

**PROTECTIVE PROVISIONS FOR THE PROTECTION OF SOUTH TEES
GROUP**

1. For the protection of the South Tees Group, the following provisions have effect, unless otherwise agreed in writing between the undertaker and, in relation to that entity's interests, STG entity.

2.—(1) In this Schedule—

“AIL access route land” means plot 13/11 so far as required in relation to Work No. 10;

“AIL access route works” means Work No. 10 within the AIL access route land;

“alternative apparatus” means appropriate alternative apparatus ~~to the satisfaction of the STG entity adequate to enable the STG entity to undertake its operations on the STG site in a manner not less efficient than previously;~~

“apparatus” means apparatus (including cables, mains, pipelines, plant and ancillary apparatus) within the Order limits ~~or which has the benefit of rights over the Order limits, and which is apparatus belonging to or maintained by a STG entity;~~

“diversion condition” means that in relation to the relevant diversion work—

- (a) in relation to a proposed work which is required for the construction of the authorised development, that it in the reasonable opinion of the undertaker enables the authorised development to be constructed and commissioned;
- (b) in relation to a proposed work which is required for the maintenance or operation of the authorised development, that in the reasonable opinion of the undertaker, it enables the authorised development to be constructed (where relevant), maintained, operated and (where relevant) decommissioned;
- (c) its cost is reasonable having regard to the nature and scale of the relevant proposed work;
- (d) planning permission ~~or development consent~~ is not required, or has been granted, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;
- (e) such other consents, licences or authorisations as are required for the diversion work have been obtained, or in the reasonable opinion of the undertaker can be obtained in accordance with the undertaker's programme for the construction of the authorised development;
- (f) the STG entity can grant adequate interest in land or a licence to the undertaker to use, maintain and operate the diversion work for its intended purpose as part of the authorised development and if relevant to carry out the diversion work;
- (g) the diversion work—
 - (i) is already constructed and available for use by the undertaker; or
 - (ii) where a diversion work is to be carried out, whether by the STG entity or the undertaker, it can be carried out and completed in accordance with and without detriment to the undertaker's programme for the construction of the authorised development;
 - ~~(h) the diversion work complies with the technical specifications agreed or determined by arbitration pursuant to paragraph 17; and~~
 - ~~(h)~~ in relation only to the AIL access route works that the diversion work complies with the red main criteria;

“diversion notice” means a notice from the STG entity to the undertaker under paragraph 178;

“diversion work” means works, development or use of land associated with the diversion of a proposed work;

Commented [B1]: STG has reinstated its preferred form wording because STG's 'satisfaction' is the appropriate measure for judging if something is adequate, rather than 'efficiency'.

Commented [B2]: STG considers it is necessary to provide protection for apparatus that may be located wholly or partly outside the Order limits but still benefit from rights within the Order limits.

The Applicant's preferred drafting is too narrow for these purposes.

Commented [B3]: STG considers the addition of this wording to be justified because the diversion work process can accommodate amendments to the Order through the Planning Act 2008.

Commented [B4]: This condition was not included in the consented NZT protective provisions for STG.

It is not required here because it relates only to the "proposed diversion notice" provisions which STG has removed.

“diversion works agreement” means an agreement between the STG entity and the undertaker in relation to a diversion work which provides—

- (a) adequate interest in land to allow the undertaker to use and where relevant maintain and operate the diversion work for its intended purpose as part of or in connection with the authorised development; and
- (b) where relevant, that the undertaker can carry out the diversion work or that the STG entity must carry out the diversion work, in either case in accordance with the undertaker’s programme for the construction of the authorised development;

“identified power” means a power conferred by the following in relation to a proposed work—

- (a) article 22 (compulsory acquisition of land);
- (b) article 23 (power to override easements and other rights);
- (c) article 25 (compulsory acquisition of rights etc.)
- (d) article 26 (private rights);
- (e) article 28 (acquisition of subsoil and airspace only);
- (f) article 32 (temporary use of land for carrying out the authorised development);
- (g) article 33 (temporary use of land for maintaining the authorised development); and
- (h) article 34 (statutory undertakers),

or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or any powers conferred by section 4 (execution of declaration) of the 1981 Act as applied by this Order;

“information notice” means a notice issued by the undertaker under paragraph 2019(c) that additional information is reasonably required before it can decide whether to agree to a diversion work;

~~“proposed diversion notice” means a notice from the STG entity to the undertaker pursuant to paragraph 14 that outlines the diversion work proposed and how the diversion work proposed satisfies so far as relevant each part of the diversion condition, except for paragraph (h) of that definition;~~

“proposed land” means the land within the STG site required for a proposed work;

“proposed work” means Work Nos. ~~3, 4, 5 and 2 to 10~~, AIL access route works or the use of the AIL access route land for construction vehicles for the authorised development to the extent the work is located within the STG site;

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

“red main criteria” means that—

- (a) the diversion work must be along a route that ~~must connect~~s to plot 13/2 at the same location as the existing road, ~~or an alternative location as agreed between STG and the Applicant;~~
- (b) the diversion work must connect into the construction areas required for the construction of the authorised development at a location required by the undertaker acting reasonably;
- (c) the diversion work must accommodate cargo of 80 metres in length, with an axle width of 15 metres, with 4 metres of overhang each side, and with a total width of 23 metres;
- (d) the diversion work must allow a minimum centre line turning radius of 25 metres and a minimum outer turning radius (to the limit of the vehicle/load) of 55 metres;
- ~~(e) the longitudinal slope of the diversion work must not exceed 5% with a maximum of 3% for gradient;~~
- ~~(f)(e)~~ the transverse slope of the diversion work must not exceed 1.5%; and
- ~~(g)(f)~~ the diversion work must have a minimum ground bearing capacity of 100kN/m2 and sufficient protection provided if it crosses underground facilities;

“the respective authorised developments” means the authorised development and the South Tees Group development respectively;

Commented [B5]: Introducing a proposed diversion notice process in addition to the diversion notice process creates an unnecessary step.

STG has reverted to its preferred single-step process, as endorsed by the Secretary of State in the made NZT Order.

Commented [B6]: STG considers that works 2 - 10 should be included in the list. Because the protective provisions specify a process for diversions, STG cannot make the Applicant move a work unreasonably, therefore there is no need to restrict the possibility of diversion outright using a narrower definition.

Commented [B7]: The location of the connection is not yet determined between STG and the Applicant.

STG’s preferred drafting allows for alternatives to be adopted by agreement.

Commented [B8]: This criterion is not agreed between STG and the Applicant. However, STG considers that the Applicant can rely upon the general protections provided in the “diversion condition” definition to set appropriate additional red main criteria relating to (among other things) a diversion work’s longitudinal slope.

“South Tees Group” means STDC, STDL, SRPL and Teesworks;

“the South Tees Group development” means development authorised by any planning permission or development consent order granted in relation to the STG site (or generally by permitted development rights), or prospective development planned in relation to the STG site;

“specified works” means any of the authorised development or activities (including maintenance) undertaken in association with the authorised development which—

- (a) will or may be situated over, or within 15 metres measured in any direction of any apparatus the removal of which has not been required by the undertaker under paragraph 3332(2) or otherwise; or
- (b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 3332(2) or otherwise.

“SRPL” means Steel River Power Limited (company number 14753711) whose registered office is at Wynyard Park House, Wynyard Avenue, Wynyard, Billingham, United Kingdom, TS22 5TB;

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

“STDC area” means the administrative area of STDC;

“STDL” means South Tees Developments Limited (company number 11747311) whose registered office is at Teesside Airport Business Suite, Teesside International Airport, Darlington, United Kingdom, DL2 1NJ;

“STG entity” means subject to paragraph 38 an entity within the South Tees Group which owns or holds an interest in land in the part of the STG site to which the provisions of this Schedule apply, and any successor in title to that entity;

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

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

“works details” means—

- (a) plans and sections;
- (b) details of the proposed design;
- (c) details of the proposed method of working
- (d) details of the programme and timing of execution of the works;
- (e) details of vehicle access routes for construction and operational traffic; and
- (f) any further particulars provided in response to a request under paragraph 3; and

“work notice” means a notice setting out details of a proposed work (sufficient to allow consideration of a potential diversion work and including a programme) and the exercise of an identified power in respect of any part of the proposed land.

(2) For the purposes of this Schedule, a diversion work or associated interest in land is capable of meeting the diversion condition notwithstanding that—

- (a) it is longer in distance than the relevant proposed work it is replacing; or
- (b) in the case of vehicular or staff access, it increases the time taken to travel to the authorised development compared to the relevant proposed work it is replacing,

provided that a diversion work or associated interest in land may not be considered to be adequate where in the reasonable opinion of the undertaker an increase in distance or time (whichever is relevant) would—

- (a) incur unreasonable cost, having regard to both the nature and scale of the relevant proposed work, and the nature and scale of the impact on the South Tees Group development; or

Commented [B9]: STG considers that this paragraph and this reference to it should be omitted. In relation to this Order and the evolving ownership situation on the site, the Applicant cannot limit the protection provided by these PPs to freehold interests only.

Any requirements for the Applicant to consult with or get approval from a few - generally aligned - entities is not unduly onerous and does not run a serious risk of causing delays.

(b) have a material adverse impact on the timetable for the delivery of the authorised development in accordance with the undertaker's construction programme.

Consent for Control of works

3. Before commencing the construction of any part of the authorised development including any permitted preliminary works within the STG site ~~other than any works within the area of Work No. 1~~, the undertaker must first submit to the STG entity for its approval the works details for the work and such further particulars as the STG entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.

Commented [B10]: As Work No. 1 is the main (and largest) work in the Proposed Development, excluding the works from a requirement for STG's approval is unacceptable to STG. STG notes that its approval for all works is preceded in the consented NZT Order.

4. No works comprising any part of the authorised development including any permitted preliminary works within the STG site ~~other than any works within the area of Work No. 1~~ are to be commenced until the works details in respect of those works submitted under paragraph 3 have been approved by the STG entity.

Commented [B11]: As per comment above.

5. Any approval of the STG entity required under paragraph 3 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements or conditions ~~in relation to the works details for the protection of apparatus and access to them and to ensure that the respective authorised developments can co-exist within the STG site~~ as the STG entity may reasonably require to be imposed.

Commented [B12]: The imposition of conditions should not be limited to the protection of STG's apparatus.

6. The authorised development must be carried out in accordance with the works details approved under paragraph 3 and any requirements or conditions imposed on the approval under paragraph 5 or where there has been a reference to an arbitrator in accordance with paragraph ~~3637~~ 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.

STG's requirement is to be able to impose conditions in relation to any works approval, which aligns with the consented NZT PPs.

7. The undertaker must not exercise any of the powers contained in articles 10 to 16 and 18 ~~to 20~~ of this Order within the STG site without the prior written approval of the STG entity, such approval not to be unreasonably withheld or delayed.

Commented [B13]: STG will need to manage the estate for the benefit of multiple tenants and ensure activities on the Teesworks site are coordinated (e.g. roadworks, temp road closures, etc). An overarching approval mechanism to article 10-16 and 18-20 is the efficient way to achieve this. Without the specified amendment, the Order lacks controls to alleviate STG's concerns.

~~8. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not, otherwise than by agreement with the STG entity:~~

- ~~(a) appropriate or acquire or take temporary possession of any land owned or held by the STG entity;~~
- ~~(b) appropriate, acquire, create, extinguish or override any easement or other interest, including by temporary possession, in land owned or held by the STG entity; or~~
- ~~(c) appropriate, acquire, extinguish or override any easement or other interest owned or held by the STG entity, including by temporary possession.~~

~~such agreement not to be unreasonably withheld or delayed.~~

Commented [B14]: STG considers that controls on CA powers are critical given the nature of the site and STG's role in managing it. It is also relevant that the Applicant is not seeking a freehold interest.

~~9. The undertaker must design, construct and operate the authorised development such that no part of the STG site beyond the extent of Work 1A.1 falls within the "inner zone" for the purposes of the Health and Safety Executive's land use planning methodology for major hazard installations and pipelines (including any equivalent successor publication), unless the STG entity has agreed otherwise.~~

It is reasonable for STG to seek a control over the exercise of powers to ensure multiple projects can co-exist. Blanket provisions such as the overriding or extinguishment of easements (e.g. rights of access) are of particular concern in this respect.

Co-operation

810. The STG entity must provide the undertaker with information the undertaker reasonably requests in relation to the South Tees Group development and which the undertaker reasonably needs (and which is reasonably available for disclosure by the STG entity) in order to understand the interactions between the respective authorised developments or to design, build and operate the authorised development.

Commented [B15]: STG considers it critical that the Applicant stores and manages hazardous material when designing, constructing and operating the Proposed Development in a manner which does not establish any HSE 'inner zone' beyond Work 1A.1.

911. The undertaker must provide the STG entity with information the STG entity reasonably requests in relation to the authorised development and which the STG entity reasonably needs (and which is reasonably available for disclosure by the undertaker) in order to understand the interactions between the respective authorised developments or to design, build and operate the South Tees Group development.

STG has always intended to bring forward other development on the land around the Proposed Development but, without this important protection, such development may be seriously constrained for decades to come.

1210.—(1) This paragraph applies insofar as—

- (a) the construction of the authorised development may be undertaken on the STG site concurrently with demolition or site preparation works undertaken by the STG entity;
- (b) the construction of the respective authorised developments may be undertaken on the STG site concurrently; or
- (c) the construction, operation or maintenance of one of the respective authorised developments would have an effect on the construction, operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and the STG entity must—

- (a) co-operate with each other with a view to ensuring—
 - (i) the co-ordination of construction programming and the carrying out of the respective authorised developments;
 - (ii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, the STG entity and their respective employees, contractors and sub-contractors; and
 - (iii) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and the STG entity; and
- (b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Expenses

1311.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the STG entity the reasonable costs and expenses incurred by them in, or in connection with—

- (a) the authorisation of works details in accordance with paragraphs 3 to 6;
- (b) the process in relation to proposed works and diversion works set out in paragraphs ~~1315~~ to ~~2627~~;
- (c) where the relevant diversion work is provided by the STG entity and solely for the use of the undertaker in connection with the authorised development, the construction of a diversion work provided instead of the relevant proposed work;
- (d) where the relevant diversion work is provided for the use of the undertaker in connection with the authorised development and for use in connection with or as part of the wider STG site, a proportion of the cost of construction of a diversion work provided instead of the H2T (temporary and permanent works) site access route works or the water connection works, such proportion to be agreed between the undertaker and the STG entity acting reasonably or to be determined by arbitration pursuant to paragraph ~~3637~~; and
- (e) the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in accordance with paragraphs ~~33 and 34~~ ~~32 and 33~~, including without limitation:
 - ~~(e)~~ -
 - (i) the review, assessment and approval of plan and section, including the imposition of any conditions or modifications;
 - (ii) the drafting, negotiating and entering into of any written agreement in relation to the diversion and protection of apparatus, including for the provision of necessary facilities and rights in land;
 - (iii) the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
 - (iv) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (v) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works, to be agreed between the parties or determined by arbitration pursuant to paragraph 36; and

~~(vi) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of the authorised development.~~

Commented [B16]: STG considers these costs should be borne by the Applicant because they would be incurred to enable the Applicant to proceed with the Proposed Development in a way that would mitigate its negative impacts on STG land.

(2) Prior to incurring any expenses associated with the activities outlined in this paragraph ~~1314~~, the STG entity must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the costs to be incurred.

~~(3) The expenses associated with the activities outlined in paragraph 11 so far as they relate to the procurement of diversion work instead of the AIL access route works will be incurred by the entity that serves the relevant diversion notice.~~

Commented [B17]: STG considers that the Applicant should be responsible for the cost of construction access, even if relocated under these protective provisions, since it will be required for the Applicant's development and should not therefore fall to STG.

Indemnity

~~1412~~.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, use, maintenance or failure of any of the works referred to in paragraph 3 and approved under paragraph 4, or any diversion or removal works carried out by the undertaker, any damage is caused to the STG site (including apparatus or other property of a STG entity), or there is any interruption in any service provided, or in the supply of any goods, by the STG entity, the undertaker must—

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

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

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

Commented [B18]: STG does not accept the Applicant's proposed liability exclusion for indirect or consequential loss, which is not precedent in the NZT PPs for STG entities.

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

(4) The STG entity must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph ~~1412~~ applies.

(5) If requested to do so by the undertaker, the STG entity must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1).

(6) The undertaker shall only be liable under this paragraph ~~1214~~ for claims reasonably incurred by the STG entity.

Provision for diversion work

~~1513~~. The undertaker must—

- (a) as soon as reasonably practicable following the grant of the DCO consent, and prior to commencement of the authorised development—
 - (i) provide to the STG entity details of its proposed work programme; and
 - (ii) provide such further particulars relating to the proposed works as the STG entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the STG entity, other than information that the undertaker reasonably considers is confidential, within a period of 30 days of a request by the STG entity or such longer period as the STG entity and the undertaker may agree; and

(b) prior to exercising an identified power in respect of any part of the proposed land issue a work notice to the STG entity for that part.

1614. If the undertaker intends to change the timing of the proposed work as set out in a proposed work programme issued to the STG entity or the timing of the proposed works set out in a work notice the undertaker must notify the STG entity as soon as reasonably practicable and where the undertaker decides to change timing which was specified in a work notice it must issue a revised work notice to the STG entity.

1715. The STG entity may issue a ~~proposed~~ diversion notice to the undertaker at any time prior to 30 days after the later of—

- (a) the date of issue of the work notice under paragraph ~~1315~~(b); or
- (b) the date of issue of the most recent work notice under paragraph ~~1614~~,

unless the STG entity and the undertaker, acting reasonably, agree such longer period prior to the expiry of the relevant 30 day period.

~~16. Within 28 days of receiving the proposed diversion notice, the undertaker may provide the STG entity with the reasonable technical specifications that are applicable to the proposed diversion work.~~

~~17.—(1) Within 28 days of receiving the technical specifications provided pursuant to paragraph 16, the STG entity must consider the technical specifications and during that period the parties must use reasonable endeavours to agree the technical specifications that are applicable to the diversion work that is the subject of the proposed diversion notice, and the STG entity must notify the undertaker before the end of that period as to whether it agrees the technical specifications.~~

~~(2) If the STG entity and the undertaker parties do not agree the relevant technical specifications pursuant to sub-paragraph (1), the matter is to be settled in accordance with paragraph 37.~~

~~18. The STG entity may issue a notice (a “diversion notice”) to the undertaker—~~

- ~~(a) after the 28 day period specified in paragraph 16, in the event that the undertaker does not provide the STG entity with the reasonable technical specifications pursuant to paragraph 16; or~~
- ~~(b) after the technical specifications are agreed or determined by arbitration pursuant to paragraph 17.~~

1819. A diversion notice must set out—

- (a) the diversion work proposed; and
- (b) how the diversion work proposed satisfies so far as relevant each part of the diversion condition.

1920. If a diversion notice is issued to the undertaker before the expiry of the period under paragraph ~~1715~~, the undertaker must notify the STG entity no later than 30 days after the date of receipt of the diversion notice confirming whether the undertaker—

- (a) agrees to the diversion work;
- (b) does not agree to the diversion work; or
- (c) requires additional information to consider whether it agrees to the diversion work (an “information notice”).

2021. In making the decision under paragraph ~~1920~~ the undertaker must act reasonably and may only issue a notice stating that it does not agree to the diversion work where it considers that the diversion condition is not satisfied.

2122. Where the undertaker gives an information notice to the STG entity, that notice must set out what additional information is required by the undertaker to decide whether or not it agrees to the diversion notice.

2223. Where the undertaker notifies the STG entity under paragraph ~~1920~~(b) that it does not agree to a diversion work, that notice must set out the reasons why the undertaker does not agree that the diversion work satisfies the diversion condition along with an indication of what would be required to make it satisfy the diversion condition.

Commented [B19]: Pursuant to the note relating to “proposed diversion notice” in the interpretation paragraph above, STG has reinstated here and in subsequent paragraphs the single-step diversion notice process as included in the NZT Order.

2324. If the undertaker issues an information notice to the STG entity, the STG entity may submit further information to the undertaker within 30 days of receipt of the information notice.

2425. If the STG entity submits further information to the undertaker within 30 days of receipt of the information notice, the undertaker must consider the further information and paragraph 1920 applies again provided that the undertaker is not obliged to consider any further information that is received by the undertaker—

- (a) more than 30 days after the date of the information notice issued by the undertaker under paragraph 1920(c); or
- (b) in any case 150 days from the date of the undertaker's work notice under paragraph 1315(b) or if relevant 150 days from the date of any revised work notice issued by the undertaker under paragraph 1614.

2526. If the undertaker issues notice to the STG entity under paragraph 2019(b) confirming that it does not agree to the diversion notice, the STG entity may submit a further diversion notice to the undertaker to address the undertaker's reasons for refusal under paragraph 2019, provided that the undertaker is not obliged to consider any further diversion notice that is received by the undertaker—

- (a) more than 30 days after the date of the notice issued by the undertaker under paragraph 1920(b); or
- (b) in any case 150 days from the date of the undertaker's work notice under paragraph 1513(b) or if relevant 150 days from the date of any further work notice issued by the undertaker under paragraph 1614.

2627. If the undertaker issues a notice under paragraph 2019(ae) the STG entity and the undertaker must use reasonable endeavours to enter into a diversion works agreement within 30 days of the notice on such terms as may be agreed between them, and where a planning permission is still to be obtained for the diversion work, the STG entity must use reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertaker's programme for the construction of the authorised development.

2728.—(1) Subject to sub-paragraphs (2) and (3), if a diversion works agreement is not entered into within the 30 day period set out in paragraph 2627 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) the STG entity or the undertaker may within 15 days of the end of that period refer the matter to arbitration under paragraph 3736.

(2) If a diversion works agreement is not entered into within the 30 day period set out in paragraph 2627 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) because any planning permission required for the diversion work has still not been obtained, and in the reasonable opinion of the undertaker the planning permission is not likely to be obtained in order to allow the diversion work to be carried out without material delay to the undertaker's programme, the undertaker may issue a notice to the STG entity confirming that it is not entering into the diversion works agreement.

(3) A notice issued by the undertaker under sub-paragraph (2) shall have the same effect as a notice issued by the undertaker under paragraph 2526.

2829. If a reference is made to arbitration under paragraph 3637 the arbitrator must determine whether the terms of the diversion works agreement can reasonably be in accordance with the diversion condition and if it can then the arbitrator must determine the terms of the diversion works agreement and which must be in accordance with the diversion condition.

2930. Where the arbitrator determines that the terms of the diversion works agreement can be in accordance with the diversion condition the STG entity and the undertaker must use all reasonable endeavours to enter into the diversion works agreement on the terms determined by the arbitrator within 15 days of the arbitrator's decision.

3031. If—

- (a) a diversion works agreement is entered into within the 30 day period set out in paragraph 2726; or

- (b) a reference to arbitration is made in accordance with paragraph 3637 and a diversion works agreement is entered into within the 15 day period in paragraph 2930,

the undertaker must not exercise the identified powers in respect of the relevant proposed land.

3132.—(1) If—

- (a) no diversion notice is issued by the STG entity to the undertaker before the expiry of the period under paragraph 4517;
- (b) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues a notice not agreeing to the diversion work under paragraph 2019(b), and no further diversion notice is issued by the STG entity to the undertaker prior to the dates set out in paragraph 2526;
- (c) a diversion notice is issued by the STG entity to the undertaker, the undertaker issues an information notice, and no further information is provided by the STG entity to the undertaker prior to the dates set out in paragraph 2425;
- (d) paragraph 2627 applies and the STG entity and the undertaker do not enter into a diversion works agreement within the 30 day period set out in that paragraph and no reference to arbitration is made prior to the expiry of the period in paragraph 2827;
- (e) the arbitrator determines under paragraph 3637 that the terms of the diversion works agreement cannot reasonably be in accordance with the diversion condition; or
- (f) paragraph 2930 applies and the STG entity has not executed and unconditionally released for completion a diversion works agreement within the 10 day period set out in that paragraph,

the undertaker may exercise the identified powers in respect of the relevant proposed land in order to (as relevant) carry out, use, maintain, operate or decommission the relevant proposed work.

(2) For the avoidance of doubt, in circumstances where sub-paragraph (1) applies, this does not obviate the need for the undertaker to comply with paragraphs 3 to 6 in respect of the relevant proposed work.

Removal of apparatus owned or maintained by a STG entity

3233.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in or takes temporary possession of any land in which any apparatus is placed, that apparatus must not be removed under this Schedule and any right of the relevant STG entity to operate, access and maintain that apparatus in that land must not be extinguished, suspended or overridden until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the STG entity in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works comprised in the authorised development in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the STG entity advance written notice of that requirement, together with plan and section works details for the work proposed, including the proposed position of the alternative apparatus to be provided or constructed, and in that case (or if in consequence of the exercise of any of the powers conferred by this Order the STG entity reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), secure any necessary consents for the alternative apparatus and afford to the STG entity to its reasonable satisfaction (taking into account paragraph 3334(1) below) the necessary facilities and rights—

- (a) for the construction of alternative apparatus in other land of, or land secured by the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or land secured by the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed, the STG entity must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights

Commented [B20]: As this is a defined term (with a broader meaning) and is used elsewhere throughout the PPs, STG considers that it should be used here as well. It is not reasonable in the context removing apparatus to limit information to “plans and sections”, which would exclude method statements etc.

in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the STG entity to seek compulsory purchase powers.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between the STG entity and the undertaker or settled by arbitration in accordance with paragraph 3637.

(5) The STG entity must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration) and the grant to the STG entity of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Schedule.

~~3334.~~—(1) Where, in accordance with the provisions of this Schedule, the undertaker affords to or secures for the STG entity facilities and rights in land for the construction, use, maintenance **and protection** of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the STG entity ~~or settled by arbitration in accordance with paragraph 37~~ and which must be no less favourable on the whole to the STG entity than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the STG entity.

Commented [B21]: This provision is in line with other PPs on the face of the Order.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the STG entity than the facilities and rights enjoyed by it in respect of the apparatus to be removed (as agreed between the undertaker and the STG entity, or failing agreement, in the opinion of the arbitrator), then the undertaker and the STG entity must agree appropriate compensation for the extent to which the new facilities and rights render the STG entity less able to effectively carry out its activities or require it to do at greater cost.

(3) If the amount of compensation cannot be agreed, the matter may be referred to arbitration in accordance with paragraph 3637 (arbitration) of this Schedule and the arbitrator must make such provision for the payment of appropriate compensation by the undertaker to the STG entity as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Protection of apparatus owned or maintained by an STG entity

~~3435.~~—(1) Where the undertaker seeks approval under paragraph 3 of this Schedule in relation to any specified works, the works details submitted under paragraph 3 must describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
- (d) the position of all apparatus;
- (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
- (f) any intended maintenance regimes.

(2) As part of its approval under paragraph 3, the STG entity may require (and the undertaker must comply with) such modifications to the works details for specified works as may be reasonably necessary for the purpose of—

- (a) securing its apparatus against interference or risk of damage, and to ensure its continuing safety and operational viability; and
- (b) providing or securing for the STG entity proper and convenient means of access to any apparatus **with or without vehicles to inspect, repair, replace and maintain and ensure its continuing safety and operational viability.**

Commented [B22]: STG considers this is needed to ensure its access to apparatus is wide enough for its required purposes.

(3) The STG entity will be entitled to watch and inspect the execution of specified works, where reasonably practicable to do so and in accordance with any relevant health and safety legislation.

(4) Where the STG entity requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, inclusive of any measures or schemes required and approved under paragraph 3, must be carried out to the STG entity's reasonable satisfaction prior to the commencement of any specified works (or any relevant part thereof) and the STG entity shall give notice of its requirement for such works within 30 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(5) If the STG entity, in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 3 to 6 apply as if the removal of the apparatus had been required by the undertaker.

(6) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 30 days before commencing the execution of the works for which a plan has been submitted under paragraph 3 for specified works (or part thereof), a new plan for such works, instead of the plan previously submitted, and having done so the provisions of this paragraph and paragraphs 4 and 5 shall apply to and in respect of the new plan.

(7) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the STG entity notice as soon as is reasonably practicable and a plan of those works and must comply with the conditions imposed under sub-paragraphs (2) and (4) insofar as is reasonably practicable in the circumstances.

(8) In this paragraph, "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of circumstances then existing or imminent (or which the person responsible for the works, believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.

3536. Where the undertaker takes temporary possession of any land or carries out survey works on land within which is situated apparatus owned or operated by a STG entity, the STG entity's rights to access and maintain the apparatus are not overridden or suspended by this Order and the STG entity may continue to exercise those rights—

- (a) in an emergency without notice; and
- (b) in non-emergency circumstances where reasonably necessary, having first given the undertaker at least 28 days prior written notice in order to allow the parties to liaise over timing and coordination of their respective works during the period of temporary possession.

Arbitration

3637. Any difference or dispute arising between the undertaker and the STG entity under this Schedule must, unless otherwise agreed in writing between the undertaker and the STG entity, be referred to and settled by arbitration in accordance with article 46 (arbitration).

Interpretation Miscellaneous

3738.—(1) ~~Where a notice or information is provided by the undertaker to any of the STG entities under this Schedule, a copy of that notice or information must also be sent to the other STG entities. Any reference to the STG entity in this Schedule means the freehold owner of the relevant part of the STG site.~~

(2) ~~Paragraphs (5) and (6) of article 43 (Procedure in relation to certain approvals) do not apply to this Schedule. The relevant STG entity which is the freehold owner referred to in sub-paragraph (1) must consult with all other STG entities that have an interest in the relevant part of the STG site in relation to any obligations, approvals or other functions which the freeholder has pursuant to this Schedule.~~

Miscellaneous

Commented [B23]: STG has included clarifying wording to ensure that earlier paragraphs still apply to the new plan submitted pursuant to this paragraph, as regards STG approval.

Commented [B24]: STG's preferred wording aligns with the preferred definition of "STG entity" and ensures all entities receive important notices and information timely.

Commented [B25]: If article 43 were to apply to the approvals procedures in this Schedule, then STG's controls would be lost in situations where it does not respond to the Applicant's requests for approvals under the Schedule (e.g. where notice was not, for some reason, received by the intended recipient).

The controls provided to STG in this Schedule are critically important to protect its interests, therefore STG does not accept the Applicant's preferred 'deemed consent' drafting.

| 3839. Schedule 18 (protective provisions for the protection of third party apparatus) does not apply to apparatus to which this Schedule applies.

