roads**” means the access roads and tracks within the Order limits giving access to pipelines, the protected crossing or within the [the North Tees Estate];

“**affected assets**” means—

- (a) apparatus which would be physically affected by the relevant works;
- (b) Roads and access tracks which would be physically affected by the relevant works

and in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power;

“**apparatus**” means pipelines, cables and other infrastructure owned or operated by NT Group within the Order limits and includes—

- (a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;
- (b) any coating or special wrapping of the apparatus; and
- (c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962 as if the pipelines were a “pipe-line” in section 65(1) of that Act;(a);

“**construction access plan**” means a plan identifying how access will be maintained to apparatus the protected crossing, and to and within the [North Tees Estate] during the proposed construction or maintenance work including—

- (a) any restrictions on general access by NT Group, including the timing of restrictions;
- (b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;

(c) details of how the needs and requirements of NT Group (including their needs and requirements in relation to any major works that they have notified to the other operators of the protected land as at the date when the plan is published) have been taken into account in preparing the plan;

(d) details of how uninterrupted and unimpeded emergency access with or without vehicles will be provided at all times for NT Group; and

(e) details of how reasonable access with or without vehicles will be retained or an alternative provided for NT Group to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the pipelines and the protected crossing;

“construction or maintenance works” means any works to construct, maintain or decommission the authorised development;

“damage” includes all damage including in relation the weakening of the mechanical strength of any apparatus;

“engineer” means an engineer appointed by NT Group for the purposes of this Order;

“major works” means works by NT Group requiring the closure, diversion or regulation of any roads serving the apparatus, the protected crossing, the North Tees Site

“North Tees Estate” means the multiple parcels of land shown outlined red on the North Tees Estate Plan;

“North Tees Estate Plan” means the plan entitled the North Tees Estate Plan

“NTL” means North Tees Limited (company number 05378625) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NTR” means North Tees Rail Limited (company number 10664592) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NTLL” means North Tees Land Limited (company number 08301212) whose registered address is The Cube, Barrack Road, Newcastle Upon Tyne, Tyne and Wear NE4 6DB and any successor in title to it;

“NT Group” means NTL, NTR and NTLL;

“operations” means, for each of NTL, NTR and NTLL, their respective freehold land within the Order limits; and

“operator” means any person who is responsible for the construction, operation, use, maintenance or renewal of any apparatus or other asset;

“owner” means

ans—

(a) in relation to the access roads, any person—

(i) with an interest in the access roads; or

(ii) with private rights of way on or over the access roads;

and

(d) in relation to protected land means any person falling within paragraphs (a) and (b) above;

“protected land” means such parts of the Order land as fall within—

(a) North Tees Estate including;

a. Any access roads and tracks

b. Any estate roads and tracks within the North Tees Estate

c. The rail lines

d. Any apparatus and infrastructure within the North Tees Estate

“specified person” means the [], or such other person as they may notify to the undertaker in writing;

“works details” means the following—

- (a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;
- (b) details of piling design (including proposed methodology, size and dept of piles, and their location for any piling proposed to be undertaken under paragraph 10);
- (c) Piling risk assessment (in accordance with the EA technical guidance document on Piling in Contaminated Land);
- (d) Contractor's construction environmental management plan including any proposed environmental monitoring and mitigation measures to prevent impacts on the environment;
- (e) Contractor's construction environmental management plan including any proposed environmental monitoring and mitigation measures to prevent impacts on the environment;
- (f) Contractor's construction phase plan
- (e) Materials management plan (where re-use of excavated materials is proposed) including laboratory test results for the proposed materials and screening to demonstrate that the material is suitable for its proposed use. Also confirmation whether the CL:AIRE Definition of Waste Code of Practice is being followed and provide the associated declaration;
- (f) Written risk assessments and method statements (RAMS) for all activities to include and identify those which could affect the ground or contamination within the ground;
- (g) Details of the proposed methodology to manage, treat and dispose of water and non aqueous phase liquids encountered during the construction works;
- (h) Details of the proposed methodology for preventing contamination of the underlying ground from stockpiling of materials
- (i) Details of materials to be brought onto site for the purpose of infilling excavations or changing ground levels including the sources, chemical and geotechnical composition and proposed use;
- (j) Details of proposed additional site investigations (if required) including the location, size and angle of any trial pits or boreholes and associated RAMS
- (k) Preliminary risk assessment, site investigation, detailed assessment, remedial strategy and verification reports (including long term monitoring)
- (l) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 11;
- (m) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 12;
- (n) details of the location of any pipelines affected by the oversailing provisions in paragraph 13, including details of the proposed clearance;
- (o) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;
- (p) details of the undertaker and their principal contractors' management of change procedures;
- (q) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;
- (r) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;

- (s) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground [and above ground] assets and which study must provide for individual lift plans;
- (t) details of the emergency response plan as prepared in consultation with local emergency services and any operators; and
- (u) any further particulars provided in accordance with paragraph 4.

Authorisation of works details affecting the Protected Land

4.—(1) Before commencing any part of a relevant work the undertaker must submit to NT Group the works details in respect of any affected asset and obtain a written acknowledgement of receipt of those works details from the specified persons in relation to the affected asset concerned.

(2) The undertaker must as soon as reasonably practicable provide such further particulars as NT Group may, within 30 days (or such longer period as is agreed between the parties) from the receipt of the works details under subparagraph (1), reasonably require.

5. No part of a relevant work is to be commenced until one of the following conditions has been satisfied—

(a) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by NT Group; or

(b) the works details supplied in respect of that relevant work under paragraph 4 have been authorised by an arbitrator under paragraph 7(3); or (c) authorisation is deemed to have been given in accordance with paragraph 7(1).

6.—(1) Any authorisation by NT Group required under paragraph 5(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as NT Group may require to be made for—

(a) the continuing safety and operation or viability of the affected asset; and

(b) the prevention of new contamination and migration or exacerbation of any existing contamination in addition to ongoing monitoring of the environmental condition of the Protected Land.

(b) the requirement for NT Group to have—

(i) uninterrupted and unimpeded emergency access with or without vehicles to the affected asset at all times; and

(ii) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the affected asset.

(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 5 and any conditions imposed on the authorisation under paragraph 6(1).

(3) Where there has been a reference to arbitration in accordance with paragraph 26 and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the arbitrator under paragraph 7(3).

7.—(1) In the event that—

(a) no response has been received to the submission of the works details under paragraph 4 within 45 days of the undertaker obtaining a written acknowledgement of receipt from a specified person under paragraph 4(1) and no further particulars have been requested under paragraph 4(2); or

(b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgement of receipt from a specified person of the further particulars supplied under paragraph 4(2),

approval of the works details is to be deemed to be given and the relevant works may commence.

(2) In the event that—

a) the undertaker considers that NT Group has unreasonably withheld its authorisation under paragraph 6(1); or

(b) the undertaker considers that NT Group has given its authorisation under paragraph 6(1) subject to unreasonable conditions, the undertaker may refer the matter to an arbitrator for determination under paragraph 26.

(3) Where the matter is referred to arbitration under sub-paragraph (2) the arbitrator is to determine whether or not authorisation should be given and, if so the conditions which should reasonably be attached to the authorisation under paragraphs 6(1)(a) and 6(1)(b).

Notice of works

8. The undertaker must provide to NT Group a minimum of 28 days' notice prior to commencing any relevant work in order that an engineer can be made available to observe the relevant works and, when required, advise on the necessary safety precautions.

Further provisions about works

9. No explosives are to be used within the protected land.

10.—(1) All piling within 1.5 metres of the centreline of any apparatus must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of an apparatus or which could have an effect on the operation or maintenance of the Protective Land, details of the proposed method for and location of the piling must be provided to NT Group for approval in accordance with paragraph 4.

11.—(1) Where the undertaker proposes to carry out excavation (including excavation by dredging) adjacent to any affected asset, that affects its support, the affected asset must be supported in a manner approved by NT Group.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures on the Protected Land, the undertaker must calculate the zone of influence of those excavations and provide those calculations to NT Group under paragraph 4.

12.—(1) Where a trench is excavated on the Protected Land, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to an affected asset.

(2) Proposed methods and locations of compacting must be notified to NT Group in accordance with paragraph 4.

(3) Compaction testing must be carried out once back filling is completed to establish whether the backfill has been adequately compacted as referred to in sub-paragraph (1) and what further works may be necessary, and the results of such testing must be supplied to NT Group.

(4) Where it is shown by the testing under sub-paragraph (3) to be necessary, the undertaker must carry out further compaction under sub-paragraph (1) and sub-paragraphs (1), (2) and (3) continue to apply until such time as the backfill has been adequately compacted.

(5) In the event that it is necessary to provide permanent support to an affected asset which has been exposed over the length of the excavation before backfilling and reinstatement is carried out, the undertaker must pay to NT Group a capitalised sum representing the increase of the costs (if any) which may be expected to be reasonably incurred in maintaining, working and, when necessary, renewal or removal any such alterations or additions.

(6) In the event of a dispute as to—

(a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or (b) the amount of any payment under sub-paragraph (5), the undertaker or NT Group may refer the matter for arbitration under paragraph 26.

13.—(1) A minimum clearance of 500 millimetres must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with NT Group.

(2) No manholes or chambers are to be built over.

Monitoring for damage to affected assets

14.—(1) When carrying out the relevant work the undertaker must monitor the relevant affected assets within the Order limits to establish whether damage has occurred.

(2) Where any damage occurs to an affected asset as a result of the relevant work, the undertaker must immediately cease all work in the vicinity of the damage and must notify NT Group to enable repairs to be carried out to the reasonable satisfaction of NT Group.

(3) If damage has occurred to an affected asset as a result of relevant work the undertaker will, at the request and election of NT Group —

(a) afford NT Group all reasonable facilities to enable it to fully and properly repair and test the affected asset and pay to NT Group its costs incurred in doing so including the costs of testing the effectiveness of the repairs and any further works or testing shown by that testing to be reasonably necessary; or

(b) fully and properly repair the affected assets as soon as reasonably practicable, in which case the repairs must be properly tested by the undertaker and be shown to the satisfaction of NT Group to have effectively repaired the affected assets before any backfilling takes place.

(4) Where testing has taken place under sub-paragraph (3)(b), the undertaker must (except where NT Group agrees otherwise in writing) provide it with a copy of the results of such testing prior to any backfilling.

(5) Following the completion of a relevant work if damage is found to have occurred to an affected asset as a result of the relevant work, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

(6) In the event that the undertaker does not carry out necessary remedial work in a timely manner then NT Group is entitled, but not obliged, to undertake the necessary remedial work and recover the cost of doing so from the undertaker.

15.—(1) If any damage occurs to a pipeline causing a leakage or escape from a pipeline, all work in the vicinity must cease and NT Group must be notified immediately.

(2) Where there is leakage or escape of gas or any other substance, the undertaker must immediately—

(a) remove all personnel from the immediate vicinity of the leak;

(b) inform NT Group;

(c) prevent any approach by the public, extinguish all naked flames and other sources of ignition for at least 350 metres from the leakage; and

(d) assist emergency services as may be requested.

(3) Where contamination to the Protected Land is caused or discovered, all work in the vicinity must cease and NT Group must be notified immediately.

Compliance with requirements, etc. applying to the protected land

16.—(1) Subject to sub-paragraph (2), in undertaking any works in relation to the protected land or exercising any rights relating to or affecting owners of the protected land, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the protected land.

(2) The undertaker is not bound by any condition, requirement or regulation that is—

(a) introduced after the date on which the notice of the works was given under paragraph 8; or (b) determined by arbitration following a determination under paragraph 26 to unreasonably— (i) create significant engineering, technical or programming difficulties; or

(ii) materially increase the cost of carrying out the works.

(3) Sub-paragraph (2) does not apply if the condition, requirement or regulation was introduced by way of legislation, direction or policy of the government, a relevant government agency, a local authority (exercising its public functions) or the police.

Access for construction and maintenance

17.—(1) Before carrying out any construction or maintenance works affecting NT Group's access rights over the access roads, the undertaker must prepare a draft construction access plan and consult on the draft construction access plan with NT Group.

(2) The undertaker must take account of the responses to any consultation referred to in sub-paragraph (1) before approving the construction access plan.

18.—(1) In preparing a construction access plan under paragraph 17 the undertaker must—

(a) establish the programme for NT Group's major works in on or adjacent to the Protected Land, and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and

(b) establish where NT Group is reasonably expected to exercise access rights to access to the protected land or any apparatus over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to arbitration under paragraph 26 in relation to any disagreement about a construction access plan the arbitrator must have regard to—

(a) whether major works were, at the date of the consultation already programmed to take place;

(b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;

(c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;

(d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;

(e) the availability (or non-availability) of other times during which the authorised development could be carried out;

(f) the programme in respect of the major works and the extent to which it is reasonable for NT Group to carry out the major works at a different time; and .

(g) the financial consequences of the decision on the undertaker and on NT Group.

(3) In this paragraph, "programmed", in relation to works, means works in respect of which the owner of the access roads has been notified of the specific dates between which the works are programmed to be carried out provided that the period covered by such dates must be the length of time the works are programmed to be carried out and not a period within part of which the works are to be carried out.

19.—(1) No works affecting access rights over the access roads are to commence until 30 days after a copy of the approved construction access plan is served on NT Group.

(2) Where NT Group or the undertaker refers the construction access plan to arbitration for determination under paragraph 26, no works affecting access rights over the access roads may commence until that determination has been provided.

(3) In carrying out construction or maintenance works the undertaker must at all times comply with the construction access plan.

Insurance

20.—(1) Before carrying out any part of the authorised development affecting NT Group, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a

reputable insurer with the terms, cover and level of cover as may be agreed in writing between the undertaker and NT Group, and evidence of that insurance must be provide on request to NT Group.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify NT Group of details of the terms or cover of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

(3) The undertaker (or any contractor carrying out such works on behalf of the undertaker) must maintain insurance in relation to the authorised development affecting NT Group during the construction, operation, maintenance, repair and decommissioning of the authorised development in the terms and at the level of cover as may be agreed in writing between the undertaker and NT Group.

21. If NT Group has a dispute about the proposed insurance (including the terms of level of cover) to be provided under paragraph 20—

(a) NT Group may refer the matter to arbitration under paragraph 26; and

(b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 26 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

22.—(1) The undertaker must repay to NT Group all reasonable fees, costs, charges and expenses reasonably incurred by NT Group in relation to these protective provisions in respect of—

(a) authorisation of survey details submitted by the undertaker under paragraph 3(3), authorisation of works details submitted by the undertaker under paragraph 4 and the imposition of conditions under paragraph 6;

(b) the engagement of an engineer and their observation of the authorised works affecting all affected assets and the provision of safety advice under paragraph 8;

(c) the engagement of an environmental consultant to review the specification of the authorised works and to provide ongoing monitoring throughout the works and for a period of [12 months] following completion of the authorised works.

(d) responding to the consultation on piling under paragraph 10;

(e) considering the effectiveness of any compacting which has taken place under paragraph 12, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;

(f) the repair and testing of an affected asset under paragraph 14;

(g) the ongoing repair , inspection, maintenance and repair of Huntsman Drive

(h) considering and responding to consultation in relation to the construction access plan under paragraph 17 and providing details of their programme for major works to the undertaker under paragraph 18; and

(i) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 20, including the reasonable costs incurred by NT Group in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow NT Group to carry out its functions under these protective provisions. (2) Subject to subparagraphs (3) and (4), if by reason or in consequence of the construction of any of the works referred to in paragraph 4, any damage is caused to the affected assets or property of NT Group, or there is any interruption in any service provided, or in the supply of any goods, by NT Group, the undertaker must—

(a) bear and pay the cost reasonably incurred by NT Group in making good such damage or restoring the supply; and

(b) make reasonable compensation to NT Group for any other expenses, loss, damages, penalty or costs incurred by NT Group, by reason or in consequence of any such damage or interruption.

Further protection in relation to the exercise of powers under the Order

23. The undertaker must give written notice to NT Group of the terms and level of cover of any guarantee or alternative form of security put in place under article 47 (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

24. The undertaker, must when requested to do so by NT Group, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) in electronic form.

25. Prior to the commencement of the authorised development the undertaker must prepare an emergency response plan following consultation with the local emergency services and provide a copy of that plan to NT Group.

Access to Huntsman Drive

26 NT Group'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.

Consent under this Part

370.—(1) Before commencing any part of the authorised development which would have an effect on the operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order limits, the undertaker must submit to the NT Group the works details for the proposed works and such further particulars as the NT Group may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No works comprising any part of the authorised development which would have an effect on the operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order limits are to be commenced until the works details in respect of those works submitted under subparagraph (1) have been approved by the NT Group.

(3) Any approval of the NT Group under subparagraph (2) must be given in respect of NTL, NTR and NTLL together, must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the NT Group may require to be made for them to have reasonable access with or without vehicles to the operations and any land owned by NTL, NTR or NTLL which is adjacent to the Order limits.

(4) The authorised development must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with article 47 (arbitration) and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under article 47.

Indemnity

371.—(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 370, any damage is caused to the operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order limits is obstructed, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NTL, NTR or NTLL in making good any such damage; and
- (b) make reasonable compensation to NTL, NTR or NTLL for any other expenses, loss, damages, penalty or costs incurred by each of them, by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or obstruction to the extent that it is attributable to the act, neglect or default of the NT Group, its officers, employees, servants, contractors or agents.

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

(4) Each of NTL, NTR and NTLL must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 371 applies. If requested to do so by the undertaker, NTL, NTR and NTLL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 371 for claims reasonably incurred by NTL, NTR and NTLL.

Arbitration

372. Any difference or dispute arising between the undertaker and the NT Group under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the NT Group (acting together), be referred to and settled by arbitration in accordance with article 47 (arbitration).

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 NT Group's apparatus is relocated or diverted, that apparatus must not be removed under this Schedule, and any right of NT Group 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 NT Group 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 NT Group 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, NT Group reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to NT Group the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, NT Group 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 NT Group and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) NT Group 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 NT Group of any such facilities and rights as are referred to in subparagraph (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 NT Group 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 NT Group, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NT Group

(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.