

Date: 28 February 2025

BOC Limited

as BOC

Planning Act 2008

Application by H2 Teesside Limited (the "Applicant") for an Order Granting Development Consent for the H2Teesside Project (the "Application")
Final Submissions

1. Introduction

- 1.1 Fieldfisher LLP acts for BOC (Interested Party Reference Number 20049365).
- 1.2 BOC's position remains as described in their Written Representations and as reserved in the representations made at the CAH1, CAH2 and deadlines 7 and 8.
- 1.3 BOC continues to have no objection to the Application in principle, provided that appropriate protective provisions are inserted on the face of the Order or preferably a comprehensive compromise agreement is agreed and entered into.
- 1.4 BOC has been seeking to agree protective provisions since February 2024 and we would refer the Examining Authority to our Written Representations (and timeline) made on 03 October 2024 with reference REP2-075 and the timeline submitted to the Examining Authority at deadline 6A with reference REP6a-025.
- 1.5 These negotiations were at the request of the Applicant made on a without prejudice basis.
- 1.6 While the parties had reached agreement on a form of compromise agreement by 18 February 2025 (save as to the settlement of costs figure) the document has not, been issued for signature and BOC currently has no clarity on when or if the document will in fact be entered into.
- 1.7 We note the comments in the letter from the Examining Authority on 25 February 2025 that the Examining Authority expresses "*its disappointment to the Applicant in regard to the apparent lack of progress on a significant number of matters ranging from Protective Provisions (PP) and side/ other agreements to Statements of Common Ground (SoCG). Many Interested Parties (IP), throughout their written submissions have expressed dissatisfaction in regard to many of these matters*" and share this sentiment.
- 1.8 BOC remains of the view that there has been insufficient engagement from the Applicant in resolving BOC's concerns. BOC would prefer to enter into an agreement to address its concerns, so it can withdraw its objection, but it is not possible to do this before the deadline on 28 February 2025.
- 1.9 In the absence of such agreement (which remains its preferred solution) BOC has instructed Fieldfisher to issue the enclosed form of protective provisions for confirmation and inclusion on the face of the Order (in order to protect its position and safeguard its infrastructure for the reasons set out below).
- 1.10 If they are included in the Order, or a mutually acceptable agreement is entered into, BOC will withdraw its objection to the Order.
- 1.11 We would remind the Applicant that the use of compulsory purchase powers is a matter of last resort and that negotiations for the relevant rights should take place.
- 1.12 BOC is of the view that the Applicant has not complied with the guidance on the use of CPO powers under the Planning Act 2008 which provides that:
 - 1.12.1 Applicants should seek to acquire land by negotiation wherever practicable. As a general rule, authority to acquire land compulsorily should only be sought as part of an order granting development consent if attempts to acquire by agreement fail.
 - 1.12.2 The applicant should be able to demonstrate to the satisfaction of the Secretary of State that all reasonable alternatives to compulsory acquisition (including modifications to the scheme) have been explored. The applicant will also need to demonstrate that the proposed interference with the

rights of those with an interest in the land is for a legitimate purpose, and that it is necessary and proportionate.

1.12.3 The Secretary of State must ultimately be persuaded that the purposes for which an order authorises the compulsory acquisition of land are legitimate and are sufficient to justify interfering with the human rights of those with an interest in the land affected.

1.13 On this basis, there is no compelling case for the land and rights being sought by the Applicant and the Order should not be made in its current form.

2. BOC's key concerns

2.1 BOC's key concerns/requirements, which have been articulated to the Applicant throughout this process, are that:

2.1.1 The Applicant does not interrupt or endanger its business operations or transport of critical industrial gases to key stakeholders at Teesside who rely on these products. Interruption to BOC's critical pipelines could not only have a catastrophic impact on BOC's business and the businesses that rely on BOC's supply but also pose an unacceptable health and safety risk if not managed correctly.

2.1.2 BOC requires compensation and an indemnity for any losses arising from the construction and operation of the authorised development.

2.2 Given that no agreement can be entered into before 28 February 2025 (and such an agreement may not be ultimately forthcoming), BOC has included within the protective provisions, provisions to recover its costs in respect of the application for, making of, and implementation of, the Order (including all costs relating to any negotiations between the parties).

Fieldfisher LLP
28 February 2025

PROTECTIVE PROVISIONS FOR THE PROTECTION OF THE BOC APPARATUS OPERATOR

PART 1

Application and interpretation

Application

1.—(1) The provisions of this Schedule have effect for the benefit of the operator unless otherwise agreed between the undertaker and the operator.

(2) The provisions of Schedules 16 to 18 to this Order do not apply to the operator or any apparatus of the operator.

(3) Sub-paragraphs (4) and (5) apply to any agreement of the type mentioned in sub-paragraph (1)—

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

(4) Where the benefit of this Order is transferred or granted to another person under article 8 (consent to transfer benefit of this Order), any such agreement has effect as if it had been made between the operator and the transferee or grantee (as the case may be).

(5) Any such agreement has effect as if it had been made between the undertaker and any successor to the operator in respect of the ownership, use, access or maintenance of any apparatus or alternative apparatus.

(6) Save to the extent provided for to the contrary in this Order or by agreement between the operator and the undertaker, nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between the operator and the undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Interpretation

2.—(1) In this Schedule—

“alternative apparatus” means appropriate alternative apparatus adequate to enable the operator to fulfil its commercial, regulatory and statutory obligations and functions in a manner no less efficient than the existing apparatus which it replaces;

“apparatus” means—

- (a) any plant, facilities, valves, mains, pipes or other apparatus (including any dormant apparatus) belonging to, used by or maintained by the operator;
- (b) any electrical cabling infrastructure belonging to the operator; and
- (c) any replacement alternative apparatus constructed pursuant to this Order that becomes operational apparatus of the operator for the purposes of transmission, distribution or supply,

and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

“ground mitigation scheme” means a scheme setting out the necessary mitigation measures (if any) for a ground subsidence event;

“ground monitoring scheme” means a scheme for monitoring ground subsidence (together with any connected movement of apparatus) which sets out—

- (a) the apparatus which is to be subject to such monitoring;
- (b) the extent of land (which in the case of the Tees crossing area includes the bed of the river estuary and the water depth above it) to be monitored;
- (c) the manner in which such levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, will require the undertaker to submit a ground mitigation scheme;

“ground subsidence event” means any ground (which in the case of the Tees crossing area includes the river bed) subsidence and any connected movement of apparatus identified by the monitoring activities set out in the ground monitoring scheme that has exceeded the level described in the ground monitoring scheme as requiring a ground mitigation scheme;

“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 BOC Limited (company number 00337663), whose registered office is at Forge, 43 Church Street West, Woking, Surrey, England, GU21 6HT or any successor in title insofar as relates to apparatus of the operator that lies—

- (a) within the Order limits; or
- (b) on other land which is affected by the ancillary rights granted by this Order;

“relevant apparatus” means—

- (c) in the case of a specified work which will be located in the Tees crossing area, all apparatus within the Tees crossing area;
- (d) in the case of any other specified work, all apparatus within a radius of 10 metres of that specified work;

“relevant documents” means—

- (a) revision 23:09 of the ‘Linewatch Booklet for Special Requirements for safe working in close proximity to high pressure pipelines’; and
- (b) the ‘Linesearch Before U Dig Safety Practices’ published on the website with the address ‘lsbud.co.uk’,

as updated, amended or replaced from time to time;

“specified works” means any of the authorised development or activities undertaken in association with the authorised development (including but not limited to piling) which—

- (a) will or may be situated over or within 15 metres measured in any direction of any apparatus (including any percussion bore-holing and cone penetration testing);
- (b) will or may be situated over or within 100 metres measured in any direction of any apparatus in the Tees crossing area;
- (c) in the case of explosive demolition works, will or may be situated over or within 50 metres measured in any direction of any apparatus;
- (d) may (excluding any de minimis potential impacts) in any way adversely affect any apparatus; or
- (e) includes any activity referred to in the relevant documents;

“Tees crossing area” means all the land and subsoil cross-hatched blue on the Tees crossing plan; and

“Tees crossing plan” means the plan which is certified as the Tees crossing plan by the Secretary of State under article 44 (certification of plans etc.) for the purposes of this Order;

(2) Any request, notice, consent, approval or agreement required by or provided for under this Schedule must be in writing.

PART 2

General duties, restrictions and obligations

Undertaker to comply with consent, approval or agreement

3.—(1) The undertaker shall only exercise any powers granted by this Order in accordance with this Schedule.

(2) Where the consent, approval or agreement of the operator is required under this Schedule, the authorised development must be executed only in accordance with the consent, approval or agreement (including any conditions imposed thereon in accordance with this Schedule) granted by (as the case may be)—

- (a) the operator; or
- (b) an expert following a reference under paragraph 26.

(3) Where any consent, approval or agreement has been granted in accordance with this Schedule, this does not preclude the undertaker from submitting at any time or from time to time a request for such revised or replacement consent, approval or agreement as may be set out in the request.

(4) Subject to sub-paragraph (5), where the undertaker submits a request for a revised or replacement consent, approval or agreement pursuant to sub-paragraph (3) the provisions of this Schedule relevant to the subject matter of the request shall apply in the same way as they did in relation to the previous request following which the existing consent, approval or agreement in question was granted.

(5) Where any provision of this Schedule requires a request for consent, approval or agreement to be submitted or granted prior to the commencement of the works or other matters to which it relates, but those works or matters have already been commenced in accordance with any consent, approval or agreement already granted under this Schedule, the undertaker must instead submit the request under sub-paragraph (3) as soon as is reasonably practicable after it becomes apparent to the undertaker that the revised or replacement consent, approval or agreement is necessary, desirable or expedient.

Undertaker to co-ordinate works

4. Where—

- (a) the undertaker has required the removal, capping off or plugging of apparatus or the interruption of the flow of any gas or other product through that apparatus under paragraph 18; or
- (b) an approval granted following a request under paragraph 16(1) is subject to a condition of the type referred to in paragraph 16(11) or (14),

the undertaker must use its reasonable endeavours to co-ordinate the execution of those works—

- (c) in the interests of—
 - (i) safety; and
 - (ii) the efficient and economic execution of the authorised development; and
- (d) taking into account the need to ensure the safe, efficient and economic operation of the operator's operations whilst those works are carried out.

Undertaker to comply with relevant documents

5. At all times when carrying out any works which require consent, approval or agreement under this Schedule, the undertaker must ensure that all such works comply with any requirement of the relevant documents.

Undertaker to reinstate level of cover

6.—(1) To the extent that the authorised development results in any reduction of the level of cover over subterranean apparatus, the undertaker shall reinstate the level of cover without delay to such level as may be approved following a request under—

- (a) in the case of a reduction of cover arising as a result of the carrying out of a specified work, paragraph 16(1); or
- (b) in any case, this paragraph.

(2) Subject to sub-paragraph (3), paragraph 24 applies to any request under sub-paragraph (1)(b).

(3) Where the apparatus in question is located in the Tees crossing area, paragraph 24 applies to a request under sub-paragraph (1)(b) as modified by paragraph 25.

(4) Subject to sub-paragraph (5), the cost of any reinstatement required under sub-paragraph (1) shall be defrayed by the undertaker.

(5) The operator may give notice to the undertaker that the operator wishes to carry out the reinstatement required under sub-paragraph (1) itself, in which case the operator —

- (a) shall reinstate the level of cover without delay; and
- (b) may recover the cost of those works from the undertaker in accordance with paragraph 21, subject to the operator complying with the relevant requirements of that paragraph.

Restriction on passage over or under apparatus

7. The undertaker must not exercise any power conferred by this Order so as to allow vehicular, construction or plant access associated or required in connexion with the carrying out of any specified works to pass over or under the apparatus other than in accordance with a consent, approval or agreement granted under any provision of this Schedule.

Restriction on excavation

8.—(1) The undertaker shall comply with the following provisions of this paragraph save where different provision is made by any consent, approval or agreement granted under this Schedule.

(2) Any apparatus must be located by hand digging prior to the use of any mechanical excavation.

(3) Any mechanical excavation within 3 metres of any apparatus must use toothless buckets and be supervised by a qualified banksman.

(4) Any excavation within a radius of 1 metre of any apparatus must be hand dug.

(5) Excavated spoil must not be stored within 5 metres of any apparatus to which that excavation relates.

Restriction on acquisition of apparatus, &c.

9.—(1) The undertaker shall not exercise any power conferred by this Order so as to acquire any apparatus or to over-ride any easement, right or other interest of the operator otherwise than in accordance with a consent, approval or agreement granted in accordance with this Schedule.

(2) Paragraph 24 applies to any request by the undertaker to the operator for the operator's consent under this paragraph.

Emergency works

10.—(1) If the undertaker—

- (a) reasonably needs to carry out emergency works; and
- (b) but for this paragraph, any consent, approval or agreement of the operator would be required under this Schedule prior to the commencement of those emergency works,

the undertaker is not required to obtain that consent, approval or agreement.

- (2) Where sub-paragraph (1) applies, the undertaker must as soon as reasonably practicable—
- (a) give notice to the operator’s remote operations control centre at BOC Ltd, Bawtry Road, Brinsworth, Rotherham, South Yorkshire S60 5NT or by telephone to 01709 842200; and
 - (b) submit a request to the operator for its approval of the completed emergency works; and
 - (c) if any further specified works are required as a result of the completion of those emergency works, submit a request pursuant to paragraph 16(1).
- (3) Paragraph 24 applies to a request submitted under sub-paragraph (2)(b).
- (4) In this paragraph, “emergency works” have the same meaning as in Part 3 of the 1991 Act.

Provision of test documentation by undertaker

11. If—

- (a) test documentation templates have been approved pursuant to a request under paragraph 16(1) and (3)(d); and
 - (b) the operator reasonably requests copies of any test documentation subsequently produced,
- the undertaker shall supply copies of that documentation to the operator without unreasonable delay.

Notice of start of commissioning

12. Notice of the intended start of commissioning of the authorised development must be given to the operator no later than 14 days prior to the date that commissioning is started.

Notification of particulars of duty-holders

13. Prior to the commencement of the authorised development, the undertaker shall give notice to the operator of the particulars specified in paragraphs 6 and 7 of Schedule 1 to the Construction (Design and Management) Regulations 2015.^a

Operator and undertaker to act reasonably and lawfully

14.—(1) For the purposes of this Schedule, the operator and the undertaker must at all times—

- (a) act reasonably; and
- (b) have regard to the interests of safety and the efficient and economic execution, construction and operation of—
 - (i) the authorised development; and
 - (ii) the operator’s operations.

(2) Without prejudice to the generality of sub-paragraph (1), where any consent, approval or agreement of the operator or the undertaker is required under this Order it must not be unreasonably withheld or delayed.

(3) When exercising any function, power or right or making any decision under this Schedule the operator and the undertaker shall comply with all applicable laws, statutes and regulations from time to time in force.

Inspection of works

15. The operator shall be entitled to watch and inspect the execution of any works which require consent, approval or agreement under this Schedule.

^a S.I. 2015 / 51

PART 3

Approval of specified works

Request for consent for specified works

16.—(1) Prior to the commencement of a specified work, the undertaker must submit a request to the operator for its approval in respect of the matters specified in sub-paragraph (2).

(2) The matters which require approval under sub-paragraph (1) are a method statement and risk assessment, reports and plans of an appropriate scale and detail, describing or containing (insofar as relevant to the specified work to which the request under sub-paragraph (1) relates)—

- (a) the proposed specified work and—
 - (i) its exact position;
 - (ii) the level at which it is to be constructed or renewed, including but not limited to cover level;
 - (iii) the manner of construction or renewal of the specified work including details of any proposed excavation;
 - (iv) any proposed reinstatement following completion of such construction or renewal; and
 - (v) the proposed programme for and any associated progress reporting arrangements during the construction of the specified work;
- (b) in respect of any plant and equipment to be used for the purpose of carrying out the specified works—
 - (i) its proposed positioning; and
 - (ii) test certificates to confirm its fitness for that purpose;
- (c) any existing pipeline crossings including—
 - (i) protection details;
 - (ii) clearance distances; and
 - (iii) as built records of those crossings;
- (d) by way of detailed drawings, any alteration proposed to be made to any relevant apparatus;
- (e) full details of—
 - (i) all relevant activities;
 - (ii) all relevant apparatus, including details of any applicable peak particle velocity measurements;
 - (iii) all relevant explosive demolition works;
 - (iv) all relevant maintenance;
- (f) any surveys carried out, including any survey tolerances applied;
- (g) records of existing condition or site inspections undertaken prior to the request being submitted;
- (h) any safety analysis carried out, including any quantitative risk assessment;
- (i) any civil, mechanical or structural calculations carried out regarding fracture, fatigue analysis, fatigue life and geotechnical data in the area to which the request relates;
- (j) any quality assurance data, quality plan or design quality assurances;
- (k) appropriate noise, vibration and resonance data;
- (l) any seismic data or activity, including any monitoring proposed during the construction of the specified works in question;
- (m) any environmental matters arising as a result of the construction of the specified works;

- (n) any proposed incident and emergency response plan;
 - (o) any proposed hydraulic or pneumatic pressure tests, including any proposed—
 - (i) test limits;
 - (ii) duration;
 - (iii) safety distances; or
 - (iv) protective measures;
 - (p) a traffic management plan in respect of all traffic associated or required in connexion with the carrying out of the specified work if such traffic would cross any apparatus, including but not limited to details of—
 - (i) proposed laydown and access areas, whether temporary or permanent;
 - (ii) arrangements for access and egress, including the frequency, days and times of access;
 - (iii) types of vehicles and machinery;
 - (iv) axle weights;
 - (v) loading, ground bearing capacity and loads implied; and
 - (vi) proposed mitigation measures to prevent localised differential settlement;
 - (q) any proposed changes to or interference with the operator's access to or from the apparatus and, if such access would be materially obstructed or interfered with, details of the proposed alternative means of access;
 - (r) any proposed monitoring arrangements to be implemented—
 - (i) during the construction; and
 - (ii) following the completion of the construction, of the specified work in question;
 - (s) contact details for any owner, occupier or pipeline operator of the land in which the specified works are to be carried out;
 - (t) a demonstration that any personnel engaged to undertake or supervise the specified works in question are appropriately competent and qualified;
 - (u) where the specified work will be located in the Tees crossing area, the additional matters specified in sub-paragraph (3);
 - (v) a ground monitoring scheme requested by the operator pursuant to sub-paragraph (5); and
 - (w) anything else reasonably requested by the operator pursuant to sub-paragraph (5).
- (3) The additional matters referred to in sub-paragraph (2)(u) are—
- (a) the proposed interaction report or assessment;
 - (b) the position of all relevant apparatus identified through—
 - (i) cable avoidance tool scanning;
 - (ii) ground penetrating radar scanning;
 - (iii) magnetic anomaly scanning;
 - (iv) an equivalent means; or
 - (v) hydraulic analysis and bathymetric analysis or reports;
 - (c) any proposed cathodic protection and alternate current interference design, including details of any corrosion management systems to be utilised, interaction study reports and any future monitoring arrangements proposed;
 - (d) test documentation templates;
 - (e) any proposed protective measures and the design of any associated systems, including but not limited to slabbing and load mats;
 - (f) details of any cut off trenches; and

- (g) details of peak particle velocity measurements for any relevant apparatus which shall not exceed 25 millimetres per second.

(4) Where the operator and the undertaker do not agree as to whether any matter set out in sub-paragraph (2) or (3) is relevant to the specified work to which the request under sub-paragraph (1) relates—

- (a) the operator shall give notice to the undertaker setting out the operator's full reasons for its opinion as to why that matter is relevant;
- (b) the undertaker shall give notice to the operator setting out the undertaker's full reasons for its opinion as to why that matter is not relevant;
- (c) this will be deemed to be a dispute between the undertaker and the operator and may be referred for determination in accordance with paragraph 26;
- (d) if the dispute is referred, copies of the notices given under sub-paragraphs (a) and (b) shall be provided to the expert
- (e) the undertaker need not request or obtain the operator's approval in respect of that matter unless directed to do so by the adjudicator.

(5) Where a request has been submitted pursuant to sub-paragraph (1), the operator may by notice require the undertaker to provide such additional information relevant to the specified work in question as—

- (a) may be reasonably necessary in order for the operator to consider the request under sub-paragraph (1); and
- (b) is relevant to—
 - (i) the safety and security of the apparatus; or
 - (ii) the operator's ability to repair, maintain, replace or access the apparatus; .

(6) Where a notice is given by the operator under sub-paragraph (5)—

- (a) the notice must set out in full—
 - (i) the additional information required by the operator;
 - (ii) the operator's reasons for requiring that additional information; and
 - (iii) why the additional information is relevant to the specified work to which the request under sub-paragraph (1) relates;
- (b) if the undertaker does not agree that the additional information requested under sub-paragraph (5) is reasonably necessary then—
 - (i) the undertaker shall give notice to the operator to that effect;
 - (ii) that notice shall set out the undertaker's full reasons for such opinion;
 - (iii) the matters to which the notice under sub-paragraph (i) relates will be deemed to be a matter in dispute between the undertaker and the operator; and
 - (iv) the undertaker need not provide that additional information unless directed to do so following referral to an expert under paragraph 26;
- (c) if the notice under sub-paragraph (5) is given by the operator after the end of the relevant period—
 - (i) the undertaker may (but is not required to) provide the additional information specified in the notice;
 - (ii) if the undertaker elects not to provide the additional information in accordance with sub-paragraph (i)—
 - (aa) the undertaker shall give notice to the operator to that effect;
 - (bb) that notice shall set out the undertaker's full reasons;
 - (cc) the matters to which the notice under sub-paragraph (i) relates will be deemed to be a matter in dispute between the undertaker and the operator; and

- (dd) the undertaker need not provide that additional information unless directed to do so following referral to an expert under paragraph 26;
- (d) for the purposes of sub-paragraph (c), the “relevant period” means—
- (i) in the case of a specified work located in the Tees crossing area, the period of 50 days commencing on the day next following the date on which the request is submitted by the undertaker under sub-paragraph (1);
 - (ii) in any other case, the period of 30 days commencing on the day next following the date on which the request is submitted by the undertaker under sub-paragraph (1);
- (7) If the undertaker is required to submit a request under sub-paragraph (1), the request must be submitted—
- (a) in the case of a specified work which will be located in the Tees crossing area, not less than 100 days before the commencement of that specified work;
 - (b) in the case of any other specified work, not less than 56 days before the commencement of that specified work.
- (8) Subject to sub-paragraph (9), paragraph 24 applies to any request submitted under sub-paragraph (1).
- (9) In the case of a request to which sub-paragraph (7)(a) applies, paragraph 24 applies to that request as modified by paragraph 25.
- (10) Any specified work to which sub-paragraph (1) applies must not be commenced unless and until the request for approval has been granted by (as the case may be)—
- (a) the operator; or
 - (b) an expert following a reference under paragraph 26.
- (11) Where the approval required under this paragraph is granted subject to a condition imposed pursuant to paragraph 24(2) which requires the provision of any temporary or permanent protective works, those protective works must be carried out in accordance with the approval prior to the commencement of the specified works in respect of which that approval is granted.
- (12) Subject to sub-paragraph (13), the cost of any protective works carried out under sub-paragraph (11) shall be defrayed by the undertaker.
- (13) The operator notice may give to the undertaker that the operator wishes to carry out the protective works required under sub-paragraph (11) itself, in which case the operator —
- (a) shall execute and complete those protective works without delay; and
 - (b) may recover the cost of those works from the undertaker in accordance with paragraph 21.
- (14) Where the approval required under this paragraph is granted subject to a condition imposed pursuant to paragraph 24(2) which requires the removal, capping off or plugging of any apparatus or the interruption of the flow of any gas or other product through that apparatus, paragraphs 18 and 19 apply as if the removal, capping off or plugging of the apparatus had been required by the undertaker pursuant to a request made under paragraph 18(4).
- (15) In this paragraph—
- “alternative means of access” means such reasonable alternative means of access to and from the apparatus as will enable the operator to repair, replace, maintain, use and access the apparatus in question, including but not limited to (where necessary) any excavation or temporary closing off of any street;
- “relevant activities” means any activity within a radius of 15 metres in any direction of any apparatus which has the potential to cause vibration or risk to the structural integrity of such apparatus, including but not limited to any percussion bore-holing and cone penetration testing;
- “relevant explosive demolition works” means—
- (a) in the case of explosive demolition works which will take place in the Tees crossing area, all explosive demolition works within the Tees crossing area;

- (b) in the case of any other explosive demolition works, all explosive demolition works within a radius of 50 metres of any apparatus;

“relevant maintenance” means—

- (c) in the case of a specified work which will be located in the Tees crossing area, all proposed maintenance activities within the Tees crossing area;
- (d) in the case of any other specified work, all proposed maintenance activities within a radius of 10 metres of any apparatus;

Ground subsidence

17.—(1) The operator shall as soon as reasonably practicable give notice to the operator of any ground subsidence event attributable to the authorised development.

(2) As soon as reasonably practicable after giving notice under sub-paragraph (1), the undertaker shall submit a request to the operator for its approval of an appropriate ground mitigation scheme.

(3) Paragraph 24 applies to any request submitted under sub-paragraph (2).

PART 4

Removal or diversion of apparatus

Removal of apparatus

18.—(1) Sub-paragraph (2) applies if, in exercise of the powers conferred by this Order, the undertaker acquires any estate, interest or right in any land in which—

- (a) any apparatus is placed; or
- (b) any right or interest of the operator is exercised.

(2) Where this sub-paragraph applies—

- (a) the apparatus must not be removed, capped off or plugged;
- (b) any flow of gas or other product through that apparatus must not be interrupted; and
- (c) any right of the operator to maintain, repair, replace or access the apparatus must not be extinguished or materially interfered with,

until the requirements of sub-paragraph (3) have been complied with.

(3) The requirements are—

- (a) that a plan has been approved for the purposes of sub-paragraph (4);
- (b) alternative apparatus has been constructed and is in operation; and
- (c) equivalent alternative rights for the operator to maintain, repair, replace and access the apparatus and alternative apparatus have been granted to the operator in accordance with paragraph 19.

(4) The undertaker must request the operator’s approval of a plan which sets out—

- (a) particulars of (as the case may be)—
 - (i) the apparatus which the undertaker requires to be removed, capped off or plugged;
 - (ii) any flow of any gas or other product that will be interrupted;
 - (iii) any right of the operator to maintain, repair, replace or access the apparatus which would be extinguished or materially interfered with;
- (b) the scope, method and timing of the matters referred to in sub-paragraph (4)(a);
- (c) plans and sections of the proposed works showing the proposed line, situation and position of any alternative apparatus to be provided or constructed;

- (d) any proposed access rights which the undertaker intends to grant to the operator in respect of that alternative apparatus;
 - (e) details of the proposed timetable and duration of—
 - (i) the works; and
 - (ii) the bringing into operation of the alternative apparatus; and
 - (f) the terms and conditions of any facilities, interests or rights which the undertaker proposes to grant to the operator to replace the operator's existing facilities, interests or rights in respect of the apparatus or rights listed in sub-paragraph (2).
- (5) If the undertaker submits a request under sub-paragraph (4), the request must be submitted—
- (a) in the case of apparatus located in the Tees crossing area, not less than 100 days before the activities referred to in sub-paragraph (2) commence;
 - (b) in the case of any other apparatus, not less than 56 days before the activities referred to in sub-paragraph (2) commence.
- (6) Subject to sub-paragraph (7), paragraph 24 applies to any request submitted under sub-paragraph (4).
- (7) In the case of a request to which sub-paragraph (5)(a) applies, paragraph 24 applies to that request as modified by paragraph 25.
- (8) The operator must, after the plan required by sub-paragraph (4) has been approved and after the grant to the operator of any such facilities and rights as are referred to in sub-paragraph (3)(c), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove, cap off or plug any apparatus particularised under sub-paragraph (4)(a)(i).
- (9) Notwithstanding sub-paragraph (8) and subject to sub-paragraph (10), if the undertaker gives notice to the operator that it desires itself to execute any work, or part of any work, in connexion with the construction or removal of apparatus or alternative apparatus in any land of the undertaker, that work, instead of being executed by the operator, may be executed by the undertaker—
- (a) without unnecessary delay;
 - (b) properly;
 - (c) with due care and attention;
 - (d) in a safe, skilful and workmanlike manner;
 - (e) to an appropriate standard.
- (10) Prior to undertaking the works to which a notice given under sub-paragraph (9) relates, the undertaker must request the operator's consent for the undertaker to carry out those works.
- (11) Paragraph 24 applies to any request made under sub-paragraph (10).
- (12) If works are executed by the undertaker in accordance with sub-paragraph (9), the operator must be notified of the timing of the works and afforded facilities to watch, monitor and inspect the execution of the works.

Alternative apparatus

19.—(1) Where, in accordance with this Schedule, the undertaker proposes to grant, afford or secure to the operator alternate facilities, interests or rights in or over land in accordance with a request under paragraph 18(3) and (4)(f), the replacement facilities, interests or rights must—

- (a) be on terms that are no less favourable as a whole than the facilities, interests or rights which applied previously; and
- (b) subject to sub-paragraph (2), ensure that the operator's existing ability to install, operate, repair, replace, maintain or access the apparatus is not materially prejudiced.

(2) The requirement in sub-paragraph (1)(b) does not apply to or include any activity which constitutes—

- (a) an offence; or
- (b) a civil wrong.

(3) If the operator considers that the facilities, interests or rights which the undertaker proposes to grant, afford or secure do not comply with the requirements of sub-paragraph (1) then the operator may refer the matter for determination under paragraph 26.

(4) Where the terms and conditions of the facilities, interests or rights in respect of alternative apparatus to be constructed in or along the authorised development are referred pursuant to sub-paragraph (3), in settling the terms and conditions the expert shall—

- (a) have regard 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.

(5) Following the determination of a referral under sub-paragraph (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 expert less favourable as a whole than the facilities, interests or rights which applied previously, the expert must make such provision for the payment of compensation by the undertaker to the operator as appears to him to be reasonable, having regard to all the circumstances of the particular case.

(6) For the purposes of this paragraph, the facilities, interests or rights which are to be replaced and which must be no less favourable as a whole shall be taken to include facilities or rights of the operator to install, operate, repair, replace, maintain or access the apparatus which do not arise from explicit legal deeds or documents.

PART 5

Financial provisions

Insurance

20.—(1) Not less than 90 days before carrying out any works forming part of the authorised development on, in or over any land within which apparatus of the operator is located, the undertaker shall request the operator's approval of the relevant policy that the undertaker proposes to put in place.

(2) Where the undertaker proposes to change the terms of a relevant policy approved for the purposes of this paragraph then it must request the operator's approval of the proposed revisions to the relevant policy that the undertaker proposes not less than 90 days prior to effecting such revisions.

(3) The undertaker (or any contractor carrying out works on behalf of the undertaker) must maintain the relevant policy in relation to such works or the use of the authorised development affecting land in which apparatus of the operator is located during the operation of the authorised development as may be approved following a request notified under sub-paragraph (1) or (2) (as the case may be).

(4) Paragraph 24 applies to any request for approval under sub-paragraphs (1) and (2).

(5) The undertaker shall on request provide to the operator evidence that the relevant policy required to be maintained under sub-paragraph (3) is in place.

(6) In this paragraph, “relevant policy” means a policy of insurance with a reputable insurer on such terms, including as to the covered risks and levels of cover, as may be approved pursuant to this paragraph.

Expenses

21.—(1) Subject to the following provisions of this paragraph and paragraph 22, the undertaker must pay to the operator any expenses incurred by the operator in complying with its obligations or granting any consent, approval or agreement under this Schedule, including in relation to—

- (a) where reasonably necessary in consequence of the execution of any specified works:
 - (i) the survey of any land, apparatus or works;
 - (ii) the watching, supervision, inspection, superintendence and monitoring of works; or
 - (iii) the installation or removal of any temporary works;
- (b) the inspection, removal, capping off, plugging, relaying, replacing, alteration, diversion, provision, construction or protection of any apparatus or alternative apparatus (including the cost of carrying out any protective works) under any provision of this Schedule;
- (c) 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;
- (d) the design, project management, supervision and implementation of works;
- (e) the negotiation, grant and acceptance of alternative apparatus and rights in accordance with paragraph 19 including but not limited to any associated—
 - (i) tax liabilities;
 - (ii) land registry fees;
 - (iii) costs or compensation incurred or paid by the operator in connexion with the acquisition, surrender, interference, extinguishment or regrant of rights or the exercise of any relevant powers of the operator in accordance with paragraph 14;
- (f) where permanent protective works are provided, a capitalised sum to cover the cost of maintaining and renewing them;
- (g) 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; and
- (h) legal, professional and third party landowners’ costs, including surveyors’ fees, arising as a result of the matters specified in this sub-paragraph.
- (i) All costs claims and expenses incurred by the operator (including but not limited to all legal, professional and surveyors' fees) arising in respect of the application for, making of and implementation of the Order (including all costs relating to any negotiations between the undertaker and the applicant in relation thereto)

(2) Subject to sub-paragraphs (6) and (7), any payment required under this paragraph must be made within a reasonable time of the undertaker being notified by the operator that it has incurred the expense in question.

(3) Where reasonable and practicable, the operator must (prior to incurring any expense referred to in sub-paragraph (1)) provide to the undertaker notice of—

- (a) the nature of the anticipated expense; and
- (b) the estimated anticipated amount.

(4) In advance of any payment under sub-paragraph (1) above being made, the operator must (if the undertaker so requests) provide to the undertaker such reasonable evidence of the expenses incurred as—

- (a) the undertaker may reasonably request; and
- (b) is reasonable and practicable to provide.

(5) In determining what is reasonable and practicable for the operator to provide pursuant to sub-paragraphs (3) and (4), regard shall be had to the nature of the expense in question.

(6) Where sub-paragraph (3) or (4) applies, the undertaker is not liable to make any payment under this paragraph unless and until the operator complies with the requirements of that sub-paragraph.

(7) The undertaker is not required to make any payment under this paragraph in respect of any expense incurred by the operator—

- (a) which is not—
 - (i) reasonably and properly incurred; or
 - (ii) reasonable and proper in amount;
- (b) following the referral or determination of any difference, dispute or matter deemed to be in dispute pursuant to paragraph 26 insofar as that expense is incurred by the operator as a result of the referral or determination under that paragraph.

Deduction for betterment

22.—(1) Any sum which would otherwise be payable to the operator pursuant to paragraph 21 shall be reduced in accordance with the following provisions of this paragraph.

(2) There must be deducted from any sum payable the value (after selling costs) of any apparatus removed, under this Schedule which is not re-used as part of the alternative apparatus.

(3) The value of the apparatus for the purpose of sub-paragraph (2) shall be calculated after the removal.

(4) If alternative apparatus—

- (a) 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) is placed at a depth greater than the depth at which the existing apparatus which it replaces was located,

any sum payable must be reduced in accordance with sub-paragraph (6).

(5) For the purposes of sub-paragraph (4)(a), an extension of the alternative apparatus to a length greater than the length of the existing apparatus must not be treated as a placing of alternative apparatus of greater dimensions than those of the existing apparatus.

(6) Subject to sub-paragraph (7), if such placing involves cost in the construction of the works exceeding that which would have been involved if the alternative apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the sum payable to the operator must be reduced by the amount of that excess.

(7) Sub-paragraph (6) does not apply if—

- (a) the undertaker agrees that the placing of alternative apparatus of that type or capacity or of those dimensions, or its placing at that depth, is necessary; or
- (b) if the undertaker does not so agree, an expert to whom the difference is referred for determination in accordance with paragraph 26 decides that it was necessary.

(8) 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 (7), regard must be had to—

- (a) current health and safety requirements;
- (b) current design standards;
- (c) relevant good practice and process design specification;
- (d) the proximity of other apparatus; and
- (e) whether it is reasonably possible to obtain the existing type of apparatus at the same capacity and dimensions on the open market within a reasonable time.

(9) Where the provision of a joint in a pipe or cable is agreed or determined to be necessary for the purposes of sub-paragraph (7), 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.

(10) Except where sub-paragraph (11) applies, if the provision of alternative apparatus in substitution for existing apparatus placed more than 15 years earlier confers a financial benefit on the operator by deferment of the time for renewal of that apparatus in the ordinary course of the operator's business, the sum payable must be reduced by the amount which represents that benefit.

(11) This sub-paragraph applies where the alternative apparatus is provided as a result of a requirement imposed by the operator pursuant to paragraph 16(14).

(12) Where sub-paragraph (11) applies, if the provision of alternative apparatus in substitution for existing apparatus confers a financial benefit on the operator by deferment of the time for renewal of that apparatus in the ordinary course of the operator's business, the sum payable must be reduced by the amount which represents that benefit.

Indemnity

23.—(1) Where this paragraph applies, the undertaker must without unreasonable delay indemnify the operator in respect of any claim—

- (a) incurred by the operator in respect of any relevant damage; and
- (b) incurred by or recovered from the operator by reason or in consequence of any relevant damage.

(2) Unless sub-paragraph (3) applies, the fact that any works, act or thing may have been done—

- (a) by the operator on behalf of the undertaker;
- (b) in accordance with a consent, approval or agreement granted by the operator under paragraph 16, including any condition imposed by the operator under paragraph 16(2); or
- (c) under the operator's supervision,

will not excuse the undertaker from liability under sub-paragraph (1).

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

- (a) any claim to the extent that it is attributable to the act, neglect or default of the operator, or the operator's officers, employees, servants, contractors or agents; or
- (b) any claim by the operator which is not reasonably and properly incurred.

(4) The operator must give the undertaker reasonable advance notice of any claim or proposed claim.

(5) No settlement, admission of liability, compromise or demand of any claim or proposed claim is to be made without the consent of the undertaker (not to be unreasonably withheld or delayed)

(6) The operator must use its reasonable endeavours to mitigate in whole or in part and to minimise any claim or proposed claim to which the indemnity under this paragraph applies where it is within the operator's reasonable ability and control so to do.

(7) If requested to do so by the undertaker, the operator must without unreasonable delay provide the undertaker with—

- (a) adequate details to substantiate any claim, or proposed claim, of the operator to indemnification pursuant to this paragraph;
- (b) a written explanation of how the operator has mitigated or minimised the matters referred to in sub-paragraph (6).

(8) In this paragraph—

“claim” means “costs, claims, expenses, losses, demands, proceedings, damages or penalties” and, for the purposes of sub-paragraph (1)(b), includes a claim incurred as a result of the operator becoming liable to pay any sum to a third party (including but not limited to any sum payable as a result of the operator being in breach of its supply contracts with such third party) as a result of any relevant damage;

“relevant cause” means—

- (a) the construction, use, maintenance or failure of or access to any part of the authorised development;
- (b) any works authorised or carried out by the undertaker pursuant to this Schedule;
- (c) any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works; and
- (d) any ground subsidence event;

“relevant damage” means—

- (a) any damage caused to any apparatus, alternative apparatus or other property of the operator, other than to apparatus which has been removed pursuant to this Schedule;
- (b) any interruption in any service provided or the supply of goods or products—
 - (i) by the operator; and
 - (ii) to the operator;
- (c) any fine or penalty incurred by the operator in respect of any breach of its obligations in its supply contracts arising as a direct result of any other relevant damage as defined in the preceding sub-paragraphs (a) and (b);
- (d) breach of any statutory obligation applicable to the apparatus; or
- (e) any interruption of the operator’s access to or from the apparatus, which arises by reason or in consequence of any relevant cause.

PART 6

Procedure for grant of consent and referral of disputes

Grant of operator consent, approval or agreement

24.—(1) Where this paragraph applies to any request of the undertaker for the consent, approval or agreement of the operator under this Schedule, the operator must within 56 days of the date of receipt of that request give notice to the undertaker as to whether its consent, approval or agreement is—

- (a) granted, in whole or in part; or
- (b) refused, in whole or in part.

(2) Any consent, approval or agreement of the operator of which notice is given pursuant to sub-paragraph (1)(a) may be granted subject to such reasonable conditions as the operator considers appropriate.

(3) Any condition imposed pursuant to sub-paragraph (2)—

- (a) must be set out in full in the notice of the operator’s decision under sub-paragraph (1)(a); and
- (b) may only be imposed on the ground that the plans, specifications and method statements which accompanied the undertaker’s request ought to be and are reasonably capable of being modified for a purpose mentioned in sub-paragraph (4).

(4) Those purposes are—

- (a) to secure the apparatus against interference or risk of damage, including but not limited to works to mitigate material vibrations;
- (b) to ensure the ongoing safety and integrity of any pipeline comprised within the apparatus;
- (c) to ensure that the operator’s ability to use, operate, repair, replace or maintain the apparatus is not materially prejudiced;
- (d) the provision of protective works; and

- (e) the provision of proper and convenient means of access to any apparatus.
- (5) Where the operator imposes a condition pursuant to sub-paragraph (2), the notice of the operator's decision under sub-paragraph (1)(a) must set out—
- (a) particulars of the specific modification required; and
 - (b) the operator's full rationale for seeking that modification.
- (6) If the operator imposes a condition under sub-paragraph (2) to which the undertaker objects then—
- (a) the condition in question shall be deemed to be a matter in dispute between the undertaker and the operator; and
 - (b) sub-paragraph (10) applies.
- (7) Where the operator gives notice pursuant to sub-paragraph (1)(b) then—
- (a) that notice shall set out the operator's full reasons for the refusal;
 - (b) the refusal to which that notice relates shall be deemed to be a matter in dispute between the undertaker and the operator; and
 - (c) sub-paragraph (10) applies.
- (8) Subject to sub-paragraph (9), if the operator does not give notice of its decision in response to the undertaker's request within the period specified in sub-paragraph (1) then—
- (a) the operator shall be deemed to have refused its consent, approval or agreement in respect of that request on the day next following the last day of that period;
 - (b) the deemed refusal shall be deemed to be a matter in dispute between the undertaker and the operator; and
 - (c) sub-paragraph (10) applies.
- (9) If the operator gives notice of its decision under sub-paragraph (1) in respect of part only of the undertaker's request then—
- (a) the operator shall be deemed to have refused its consent, approval or agreement in respect of the remainder of that request on the day next following the date of the notice under sub-paragraph (1);
 - (b) the parts of the request which are deemed to have been refused under sub-paragraph (9)(a) shall be deemed to be a matter in dispute between the undertaker and the operator; and
 - (c) sub-paragraph (10) applies.
- (10) Where this sub-paragraph applies then the matter which is deemed to be in dispute under this paragraph may be referred for determination in accordance with paragraph 26.
- (11) Where a matter which is deemed to be in dispute under this paragraph is referred in accordance with sub-paragraph (10), the expert appointed under paragraph 26 may grant or refuse consent, approval or agreement in respect of the request, save that the expert may not—
- (a) refuse consent, approval or agreement in respect of any part of the request to which a notice given by the operator pursuant to sub-paragraph (1)(a) applies; or
 - (b) grant consent, approval or agreement subject to any condition, unless that condition is one which—
 - (i) is imposed on the ground specified in sub-paragraph (3)(b) for a purpose specified in sub-paragraph (4); and
 - (ii) was set out in a notice given by the operator pursuant to sub-paragraph (1)(a).
- (12) Any request to which this paragraph applies must be submitted to either—
- (a) the operator's registered office address; or
 - (b) instead of the operator's registered office address, such other address within the United Kingdom—
 - (i) as the operator may from time to time appoint for that purpose; and

- (ii) of which notice is given to the undertaker.

Grant of operator consent, approval or agreement within the Tees crossing area

25. Where this paragraph applies to any request of the undertaker for the consent, approval or agreement of the operator under this Schedule, paragraph 24(1) shall be read as if a period of 100 days was substituted for the period of 56 days therein specified.

Referral and determination of disputes

26.—(1) article 46 (arbitration) does not apply to the provisions of this Schedule and any difference, dispute or matter deemed to be in dispute arising between the undertaker and the operator under this Schedule (including as to any payment, sum or deduction pursuant to paragraphs 21, 22 and 23) must be referred to-

- (a) A meeting between a senior executive or executives (not to exceed two) to seek agreement on the matter in dispute within 21 days from the date of a dispute first being notified in writing by one party to the other; and
- (b) In the absence of the difference being settled within that period, to be settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the undertaker and the operator or, in the absence of agreement identified by the President of the Institute of Civil Engineers, who must be sought to be appointed within 14 days of the notification of the dispute.

(2) The fees of the expert appointed pursuant to sub-paragraph (1)(b) are to be payable by the partes in such proportions as the expert may determine, in the absence of such determination, equally between the parties.



(3) Where appointed pursuant to sub-paragraph (1)(a), the expert must-

- (a) invite the parties to make submissions to the expert in writing and copies to the other party to be received by the expert within 14 days of the expert's appointment; and
- (b) allow each party an opportunity to comment on the submissions made by the other provided that they are received within 10 days of the receipt of the submissions referred to in sub-paragraph (3)(a); and
- (c) issue a decision within 21 days of receipt of the submissions submitted pursuant to sub-paragraph (3)(a); and
- (d) give reasons for the decision.

(4) The expert must consider where relevant-

- (a) The development outcomes sought by the undertaker and the operator; and expert may determine how the payment is to be apportioned in which case the undertaker and the operator; and
- (b) the safety, operational and management requirements of the operator; and
- (c) any other important and relevant considerations.

(5) Any determination by the expert is final and binding which the parties must comply with and is enforceable by the parties by injunction except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settle by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either part (after giving notice in writing to the other) by the president of the Institution of Civil Engineers

- Key:**
-  Tees Crossing Area
 -  Order Limits

Notes:

Coordinate System: British National Grid
 Projection: Transverse Mercator
 Datum: OSGB 1936

Interest:
 The King's Most Excellent Majesty In Right
 Of His Crown

Location:
 River Tees, Billingham, Stockton-on-Tees,
 Tees Valley

Coords: 454668, 524712

Scheme Name:
 H2 Teesside

Drawing Name:
 Information Plan

Drawing No: 22004379_PLN_INFO_533.1

Rev	Date	Description
-	05.02.2025	First Issue

Drawn: AL

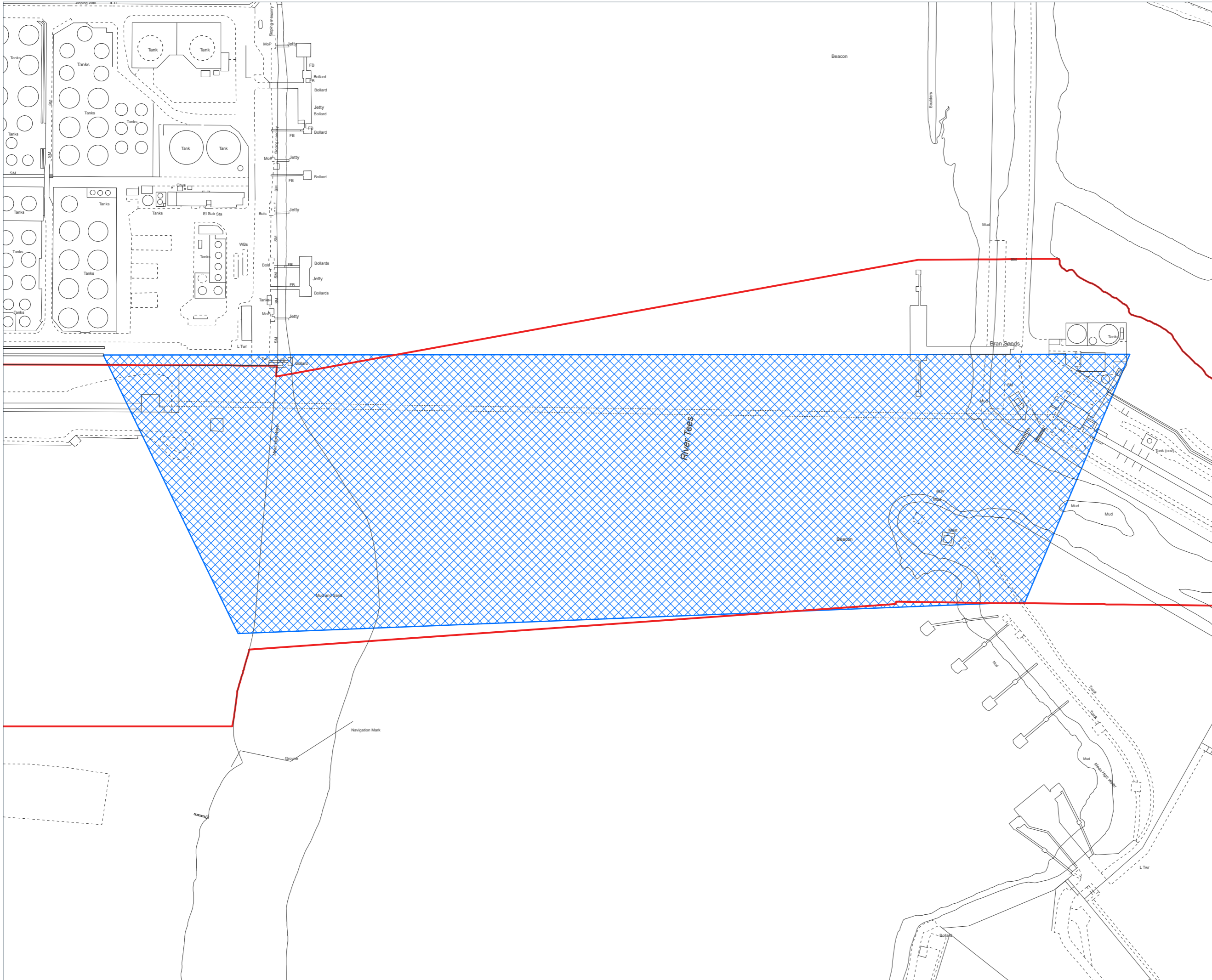
Approved: JF

Sheet No: 1 of 1

Sheet Size: A3



The information contained in this document is confidential and protected by copyright. The use, copying or disclosure to a third party, either wholly or in part, except with the written permission of, and in the manner prescribed by BP Exploration Operating Company Limited constitutes an infringement of copyright. Dalcour MacLaren does not warrant that this document is definitive nor free of error and does not accept liability for any loss caused or arising from reliance upon information provided herein. Although our best efforts have been made to ensure the accuracy of these plans, all measurements must be confirmed on site. BASED UPON THE ORDINANCE SURVEY MAP WITH THE SANCTION OF THE CONTROLLER OF HM STATIONERY OFFICE. CROWN COPYRIGHT RESERVED. © OS LICENCE No. AC0000808122



Drawing Location: C:\Users\andrew.lambe\Dalcour MacLaren\H2 Teesside\22004379 - Geomatics\01 DM Plans\0205\2025_22004379_PLN_INFO_533.aprx