S T A T U T O R Y I N S T R U M E N T S

2024 No. 174

INFRASTRUCTURE PLANNING

The Net Zero Teesside Order 2024

Made - - - - *16th February 2024*

Coming into force *11th March 2024*

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An application has been made to the Secretary of State under section 37 (applications for orders granting development consent) of the Planning Act 2008(**a**) (the "2008 Act") in accordance with the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009(**b**) for an Order granting development consent.

The application was examined by a Panel as Examining authority appointed by the Secretary of State pursuant to sections 61(**c**) and 65(**d**) of Part 6 of the 2008 Act and carried out in accordance with Chapter 4 of Part 6 of the 2008 Act and the Infrastructure Planning (Examination Procedure) Rules 2010(**e**). The Examining authority having considered the application with the documents that accompanied the application, and the representations made and not withdrawn, has, in

(**a**) 2008 c. 29. Section 37 was amended by Chapter 6 and Part 6 of, and Schedule 13 to, the Localism Act 2011 (c. 20).
(**b**) S.I. 2009/2264.
(**c**) Section 61 was amended by section 128(2) and Schedule 13, paragraph 18 to the Localism Act 2011 c. 20 and by section 26 of the Infrastructure Act 2015 c. 7.
(**d**) Section 65 was amended by Schedule 13 paragraph 22(2) and Schedule 25, paragraph 1 to the Localism Act 2011 c. 20 and by section 27(1) of the Infrastructure Act 2015 c. 7.
(**e**) S.I. 2010/103, amended by S.I. 2012/635.

accordance with section 74(2)(**a**) of the 2008 Act, submitted a report and recommendation to the Secretary of State.

The Secretary of State having considered the representations made and not withdrawn, the report and recommendation of the Examining authority and having taken into account the environmental information in accordance with regulation 4 of the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017(**b**) and having had regard to the documents and matters referred to in section 104(2)(**c**) (decisions in cases where national policy statement has effect) of the 2008 Act has determined to make an Order granting development consent for the development comprised in the application on terms that, in the opinion of the Secretary of State, are not materially different from those comprised in the application.

The Secretary of State is satisfied that open space comprised within the Order land, when burdened with the new rights authorised for compulsory acquisition under the terms of this Order, will be no less advantageous than it was before such acquisition, to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public and that, accordingly, section 132(3)(**d**) of the 2008 Act applies;

Accordingly, the Secretary of State, in exercise of the powers conferred by sections 114, 115, 120(**e**), 140 and 149A of the 2008 Act, makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Net Zero Teesside Order 2024 and comes into force on 11th March 2024.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**f**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**g**);

"the 1966 Act" means the Tees and Hartlepool Port Authority Act 1966(**h**);

"the 1974 Order" means the Tees and Hartlepool Port Authority Revision Order 1974(**i**);

"the 1980 Act" means the Highways Act 1980(**j**);

"the 1981 Act" means the Compulsory Purchase (Vesting Declarations) Act 1981(**k**);

(**a**) Section 74 was amended by the Localism Act 2011 (c. 20) section 128(2) and 237, Schedule 13 paragraph 29 and Schedule 25, Part 20.
(**b**) S.I. 2017/572.
(**c**) Section 104 was amended by section 58(5) of the Marine and Coastal Access Act 2009 (c. 23) and by section 128(2) and Schedule 13, paragraphs 1 and 49(1) to (6) of the Localism Act 2011 c. 20.
(**d**) Section 132 was amended by section 24(3) of the Growth and Infrastructure Act 2013 (c. 27).
(**e**) Sections 114, 115 and 120 were amended by sections 128(2) and 140 and Schedule 13, paragraphs 1, 55(1), (2) and 60(1) and (3) of the Localism Act 2011. Relevant amendments were made to section 115 by section 160(1) to (6) of the Housing and Planning Act 2016 (c. 22).
(**f**) 1961 c. 33.
(**g**) 1965 c. 56.
(**h**) 1966 c. xxv.
(**i**) S.I. 1975/693.
(**j**) 1980 c. 66.
(**k**) 1981 c. 66.

"the 1984 Act" means the Road Traffic Regulation Act 1984(**a**);

"the 1986 Act" means the Gas Act 1986(**b**);

"the 1989 Act" means the Electricity Act 1989(**c**);

"the 1990 Act" means the Town and Country Planning Act 1990(**d**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**e**);

"the 1994 Order" means the Tees and Hartlepool Harbour Revision Order 1994(**f**);

"the 2000 Act" means the Countryside and Rights of Way Act 2000(**g**);

"the 2004 Act" means the Traffic Management Act 2004(**h**);

"the 2008 Act" means the Planning Act 2008(**i**);

"the 2009 Act" means the Marine and Coastal Access Act 2009(**j**);

"access and rights of way plans" means the plans which are certified as the access and rights of way plans by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

"access land" has the same meaning as in section 1(1) (principal definitions for Part I) of the 2000 Act;

"address" includes any number or address used for the purposes of electronic transmission;

"apparatus" has the same meaning as in Part 3 (Street works in England and Wales) of the 1991 Act and further includes pipelines (and parts of them), aerial markers, cathodic protection test posts, field boundary markers, transformer rectifier kiosks, electricity and fibre-optic cables, pipe and cable protection telecommunications equipment and electricity cabinets;

"application guide" means the document of that description which is certified by the Secretary of State as the application guide under article 45 for the purposes of this Order;

"authorised development" means the development described in Schedule 1 (authorised development) and any other development authorised by this Order within the meaning of section 32 (meaning of "development") of the 2008 Act;

"book of reference" means the document of that description which is certified by the Secretary of State as the book of reference under article 45 for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carbon dioxide storage licence" means a licence for the activities under section 17 of the Energy Act 2008 for the carbon dioxide storage site;

"carbon dioxide storage site" means the site for the storage of carbon dioxide captured or collected by the authorised development;

"carriageway" has the same meaning as in the 1980 Act;

"CCGT" means combined cycle gas turbine;

"CCP" means the carbon capture plant, which is designed to capture a minimum rate of 90% of the carbon dioxide emissions of the generating station operating at full load;

"commence" means—

(a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for operations consisting of pre-construction monitoring surveys approved under the deemed marine licences; or

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(**a**) 1984 c. 27.
(**b**) 1986 c. 44.
(**c**) 1989 c. 29.
(**d**) 1990 c. 8.
(**e**) 1991 c. 22.
(**f**) S.I. 1994/2064.
(**g**) 2000 c. 37.
(**h**) 2004 c. 18.
(**i**) 2008 c. 29.
(**j**) 2009 c. 23.

(b) in respect of any other works comprised in or carried out for the purposes of the authorised development, the first carrying out of any material operation, as defined in section 155 (which explains when development begins) of the 2008 Act,

and the words "commencement" and "commenced" and cognate expressions are to be construed accordingly;

"commissioning" means the process of testing all systems and components of the authorised development which are installed or in relation to which installation is nearly complete in order to ensure that they, and the authorised development as a whole, function in accordance with the plant design specifications and the undertaker's operational and safety requirements;

"consenting authority" means the relevant planning authority, highway authority, traffic authority, street authority, the owner of a watercourse, sewer or drain or the beneficiary of any of the protective provisions contained in Schedule 12 (protective provisions);

"date of final commissioning" means the date on which—

(a) commissioning of the authorised development is completed and that development commences operation on a commercial basis; or

(b) where specified in this Order, the date on which a specified Work No. commences operation on a commercial basis;

"deemed marine licences" means the marine licences set out in Schedules 10 (deemed marine licence under the 2009 Act – Project A) and 11 (deemed marine licence under the 2009 Act – Project B) including any variations to either of them;

"design and access statement" means the statement which is certified as the design and access statement by the Secretary of State under article 45 for the purposes of this Order;

"electronic communication" has the meaning given in section 15(1) (general interpretation) of the Electronic Communications Act 2000;

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means provided it is in electronic form;

"the environmental statement" means the statement certified as the environmental statement by the Secretary of State under article 45 for the purposes of this Order;

"ES addendum" means the documents certified as part of the environmental statement as the Environmental Statement Addendum – Volume I, Environmental Statement Addendum – Volume II and Non-Technical Summary of the Environmental Statement Addendum by the Secretary of State under article 45 for the purposes of this Order;

"footpath" and "footway" have the same meanings as in the 1980 Act;

"framework construction environmental management plan" means the document of that description which is certified as the framework construction environmental management plan by the Secretary of State under article 45 for the purposes of this Order;

"framework construction traffic management plan" means the document of that description at appendix 16C of the environmental statement;

"framework construction workers travel plan" means the document of that description at appendix 16B of the environmental statement;

"framework site waste management plan" means the document appended at appendix A of the framework construction environmental management plan;

"highway" and "highway authority" have the same meanings as in the 1980 Act;

"indicative landscape and biodiversity strategy" means the document of that description which is certified as the indicative landscape and biodiversity strategy by the Secretary of State under article 45 for the purposes of this Order and the updated landscape and biodiversity plan;

"indicative lighting strategy" means the document of that description which is certified as the indicative lighting strategy by the Secretary of State under article 45 for the purposes of this Order;

"land plans" means the plans which are certified as the land plans by the Secretary of State under article 45 for the purposes of this Order;

"legible in all material respects" means the information contained in an electronic communication is available to the recipient to no lesser extent than it would be if transmitted by means of a document in printed form;

"maintain" includes, inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve any part of, but not remove, reconstruct or replace the whole of, the authorised development provided that such activities do not give rise to any materially new or materially different adverse effects that have not been assessed in the environmental statement and "maintenance" and "maintaining" are to be construed accordingly;

"mean high water springs" or "MHWS" means the average of high water heights occurring at the time of spring tides;

"MMO" means the Marine Management Organisation;

"NGET" means National Grid Electricity Transmission plc (company number 2366977) whose registered office is at 1-3 Strand, London WC2N 5EH;

"NZT Power" means Net Zero Teesside Power Limited (company number 12473751) whose registered office is at Chertsey Road, Sunbury On Thames, Middlesex, United Kingdom, TW16 7BP;

"NZNS Storage" means Net Zero North Sea Storage Limited (company number 12473084) whose registered office is at Chertsey Road, Sunbury On Thames, Middlesex, United Kingdom, TW16 7BP;

"Order land" means the land which is required for, or is required to facilitate, or is incidental to, or is affected by, the authorised development shown edged red on the land plans and described in the book of reference;

"Order limits" means the limits shown on the works plans within which the authorised development may be carried out;

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(**a**);

"permitted preliminary works" means works consisting of environmental surveys, geotechnical surveys, surveys of existing infrastructure, and other investigations for the purpose of assessing ground conditions, the preparation of facilities for the use of contractors (excluding earthworks and excavations), the provision of temporary means of enclosure and site security for construction, the temporary display of site notices or advertisements and any other works agreed by the relevant planning authority, provided that these will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement;

"project A" means the development described in Schedule 1 except Work Nos. 6, 7 and 8;

"project B" means the development described in Schedule 1 except Work Nos. 1, 2 and 4;

"relevant highway authority" means the highway authority responsible for highways within the vicinity of the authorised development pursuant to section 1(1A)(2) of the 1980 Act;

"relevant planning authority" means the local planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

"Requirements" means those matters set out in Schedule 2 (Requirements) to this Order;

"Royal Mail" means Royal Mail Group Limited (company number 04138203) whose registered office is at 185 Farringdon Road, London, EC1A 1AA;

"shared areas plan" means the plan defined as the Shared Areas Plan in Part 18 of Schedule 12 of the Order (for the protection of Anglo American);

(**a**) 1981 c. 67. The definition of "owner" was amended by section 70 of and paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to the Order.

"special category land" means the land shown hatched blue on the land plans;

"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;

"statutory undertaker" means any person falling within section 127(8) (statutory undertakers' land) of the 2008 Act, subject to any specific wording in this Order;

"street" means a street within the meaning given by section 48 (streets, street works and undertakers)(**a**) of the 1991 Act, together with land on the verge of a street or between two carriageways, and "street" includes any part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act(**b**);

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

"traffic authority" has the same meaning as given in section 121A (traffic authorities) of the 1984 Act;

"tribunal" means the Lands Chamber of the Upper Tribunal;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"undertaker" means, subject to articles 7 (benefit of the Order) and 8 (consent to transfer benefit of this Order)—

(a) for the purposes of constructing, maintaining and operating Project A, NZT Power;

(b) for the purposes of constructing, maintaining and operating Project B, NZNS Storage;

"updated landscape and biodiversity plan" means the document of that description which is certified as the updated landscape and biodiversity plan by the Secretary of State under article 45 for the purposes of this Order;

"watercourse" includes all rivers, streams, creeks, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain;

"working day" means any day except a Saturday or Sunday, Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(**c**);

"works plans" means the plans which are certified as the works plans by the Secretary of State under article 45 for the purposes of this Order.

(2) The definitions in paragraph (1) do not apply to the deemed marine licences except where expressly provided for in a deemed marine licence.

(3) All distances, directions and lengths referred to in this Order, except for the parameters referred to in Table 9 and Table 10 in Part 1 of Schedule 10, Table 11 and Table 12 in Part 1 of Schedule 11 and Table 14 in Schedule 15, are approximate and distances between lines and/or points on a numbered work comprised in the authorised development and shown on the works plans and access and rights of way plans are to be taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) References in this Order to "numbered work" and "Work No." are references to the works comprising the authorised development as set out in Schedule 1 and shown on the works plans.

(6) The expression "includes" is to be construed without limitation unless the contrary intention appears.

(7) References in this Order to plots are references to the plots shown on the land plans and described in the book of reference.

(**a**) Section 48 was amended by section 124 (1) and (2) of the Local Transport Act 2008 (c. 26).
(**b**) "Street authority" is defined in section 49, which was amended by section 1(6) and paragraphs 113 and 117 of Schedule 1 to the Infrastructure Act 2015.
(**c**) 1971 c. 80.

Electronic communications

3.—(1) In this Order—

(a) references to documents, maps, plans, drawings, certificates or other documents, or to copies, include references to them in electronic form;

(b) references to a form of communication being "in writing" include references to an electronic communication that satisfies the conditions in paragraph (2) and "written" and other cognate expressions are to be construed accordingly.

(2) The conditions are that—

(a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission; and

(b) the communication is—

(i) capable of being accessed by the recipient;

(ii) legible in all material respects; and

(iii) sufficiently permanent to be used for subsequent reference.

(3) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(4) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (5).

(5) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date may not be less than seven days after the date on which the notice is given.

PART 2

PRINCIPAL POWERS

Development consent etc. granted by this Order

4.—(1) Subject to the provisions of this Order and to the Requirements, NZT Power is granted development consent for Project A to be carried out within the Order limits.

(2) Subject to the provisions of this Order and to the Requirements, NZNS Storage is granted development consent for Project B to be carried out within the Order limits.

(3) Each numbered work must be carried out within the Order limits and situated within the corresponding numbered area shown on the works plans.

Maintenance of authorised development

5.—(1) The undertaker may at any time maintain the authorised development except to the extent that this Order, or an agreement made under this Order, provides otherwise.

(2) This article only authorises the carrying out of maintenance works within the Order limits.

Operation of authorised development

6.—(1) The undertaker is hereby authorised to use and to operate the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required from time to time to authorise the operation of the authorised development.

Benefit of this Order

7. Subject to article 8 (consent to transfer benefit of this Order), the provisions of this Order have effect—

(a) solely for the benefit of NZT Power in respect of Project A; and

(b) solely for the benefit of NZNS Storage in respect of Project B.

Consent to transfer benefit of this Order

8.—(1) Subject to paragraphs (3) and (7), the undertaker may with the written consent of the Secretary of State—

(a) transfer to another person ("the transferee") any or all of the benefit of the provisions of this Order (including any of the numbered works but excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or

(b) grant to another person ("the lessee") for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including any of the numbered works but excluding the deemed marine licences referred to in paragraph (2) below) and such related statutory rights as may be so agreed.

(2) Subject to paragraphs (3) and (7), the undertaker may with the written consent of the Secretary of State—

(a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of a deemed marine licence and such related statutory rights as may be agreed between the undertaker and the transferee; or

(b) where an agreement has been made in accordance with paragraph (1)(b), grant to the lessee the whole of a deemed marine licence and such related statutory rights as may be so agreed.

(3) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of a deemed marine licence.

(4) Where a transfer or grant has been made in accordance with paragraph (1) or (2) references in this Order to the undertaker, except in paragraph (5), include references to the transferee or the lessee.

(5) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (2) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(6) Where an agreement has been made in accordance with paragraph (1) or (2)—

(a) the benefit transferred or granted ("the transferred benefit") includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates; and

(b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker.

(7) The consent of the Secretary of State is not required for the exercise of powers under paragraph (1) or (2) where—

(a) the transferee or lessee is—

(i) a person who holds a licence under section 6 (licences authorising supply, etc.) of the 1989 Act(**a**) or section 7 (licensing of public gas transporters)(**b**) of the 1986 Act; or

(ii) in relation to a transfer or a lease of any works within a highway, a highway authority responsible for the highways within the Order land; or

(iii) in relation only to a transfer or lease of all or part of Work No. 3, NGET; or

(b) the time limits for all claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claims that have been made have all been compromised or withdrawn;

(iii) compensation has been paid in final settlement of all such claims;

(iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(8) Where the consent of the Secretary of State is not required under paragraph 8(7), the undertaker must notify the Secretary of State and, where the transfer or grant relates to the STDC area, STDC and Teesworks Limited in writing before transferring or granting a benefit referred to in paragraph (1) or (2).

(9) The notification referred to in paragraph (8) must state—

(a) the name and contact details of the person to whom the benefit of the powers are to be transferred or granted;

(b) subject to paragraph (8), the date on which the transfer is expected to take effect;

(c) the powers to be transferred or granted;

(d) pursuant to paragraph (4), the restrictions, liabilities and obligations that are to apply to the person exercising the powers transferred or granted; and

(e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(10) The date specified under paragraph (9)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(11) The notice given under paragraph (8) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(12) The undertaker must, within 10 working days after entering into an agreement under paragraph (1) or (2) in relation to which any of the benefit of the deemed marine licence is to be transferred to another party, notify the Environment Agency and the MMO in writing, and the notice must include particulars of the other party to the agreement under paragraph (1) or (2) and details of the extent, nature and scope of the functions to be transferred or otherwise dealt with which relate to the functions of any of those bodies.

Amendment and modification of statutory provisions

9.—(1) The York Potash Harbour Facilities Order 2016 is amended for the purposes of this Order only as set out in Schedule 3 (modifications to and amendments of the York Potash Harbour Facilities Order 2016).

(2) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of any part of numbered works 2A, 6 or 10 and any works that may be carried out in association with those numbered works—

(**a**) 1989 c. 29. Section 6 was amended by section 30 of the Utilities Act 2000 (c. 27), and by section 89(3) of the Energy Act 2004 (c. 20). There are other amendments to this section that are not relevant to this Order.

(**b**) Section 7 was amended by section 5 of the Gas Act 1995 (c. 45) and section 76(2) of the Utilities Act 2000 (c. 27). There are other amendments to the section that are not relevant to this Order.

(a) byelaws and directions made under the 1966 Act, the 1974 Order or the 1994 Order which prevent, restrict, condition or require the consent of the Tees Port Authority or the harbour master to any such works; and

(b) requirements of section 22 (licensing of works) of the 1966 Act.

PART 3

STREETS

Power to alter layout etc. of streets

10.—(1) The undertaker may for the purposes of constructing, operating or maintaining the authorised development alter the layout of, or carry out any works in, a street specified in column (2) of Table 1 in Schedule 4 (streets subject to street works) in the manner specified in relation to that street in column (3) of that Table 1.

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraph (3), the undertaker may, for the purposes of constructing, operating and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

(a) alter the level or increase the width of any kerb, footway, cycle track or verge; and

(b) make and maintain passing places.

(3) Subject to paragraph (4), the powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(4) Paragraph (3) does not apply where the undertaker is the street authority for a street in which the works are being carried out.

Street works

11.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (streets subject to street works) and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) drill, tunnel or bore under the street;

(c) place and keep apparatus in the street;

(d) maintain apparatus in the street or change its position; and

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

Construction and maintenance of new or altered means of access

12.—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (those parts of the accesses to be maintained by the highway authority) to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed by the highway authority, must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the highway authority.

(2) Those parts of each means of access specified in Part 2 of Schedule 5 (those parts of the accesses to be maintained by the street authority) to be constructed under this Order and which are not intended to be a public highway must be completed to the reasonable satisfaction of the street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence, without prejudice to any other defence or the application of the law relating to contributory negligence, to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), a court must in particular have regard to the following matters—

(a) the character of the street including the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a street of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the street;

(d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

(e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant that the undertaker had arranged for a competent person to carry out or supervise the maintenance of that part of the street to which the action relates unless it is also proved that the undertaker had given that person proper instructions with regard to the maintenance of the street and that those instructions had been carried out.

Temporary stopping up of streets, public rights of way and access land

13.—(1) The undertaker, during and for the purposes of carrying out and maintaining the authorised development, may temporarily stop up, prohibit the use of, restrict the use of, alter or divert any street or public right of way and may for any reasonable time—

(a) divert the traffic or a class of traffic from the street or public right of way; and

(b) subject to paragraph (2), prevent all persons from passing along the street or public right of way.

(2) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street or public right of way affected by the temporary stopping up, prohibition, restriction, alteration or diversion of a street or public right of way under this article if there would otherwise be no such access.

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, prohibit the use of, restrict the use of or, for the purposes of sub-paragraphs (a) or (b) of this paragraph (3), alter or divert—

(a) the streets specified in column (2) of Table 4 in Part 1 of Schedule 6 (those parts of the street to be temporarily stopped up) to the extent specified in column (3) of that Table 4;

(b) the public rights of way specified in column (2) of Table 5 in Part 2 of Schedule 6 (those public rights of way to be temporarily stopped up) to the extent specified in column (3) of that Table 5; and

(c) the access land specified in column (2) of Table 6 in Part 3 of Schedule 6 (those parts of the access land where public access may be temporarily suspended) to the extent specified in column (3) of that Table 6.

(4) The undertaker must not temporarily stop up, prohibit the use of, restrict the use of, alter or divert—

(a) any street or public right of way specified in paragraph (3) without first consulting the street authority;

(b) any other street or public right of way without the consent of the street authority, and the street authority may attach reasonable conditions to any such consent; or

(c) any access land without first consulting Natural England.

(5) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Without prejudice to the scope of paragraph (1), the undertaker may use any street or public right of way or access land which has been temporarily stopped up under the powers conferred by this article and within the Order limits as a temporary working site.

(7) Without prejudice to the requirements of paragraph (4), the undertaker must not exercise the powers in paragraphs (1) and (3) in relation to a road unless it has—

(a) given not less than four weeks' notice in writing of its intention to do so to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention under sub-paragraph (a).

(8) Any prohibition, restriction or other provision made by the undertaker under paragraph (1) or (3) of this article in relation to a road has effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act, and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

(9) The rights of access conferred by section 2 of the 2000 Act (rights of the public in relation to access land) are suspended in relation to the access land specified in column (2) of Table 6 in Part 3 of Schedule 6 (those parts of the access land where public access may be temporarily suspended) to the extent specified in column (3) of that Table 6.

(10) The period of suspension under paragraph (9) lasts for the period of the temporary stopping up.

(11) In this article—

(a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and

(b) a "road" means a road that is a public highway maintained by and at the expense of the traffic authority.

Access to works

14. The undertaker may, for the purposes of the authorised development—

(a) form and lay out the means of access, or improve existing means of access, in the locations specified in Schedule 4 (streets subject to street works); and

(b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access as the undertaker reasonably requires for the purposes of the authorised development.

Agreements with streets authorities

15.—(1) A street authority and the undertaker may enter into agreements with respect to—

(a) construction of any new street including any structure carrying the street;

(b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;

(c) the maintenance of any street or of the structure of any bridge or tunnel carrying a street over or under the authorised development;

(d) any stopping up, alteration or diversion of a street under the powers conferred by this Order;

(e) the execution in the street of any of the authorised development;

(f) the adoption by a street authority which is the highway authority of works—

(i) undertaken on a street which is existing publicly maintainable highway; and/or

(ii) which the undertaker and highway authority agree are to be adopted as publicly maintainable highway; and

(g) any such works as the parties may agree.

(2) Such an agreement may, without prejudice to the generality of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question;

(b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and

(c) contain such terms as to payment and otherwise as the parties consider appropriate.

Traffic regulation

16.—(1) Subject to paragraphs (3) and (4) and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with the construction of the authorised development, at any time prior to the date that is 12 months after the date of final commissioning—

(a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and

(b) make provision as to the direction or priority of vehicular traffic on any road, either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

(a) given not less than four weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and

(b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary stopping up of streets, public rights of way and access land) or paragraph (1) of this article has effect as if duly made by, as the case may be—

(a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or

(b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places)(**a**) of the 1984 Act, and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the 2004 Act.

(4) In this article—

(**a**) Relevant amendments to section 32 were made by the 1991 Act section 168(1) and Schedule 8, paragraph 39.

(a) subject to sub-paragraph (b), expressions used in it and in the 1984 Act have the same meaning; and

(b) a "road" means a road that is a public highway maintained by and at the expense of the traffic authority.

PART 4

SUPPLEMENTAL POWERS

Discharge of water

17.—(1) Subject to paragraphs (2) and (3), the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) must be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**a**).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(6) This article does not authorise any water discharge activities or groundwater activities for which an environmental permit would be required pursuant to regulation 12(1) (requirement for an environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(7) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(**c**), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and

(b) other terms and expressions, with the exception of the term "watercourse", used both in this article and in the Water Resources Act 1991(**d**) have the same meaning as in that Act.

(**a**) 1991 c. 56. Section 106 was amended by sections 35(8)(a) and 43(2) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c. 43) and sections 36(2) and 99(2), (4), and (5) of the Water Act 2003 (c. 37).
(**b**) S.I. 2016/1154.
(**c**) 1964 c. 40. Paragraph 9B was inserted into Schedule 2 by paragraph 9 of Schedule 3 of the Transport and Works Act 1992 (c. 42).
(**d**) 1991 c. 57.

Felling or lopping of trees and removal of hedgerows

18.—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

(b) from constituting a danger to persons constructing, maintaining or operating the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Protective works to buildings

19.—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

(a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised development; or

(b) after the completion of that part of the authorised development in the vicinity of the building at any time up to the end of the period of five years beginning with the date that those works are completed.

(3) For the purpose of determining how the functions under this article are to be exercised the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building the undertaker may (subject to paragraphs (5) and (6))—

(a) enter the building and any land within its curtilage; and

(b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

(a) a right under paragraph (1) to carry out protective works to a building;

(b) a right under paragraph (3) to enter a building and land within its curtilage;

(c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or

(d) a right under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice in writing of its intention to exercise that right and, in a case falling within sub-paragraph (a), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice in writing within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 47 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which rights under this article have been exercised for any loss or damage arising to them by reason of the exercise of those rights.

(8) Where—

(a) protective works are carried out under this article to a building; and

(b) within the period of 5 years beginning with the date of final commissioning it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised development,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance)(**a**) of the 2008 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) In this article "protective works" in relation to a building means—

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the carrying out, maintenance or use of the authorised development; and

(b) any works the purpose of which is to remedy any damage which has been caused to the building by the carrying out, maintenance or use of the authorised development.

Authority to survey and investigate the land

20.—(1) The undertaker may for the purposes of this Order enter on any land within the Order limits or on any land which may be affected by the authorised development and—

(a) survey or investigate the land;

(b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered or equipment placed or left on the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of the undertaker—

(a) must, if so required on entering the land, produce written evidence of their authority to do so; and

(b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

(a) in land located within the highway boundary without the consent of the highway authority; or

(b) in a private street without the consent of the street authority.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such

(**a**) As amended by S.I. 2009/1307.

compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Removal of human remains

21.—(1) Before the undertaker carries out any part of the authorised development or works which will or may disturb any human remains in the Order land it must remove those human remains from the Order land, or cause them to be removed, in accordance with the following provisions of this article.

(2) Before any such remains are removed from the Order land the undertaker must give notice of the intended removal, describing the Order land and stating the general effect of the following provisions of this article, by—

(a) publishing a notice once in each of two successive weeks in a newspaper circulating in the area of the authorised development; and

(b) displaying a notice in a conspicuous place on or near to the Order land.

(3) As soon as reasonably practicable after the first publication of a notice under paragraph (2) the undertaker must send a copy of the notice to the relevant planning authority.

(4) At any time within 56 days after the first publication of a notice under paragraph (2) any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

(5) Where a person has given notice under paragraph (4), and the remains in question can be identified, that person may cause such remains to be—

(a) removed and re-interred in any burial ground or cemetery in which burials may legally take place; or

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10) and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (10).

(6) If the undertaker is not satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who is to remove the remains and as to the payment of the costs of the application.

(7) The undertaker must pay the reasonable expenses of removing and re-interring or cremating the remains of any deceased person under this article.

(8) If—

(a) within the period of 56 days referred to in paragraph (4) no notice under that paragraph has been given to the undertaker in respect of any remains in the Order land; or

(b) such notice is given and no application is made under paragraph (6) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or

(c) within 56 days after any order is made by the county court under paragraph (6) any person, other than the undertaker, specified in the Order fails to remove the remains; or

(d) it is determined that the remains to which any such notice relates cannot be identified;

(e) subject to paragraph (9), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(9) If the undertaker is satisfied that any person giving notice under paragraph (4) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(10) On the re-interment or cremation of any remains under this article—

(a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and

(b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (8) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (3).

(11) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(12) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(13) Section 25 (offence of removal of body from burial ground) of the Burial Act 1857(**a**) is not to apply to a removal carried out in accordance with this article.

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

22.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it.

(2) This article is subject to article 24 (time limit for exercise of authority to acquire land compulsorily), article 25 (compulsory acquisition of rights etc.), article 28 (acquisition of subsoil and airspace only), article 30 (rights over or under streets), article 31 (temporary use of land for carrying out the authorised development) and article 43 (Crown rights).

Power to override easements and other rights

23.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) (nuisance: statutory authority) of the 2008 Act, notwithstanding that it involves—

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

(**a**) 1857 c. 81. Substituted by Church of England (Miscellaneous Provisions) Measure 2014 No. 1 section 2 (1 January 2015: substitution has effect subject to transitional and saving provisions specified in S.I. 2014/2077 Schedule1 paragraphs 1 and 2).

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 158 (benefit of Order granting development consent) of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) (compensation in case where no right to claim in nuisance) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

Time limit for exercise of authority to acquire land compulsorily

24.—(1) After the end of the period of five years beginning on the day on which this Order is made—

(a) no notice to treat may be served under Part 1 (compulsory purchase under acquisition of Land Act of 1946) of the 1965 Act; and

(b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act (as applied by article 27 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)).

(2) The authority conferred by article 31 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights etc.

25.—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land as may be required for any purpose for which that land may be acquired under article 22 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) The powers of paragraph (1) may be exercised by a statutory undertaker in any case where the undertaker, with the consent of the Secretary of State, transfers the power to a statutory undertaker.

(3) Where in consequence of paragraph (2), a statutory undertaker exercises the powers in paragraph (1) in place of the undertaker, except in relation to the payment of compensation the liability for which must remain with the undertaker, the statutory undertaker is to be treated for the purposes of this Order, and by any person with an interest in the land affected, as being the undertaker in relation to the acquisition of the rights in question.

(4) In the case of—

(a) the Order land specified in column (1) of Table 7 in Schedule 7 (land in which new rights etc. may be acquired) and coloured blue on the land plans (the special category land) the undertaker's powers of compulsory acquisition under paragraph (1) are limited to the acquisition of such wayleaves, easements, new rights over the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development for the purposes specified in column (2) of that Table 7 in relation to that land; and

(b) the Order land specified in column (1) in Table 7 in Schedule 7 and coloured pink on the land plans the undertaker may, as an alternative to acquiring land pursuant to article 22 (compulsory acquisition of land), acquire such wayleaves, easements or new rights over the land or impose such restrictive covenants as the undertaker may require for or in

connection with the authorised development for the purposes specified in column (2) of that Table 7 in relation to that land.

(5) The power under paragraphs (1) and (2) to acquire the rights and to impose the restrictive covenants for the benefit of statutory undertakers—

(a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land as may be required for the benefit of any other statutory undertaker; and

(b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land as are required for the benefit of any other statutory undertaker.

(6) Subject to section 8 (provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants)), where the undertaker creates or acquires a right over land or imposes a restrictive covenant under paragraph (1), the undertaker is not to be required to acquire a greater interest in that land.

(7) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(8) For the purposes of this article and Schedule 7 "statutory undertaker" includes any person who has apparatus within the Order limits.

(9) References in this article to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the airspace above its surface and to any trusts or incidents (including restrictive covenants) to which the land is subject.

(10) Nothing in this article permits the undertaker to acquire or create rights or impose restrictive covenants in land specified in Schedule 9 (land of which temporary possession may be taken).

(11) This article is subject to article 43 (Crown rights).

(12) Subject to Article 43 (Crown rights), so much of the special category land as is required for the purposes of the exercising of rights acquired by the undertaker pursuant to this article is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those rights.

Private rights

26.—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictive covenants under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

(a) as from the date of acquisition of the right by the undertaker, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the undertaker under section 11(1) (powers of entry) of the 1965 Act in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over any part of the Order land that is owned by, vested in or acquired by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights and where the undertaker gives notice of such extinguishment.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or restriction under this Order is entitled to compensation in accordance with section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 33 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs are not to apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction in question is vested, belongs or benefits.

(8) If any such agreement as is referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, restrictions right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Application of the 1981 Act

27.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act) for subsection (2) there is substituted—

"(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.".

(4) In section 5(2) (earliest date for execution of declaration), omit the words from ", and this subsection" to the end.

(5) Omit section 5A (time limit for general vesting declaration).

(6) In section 5B(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 118 of the 2008 Act (legal challenges

relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily)".

(7) In section 6(1)(b) (notices after execution of declaration), for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008".

(8) In section 7(1)(a) (constructive notice to treat), omit "(as modified by section 4 of the Acquisition of Land Act 1981)".

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

> "(2) But see article 28 (acquisition of subsoil or airspace only), which excludes the acquisition of subsoil or airspace only from this Schedule.".

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 29 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order).

Acquisition of subsoil and airspace only

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph (1) of article 22 (compulsory acquisition of land) and paragraph (1) of article 25 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

Modification of Part 1 of the 1965 Act

29.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4" substitute "section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily)".

(3) In section 11A (powers of entry: further notice of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision"; and

(b) in subsection (2), after "land" insert "under that provision".

(4) In section 22(2) (interests omitted from purchase), for "section 4 of this Act" substitute "article 24 (time limit for exercise of authority to acquire land compulsorily) of the Net Zero Teesside Order 2024".

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

"(2) But see article 28(3) (acquisition of subsoil or airspace only) of the Net Zero Teesside Order 2024, which excludes the acquisition of subsoil or airspace only from this Schedule."; and

(b) after paragraph 29, insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 31 (temporary use of land for carrying out the authorised development) or article 32 (temporary use of land for maintaining the authorised development) of the Net Zero Teesside Order 2024.".

Rights under or over streets

30.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order land as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5) any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out the authorised development

31.—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take possession of—

(i) so much of the land specified in column (1) of Table 8 in Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Table 8;

(ii) any other part of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;

(b) remove any buildings, structures, fences, debris and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land;

(d) construct any works specified in relation to that land in column (2) of Table 8 in Schedule 9 (land of which temporary possession may be taken); and

(e) carry out or construct any mitigation works.

(2) Before taking temporary possession of land for a period of time by virtue of paragraph (1) the undertaker must give a notice of intended entry to each of the owners and occupiers of the land, so far as known to the undertaker after making diligent inquiry.

(3) The notice in paragraph (2) must specify—

(a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of 28 days beginning with the day on which the notice is given;

(b) subject to paragraph (4) the period for which the undertaker is to take temporary possession of the land, provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the earlier of—

(i) where Schedule 9 (land of which temporary possession may be taken) specifies a purpose for which possession may be taken relating to particular Work Nos., the end of the period of one year beginning with the date of final commissioning of those Work Nos.; or

(ii) the end of the period of one year beginning with the date of final commissioning of the authorised development; or

(b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act, made a declaration under section 4 of the 1981 Act or has otherwise acquired or leased the land.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession, the undertaker must, before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not to be required to replace a building or any debris removed under this article.

(6) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker must not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(10) Nothing in this article precludes the undertaker from—

(a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in Schedule 7 (land in which new rights etc. may be acquired); or

(b) acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) that land under article 28 (acquisition of subsoil or airspace only) or article 30 (rights under or over streets).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 9 (land of which temporary possession may be taken).

(14) The provisions of the Neighbourhood Planning Act 2017(**a**) do not apply insofar as they relate to temporary possession of land under this article in connection with the carrying out of the authorised development and other development.

(15) Subject to Article 43, so much of the special category land as is required for the purposes of exercising the powers pursuant to this article is temporarily discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those powers, and only for such time as any special category land is being used under this article.

Temporary use of land for maintaining the authorised development

32.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

(a) enter on and take temporary possession of any of the Order land if such possession is reasonably required for the purpose of maintaining the authorised development;

(b) enter on any of the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and

(c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The notice in paragraph (3) must specify—

(a) the period after the end of which the undertaker may take temporary possession of the land provided that such period must not end earlier than the end of the period of 28 days beginning with the day on which the notice is given; and

(b) subject to paragraph (5) the period for which the undertaker is to take temporary possession of the land, provided that such periods may be varied from time to time by agreement between the undertaker and the owner or occupier.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(**a**) 2017 c. 20.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (further provisions as to compensation for injurious affection) of the 2008 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

(10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) In this article "the maintenance period" means the period of one year beginning with the date of final commissioning.

(13) The provisions of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to temporary possession of land under this article in connection with the maintenance of the authorised development and other development necessary for the authorised development within the Order land.

(14) Subject to Article 43, so much of the special category land as is required for the purposes of exercising the powers pursuant to this article is temporarily discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those powers, and only for such time as any special category land is being used under this article.

Statutory undertakers

33. Subject to the provisions of Schedule 12 (protective provisions), the undertaker may—

(a) acquire compulsorily the land belonging to statutory undertakers within the Order land;

(b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land; and

(c) create and acquire compulsorily rights or impose restrictions over any Order land belonging to statutory undertakers.

Apparatus and rights of statutory undertakers in streets

34. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 10 (power to alter layout etc. of streets), article 11 (street works) or article 13 (temporary stopping up of streets, public rights of way and access land) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 12 (protective provisions), as if this Order had not been made.

Recovery of costs of new connections

35.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in

consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33 (statutory undertakers) any person who is—

(a) the owner or occupier of premises the drains of which communicated with the sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 34 (apparatus and rights of statutory undertakers in streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003(**a**); and

"public utility undertaker" has the same meaning as in the 1980 Act.

Compulsory acquisition of land – incorporation of the mineral code

36. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**b**) are incorporated in this Order subject to the following modifications—

(a) for "the acquiring authority" substitute "the undertaker";

(b) for the "undertaking" substitute "authorised development"; and

(c) paragraph 8(3) is not incorporated.

PART 6

MISCELLANEOUS AND GENERAL

Deemed marine licence

37. The marine licences set out in Schedules 10 and 11 are deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensed activities set out in Part 1, and subject to the conditions set out in Part 2, of each licence.

Application of landlord and tenant law

38.—(1) This article applies to—

(a) any agreement for leasing to any person the whole or any part of the authorised development or the right to operate the same;

(b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised development, or any part of it; and

(c) so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of any agreement to which this article applies.

(**a**) 2003 c. 21. Section 151(1) was amended by paragraphs 90(a)(i), (ii), (iii), 90(b), 90(c) and 90(d) of Schedule 1 to the Electronic Communications and Wireless Telegraphy Regulations (S.I. 2011/1210).

(**b**) 1981 c. 67.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

(a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;

(b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or

(c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

39. Development consent granted by this Order is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as not being operational land) of the 1990 Act.

Defence to proceedings in respect of statutory nuisance

40.—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990(**a**) in relation to a nuisance falling within section 79(1) (statutory nuisances and inspections therefor.) of that Act no order is to be made, and no fine may be imposed, under section 82(2) (summary proceedings by persons aggrieved by statutory nuisances) of that Act if the defendant shows that the nuisance—

(a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(**b**); or

(b) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or

(c) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

Protection of interests

41. Schedule 12 (protective provisions) has effect.

Saving for Trinity House

42. Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

(**a**) 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16); Section 79 was amended by sections 101 and 102 of the same Act.

(**b**) 1974 c. 40. Section 60 was amended by section 7(3)(a)(4)(g) of the Public Health (Control of Disease) Act 1984 (c. 22) and section 112(1)(3), paragraphs 33 and 35(1) of Schedule 17, and paragraph 1(1)(xxvii) of Schedule 16 to the Electricity Act 1989 (c. 29); Section 61 was amended by section 133(2) and Schedule 7 to the Building Act 1984 (c. 55), paragraph 1 of Schedule 24 to the Environment Act 1995 (c. 25), and section 162(1) of and paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43).

Crown Rights

43.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

(a) belonging to His Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;

(b) belonging to His Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or

(c) belonging to a government department or held in trust for His Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

Procedure in relation to certain approvals

44.—(1) Where an application is made to, or a request is made of, a consenting authority for any consent, agreement or approval required or contemplated by any of the provisions of the Order (not including the Requirements), such consent, agreement or approval to be validly given, must be given in writing.

(2) Where paragraph (1) applies to any consent, agreement or approval, such consent, agreement or approval must not be unreasonably withheld or delayed.

(3) Schedule 13 (procedure for discharge of Requirements) has effect in relation to all consents, agreements or approvals required, granted, refused or withheld in relation to the Requirements.

(4) Save for applications made pursuant to Schedule 13 (procedure for discharge of Requirements) or where stated to the contrary if, within six weeks (or such longer period as may be agreed between the undertaker and the relevant consenting authority in writing) after the application or request has been submitted to a consenting authority it has not notified the undertaker of its disapproval and the grounds of disapproval, it is deemed to have approved the application or request.

(5) Where any application is made as described in paragraph (1), the undertaker must include a statement in such application that refers to the timeframe for consideration of the application and the consequences of failure to meet that timeframe as prescribed by paragraph (4).

Certification of plans etc.

45.—(1) The undertaker, as soon as practicable after the making of this Order, must submit to the Secretary of State copies of all documents and plans listed in Table 13 in Schedule 14 (documents and plans to be certified) to this Order for certification that they are true copies of the documents referred to in this Order.

(2) Where the amendment of any plan or document referred to in paragraph (1) is required to reflect the terms of the Secretary of State's decision to make this Order, that plan or document, in the form amended to the Secretary of State's satisfaction, is the version of the plan or document to be certified under paragraph (1).

(3) A plan or document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

46.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or

(c) subject to article 3 by electronic transmission.

(2) If an electronic communication is received outside the recipient's business hours, it is to be taken to have been received on the next working day.

(3) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(4) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**a**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(5) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of that land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(6) This article does not exclude the employment of any method of service not expressly provided for by it.

Arbitration

47.—(1) Subject to article 42 (saving for Trinity House), any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the MMO is required under any provision of this Order is not subject to arbitration under this article.

Funding for compulsory acquisition compensation

48.—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any Order land unless it has first put in place, following approval by the Secretary of State, either—

(a) a guarantee (and the amount of that guarantee) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) in respect of the exercise of the relevant power in relation to that land; or

(**a**) 1978 c. 30. Section 7 was amended by section 144 and paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c. 27). There are other amendments not relevant to this Order.

(b) an alternative form of security (and the amount of that security) in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

(a) article 22 (compulsory acquisition of land);

(b) article 25 (compulsory acquisition of rights etc.);

(c) article 26 (private rights);

(d) article 28 (acquisition of subsoil or airspace only);

(e) article 30 (rights under or over streets);

(f) article 31 (temporary use of land for carrying out the authorised development);

(g) article 32 (temporary use of land for maintaining the authorised development); and

(h) article 33 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by authority of the Secretary of State for Energy Security and Net Zero

David Wagstaff
Deputy Director Energy Infrastructure Planning
Department for Energy Security and Net Zero

16th February 2024

SCHEDULES

SCHEDULE 1

Article 2

AUTHORISED DEVELOPMENT

In the Borough of Redcar and Cleveland and the Borough of Stockton and Tees a nationally significant infrastructure project as defined in sections 14(1)(a) and 15 of the 2008 Act, and development which is to be treated as development for which development consent is required by direction under sections 35(1) and 35ZA of that Act, and associated development under section 115(1)(b) of that Act, comprising—

Work No. 1 – an electricity generating station fuelled by natural gas and with a gross output capacity of up to 860 megawatts (MWe) comprising—

(a) Work No. 1A – a combined cycle gas turbine plant, comprising—

(i) a gas turbine;

(ii) a steam turbine;

(iii) a heat recovery steam generator (HRSG);

(iv) gas and steam turbine buildings;

(v) gas turbine air intake filters;

(vi) selective catalytic reduction equipment;

(vii) HRSG stack;

(viii) a transformer;

(ix) deaerator and feed water pump buildings;

(x) chemical sampling / dosing plant;

(xi) demineralised water treatment plant, including storage tanks;

(xii) electrical substation, including electrical equipment, buildings and enclosures;

(xiii) gas reception facility, including gas supply pipeline connection works, gas receiving area, gas pipeline internal gauge receiver for pipe inspection, emergency shutdown valves, gas vents and gas metering, and pressure reduction equipment;

(xiv) auxiliary boiler and emissions stack; and

(xv) continuous emissions monitoring system;

(b) Work No. 1B – CCGT and CCP cooling and utilities infrastructure, comprising—

(i) mechanical draft cooling towers;

(ii) cooling water pumps, plant and buildings;

(iii) cooling water dosing and sampling plant and buildings;

(iv) standby diesel generator and emissions stack;

(v) diesel fuel storage tanks and unloading area;

(vi) fire and raw water storage tanks;

(vii) chemical storage facilities;

(viii) wastewater treatment plant and building; and

(ix) effluent, stormwater and firewater retention ponds;

(c) Work No. 1C – CCP, comprising—

(i) flue gas pre-treatment plant and blower;

(ii) carbon dioxide absorption column and associated stack;

(iii) carbon dioxide stripper and solvent regenerator;

(iv) carbon dioxide conditioning and compression equipment; and

(v) ancillary equipment, including pumps, chemical storage, water washing equipment, acid washing equipment and pipework;

(d) Work No. 1D – administration, control room and stores, comprising—

(i) administration and control buildings; and

(ii) workshop and stores buildings; and

(e) Work No. 1E – ancillary works in connection with Work Nos. 1A, 1B, 1C and 1D—

(i) ancillary plant, buildings, enclosures and structures;

(ii) pipework, pipe runs and pipe racks;

(iii) firefighting equipment, buildings and distribution pipework;

(iv) lubrication oils storage facilities;

(v) permanent plant laydown area for operation and maintenance activities; and

(vi) mechanical, electrical, gas, telecommunications and water networks, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections between Work Nos. 1A, 1B, 1C and 1D and parts of Work Nos. 2A, 3, 4, 5, 6, 7 and 8.

Work No. 2 – a gas connection, being works for the transport of natural gas to Work No. 1A, comprising—

(a) Work No. 2A – underground high pressure gas pipeline, comprising—

(i) an underground high-pressure gas supply pipeline of up to 600 millimetres nominal bore diameter;

(ii) cathodic protection posts;

(iii) marker posts; and

(iv) underground electrical supply cables, transformers and control systems cables; and

(b) Work No. 2B – above ground installations connecting Work No. 2A to the National Transmission System, comprising—

(i) a compound for National Gas Transmission plc's apparatus, comprising—

(aa) an offtake connection from the National Transmission System;

(bb) above and below ground valves, flanges and pipework;

(cc) remotely operated valve and valve bypass;

(dd) an above or below ground pressurisation bridle;

(ee) instrumentation and electrical kiosks; and

(ff) telemetry and communications equipment;

(ii) compounds for the undertaker's apparatus, comprising—

(aa) above and below ground valves, flanges and pipework;

(bb) isolation valves;

(cc) pipeline inline gauge launching facility;

(dd) instrumentation and electrical kiosks; and

(ee) telemetry and communications equipment; and

(iii) in connection with Work No. 2B, access works, vehicle parking, electrical and telecommunications connections, surface water drainage, security fencing and gates, closed circuit television cameras and columns.

Work No. 3 – works for the export of electricity from Work No. 1A to the National Grid Electricity Transmission system, comprising—

(a) Work No. 3A – an electrical connection from Work No. 1A to Work No. 3B, comprising 275 kilovolt underground and overground electrical cables and control systems cables, and the connection between Work No. 3B and the National Grid Tod Point substation; and

(b) Work No. 3B – a new electrical substation at Tod Point, including electrical equipment, buildings, enclosures and extension works at the National Grid substation.

Work No. 4 – water supply connection works to provide cooling and make-up water to Work No. 1, comprising up to two water pipelines of up to 1100 millimetres nominal bore diameter from the existing raw water main.

Work No. 5 – wastewater disposal works in connection with Work No. 1, comprising—

(a) Work No. 5B – a new water discharge pipeline to the Tees Bay; and

(b) Work No. 5C – up to two new wastewater pipelines between Bran Sands Wastewater Treatment Plant and Work No. 1.

Work No. 6 – a carbon dioxide gathering network, comprising underground and overground pipelines of up to 550 millimetres nominal bore diameter for the transport of carbon dioxide to Work No. 7.

Work No. 7 – a high pressure carbon dioxide compression station, comprising—

(a) inlet metering;

(b) compression facilities;

(c) electrical connection and substation;

(d) hydrogen storage; and

(e) mechanical, electrical, gas, telecommunications, pipework, cables, racks, infrastructure, instrumentation and utilities, including connections between Work No. 7 and Work Nos. 1A, 1B, 1C, 1D, 6 and 8.

Work No. 8 – high pressure carbon dioxide export pipeline corridor, comprising an overground and underground pipeline of up to 800 millimetres nominal bore diameter and associated power and fibre-optic cables.

Work No. 9 – temporary construction and laydown areas, comprising hardstanding, laydown and open storage areas, contractor compounds and construction staff welfare facilities, gatehouse and weighbridge, vehicle parking and cycle storage facilities, internal roads and pedestrian and cycle routes, security fencing and gates, external lighting including lighting columns, and, closed circuit television cameras and columns, comprising—

(a) Work No. 9A – Teesworks laydown;

(b) Work No. 9B – Navigator Terminal and Seal Sands laydown;

(c) Work No. 9C – INEOS laydown;

(d) Work No. 9D – Saltholme laydown;

(e) Work No. 9E – Saltholme laydown; and

(f) Work No. 9F – Haverton Hill laydown.

Work No. 10 – access and highway improvements, comprising works to create, improve, repair or maintain access roads, haul roads and access points.

In connection with and in addition to Work Nos. 1 to 10, further associated development comprising such other works or operations as may be necessary or expedient for the purposes of or in connection with the authorised development, and which are within the Order limits and fall within the scope of the work assessed by the environmental statement, including—

(a) surface water drainage systems, storm water attenuation systems including storage basins, oil water separators, including works to existing drainage systems;

(b) electrical, gas, potable water supply, carbon dioxide, foul water drainage and telecommunications infrastructure connections and works, and works to alter the position of services and utilities connections;

(c) hardstanding and hard landscaping;

(d) soft landscaping, including embankments and planting;

(e) biodiversity enhancement measures;

(f) security fencing, gates, boundary treatment and other means of enclosure;

(g) external lighting, including lighting columns;

(h) gatehouses;

(i) closed circuit television cameras and columns and other security measures;

(j) site establishment and preparation works, including—

(i) site clearance (including vegetation removal, demolition of existing buildings and structures);

(ii) earthworks (including soil stripping and storage and site levelling) and excavations;

(iii) remediation works;

(iv) the creation of temporary construction access points;

(v) the alteration of the position of services and utilities; and

(vi) works for the protection of buildings and land;

(k) temporary construction laydown areas and contractor facilities, including—

(i) materials and plant storage and laydown areas;

(ii) generators;

(iii) concrete batching facilities;

(iv) vehicle and cycle parking facilities;

(v) pedestrian and cycle routes and facilities;

(vi) offices and staff welfare facilities;

(vii) security fencing and gates;

(viii) external lighting;

(ix) roadways and haul routes;

(x) wheel wash facilities; and

(xi) signage;

(l) vehicle parking and cycle storage facilities;

(m) accesses, roads and pedestrian and cycle routes; and

(n) tunnelling, boring, piling and drilling works and management of arisings.

SCHEDULE 2

Article 2

REQUIREMENTS

Commencement of the authorised development

1.—(1) The authorised development may not be commenced after the expiration of five years from the date this Order comes into force.

(2) The authorised development may not commence unless the undertaker has given the relevant planning authority fourteen days' notice of its intention to commence the authorised development.

Notice of start and completion of commissioning

2.—(1) Notice of the intended start of commissioning of the authorised development must be given to the relevant planning authority no later than fourteen days prior to the date that commissioning is started.

(2) Notice of the intended date of final commissioning of each of Work Nos.1 and 6 must be given to the relevant planning authority no later than fourteen days prior to the date of final commissioning.

Detailed design

3.—(1) No part of the authorised development comprised in Work No. 1 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with STDC)—

(a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;

(b) finished floor levels;

(c) the height of the stacks which must be at a level at which the environmental effects will be no worse than those identified in Chapter 8 of the environmental statement;

(d) hard standings; and

(e) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, cycle parking and routes, and pedestrian routes.

(2) No part of the authorised development comprised in Work No. 2A may commence, save for the permitted preliminary works, until details of the following, to the extent that they are above mean low water springs, for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp, STDC and the TG entities)—

(a) the route and method of installation of the high-pressure gas supply pipeline and any electrical supply, telemetry and other apparatus;

(b) the number and location of cathodic protection posts and marker posts;

(c) surface water drainage; and

(d) works involving trenchless technologies including their location.

(3) No part of the authorised development comprised in Work No. 2B may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp, STDC and the TG entities)—

(a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings, structures and above ground apparatus;

(b) hard standings;

(c) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities; and

(d) works involving trenchless technologies including their location.

(4) No part of the authorised development comprised in Work No. 3 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC)—

(a) the route and method of installation of the 275 kilovolt electrical cables and control system cables running from Work No. 1 to the existing substation at Tod Point;

(b) the connections within the existing substation at Tod Point, including electrical cables, connections to the existing busbars and new, upgraded or replacement equipment; and

(c) works involving trenchless technologies including their location.

(5) No part of the authorised development comprised in Work No. 4 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with STDC)—

(a) route and method of construction of the water supply pipelines; and

(b) works involving trenchless technologies including their location.

(6) No part of the authorised development comprised in Work No. 5 may commence, save for permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC)—

(a) the route and method of construction of any new wastewater water pipelines above mean low water springs; and

(b) works involving trenchless technologies including their location.

(7) No part of the authorised development comprised in Work No. 6 may commence, save for the permitted preliminary works, until details of the following, to the extent that they are above mean low water springs, for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC)—

(a) the route and method of installation of the carbon dioxide gathering network pipelines and any electrical supply, telemetry and other apparatus;

(b) the number and location of cathodic protection posts and marker posts; and

(c) works involving trenchless technologies including their location.

(8) No part of the authorised development comprised in Work No. 7 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with STDC)—

(a) the siting, layout, scale and external appearance, including the colour, materials and surface finishes of all new permanent buildings and structures;

(b) finished floor levels;

(c) hard standings; and

(d) the internal vehicular access and circulation roads, loading and unloading, vehicle parking and turning facilities, and pedestrian routes.

(9) No part of the authorised development comprised in Work No. 8 may commence, save for the permitted preliminary works, until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with STDC)—

(a) the route and method of installation of the carbon dioxide export pipeline and any electrical supply, telemetry and other apparatus;

(b) the number and location of cathodic protection posts and marker posts; and

(c) works involving trenchless technologies including their location.

(10) No part of the authorised development comprised in Work No. 9 may commence until details of the following for that part have been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC)—

(a) layout and heights of contractor compounds and construction staff welfare facilities; and

(b) vehicle access, parking and cycle storage facilities.

(11) Work Nos. 1, 3 and 7 must be carried out in accordance with the design parameters in Schedule 15.

(12) Subject to other terms of this Order, Work Nos. 1, 2, 3, 4, 5, 6, 7, 8 and 9 must be carried out in accordance with the details approved in accordance with sub-paragraphs (1) to (10) above, unless otherwise agreed with the relevant planning authority.

(13) The details to be submitted to and approved by the relevant planning authority under sub-paragraphs (1) and (8) must be in accordance with the principles in section 7 and 8 of the design and access statement.

Landscape and biodiversity protection management and enhancement

4.—(1) No part of the authorised development may commence until a landscape and biodiversity protection plan for that part has been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC).

(2) The plan submitted and approved pursuant to sub-paragraph (1) must include details of—

(a) measures to protect existing shrub and tree planting that is to be retained;

(b) details of any trees and hedgerows to be removed; and

(c) biodiversity and habitat mitigation and impact avoidance.

(3) The plan submitted and approved pursuant to sub-paragraph (1) must be implemented as approved throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(4) No part of Work Nos. 1 or 7 may be commissioned until a landscape and biodiversity management and enhancement plan for that part has been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC).

(5) The plan submitted and approved pursuant to sub-paragraph (4) must include details of—

(a) implementation and management of all new shrub and tree planting;

(b) measures to enhance and maintain existing shrub and tree planting that is to be retained;

(c) measures to enhance biodiversity and habitats;

(d) an implementation timetable;

(e) annual landscape and biodiversity management and maintenance; and

(f) monitoring measures in accordance with the measures and timeframes set out in sections 6 and 7 of the indicative landscape and biodiversity strategy and including a process for submission to and approval by the relevant planning authority of an annual monitoring report and provision of the annual monitoring report to STDC.

(6) Any shrub or tree planted as part of the approved plan that, within a period of five years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted unless otherwise agreed with the relevant planning authority.

(7) The plans submitted and approved pursuant to sub-paragraphs (1) and (4) must be—

(a) in accordance with the principles of the indicative landscape and biodiversity strategy; and

(b) implemented and maintained as approved during the operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

Public rights of way and access land management

5.—(1) No public rights of way may be temporarily diverted or stopped up and access to any access land must not be temporarily prevented until a management plan for the relevant section of public rights of way or access land has been submitted to and approved by the relevant planning authority.

(2) The plan must include details of—

(a) measures to minimise the length of any sections of public rights of way and the area of any access land to be temporarily closed; and

(b) advance publicity and signage in respect of any sections of public rights of way to be temporarily closed or diverted and access land to be temporarily closed.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

External lighting

6.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for all external lighting to be installed during construction for that part (with the exception of the aviation warning lighting required by virtue of requirement 27) has been submitted to and approved by the relevant planning authority.

(2) No part of the authorised development may be commissioned until a scheme for all permanent external lighting to be installed (with the exception of the aviation warning lighting required by virtue of requirement 27) in that part has been submitted to and approved by the relevant planning authority.

(3) The schemes submitted and approved pursuant to sub-paragraphs (1) and (2) of this requirement must be in accordance with the indicative lighting strategy and include measures to minimise and otherwise mitigate any artificial light emissions.

(4) The schemes must be implemented as approved unless otherwise agreed with the relevant planning authority.

Highway accesses

7.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the siting, design and layout (including visibility splays and construction specification) of any new or modified temporary means of access between any part of the Order limits and the public highway to be used by vehicular traffic during construction, and the means of and a programme for reinstating any such means of access after construction has, for that part, been submitted to and, after consultation with the highway authority, Sembcorp and STDC, approved by the relevant planning authority.

(2) The highway accesses approved pursuant to sub-paragraph (1) must be constructed in accordance with the approved details and, unless approved pursuant to sub-paragraph (3) to be retained permanently, reinstated in accordance with the approved programme, unless otherwise agreed with the relevant planning authority.

(3) Prior to the date of final commissioning of each relevant Work No. details of the siting, design and layout (including visibility splays and construction specification) of any new or modified permanent means of access to a highway to be used by vehicular traffic, must, for each part of the authorised development, be submitted to and, after consultation with the highway authority, Sembcorp and STDC, approved by the relevant planning authority.

(4) The highway accesses approved pursuant to sub-paragraph (3) must be constructed in accordance with the details approved unless otherwise agreed with the relevant planning authority.

Means of enclosure

8.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of a programme for the removal of all temporary means of enclosure for any construction areas or sites associated with the authorised development have, for that part, been submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC).

(2) Any construction areas or sites associated with the authorised development must remain securely fenced at all times during construction and commissioning of the authorised development and the temporary means of enclosure must then be removed in accordance with the programme approved pursuant to sub-paragraph (1).

(3) Prior to the date of final commissioning of each relevant Work No., details of any proposed permanent means of enclosure, must, for each part of the authorised development, be submitted to and approved by the relevant planning authority.

(4) Prior to the date of final commissioning of each relevant Work No., any approved permanent means of enclosure must be completed.

(5) The authorised development must be carried out in accordance with the approved details unless otherwise agreed with the relevant planning authority.

(6) In this requirement, "means of enclosure" means fencing, walls or other means of boundary treatment and enclosure.

Site security

9.—(1) No part of Work Nos. 1 or 7 may be brought into use until a written scheme detailing security measures to minimise the risk of crime has, for that part, been submitted to and approved by the relevant planning authority.

(2) The approved scheme must be maintained and operated throughout the operation of the relevant part of the authorised development.

Fire prevention

10.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a fire prevention method statement providing details of fire detection measures, fire suppression measures and the location of accesses to all fire appliances in all of the major building structures and storage areas within the relevant part of the authorised development, including measures to contain and treat water used to suppress any fire has, for that part, been submitted to and, after consultation with the Health and Safety Executive and the Cleveland Fire Authority, approved by the relevant planning authority.

(2) The authorised development must be implemented in accordance with the approved details and all relevant fire prevention, detection and suppression measures, accesses and fire appliances must be maintained to the reasonable satisfaction of the relevant planning authority at all times throughout the operation of the relevant part of the authorised development.

Surface and foul water drainage

11.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details of the temporary surface and foul water drainage systems, including means of pollution control in accordance with the construction environmental management plan and a management and maintenance plan to ensure that the systems remain fully operational throughout the construction of the relevant part of the authorised development have, for that part, been submitted to, and after consultation with the Environment Agency, the lead local flood authority, the relevant internal drainage board, Sembcorp and STDC, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) Details of the permanent surface and foul water drainage systems, including a programme for their implementation, must be submitted to and, after consultation with the Environment Agency, relevant internal drainage board and Sembcorp, approved by the relevant planning authority prior to the start of construction of any part of those systems.

(4) The details submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in Chapter 9 of the environmental statement.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

(6) When submitting schemes pursuant to sub-paragraphs (1) and (3) the undertaker may submit separate schemes for the foul and surface water drainage systems.

Flood risk mitigation

12.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the mitigation of flood risk during construction, has, for that part, been submitted to, and after consultation with the Environment Agency and STDC, approved by the relevant planning authority.

(2) The scheme approved pursuant to sub-paragraph (1) must be implemented as approved and maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

(3) No part of the authorised development may be commissioned until a scheme for the mitigation of flood risk during operation has, for that part, been submitted to and, after consultation with the Environment Agency and STDC, approved by the relevant planning authority.

(4) The schemes submitted and approved pursuant to sub-paragraphs (1) and (3) of this requirement must be in accordance with the principles set out in Chapter 9 and appendix 9A of the environmental statement.

(5) The scheme approved pursuant to sub-paragraph (3) must be implemented as approved and maintained throughout the operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

(6) The authorised development must not be commissioned until the flood risk mitigation has been implemented and a flood emergency response and contingency plan has been submitted to, and after consultation with the Environment Agency and STDC, approved by the relevant planning authority.

(7) The plan approved pursuant to sub-paragraph (6) must be implemented throughout the commissioning and operation of the relevant part of the authorised development unless otherwise agreed with the relevant planning authority.

Contaminated land and groundwater

13.—(1) Subject to sub-paragraph (8), no part of the authorised development may commence, save for geotechnical surveys and other investigations for the purpose of assessing ground conditions, until a scheme to deal with the contamination of land, including groundwater, which is likely to cause significant harm to persons or pollution of controlled waters or the environment, has, for that part, been submitted to and, after consultation with the Environment Agency and STDC, approved by the relevant planning authority.

(2) The scheme submitted and approved under sub-paragraph (1) must be consistent with the principles set out in Chapter 10 of the environmental statement and any construction environmental management plan submitted under requirement 16(1) and include—

(a) a preliminary risk assessment (desk top study) and risk assessment that—

(i) is supported by a site investigation scheme; and

(ii) identifies the extent of any contamination;

(b) an appraisal of remediation options and a proposal of the preferred option where the risk assessment indicates that remediation is required in order for the relevant area of land not to meet the definition of "contaminated land" under Part 2A (contaminated land) of the Environmental Protection Act 1990(**a**);

(c) where the risk assessment carried out under sub-paragraph (a) identifies the need for remediation, a remediation strategy which must include—

(i) the preferred option for remediation to ensure that the site will not meet the definition of "contaminated land" under Part 2A (contaminated land) of the Environmental Protection Act 1990; and

(ii) a verification plan, providing details of the data to be collected in order to demonstrate that the works set out in the remediation scheme submitted for approval under this sub-paragraph are complete;

(d) a materials management plan that is in accordance with the prevailing code of practice relevant to such plans, which sets out long-term measures with respect to any contaminants remaining on the site during and after the authorised development is carried out;

(e) details of how any unexpected contamination will be dealt with;

(f) an update to the hydrogeological impact assessment including hydrogeological conceptual model that is informed by any further ground investigation reports and groundwater monitoring in addition to the information in Chapter 10 of the environmental statement;

(g) a long term monitoring and maintenance plan in respect of contamination, including details of (but not limited to) monitoring of groundwater and surface water, appropriate screening criteria, and a time-table of monitoring and submission of monitoring reports, and which must include any necessary contingency action or mitigation measures arising from the matters reported; and

(h) a plan for managing or otherwise decommissioning any boreholes installed for the investigation of soils, groundwater or geotechnical purposes, including details of how redundant boreholes are to be decommissioned in order to prevent risk of groundwater pollution, how any boreholes that need to be retained for monitoring purposes will be secured, protected and inspected, and including a requirement for appropriate validation records within a report to be submitted to demonstrate that all boreholes which are no longer required have been decommissioned in accordance with best practice.

(3) The authorised development, including any remediation and monitoring, must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority following consultation with the Environment Agency.

(4) Following the implementation of the remediation strategy approved under sub-paragraph (3), a verification report, based on the data collected as part of the remediation strategy and demonstrating the completion of the remediation measures must be produced and supplied to the relevant planning authority and the Environment Agency.

(5) Where the verification report produced under sub-paragraph (4) does not demonstrate the completion of the remediation measures, a statement as to how any outstanding remediation measures will be addressed must be supplied to the relevant planning authority and the Environment Agency at the same time as the verification report.

(**a**) 1990 c. 43.

(6) The outstanding remediation measures must be completed to the reasonable satisfaction of the relevant planning authority, after consultation with the Environment Agency and STDC, by the date agreed with that authority.

(7) As an alternative to seeking an approval under sub-paragraph (1), the undertaker may instead submit for approval by the relevant planning authority, following consultation with the Environment Agency and STDC, a notification that the undertaker instead intends to rely on any scheme to deal with the contamination of land (including groundwater) which relates to any part of Work Nos. 1, 7, 9A or 10 that has been previously approved by the relevant planning authority pursuant to an application for planning permission or an application to approve details under a condition attached to a planning permission.

(8) If a notification under sub-paragraph (7) is—

(a) approved by the relevant planning authority following consultation with the Environment Agency then the undertaker must implement the previously approved scheme and an approval under sub-paragraph (1) is not required; or

(b) not approved by the relevant planning authority following consultation with the Environment Agency then an approval under sub-paragraph (1) is required.

(9) Sub-paragraphs (1) to (8) do not apply to any part of the Order land where the undertaker demonstrates to the relevant planning authority following consultation with the Environment Agency that the relevant part of the Order land is fit for the authorised development through the provision of a remedial validation report (which must include a risk assessment, details of any planning permission under which remediation works were carried out and any ongoing monitoring requirements) and the relevant planning authority notifies the undertaker that it is satisfied that the relevant part of the Order land is fit for the authorised development on the basis of that report.

(10) The undertaker must comply with any ongoing monitoring requirements and any activities identified as necessary by the monitoring contained within the documents submitted to and approved by the relevant planning authority pursuant to sub-paragraph (9).

Archaeology

14.—(1) No part of the authorised development may commence until a written scheme of investigation for that part has been submitted to and, after consultation with the relevant archaeological body, approved by the relevant planning authority.

(2) The scheme submitted and approved must be in accordance with Chapter 18 of the environmental statement.

(3) The scheme must identify any areas where further archaeological investigations are required and the nature and extent of the investigation required in order to preserve by knowledge or in-situ any archaeological features that are identified.

(4) The scheme must provide details of the measures to be taken to protect record or preserve any significant archaeological features that may be found and must set out a process for how unexpected finds will be dealt with.

(5) Any archaeological investigations implemented and measures taken to protect record or preserve any identified significant archaeological features that may be found must be carried out—

(a) in accordance with the approved scheme; and

(b) by a suitably qualified person or organisation approved by the relevant planning authority in consultation with relevant archaeological body unless otherwise agreed with the relevant planning authority.

Protected species

15.—(1) No part of the authorised development may commence until further survey work for that part has been carried out to establish whether any protected species are present on any of the land affected, or likely to be affected, by that part of the authorised development.

(2) Where a protected species is shown to be present, no authorised development of that part must commence until a scheme of protection and mitigation measures has been submitted to and, following consultation with Natural England, approved by the relevant planning authority.

(3) The authorised development must be carried out in accordance with the approved scheme unless otherwise agreed with the relevant planning authority.

(4) In this requirement, "protected species" has the same meaning as in regulations 42 and 46 of the Conservation of Habitats and Species Regulations 2017(**a**).

Construction environmental management plan

16.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction environmental management plan for that part has been submitted to and, after consultation with the Environment Agency, Sembcorp and STDC, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with the framework construction environmental management plan and the indicative landscape and biodiversity strategy and incorporate—

(a) a code of construction practice, specifying measures designed to minimise the impacts of construction works;

(b) a scheme for the control of any emissions to air;

(c) a soil management plan;

(d) a sediment control plan;

(e) a scheme for environmental monitoring and reporting during the construction of the authorised development, including measures for undertaking any corrective actions;

(f) a scheme for the notification of any significant construction impacts on local residents and businesses for handling any complaints received relating to such impacts during the construction of the authorised development;

(g) surface and foul water drainage measures that are in accordance with the surface and foul water drainage scheme submitted under requirement 11(1);

(h) the measures outlined in paragraphs 15.7.4, 15.8.12 to 15.8.16, 15.8.19 and 15.9.1 in Appendix B: Ornithology in the Environmental Statement Addendum – Volume I of the ES addendum or such other measures to achieve the same maximum noise levels as are set out in paragraphs 15.8.13 to 15.8.16 of Appendix B: Ornithology in the Environmental Statement Addendum – Volume I of the ES addendum;

(i) a groundwater monitoring plan that comprises monitoring of groundwater levels and chemical contaminants of concern to inform the construction design process and which must take into account the updated hydrogeological impact assessment and any further ground investigation reports and groundwater monitoring required by requirement 13(2)(f);

(j) a materials management plan in accordance with paragraph 5.3.76 of Chapter 5 of the environmental statement;

(k) a hazardous materials management plan in accordance with paragraph 10.5.3 in Chapter 10 of the environmental statement; and

(l) any other management or mitigation plans set out in the framework construction environmental management plan.

(3) All construction works associated with the authorised development must be carried out in accordance with the relevant approved construction environmental management plan unless otherwise agreed with the relevant planning authority.

(**a**) S.I. 2017/1012.

Protection of highway surfaces

17.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until details for undertaking condition surveys of the relevant highways which are maintainable at the public expense in accordance with the 1980 Act and which are to be used during construction have been submitted to and, after consultation with the highway authority, approved by the relevant planning authority.

(2) The condition surveys must be undertaken in accordance with the approved details and a schedule of repairs, including a programme for undertaking any such repairs and their inspection, must, following the completion of the post-construction condition surveys, be submitted to, and after consultation with the highway authority, approved by the relevant planning authority.

(3) The schedule of repairs must be carried out as approved unless otherwise agreed with the relevant planning authority.

Construction traffic management plan

18.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction traffic management plan for that part has been submitted to and, after consultation with National Highways and the relevant highway authority, STDC, Sembcorp, Royal Mail and the TG entities, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with Chapter 16 of the environmental statement and the framework construction traffic management plan.

(3) The plan submitted and approved must include—

(a) details of the routes to be used for the delivery of construction materials and any temporary signage to identify routes and promote their safe use, including details of the access points to the construction site to be used by light goods vehicles and heavy goods vehicles;

(b) details of the routing strategy and procedures for the notification and conveyance of abnormal indivisible loads, including agreed routes, the numbers of abnormal loads to be delivered by road and measures to mitigate traffic impact;

(c) details of the activities to be undertaken to inform major users of highways in the area of the local highways authority about the impact of works to be undertaken to highways as part of the authorised development;

(d) the construction programme, including the profile of activity across the day;

(e) any necessary measures for the temporary protection of carriageway surfaces, the protection of statutory undertakers' plant and equipment, and any temporary removal of street furniture; and

(f) details of the monitoring to be undertaken in accordance with paragraph 16.5 of the framework construction traffic management plan.

(4) Notices must be erected and maintained throughout the period of construction at every entrance to and exit from the construction site, indicating to drivers the approved routes for traffic entering and leaving the construction site.

(5) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Construction workers travel plan

19.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction workers travel plan for that part has been submitted to and, after consultation with National Highways and the relevant highway authority and STDC, approved by the relevant planning authority.

(2) The plan submitted and approved must be in accordance with Chapter 16 of the environmental statement and the framework construction workers travel plan.

(3) The plan submitted and approved must include—

(a) measures to promote the use of sustainable transport modes to and from the authorised development by construction staff;

(b) provision as to the responsibility for, and timescales of, the implementation of those measures;

(c) details of parking for construction personnel within the construction sites;

(d) a monitoring and review regime; and

(e) the profile of activity across the day.

(4) The approved plan must be implemented within three months of commencement of the relevant part of the authorised development and must be maintained throughout the construction of the authorised development unless otherwise agreed with the relevant planning authority.

Construction hours

20.—(1) Construction work and the delivery or removal of materials, plant and machinery relating to the authorised development must not take place on bank holidays nor otherwise outside the hours of—

(a) 0700 to 1900 hours on Monday to Friday; and

(b) 0700 to 1300 hours on a Saturday.

(2) The restrictions in sub-paragraph (1) does not apply to construction work or the delivery or removal of materials, plant and machinery, where these—

(a) do not exceed a noise limit measured at the Order limits and which must be first agreed with the relevant planning authority in accordance with requirement 21;

(b) are carried out with the prior approval of the relevant planning authority; or

(c) are associated with an emergency.

(3) The restrictions in sub-paragraph (1) do not apply to the delivery of abnormal indivisible loads, where this is—

(a) associated with an emergency; or

(b) carried out with the prior approval of the relevant planning authority.

(4) Sub-paragraph (1) does not preclude—

(a) a start-up period from 0630 to 0700 and a shut-down period from 1900 to 1930 Monday to Friday and a start-up period from 0630 to 0700 and a shut-down period from 1300 to 1330 on a Saturday; or

(b) maintenance at any time of plant and machinery engaged in the construction of the authorised development;

(5) In this requirement “emergency” means a situation where, if the relevant action is not taken, there would likely be adverse health, safety, security or environmental consequences that, in the reasonable opinion of the undertaker, would outweigh the adverse effects to the public (whether individuals, classes or generally as the case may be) of taking that action.

Control of noise - construction

21.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a scheme for the monitoring and control of noise during the construction of that part of the authorised development has been submitted to and approved by the relevant planning authority, following consultation with Sembcorp.

(2) The scheme submitted and approved must be in accordance with the principles set out in Chapter 11 of the environmental statement and specify—

(a) each location from which noise is to be monitored;

(b) the method of noise measurement;

(c) the maximum permitted levels of noise at each monitoring location to be determined with reference to the ABC Assessment Method for the different working time periods, as set out in BS 5228-1:2009+A1:2014, unless otherwise agreed in writing with the relevant planning authority for specific construction activities;

(d) provision as to the circumstances in which construction activities must cease as a result of a failure to comply with a maximum permitted level of noise; and

(e) the noise control measures to be employed.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

Control of noise - operation

22.—(1) No part of Work Nos. 1 or 7 may be brought into commercial use following commissioning until a scheme for the management and monitoring of noise during operation of those parts of the authorised development and which is consistent with the principles set out in Chapter 11 of the environmental statement has been submitted to and approved by the relevant planning authority.

(2) Noise (in terms of the BS4142:2014 rating level) from the operation of the authorised development must be no greater than +5dB difference to the defined representative background sound level during the daytime and no greater than +5dB difference to the defined representative background sound level during the night time adjacent to the nearest residential properties at such locations as agreed with the relevant planning authority.

(3) The scheme must be implemented as approved unless otherwise agreed with the relevant planning authority.

(4) In this requirement “daytime” means the period from 0700 to 2300 and “night time” means the period from 2300 to 0700.

Piling and penetrative foundation design

23.—(1) No part of the authorised development comprised within Work Nos. 1 or 7 may commence, save for the permitted preliminary works, until a written piling and penetrative foundation design method statement, informed by a risk assessment and which is consistent with the piling mitigation measures in paragraph 10.8 of Chapter 10 of the environmental statement and the principles set out in Chapter 11 of the environmental statement and any construction environmental management plan (including the details of any approved groundwater monitoring plan) submitted under requirement 16(1) for that part, has been submitted to and, after consultation with the Environment Agency, Natural England, Sembcorp and STDC, approved by the relevant planning authority.

(2) All piling and penetrative foundation works must be carried out in accordance with the approved method statement unless otherwise agreed with the relevant planning authority.

Waste management on site - construction wastes

24.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a construction site waste management plan for that part has been submitted to and, after consultation with STDC, approved by the relevant planning authority.

(2) The plan submitted under sub-paragraph (1) must be in accordance with the framework site waste management plan.

(3) The plan must be implemented as approved unless otherwise agreed with the relevant planning authority.

Restoration of land used temporarily for construction

25.—(1) Prior to the date of final commissioning of each relevant Work No., a scheme for the restoration (including remediation of contamination caused by the undertaker's activities) of any land within the Order limits which has been used temporarily for construction must, for each part of the authorised development, be submitted to and approved by the relevant planning authority (following consultation with Sembcorp and STDC).

(2) The land must be restored within one year of the date of final commissioning of each relevant Work No. (or such longer period as the relevant planning authority may approve) in accordance with the restoration scheme approved pursuant to sub-paragraph (1).

(3) The scheme submitted pursuant to sub-paragraph (1) must take into account the updated hydrogeological impact assessment and any further ground investigation reports and groundwater monitoring required by requirement 13(2)(f).

Combined heat and power

26.—(1) Work No. 1A must not be brought into commercial use following commissioning until the relevant planning authority has given notice that it is satisfied that the undertaker has allowed for space within the design of the authorised development for the later provision of heat pass-outs for off-site users of process or space heating and its later connection to such systems, should they be identified and commercially viable.

(2) The undertaker must maintain such space during the operation of the authorised development unless otherwise agreed with the relevant planning authority.

(3) On the date that is 12 months after Work No. 1A is first brought into commercial use following commissioning, the undertaker must submit to the planning authority for its approval a report ('the CHP review') updating the CHP assessment.

(4) The CHP review submitted and approved must—

(a) consider the opportunities that reasonably exist for the export of heat from the authorised development at the time of submission and which are economically viable; and

(b) include a list of actions (if any) that the undertaker is reasonably to take (including with regard to cost to the undertaker) to increase the potential for the export of heat from the authorised development.

(5) The undertaker must take such actions as are included, within the timescales specified, in the approved CHP review unless otherwise agreed with the relevant planning authority.

(6) On each date during the operation of Work No. 1A that is four years after the date on which it last submitted the CHP review or a revised CHP review to the relevant planning authority, the undertaker must submit to the relevant planning authority for its approval a revised CHP review.

(7) Sub-paragraphs (4) and (5) apply in relation to a revised CHP review submitted under sub-paragraph (6) in the same way as they apply in relation to the CHP review submitted under sub-paragraph (3).

Aviation warning lighting

27.—(1) No part of the authorised development comprised within Work No. 1 or 7 may commence, save for the permitted preliminary works, until details of the aviation warning lighting to be installed for that part during construction and operation have been submitted to, and after consultation with the Civil Aviation Authority, approved by the relevant planning authority.

(2) The aviation warning lighting approved pursuant to sub-paragraph (1) must be installed and operated in accordance with the approved details.

Air safety

28. No part of Work Nos. 1 or 7 may commence, save for the permitted preliminary works, until details of the information that is required by the Defence Geographic Centre of the Ministry of

Defence to chart the site for aviation purposes for that part have been submitted to and approved by the relevant planning authority.

Local liaison group

29.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until the undertaker has established a group to liaise with local residents and organisations about matters relating to the authorised development (the "local liaison group").

(2) The undertaker must invite the relevant planning authority, Sembcorp, STDC, the TG entities and other relevant interest groups, as may be agreed with the relevant planning authority, to nominate representatives to join the local liaison group.

(3) The undertaker must provide a secretariat service and provide either an appropriate venue for the local liaison group meetings to take place or means by which the local liaison group meetings can take place electronically.

(4) The local liaison group must—

(a) include representatives of the undertaker or its contactor; and

(b) meet every other month, starting in the month prior to commencement of the authorised development, until the completion of commissioning unless otherwise agreed by the majority of the members of the local liaison group.

Employment, skills and training plan

30.—(1) No part of the authorised development may commence, save for the permitted preliminary works, until a plan detailing arrangements to promote employment, skills and training development opportunities for local residents during construction of the authorised development has been submitted to and approved by the relevant planning authority.

(2) The plan approved pursuant to sub-paragraph (1) must be implemented and maintained during the construction of the authorised development unless otherwise agreed by the relevant planning authority.

(3) No part of Work No. 1 may be commissioned until a plan detailing arrangements to promote employment opportunities during operation of the authorised development has been submitted to and approved by the relevant planning.

(4) The plan approved pursuant to sub-paragraph (3) must be implemented and maintained during the operation of the authorised development unless otherwise agreed by the relevant planning authority.

Carbon dioxide capture transfer and storage

31.—(1) No part of the authorised development, save for the permitted preliminary works, may commence until evidence of the following (or such licence or consent as may replace those listed) has been submitted to and approved by the relevant planning authority—

(a) that the carbon dioxide storage licence has been granted;

(b) that the environmental permits have been granted for Work No. 1 and Work No. 7; and

(c) that any pipeline works authorisation required by section 14 of the Petroleum Act 1998(**a**) for offshore pipeline works from Work No. 8 to the carbon dioxide storage site has been granted.

(2) Prior to the start of commissioning of the authorised development, the undertaker must not without the consent of the Secretary of State—

(a) dispose of any interest held by the undertaker in the land required for Work No. 1C and Work No. 7; or

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(**a**) 1998 c. 17.

(b) do anything, or allow anything to be done or to occur, which may reasonably be expected to diminish the undertaker's ability, within two years of such action or occurrence, to prepare Work No. 1C and 7 for construction.

(3) Work No. 1A may not be brought into commercial use without Work Nos. 1C, 7 and 8 also being brought into commercial use and Work No. 8 being connected to an operational storage site.

Decommissioning

32.—(1) Within 12 months (or such longer period as may be agreed in writing with the relevant planning authority) of the date that any part of the authorised development permanently ceases operation, the undertaker must submit to the relevant planning authority for its approval (following consultation with Sembcorp and the Environment Agency)—

(a) a decommissioning environmental management plan for that part; and

(b) evidence that any necessary planning consents have been granted for decommissioning in relation to that part.

(2) No decommissioning works must be undertaken until the relevant planning authority has—

(a) approved the plan submitted for that part submitted pursuant to sub-paragraph (1)(a); and

(b) confirmed in writing that it is satisfied as to the evidence submitted for that part pursuant to sub-paragraph (1)(b).

(3) Where the relevant planning authority notifies the undertaker that the information submitted pursuant to sub-paragraph (1) is not approved, the undertaker must within a period of 2 months from the notice (or such other period as may be agreed with the relevant planning authority) make a further submission pursuant to sub-paragraph 1 to the relevant planning authority, unless it has submitted an appeal to the Secretary of State against the decision of the relevant planning authority pursuant to sub-paragraph 409(1) of Schedule 13.

(4) Where the undertaker has submitted an appeal pursuant to sub-paragraph 409(1) of Schedule 13 against the decision of the relevant planning authority to not approve the information submitted pursuant to sub-paragraph (1), and the Secretary of State notifies the undertaker that the appeal has been dismissed, the undertaker must within a period of 2 months from the notice from the Secretary of State (or such other period as may be agreed with the relevant planning authority) make a further submission pursuant to sub-paragraph (1) to the relevant planning authority.

(5) The plan submitted pursuant to sub-paragraph (1)(a) must include details of—

(a) the buildings to be demolished and the apparatus to be removed;

(b) where apparatus is proposed to be left in-situ and not removed, the steps to be taken to decommission such apparatus and ensure it remains safe;

(c) the means of removal of the materials resulting from the decommissioning works;

(d) the phasing of the demolition and removal works;

(e) any restoration works to restore the land to a condition agreed with the relevant planning authority;

(f) the phasing of any restoration works;

(g) a timetable for the implementation of the scheme;

(h) traffic management arrangements during any demolition, removal and remediation works; and

(i) the monitoring and control of noise.

(6) The plan submitted pursuant to sub-paragraph (1)(a) must be implemented as approved unless otherwise agreed with the relevant planning authority.

Requirement for written approval

33. Where under any of the above Requirements the approval or agreement of the relevant planning authority or another person is required, that approval or agreement must be provided in writing.

Approved details and amendments to them

34.—(1) All details submitted for the approval of the relevant planning authority under these Requirements must reflect the principles set out in the documents certified under article 45 (certification of plans etc.).

(2) With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are to be taken to include any amendments that may subsequently be approved by the relevant planning authority.

Amendments agreed by the relevant planning authority

35.—(1) Where the words "unless otherwise agreed by the relevant planning authority" appear in the these Requirements, any such approval or agreement may only be given in relation to non-material amendments and where it has been demonstrated to the satisfaction of that authority that the subject matter of the approval or agreement sought will not give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

(2) In cases where the requirement or the relevant sub-paragraph requires consultation with specified persons, any such approval or agreement must not be given without the relevant planning authority having first consulted with those persons.

Consultation with South Tees Development Corporation

36. Where a requirement specifies that the relevant planning authority must consult STDC that only applies to the extent that the matters submitted for approval relate to any part of the authorised development which is within the STDC area or in the relevant planning authority's opinion could affect the STDC area.

Effluent nutrient nitrogen safeguarding scheme

37.—(1) No part of the authorised development other than the permitted preliminary works may commence until an effluent nutrient nitrogen safeguarding scheme has been submitted to and, after consultation with Natural England and the Environment Agency, approved by the relevant planning authority.

(2) The effluent nutrient nitrogen safeguarding scheme submitted pursuant to paragraph (1) must include the following—

(a) details of the selected design and discharge location of the infrastructure that will treat and discharge effluent containing nitrogen produced by the operation of the authorised development;

(b) discharge modelling of the design selected pursuant to sub-paragraph (a) and which (unless otherwise agreed with the relevant planning authority after consultation with Natural England and the Environment Agency) is based on the modelling methodology in Appendix B of the nutrient nitrogen briefing paper; and

(c) information on the wastewater discharge monitoring methods, frequency and locations that will be undertaken pursuant to any environmental permits required for the authorised development.

(3) The effluent nutrient nitrogen safeguarding scheme submitted pursuant to paragraph (1) must demonstrate that nitrogen in effluent from the operation of the authorised development is controlled and discharged in order that the nitrogen in effluent will—

(a) not cause a net increase in total nitrogen loads in water within the Tees Estuary at the Seal Sands mud flats; and

(b) not impact on the Water Framework Directive status of the Tees Coastal Water, Tees Transitional Waterbody or Tees Estuary.

(4) The undertaker must implement the effluent nutrient nitrogen safeguarding scheme as approved, unless otherwise agreed with the relevant planning authority following consultation with Natural England and the Environment Agency.

Consultation with Sembcorp and TG entities

38. In this Schedule any reference to—

(a) "Sembcorp" means the same as the definition of "Sembcorp" in Part 17 of Schedule 12 of the Order; and

(b) "TG entities" means the same as the definition of "NSMP entity" in Part 28 of Schedule 12 of the Order.

SCHEDULE 3

Article 9

AMENDMENTS OF THE YORK POTASH HARBOUR FACILITIES ORDER 2016

1. The York Potash Harbour Facilities Order 2016(**a**) is amended as follows.

2. In article 34 (protection of interests), for "11" substitute "12".

3. After Schedule 11 insert new Schedule 12—

"SCHEDULE 12

FOR THE PROTECTION OF NET ZERO TEESSIDE POWER LIMITED AND NET ZERO NORTH SEA STORAGE LIMITED

Interpretation

1. For the protection of the NZT Undertaker, the following provisions have effect, unless otherwise agreed in writing between the Parties.

2. The following definitions apply in this Part of this Schedule—

"Anglo American Apparatus" means the pipeline, cables, structures which are or are to be owned, occupied or maintained by the undertaker within the Shared Area;

"Land Plans" means the land plans as defined by the NZT Order;

"NZT Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by the NZT Undertaker within the Shared Area;

"NZT Order" means the Net Zero Teesside Order 2024;

"NZT Project" means the construction, operation or maintenance of the authorised development as is defined by the NZT Order;

"NZT Specified Works" means so much of the NZT Project as is within the Shared Area;

"NZT Undertaker" means the undertaker as defined by the NZT Order;

"Parties" means the NZT Undertaker and the undertaker;

"Plans" includes sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the shared area;

"Property Documents" means any leases, licences or other documents by virtue of which Anglo American has an interest in, on or over land;

"Respective Projects" means the NZT Project and the authorised development;

"Secretary of State" means the Secretary of State for Energy Security and Net Zero or any successor in function;

"Shared Area" means the land coloured blue on the Shared Area Plan;

"Shared Area 1" means the land comprising plots 222 and 223 on the Land Plans;

(**a**) S.I. 2016/772.

"Shared Area 2" means the land comprising plots 252, 252a, 253, 253a, 255, 263, 278, 280, 281, 284, 285, 286, 294, 301, 302, 303, 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, 325, 328, 329, 330, 331, 332, 333, 343 and 541 on the Land Plans;

"Shared Area 3" means the land comprising plots 332, 343, 345 and 347 on the Land Plans;

"Shared Area 4" means the land comprising plots 384, 397, 395, 401 and 405 on the Land Plans;

"Shared Area 5" means the land comprising plots 417, 418, 427, 432, 436 and 439 on the Land Plans;

"Shared Area 6" means the land comprising plots 540a and 540d on the Land Plans;

"Shared Area Plan" means the plan which is certified as the Net Zero Teesside Anglo American Shared Area Plan by the Secretary of State under article 45 (certification of plans etc.) of the NZT Order; and

"Specified Works" means so much of the authorised development as is within the Shared Area.

Consent to works in the shared area

3.—(1) Where the consent or agreement of the NZT Undertaker is required under the provisions of this Schedule the undertaker must give at least 21 days written notice to the NZT Undertaker of the request for such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with the request which must identify—

(a) the land that will or may be affected;

(b) which Works Nos. from the Order any powers sought to be used or works to be carried out relate to;

(c) the identity of the contractors carrying out the work;

(d) the proposed programme for the power to be used or works to be carried out; and

(e) the named point of contact for the undertaker for discussions in relation to the information supplied and the consenting process.

(2) The NZT Undertaker must notify the undertaker within 14 days of the receipt of the written notice under sub-paragraph (1) of—

(a) any information it reasonably requires to be provided in addition to that proposed to be supplied by the undertaker under sub-paragraph (1);

(b) any particular circumstances with regard to the construction or operation of the NZT Project it requires to be taken into account;

(c) the named point of contact for the NZT Undertaker for discussions in relation to the information supplied and the consenting process; and

(d) the specific person who will be responsible for confirming or refusing the consent or agreement.

(3) Any request for consent under paragraphs 5(1), 6(1) and 6(2) must be accompanied by the information referred to in sub-paragraph (1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to sub-paragraph (5), where conditions are included in any consent granted by the NZT Undertaker pursuant to this Part of this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by the NZT Undertaker.

(5) Wherever in this Schedule provision is made with respect to the agreement, approval or consent of the NZT Undertaker, that approval or consent must be in writing and subject to such reasonable terms and conditions as the NZT Undertaker may require including conditions requiring protective works to be carried out, but must not be unreasonably

refused or delayed and for the purposes of these provisions it will be deemed to be reasonable for any consent to be refused if it would—

(a) compromise the safety and operational viability of the NZT Project;

(b) make regulatory compliance more difficult or expensive; and/or

(c) prevent the ability of the NZT Undertaker to have uninterrupted access to the NZT Project,

provided that before the NZT Undertaker can validly refuse consent for any of the reasons set out in sub-paragraphs (a) and (b) it must first give the undertaker seven days' notice of such intention and consider any representations made in respect of such refusal by the undertaker to the NZT Undertaker within that seven day period.

(6) The seven day period referred to in the proviso to sub-paragraph (5) must be added to the period of time within which any request for agreement, approval or consent is required to be responded to pursuant to the provisions of this Schedule.

(7) In the event that—

(a) the undertaker considers that the NZT Undertaker has unreasonably withheld its authorisation or agreement under paragraphs 5(1), 6(1) and/or 6(2); or

(b) the undertaker considers that the NZT Undertaker has given its authorisation under paragraphs 5(1), 6(1) and/or 6(2) subject to unreasonable conditions,

the undertaker may refer the matter to an expert for determination under paragraph 11.

(8) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Schedule must be sent to the NZT Undertaker by recorded delivery and addressed to Andy Lane, VP Hydrogen – UK, bp, Chertsey Road, Sunbury on Thames, Middlesex TW16 7LN, and copied to Clare Haley, Senior Counsel, bp, Chertsey Road, Sunbury on Thames, Middlesex TW16 7LN (or the equivalent named individual holding those positions at the time of the notice) and by email to andy.lane@uk.bp.com and clare.haley@uk.bp.com.

(9) In the event that the NZT Undertaker does not respond in writing to a request for approval or consent or agreement within 28 days of its receipt of the postal request then the undertaker may serve upon the NZT Undertaker written notice requiring the NZT Undertaker to give their decision within a further 28 days beginning with the date upon which the NZT Undertaker received written notice from the undertaker and, subject to compliance with sub-paragraph (10), if by the expiry of the further 28 day period the NZT Undertaker has failed to notify the undertaker of its decision the NZT Undertaker is deemed to have given its consent, approval or agreement without any terms or conditions.

(10) Any further notice given by the undertaker under sub-paragraph (9) must include a written statement that the provisions of sub-paragraph (9) apply to the relevant approval or consent or agreement.

Co-operation

4. Insofar as the NZT Specified Works are or may be undertaken concurrently with the Specified Works within the Shared Area, the undertaker must—

(a) co-operate with the NZT Undertaker with a view to ensuring—

(i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and

(ii) that access for the purposes of the construction and operation of the NZT Project is maintained for the NZT Undertaker and its contractors, employees, contractors and sub-contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

Regulation of works within the shared area

5.—(1) The undertaker must not carry out the Specified Works without the prior written consent of the NZT Undertaker obtained pursuant to, and in accordance with, the provisions of paragraph 3.

(2) Where under paragraph 3(5) the NZT Undertaker requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the reasonable satisfaction of the NZT Undertaker.

(3) Nothing in paragraph 3 or this paragraph 5 precludes the undertaker from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any of the Specified Works, new Plans in respect of that Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 3 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 11 and the expert gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 11.

(5) The undertaker must give to the NZT Undertaker not less than 28 days' written notice of its intention to commence the construction of any of the Specified Works and, not more than 14 days after completion of their construction, must give the NZT Undertaker written notice of the completion.

(6) The undertaker is not required to comply with sub-paragraphs (1) to (5) above in a case of emergency, (being actions required directly to prevent possible death or injury) but in that case it must give to the NZT Undertaker notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 3 and 5 in so far as is reasonably practicable in the circumstances.

(7) The undertaker must at all reasonable times during construction of the Specified Works allow the NZT Undertaker and its officers, employees, servants, contractors, and agents access to the Specified Works and all reasonable facilities for inspection of the Specified Works.

(8) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from the NZT Undertaker requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(9) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (8), the NZT Undertaker may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(10) The undertaker must not exercise the powers conferred by the Order or undertake the Specified Works to prevent or interfere with the access by the NZT Undertaker to the NZT Specified Works unless first agreed in writing by the NZT Undertaker.

(11) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Specified Works the access to any of the NZT Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the NZT Specified Works as will enable the NZT Undertaker to construct, maintain or operate the NZT Project no less effectively than was possible before the obstruction.

(12) To ensure its compliance with this paragraph 5, the undertaker must before carrying out any of the Specified Works request up-to-date written confirmation from the NZT Undertaker of the location of any part of its then existing or proposed NZT Specified Works.

Regulation of powers over the shared area

6.—(1) The undertaker must not exercise the powers granted under the Order so as to hinder or prevent the construction, operation or maintenance of the NZT Specified Works without the prior written consent of the NZT Undertaker.

(2) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (3) below, over or in respect of the Shared Area otherwise than with the prior written consent of the NZT Undertaker.

(3) The articles referred to in sub-paragraph (2) above are—

(a) article 10 (street works);

(b) article 11 (temporary stopping up of streets);

(c) article 12 (access to works);

(d) article 14 (discharge of water);

(e) article 15 (protective works to buildings);

(f) article 16 (authority to survey and investigate land);

(g) article 24 (compulsory and other acquisition of rights);

(h) article 25 (power to override easements and other rights); and

(i) article 30 (temporary use of land).

(4) In the event that the NZT Undertaker withholds its consent pursuant to sub-paragraph (2) it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

(5) Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire or take permanent or temporary possession of any land interest held by the NZT Undertaker in any plots shown on the land plans, or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right in such land.

Constructability Principles

7.—(1) The undertaker must (unless otherwise agreed, in an emergency relating to potential death or serious injury, or where it would render the Anglo American Apparatus, the Specified Works, the NZT Specified Works or NZT Apparatus unsafe, or put the undertaker in breach of its statutory duties or in breach of an obligation or requirement of the Order)—

(a) carry out the Specified Works in such a way that will not prevent or interfere with the continued construction of the NZT Specified Works, or the maintenance or operation of the NZT Apparatus unless the action leading to such prevention or interference has the prior written consent of the NZT Undertaker;

(b) ensure that works carried out to, or placing of Anglo American Apparatus beneath, roads along which construction or maintenance access is required by the Net Zero Undertaker in respect of any NZT Apparatus will be of adequate specification to bear the loads;

(c) prior to the carrying out of any of the Specified Works in any part of any Shared Area—

(i) submit a construction programme and a construction traffic and access management plan in respect of that area to the NZT Undertaker for approval (noting that a single construction traffic and access management plan may be completed for one or more parts of each Shared Area or more than one Shared Area and may be subject to review if agreed between the Parties); and

(ii) where applicable, confirm to the NZT Undertaker in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time;

(d) at all times construct the Specified Works in compliance with the relevant approved construction traffic and access management plan;

(e) update the monthly construction programme approved under sub-paragraph (c)(i) monthly and supply a copy of the updated programme to the NZT Undertaker every month;

(f) notify the NZT Undertaker of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;

(g) provide comprehensive, as built, drawings of the Specified Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Specified Works;

(h) other than in respect of land in which the undertaker has a freehold interest, following the completion of each of the Specified Works, unless otherwise agreed in writing by the NZT Undertaker, fully reinstate the affected area (with the exception only of the retention of permanent aspects of the Specified Works) and remove all waste/surplus materials;

(i) in respect of land in which Anglo American has a freehold interest, following the completion of each of the Specified Works, the area affected must not be left in such a state as to adversely affect the construction, maintenance and operation of the NZT Specified Works; and

(j) obtain the prior written consent of the NZT Undertaker for the use of any re-cycled aggregate material within the Shared Area.

(2) Any spoil from the NZT Specified Works or the Specified Works (including contaminated material) must be dealt with in accordance with a spoil management plan to be agreed between the Parties in advance of the work by either Party generating such spoil beginning.

(3) In considering a request for any consent under the provisions of this Part of this Schedule, the NZT Undertaker must not—

(a) request an additional construction traffic and access management plan or a spoil management plan if such a plan has already been approved pursuant to sub-paragraph (1)(c) (as relevant in respect of a traffic and access management plan) or agreed pursuant to sub-paragraph (2) (in respect of a spoil management plan); and

(b) refuse consent for reasons which conflict with the contents of documents approved by the NZT Undertaker pursuant to the provisions of this paragraph and paragraph 8.

Interface Design Process

8.—(1) Prior to the seeking of any consent under this Schedule, the undertaker must, unless the NZT Undertaker has brought forward works in that part of the Shared Area before the undertaker, participate in a design and constructability review for that part of the Shared Area which shall, at a minimum (unless otherwise agreed), include the following matters—

(a) a Front End Engineering Design (FEED) level indicative construction work-pack;

(b) a hazard and operability study; and

(c) a construction hazard study.

(2) Unless otherwise agreed, the undertaker must submit the outcome of the design and constructability review referred to in sub-paragraph (1) to the NZT Undertaker for approval prior to the seeking of any consent under this Schedule.

(3) The undertaker must at all times design and construct the Specified Works in compliance with the relevant approved design and constructability review pursuant to sub-paragraph (2).

(4) The undertaker may undertake a single design and constructability review process for one or more parts of the Shared Area and any approved design and constructability review may be amended if agreed by the NZT Undertaker.

(5) In considering any request for consent or approval under this Schedule, the NZT Undertaker must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless the NZT Undertaker reasonably believes that the relevant agreed design and constructability review is materially out of date or is inapplicable due to a change in either the NZT Project or the Woodsmith Project.

Miscellaneous provisions

9.—(1) The NZT Undertaker and the undertaker must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Schedule.

(2) The undertaker must pay to the NZT Undertaker the reasonable expenses incurred by the NZT Undertaker in connection with the consenting processes under this Schedule, including the approval of plans, inspection of any Specified Works or the alteration or protection of the NZT Specified Works.

Indemnity

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction, maintenance or operation of any Specified Works, or failure thereof, any damage is caused to any NZT Apparatus used in connection with the NZT Specified Works or damage is caused to any part of the NZT Specified Works or there is any interruption in any service provided, or the operations of the NZT Undertaker, or in the supply of any goods, by the NZT Undertaker, or the NZT Undertaker becomes liable to pay any amount to any third party as a consequence of the Specified Works, the undertaker must—

(a) bear and pay the costs reasonably incurred by Anglo American in making good such damage or restoring the service, operations or supply; and

(b) compensate the NZT Undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the NZT Undertaker, by reason or in consequence of any such damage or interruption or the NZT Undertaker becoming liable to any third party as aforesaid.

(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 NZT Undertaker, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by the NZT Undertaker.

(3) The NZT Undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made, unless payment is required in connection with a statutory compensation scheme, without first consulting the undertaker and considering its representations.

(4) The NZT Undertaker must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, the NZT Undertaker 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).

(5) The undertaker shall not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that the NZT Undertaker has not used its

reasonable endeavours to mitigate and/or minimise that claim accordance with sub-paragraph (4).

(6) The fact that any work or thing has been executed or done with the consent of the NZT Undertaker and in accordance with any conditions or restrictions prescribed by the NZT Undertaker or in accordance with any plans approved by the NZT Undertaker or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 11 does not relieve the undertaker from any liability under this paragraph.

(7) The total liability of Anglo American whether for breach of, or under any indemnity contained in, this Deed and whether under contract, tort, equity or otherwise shall be limited to the sum of ten million pounds (£10m).

Dispute resolution

11.—(1) Article 40 of this Order does not apply to provisions of this Schedule.

(2) Any difference in relation to the provisions in this Part of this Schedule must be referred to—

(a) a meeting of the Managing Director of Net Zero Teesside Power Limited and/or the Managing Director of Net Zero North Sea Storage Limited, whichever is the relevant party and the Chief Executive Officer of Anglo American Crop Nutrients Limited 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 NZT Undertaker and the undertaker or, in the absence of agreement identified by the President of the Institute of Civil Engineers, who must be sought to be appointed within 28 days of the notification of the dispute.

(3) The fees of the expert are payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

(4) The expert must—

(a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) allow each Party an opportunity to comment on the submissions made by the other provided they are received within 21 days of the receipt of the submissions referred to in sub-paragraph (a) above;

(c) issue a decision within 42 days of receipt of the submissions submitted pursuant to sub-paragraph (a) above; and

(d) give reasons for the decision.

(5) The expert must consider where relevant—

(a) the development outcomes sought by the NZT Undertaker and the undertaker;

(b) the ability of the NZT Undertaker and the undertaker to achieve the outcomes referred to in sub-paragraph (a) above in a timely and cost-effective manner;

(c) any increased costs on any Party as a result of the matter in dispute;

(d) whether under the NZT Order or the Order, the NZT Undertaker's or the undertaker's outcomes could be achieved in any alternative manner without the NZT Specified Works being materially compromised in terms of increased cost or increased length of programme; and

(e) any other important and relevant considerations.

(6) 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 settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.”.

SCHEDULE 4

Articles 10, 11 and 14

STREETS SUBJECT TO STREET WORKS

Table 1

(1) *Area*	*(2)* *Street subject to street works*	*(3)* *Description of the street works*
In the District of Stockton-on-Tees	A1185	Works for the improvement of the access at the point marked P on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked R on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked S on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked U on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178	Works for the improvement of the access at the point marked V on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Seal Sands Road	Works for the improvement of the access at the point marked Y on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked L on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked M on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Works for the improvement of the access at the point marked N on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked H on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue	Works for the improvement of the access at the point marked I on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275	Works for the improvement of the access at the point marked

		E on sheet 7 of the access and rights of way plans

SCHEDULE 5

Article 12

ACCESS

PART 1

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE HIGHWAY AUTHORITY

Table 2

(1) *Area*	*(2)* *Street*	*(3)* *Description of relevant part of access*
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked R on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked U on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked V on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access cross-hatched in blue at the point marked S on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access in the area cross hatched in blue at the point marked Y on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked L on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked M on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access cross-hatched in blue at the point marked N on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in blue at the point marked H on sheet 7 of the access and rights of way plans
In the District of Stockton-on-	Nelson Avenue / unnamed	That part of the access in the

Tees	private track	area cross hatched in blue at the point marked I on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275 / unnamed private track	That part of the access cross-hatched in blue at the point marked E on sheet 7 of the access and rights of way plans

PART 2

THOSE PARTS OF THE ACCESSES TO BE MAINTAINED BY THE STREET AUTHORITY

Table 3

(1) *Area*	*(2)* *Street*	*(3)* *Description of relevant part of access*
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked R on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked U on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked V on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A178 / unnamed private track	That part of the access in the area cross hatched in red at the point marked S on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	A1185 / unnamed private track	That part of the access in the area cross hatched in red at the point marked P on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Seal Sands Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked Y on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked L on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access in the area cross hatched in red at the

		point marked M on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road / unnamed private track	That part of the access in the area cross hatched in red at the point marked N on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in red at the point marked H on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue / unnamed private track	That part of the access in the area cross hatched in red at the point marked I on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275 / unnamed private track	That part of the access in the area cross hatched in red at the point marked E on sheet 7 of the access and rights of way plans

SCHEDULE 6

Article 13

TEMPORARY STOPPING UP OF STREETS, PUBLIC RIGHTS OF WAY AND ACCESS LAND

PART 1

THOSE PARTS OF THE STREET TO BE TEMPORARILY STOPPED UP

Table 4

(1) *Area*	*(2)* *Streets subject to temporary stopping up of use*	*(3)* *Extent of temporary stopping up of use of street*
In the District of Stockton-on-Tees	A178	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked Q and T on sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Cowpen Bewley Road	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked K and O on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	B1275	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked D and F on sheet 7 of the access and rights of way plans
In the District of Stockton-on-Tees	Nelson Avenue	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert of the part of the street between the points marked J and G on sheet 7 of the access and rights of way plans

PART 2

THOSE PUBLIC RIGHTS OF WAY TO BE TEMPORARILY STOPPED UP

Table 5

(1) *Area*	*(2)* *Public right of way subject to temporary prohibition or restriction of use*	*(3)* *Extent of temporary prohibition or restriction of use of public right of way*
In the District of Redcar and Cleveland	Public footpath - Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked DH and CZ on Sheet 3 of the access and rights of way plans
In the District of Redcar and Cleveland	Public footpath - England Coast Path / Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked BH and BG on Sheet 4 of the access and rights of way plans
In the District of Redcar and Cleveland	Public footpath - England Coast Path / Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked CK and CM on Sheet 3 of the access and rights of way plans
In the District of Redcar and Cleveland	Public bridleway - England Coast Path / Teesdale Way LDR	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the bridleway between the points marked BX and BY on Sheet 4 of the access and rights of way plans
In the District of Stockton-on-Tees	Public footpath - England Coast Path	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked V and W1 on Sheet 6 of the access and rights of way plans
In the District of Stockton-on-Tees	Public footpath - England Coast Path	Temporarily stop up, prohibit the use of, restrict the use of, alter or divert the footpath between the points marked W and X on sheet 6 of the access and rights of way plans

PART 3

THOSE PARTS OF THE ACCESS LAND WHERE PUBLIC ACCESS MAY BE TEMPORARILY SUSPENDED

Table 6

(1) *Area*	*(2)* *Access land subject to temporary prohibition or restriction of use*	*(3)* *Extent of temporary prohibition or restriction of use of access land*
In the District of Redcar and Cleveland	Access land at South Gare Road and Coatham beach and sand dunes	Temporarily suspend access to the area shaded beige on sheets 1, 2 and 3 of the access and rights of way plans

SCHEDULE 7

Article 25

LAND IN WHICH NEW RIGHTS ETC. MAY BE ACQUIRED

Interpretation

1. In this Schedule—

"Work No. 2A infrastructure" means any works or development comprised within Work No. 2A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2A on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 2B infrastructure" means any works or development comprised within Work No. 2B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 2B on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 3 infrastructure" means any works or development comprised within Work No. 3A or Work No. 3B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 3A or Work No. 3B on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 4A infrastructure" means any works or development comprised within Work No. 4A, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 4A on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 5B infrastructure" means any works or development comprised within Work No. 5B, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 5B on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 5C infrastructure" means any works or development comprised within Work No. 5C, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 5C on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 6 infrastructure" means any works or development comprised within Work No. 6, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 6 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus;

"Work No. 8 infrastructure" means any works or development comprised within Work No. 8, ancillary apparatus and any other necessary works or development permitted within the area delineated as Work No. 8 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus; and

"Work No. 10 access and highway improvements" means any works or development comprised within Work No. 10 including any other necessary works or development permitted within the area delineated as Work No. 10 on the works plans including the alteration, diversion or construction of statutory undertakers' apparatus.

Table 7

(1) *Plot numbers shown on Land Plans*	*(2)* *Purposes for which rights over land may be acquired or restrictive covenants may be imposed*
The following plots shown coloured blue on the land plans— 105, 110, 113, 114, 316, 319, 320, 324, 332, 343, 344, 345, 347, 349, 350, 351, 352, 354, 355, 356, 357, 358, 359, 360, 365, 366, 382, 384, 395, 397, 401, 408, 409, 409a, 409b, 425, 425a, 462, 464	For and in connection with the Work No. 2A infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2A infrastructure and Work No. 2B infrastructure, together with the right to install, retain, use and maintain the Work No. 2A infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2A infrastructure, or interfere with or obstruct access from and to the Work No. 2A infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 112, 325, 328, 329, 330, 333, 450, 455, 456, 457	
The following plots shown coloured pink on the land plans— 112, 325, 328, 329, 330, 333	For and in connection with the Work No. 2B infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 2B infrastructure, together with the right to install, retain, use and maintain the Work No. 2B infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 2B infrastructure, or interfere with or obstruct access from and to the Work No. 2B infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

The following plots shown coloured blue on the land plans— 386, 387, 388, 393, 393c, 393f, 395, 401, 405, 408, 409, 409a, 409b, 412, 413, 416, 417, 418, 419, 420, 421, 423, 425, 425a, 427, 431, 432, 436, 439, 462, 464, 540a, 540d	For and in connection with the Work No. 3 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 3 infrastructure, together with the right to install, retain, use and maintain the Work No. 3 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 3 infrastructure, or interfere with or obstruct access from and to the Work No. 3 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 391, 393b, 396, 398, 399, 400, 403, 404, 406, 411, 414, 422, 424, 429, 449, 450, 451, 452, 454, 455, 456, 457, 540b, 540c	
The following plots shown coloured blue on the land plans— 409a, 425a, 458, 461, 463, 467, 470, 472, 473, 498, 509, 512, 515, 516, 518, 519, 521, 522, 524, 525, 531, 535, 536, 537, 538	For and in connection with the Work No. 4 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 4 infrastructure, together with the right to install, retain, use and maintain the Work No. 4 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 4 infrastructure, or interfere with or obstruct access from and to the Work No. 4 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 320, 332, 343, 345, 347, 366, 382, 384, 395, 397, 401, 408, 409, 409a, 409b, 425, 425a, 462, 464	For and in connection with the Work No. 5C infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5C infrastructure, together with the right to install, retain, use and maintain the Work No. 5C infrastructure, and a

The following plots shown coloured pink on the land plans— 450, 455, 456, 457	right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 5C infrastructure, or interfere with or obstruct access from and to the Work No. 5C infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 20a, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 56, 57, 58, 59, 60, 61, 62, 63, 65, 66, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 93, 94, 95, 96, 99, 100, 101, 102, 115, 119, 120, 121, 124, 124d, 128, 138, 139, 141, 142, 142b, 156, 157, 157b, 158, 165, 165a, 166, 166b, 169, 171, 171b, 172, 174, 174d, 174e, 176, 176b, 181, 183, 184, 191d, 194, 196, 278, 280, 281, 284, 285, 286, 294, 301, 302, 303, 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, 331, 332, 343, 344, 345, 347, 349, 350, 351, 352, 354, 355, 356, 357, 358, 359, 360, 365, 366, 382, 384, 395, 397, 401, 405, 408, 409, 409a, 409b, 421, 423, 425, 425a, 462, 464 The following plots shown coloured pink on the land plans— 325, 328, 329, 330, 333, 385, 394, 400, 404, 411 422, 424, 429, 450, 455, 456, 457	For and in connection with the Work No. 6 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 6 infrastructure, or interfere with or obstruct access from and to the Work No. 6 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured pink on the land plans— 392, 415, 429, 447	For and in connection with the Work No. 8 infrastructure, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure, together with the right to install, retain, use and maintain the Work No. 8 infrastructure, and a right of support for it, along with the right to prevent any works on or uses of the land which may interfere with or damage the Work No. 8 infrastructure, or interfere with or obstruct access from and to the Work No. 8 infrastructure, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.

The following plots shown coloured blue on the land plans— 89, 91, 92, 98, 103, 106, 108, 110 111, 126, 136, 137, 143, 144, 145, 146, 147, 148, 150, 151, 152, 153, 157b, 165a, 167, 168, 170, 174e, 181, 186, 187, 316, 319, 320, 324, 332, 343, 344, 345, 347, 349, 350, 351, 352, 354, 355, 356, 357, 358, 359, 360, 365, 366, 377, 378, 382, 384, 386, 387, 388, 393, 393c, 393f, 395, 397, 401, 405, 408, 409, 409a, 409b, 412, 413, 416, 417, 418, 419, 420, 421, 423, 425, 425a, 426, 427, 431, 432, 434, 435, 436, 438, 439, 445, 458, 458a, 459, 461, 462, 463, 464, 467, 470, 472, 473, 474, 475, 477, 478, 483, 485, 486, 487, 488, 489, 493, 495, 496, 498, 500, 502, 504, 505, 508, 509, 510, 511, 512, 514, 515, 516, 517, 518, 519, 521, 522, 523, 524, 532, 533, 534, 540d The following plots shown coloured pink on the land plans— 325, 327, 328, 329, 330, 333, 339, 391, 393b, 403, 450, 455, 456, 457, 479, 482, 540b, 540c	For and in connection with the Work No. 10 access and highway improvements, the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the authorised development, along with the right to prevent any works on or uses of the land which may interfere with or obstruct access from and to the authorised development, including the right to prevent or remove the whole of any building, or fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land.
The following plots shown coloured blue on the land plans— 377, 378, 379, 448, 494, 499, 501, 526, 527, 528, 529, 530, 539 The following plot shown coloured pink on the land plans— 402	For and in connection with the Work No. 5B infrastructure (except where the right to install, retain, use and maintain the Work No. 5B infrastructure is within the subsoil only), the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 5B infrastructure, together with the right, including within the subsoil, for the undertaker and all persons authorised on its behalf to install, retain, use and maintain the Work No. 5B infrastructure, and a right of support for it, and the right to the free flow of water (as relevant), along with the right to prevent any works on or uses of the land or, in the case of a right within the subsoil any works or uses above, under and adjoining such subsoil, which may interfere with or damage the Work No. 5B infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land or subsoil (as relevant).
The following plots shown coloured blue on the land plans— 185, 190, 190b, 191, 191a, 191b, 202c, 218, 232a, 252, 252a, 253, 253a, 255, 263	For and in connection with the Work No. 6 infrastructure (except where the right to install, retain, use and maintain the Work No. 6 infrastructure is within the subsoil only), the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery,

	for all purposes in connection with the laying, installation, use and maintenance of the Work No. 6 infrastructure, together with the right, including within the subsoil, for the undertaker and all persons authorised on its behalf to install, retain, use and maintain the Work No. 6 infrastructure, and a right of support for it, and the right to the free flow of water (as relevant), along with the right to prevent any works on or uses of the land or, in the case of a right within the subsoil any works or uses above, under and adjoining such subsoil, which may interfere with or damage the Work No. 6 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land or subsoil (as relevant).
The following plots shown coloured blue on the land plans— 377, 378, 379, 448, 494, 499, 501, 526, 527, 528, 529, 539	For and in connection with the Work No. 8 infrastructure (except where the right to install, retain, use and maintain the Work No. 8 infrastructure is within the subsoil only), the right to create or improve accesses and a right for the undertaker and all persons authorised on its behalf to enter, pass and re-pass, on foot, with or without vehicles, plant and machinery, for all purposes in connection with the laying, installation, use and maintenance of the Work No. 8 infrastructure, together with the right, including within the subsoil, for the undertaker and all persons authorised on its behalf to install, retain, use and maintain the Work No. 8 infrastructure, and a right of support for it, and the right to the free flow of water (as relevant), along with the right to prevent any works on or uses of the land or, in the case of a right within the subsoil any works or uses above, under and adjoining such subsoil, which may interfere with or damage the Work No. 8 infrastructure, including the right to prevent or remove the whole of any fixed or moveable structure, tree, shrub, plant or other thing, and the right to prevent or remove any works or uses which alter the surface level, ground cover or composition of the land or subsoil (as relevant).
The following plot shown coloured pink on the land plans— 402	

SCHEDULE 8

Article 25

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS AND IMPOSITION OF NEW RESTRICTIVE COVENANTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation to the scope of paragraph 1, the Land Compensation Act 1973(**a**) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

(a) for "land is acquired or taken from" substitute "a right or restrictive covenant over land is purchased from or imposed on"; and

(b) for "acquired or taken from him" substitute "over which the right is exercisable or the restrictive covenant enforceable".

3.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modification set out in sub-paragraph (2).

(2) In section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

"(5A) If—

(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Net Zero Teesside Order 2024; and

(b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the Net Zero Teesside Order 2024 to acquire an interest in the land, and

(c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land where it entered on that land for the purpose of exercising that right.".

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and modified by article 29 (modification of Part 1 of the Compulsory Purchase Act 1965)) to the acquisition of land under article 22 (compulsory acquisition of land), applies to the compulsory acquisition of a right by the creation of a new right, or to the imposition of a restrictive covenant under article 25 (compulsory acquisition of rights etc.)—

(a) with the modification specified in paragraph 5; and

(b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(**a**) 1973 c. 26.

(2) References in the 1965 Act to land are, in the appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or the restrictive covenant imposed or to be imposed; or

(b) the land over which the right is or is to be exercisable, or the restrictive covenant is or is to be enforceable.

(3) For section 7 of the 1965 Act there is substituted the following section—

"**7.** In assessing the compensation to be paid by the acquiring authority under this Act, regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the covenant but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.".

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

(a) section 9(4) (failure by owners to convey);

(b) paragraph 10(3) of Schedule 1 (persons without powers to sell their interests);

(c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and

(d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry) of the 1965 Act is modified so that, where the acquiring authority has served notice to treat in respect of any right or restrictive covenant, as well as the notice of entry required by subsection (1) of that section (as it applies to compulsory acquisition under article 22 (compulsory acquisition of land), it has power, exercisable in equivalent circumstances and subject to equivalent conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant; and sections 11A (powers of entry: further notices of entry)(**a**), 11B (counter-notice requiring possession to be taken on a specified date)(**b**), 12 (unauthorised entry)(**c**) and 13 (refusal to give possession to an acquiring authority)(**d**) of the 1965 Act are modified correspondingly.

(6) Section 20 (tenants at will etc.)(**e**) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right or the enforcement of the restrictive covenant in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act as modified by article 29(3) (modification of Part 1 of the Compulsory Purchase Act 1965) is also modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired or enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

(**a**) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
(**b**) Section 11B was inserted by section 187(3) of the Housing and Planning Act 2016 (c. 22).
(**c**) Section 12 was amended by section 56(2) of and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
(**d**) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
(**e**) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1.—(1) This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over, or restrictive covenant affecting, the whole or part of a house, building or factory and have not executed a general vesting declaration under section 4 of the 1981 Act (execution of declaration) as applied by article 27 (application of the Compulsory Purchase (Vesting Declarations) Act 1981) of the Net Zero Teesside Order 2024 in respect of the land to which the notice to treat relates.

(2) But see article 28(3) (acquisition of subsoil or airspace only) of the Net Zero Teesside Order 2024 which excludes the acquisition of subsoil or airspace only from this Schedule.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—

(a) withdraw the notice to treat,

(b) accept the counter-notice, or

(c) refer the counter-notice to the Upper Tribunal.

6. The authority must serve notice of their decision on the owner within the period of three months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

8. If the authority does not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right or the imposition of the restrictive covenant would—

(a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or

(b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

(a) the effect of the acquisition of the right or the imposition of the covenant,

(b) the use to be made of the right or covenant proposed to be acquired or imposed, and

(c) if the right or covenant is proposed to be acquired or imposed for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right or the imposition of the covenant would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of six weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.".

SCHEDULE 9

Article 31

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

Table 8

(1) *Plot numbers shown on Land Plans*	*(2)* *Purpose for which temporary possession may be taken*
289, 292, 293, 298, 300, 336, 337, 338, 342	Temporary use as laydown, construction compound, construction use and accesses (Work No. 9A) required to facilitate construction of the authorised development
67, 67a, 68, 122, 125	Temporary use as laydown, construction compound, construction use and accesses (Work Nos. 9C and 9D) required to facilitate construction of Work No. 2A
If WN9C— 122, 125 If WN9D— 67, 67a, 68	Temporary use as laydown, construction compound, construction use and accesses (Work Nos. 9C and 9D) required to facilitate construction of Work No. 2B
19, 48, 49, 50, 51, 52, 53, 54, 55, 64, 67, 67a, 68, 122, 125, 174c, 179, 179a, 193, 195, 197, 199, 202a	Temporary use as laydown, construction compound, construction use and accesses (Work Nos. 9B, 9C, 9D, 9E and 9F) required to facilitate construction of Work No. 6
222, 223, 282, 283, 287, 290, 291, 296, 299, 348, 362, 363, 367, 370, 373, 374, 376, 381, 393a, 393d, 393e	Temporary use to facilitate access to and highway improvements (Work No. 10) in relation to the authorised development
48, 49, 50, 51, 52, 53, 54, 55, 64, 123, 188, 189	Temporary use to facilitate access to and highway improvements (Work No. 10) in relation to Work Nos. 2A, 2B and 6
393a, 393d, 393e	Temporary use to facilitate carrying out of Work No. 3A
1a, 2a, 3a, 4a, 6a, 7a, 7b, 8a, 8b, 9a, 10a, 12a, 13a, 15a, 17, 20, 22a, 23a, 28a, 34a 39a, 39b, 43a, 47a, 63a, 66a, 70a, 70b, 90a, 94a, 94b, 100a, 100b, 124a, 124b, 128a, 135, 138a, 141a, 142a, 156a, 157a, 158a, 166a, 169a, 171a, 172a, 174a, 174b, 176a, 183a, 184a, 185a, 185b, 190a, 191c, 192	Temporary use to facilitate carrying out of Work No. 6

SCHEDULE 10

Article 37

DEEMED MARINE LICENCE UNDER THE 2009 ACT: PROJECT A

PART 1

LICENSED ACTIVITIES

1.—(1) In this licence—

"the 2004 Act" means the Energy Act 2004;

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"authorised development" means the development and associated development described in Schedule 1 of the Order;

"CEMP" means a construction environmental management plan for the licensed activities or any part of those works;

"commence" means the first carrying out of any licensed activities authorised by this marine licence and "commenced" and "commencement" shall be construed accordingly;

"condition" means a condition under Part 2 of this licence;

"disposal" means the deposit of dredge arisings at a disposal site carrying reference TY160 – "Tees Bay A" or TY150 – "Tees Bay C";

"dredge arisings" means inert material of natural origin, produced during dredging;

"enforcement officer" means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;

"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

"framework construction environmental management plan" means the document certified as the framework construction environmental management plan by the Secretary of State for the purposes of this Order;

"licensed activities" means the activities specified in Part 1 of this licence;

"maintain" includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and "maintenance" must be construed accordingly;

"MCMS" means the MMO's online system for submission of marine licence applications and management of consented marine licences, including the submission of condition returns;

"Kingfisher Fortnightly Bulletin" means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

"Marine Management Organisation" means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor of that function and "MMO" shall be construed accordingly;

"MCA" means the Maritime and Coastguard Agency;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"office hours" means the period from 09:00 until 17:00 on any working day;

"Order" means the Net Zero Teesside Order 2024;

"Order limits" has the same meaning as in article 2(1) (interpretation) of the Order;

"relevant undertaker" means Net Zero Teesside Power Limited (company number 12473751) or the person who has the benefit of this deemed marine licence by virtue of article 7 (benefit of this Order) and article 8 (consent to transfer benefit of this Order) and any agent, contractor or sub-contractor acting on its behalf;

"sediment sampling plan" means a plan that provides an adequate characterisation of material proposed for dredging as part of the licenced activities;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"UXO" means unexploded ordnance;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft and any other craft capable of travelling on, in or under water, whether or not self-propelled;

"working day" means a day other than a Saturday or a Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971; and

"Work No. 5B" means Work No. 5B as described in Schedule 1 to the Order.

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT); and

(b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Centre for Environment, Fisheries and Aquaculture Science, Pakefield Road, Lowestoft, Suffolk, NR33 0HT; Tel. 01502 562 244.

(b) Historic England, Cannon Bridge House, 25 Dowgate Hill, London, EC4R 2YA; Tel.020 7973 370.

(c) Kingfisher Information Service of Seafish, Email – kingfisher@seafish.co.uk.

(d) Marine Management Organisation, Local Enforcement Office, Neville House Bell Street, North Shields, NE30 1LJ; Tel. 0191 257 4520, Email – northshields@marinemanagement.org.uk.

(e) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel. 0300 123 1032, Email – marine.consents@marinemanagement.org.uk.

(f) Maritime and Coastguard Agency, Navigation Safety Branch, Bay 2/20, Spring Place, 105 Commercial Road, Southampton, SO15 1EG; Tel. 020 3817 2433.

(g) Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX; Tel. 0300 060 3900.

(h) The United Kingdom Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN; Tel. 01823 337 900.

(i) Trinity House, Tower Hill, London, EC3N 4DH; Tel. 020 7481 6900.

(5) Unless otherwise advised in writing by the MMO, MCMS must be used for all licence returns or applications to vary this licence.

Details of licensed activities

2.—(1) Subject to the licence conditions in Part 2, this licence authorises the relevant undertaker to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) The licensed activities are authorised in relation to the construction, maintenance and operation of—

(a) Work No. 5B—

(i) construction of a micro-bored tunnel;

(ii) dredging campaign(s) facilitating the removal of material from the seabed required for the construction of works and backfill / side cast as required;

(iii) the combined total disposal of up to 500m3 of dredge arisings across each of the disposal sites carrying reference TY160 – "Tees Bay A" and TY150 – "Tees Bay C";

(iv) the installation of a pipeline;

(v) the establishment of a connection point for a discharge head including but not limited to the creation of a punchhole;

(vi) the emplacement of a discharge head;

(vii) the deposit of rock armour protection;

(viii) construction works; and

(ix) UXO inspection, removal and detonation.

in connection with Work No. 5B and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

3. The relevant undertaker may engage in the licensed activities related to Work No. 5B in the area bounded by the coordinates set out in Table 9 in this paragraph.

Table 9

Work No.	*Description*	*Longitude*	*Latitude*
Work No. 5B	Replacement discharge pipeline to the Tees Bay	-1.089946	54.63327
		-1.082979	54.630381
		-1.08312	54.630343
		-1.083903	54.630131
		-1.099769	54.625843
		-1.099968	54.625789
		-1.103141	54.624931
		-1.103864	54.624736
		-1.104309	54.624862
		-1.105244	54.625169
		-1.107138	54.625736
		-1.107962	54.625997
		-1.108859	54.626305
		-1.108101	54.626585
		-1.107614	54.626764
		-1.106721	54.627093
		-1.10572	54.627462

		-1.105639 -1.090325 -1.090027	54.627492 54.633131 54.633241

4. The coordinates for the disposal sites notified to the MMO for use in this licence are specified in Table 10 in this paragraph.

Table 10

Disposal Site Ref	*Description*	*Easting*	*Northing*
TY150	Tees Bay A disposal site	-0.956699 -0.9783 -0.998299 -0.9767 -0.956699	54.698301 54.690001 54.705 54.710001 54.698301
TY160	Tees Bay B disposal site	-1.004999 -1.025 -1.0583 -1.036699 -1.004999	54.683302 54.67 54.680002 54.691702 54.683302

5. The coordinates in Table 9 and Table 10 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

6. This licence remains in force until the authorised development has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes) of the 2004 Act, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8 (consent to transfer benefit of this Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

PART 2

CONDITIONS

General

9. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of such oil, fuel or chemical spill being identified in accordance with the following, unless otherwise advised in writing by the MMO—

(a) within office hours Tel. 0300 200 2024;

(b) outside office hours Tel. 07770 977 825; or

(c) at all times if other numbers are unavailable, Tel. 0845 051 8486 or Email – dispersants@marinemanagement.org.uk.

Notifications and Inspections

10.—(1) The relevant undertaker must ensure that—

(a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 14(2)(a); and

(ii) the vessel masters responsible for the vessels notified to the MMO in accordance with condition 14(2)(b); and

(b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must confirm receipt of this licence in writing to the MMO.

(2) Only those persons and vessels notified to the MMO in accordance with condition 14 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

(a) the relevant undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the relevant undertaker or its agents and contractors responsible for the loading, transportation or deposit of dredge arisings; and

(c) on board each vessel or at the office of any person with responsibility for such vessel from which the removal or deposit of dredge arisings are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The relevant undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.

(6) The relevant undertaker must inform the MMO Local Enforcement Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(7) The relevant undertaker must inform the Kingfisher Information Service of Seafish of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part—

(a) at least 14 days prior to the commencement of Work Number 5B seaward of mean high water springs, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and

(b) as soon as reasonably practicable and no later than 24 hours after completion of construction of Work Number 5B seaward of mean high water springs,

and confirmation of notification to Kingfisher Information Service of Seafish must be provided to the MMO Licensing Team as soon as reasonably practicable and no later than 24 hours after the date of such notice.

(8) A notice to mariners must be issued by the relevant undertaker at least 14 days prior to the commencement of the licensed activities or any part of them advising of—

(a) the start date of the licenced activities relating to Work No. 5B; and

(b) the expected vessel routes from the construction ports to the relevant location,

and copies of all notices must be provided to MMO Licensing Team, TH, MCA and the United Kingdom Hydrographic Office within five days as soon as reasonably practicable and no later than 24 hours after the issue of such notice.

(9) The relevant undertaker must notify the United Kingdom Hydrographic Office of—

(a) the commencement (within ten days of the date of commencement) of the licensed activities; and

(b) progress and completion of construction (within ten days of the date of completion of construction) of the licensed activities,

in order that all necessary amendments to nautical charts are made. The relevant undertaker must send a copy of any notification issued to the MMO as soon as reasonably practicable and no later than 24 hours after the issue of such notice.

(10) In case of material damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof, the relevant undertaker must as soon as possible and no later than 24 hours following the relevant undertaker becoming aware of any such damage, destruction or decay, notify the MMO, MCA, Trinity House, Kingfisher Information Service of Seafish and the United Kingdom Hydrographic Office.

(11) In case of exposure of pipelines on or above the seabed, the relevant undertaker must, within three working days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of Seafish of the location and extent of exposure, and no later than five days after the date of issue of such notice the relevant undertaker must send a copy of that notice to the MMO, MCA, Trinity House, and the United Kingdom Hydrographic Office.

Pre-construction

11.—(1) The relevant undertaker must submit a sediment sampling plan to the MMO for approval (following consultation with the Environment Agency) at least six months prior to the commencement of dredging activities.

(2) The sediment sampling and analysis must be undertaken—

(a) in accordance with the sediment sampling plan approved by the MMO pursuant to sub-paragraph (1); and

(b) by a laboratory which has been validated by the MMO for sediment analysis to inform marine licence applications.

(3) Details of the sediment sampling and analysis undertaken pursuant to sub-paragraph (2) must be submitted to the MMO at least 6 weeks prior to the commencement of dredging activities.

(4) No dredging and disposal activities may be undertaken until the details of sediment sampling and analysis submitted pursuant to sub-paragraph (3) have been approved by the MMO in writing (following consultation with the Environment Agency).

12.—(1) The relevant undertaker must submit a CEMP covering the period of construction to include details of—

(a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;

(b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised;

(c) waste management and disposal arrangements; and

(d) the appointment and responsibilities of a fisheries liaison officer.

(2) The CEMP must be submitted to the MMO for approval in writing at least three months prior to the commencement of the licenced activities or part of the licensed activities.

(3) The CEMP submitted pursuant to sub-paragraph (2) must be in accordance with the framework construction environmental management plan.

(4) The licensed activities must be carried out in accordance with the CEMP approved pursuant to sub-paragraph (2) unless otherwise agreed in writing with the MMO.

13.—(1) A marine method statement must be submitted to the MMO at least three months prior to the proposed commencement of the licensed activities or part of the licenced activities.

(2) A marine method statement submitted pursuant to sub-paragraph (1) for licensed activities must include details of—

(a) methods of dredging to be employed and associated disposal arrangements;

(b) the micro-bored tunnel installation and methodology;

(c) the discharge head installation technique and methodology;

(d) rock armour specification, provenance and installation technique; and

(e) an indicative programme for the delivery of the licensed activities.

(3) A marine method statement submitted pursuant to sub-paragraph (1) must—

(a) only include details of the licensed activities in so far as they are required; and

(b) be scaled to correspond to the final requirements of the authorised development.

(4) No part of the licensed activities may commence until the marine method statement for that part has been approved in writing by the MMO.

(5) A marine method statement approved pursuant to sub-paragraph (4) may be amended from time to time subject to approval in writing from the MMO.

(6) The licensed activities must be carried out in accordance with the marine method statement approved pursuant to sub-paragraphs (5) and (6).

Reporting of engaged agents, contractors and vessels

14.—(1) The relevant undertaker must notify the MMO in writing of any agents, contractors or subcontractors (including their name, address and company number if applicable) that will carry on any licensed activity listed in this licence on behalf of the relevant undertaker.

(2) A notification pursuant to sub-paragraph (1) must—

(a) include the name, address and company number if applicable of any agent, contractor or sub-contractor; and

(b) details of any vessel being used to carry on any licensed activity listed in this licence on behalf of the relevant undertaker including the master's name, vessel type, vessel IMO number and vessel owner or operating company (including company number if applicable); and

(c) must be provided no less than 24 hours before the commencement of the licensed activity.

(3) Any changes to the name or function of the specified agent, contractor or sub-contractor, or details or functions of the specified vessel, as provided in accordance with sub-paragraph (1) must be notified to the MMO in writing no less than 24 hours before the agent, contract or sub-contractor carries out a licensed activity.

Written scheme of archaeological investigation

15.—(1) The licensed activities, or any part of the licensed activities, must not commence unless a written scheme of archaeological investigation has been submitted to and approved in writing by the MMO following consultation with Historic England.

(2) A written scheme of archaeological investigation submitted pursuant to sub-paragraph (1) must include—

(a) details of responsibilities of the relevant undertaker, archaeological consultant and contractor where required and appropriate;

(b) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO;

(c) details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found and must set out a process for how unexpected finds will be dealt with which must be in accordance with the measures in the framework construction environmental management plan;

(d) delivery of any mitigation including the use of archaeological construction exclusion zones in agreement with the MMO;

(e) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development; and

(f) a geoarchaeological assessment that determines the extent to which any deposits of paleoenvironmental features exist.

(3) Unless otherwise agreed in writing the written scheme of archaeological investigation should be implemented as approved.

Construction, Operation and Maintenance

16. The relevant undertaker must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with the Pollution Prevention for Businesses guidelines.

17. The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

18. The relevant undertaker must—

(a) not discharge waste concrete slurry or wash water from concrete or cement into the marine environment; and

(b) site concrete and cement mixing and washing areas at least 10 metres from the River Tees or surface water drain to minimise the risk of run off entering the marine environment.

19. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

20.—(1) Vibratory or drilled “pin” piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where the relevant undertaker has established, following the carrying out of a desk top study informed by appropriate survey information, that vibratory or drilled “pin” piling would be ineffective.

(2) Where percussive piling is established to be necessary in accordance with sub-paragraph (1)—

(a) soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved;

(b) the soft-start duration must be a period of not less than 20 minutes; and

(c) should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated.

21.—(1) In the event that any rock material is misplaced or lost below MHWS, the relevant undertaker must report the loss to the MMO Local Enforcement Office and MMO Marine Licensing Team using the dropped object procedure and via return of a completed Marine Licence Dropped Incident Report (MLDIR1), as soon as possible, and in any event within 48 hours of becoming aware of an incident and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the relevant undertaker must use reasonable endeavours to locate the material and recover it.

(2) On receipt of the MLDIR1, the MMO may require, acting reasonably, the relevant undertaker to carry out relevant surveys. The relevant undertaker must carry out surveys in accordance with the MMO’s reasonable requirements and must report the results of such surveys to the MMO.

(3) On receipt of such survey results, the MMO may, acting reasonably, require the relevant undertaker to remove specific obstructions from the seabed. The relevant undertaker must carry out removals of specific obstructions from the seabed in accordance with the MMO’s reasonable requirements and at its own expense.

(4) Where the relevant undertaker has been unable to locate or recover material pursuant to discharging its duties under sub-paragraphs (1) to (3) it must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

UXO Clearance

22.—(1) No removal or detonation of UXO can take place until a UXO clearance methodology and marine mammal mitigation protocol has been submitted to and approved in writing by the MMO (following consultation with the Environment Agency and Natural England).

(2) The UXO clearance methodology and marine mammal mitigation protocol must be submitted to the MMO no later than six months prior to the date on which it is intended for UXO clearance activities to begin (unless otherwise agreed in writing by the MMO).

(3) The UXO clearance methodology submitted pursuant to sub-paragraph (1) must be based on the nature, location and size of UXO or magnetic anomalies that have been identified and include—

(a) a methodology for the clearance of magnetic anomalies or otherwise which are deemed a UXO risk;

(b) information to demonstrate how the best available evidence and technology has been taken into account in formulating the methodology;

(c) a debris removal plan;

(d) a plan highlighting the area(s) within which clearance activities are proposed;

(e) details of engagement with other local legitimate users of the sea; and

(f) a programme of works.

(4) The marine mammal mitigation protocol submitted pursuant to sub-paragraph (1) must include details of the measures to prevent auditory or other injury to marine mammals following current best practice as advised by the relevant statutory nature conservation bodies.

(5) The removal or detonation of UXO must be undertaken in accordance with UXO clearance methodology and marine mammal mitigation protocol approved pursuant to sub-paragraph (1).

(6) Subject to sub-paragraph (7) a UXO clearance close out report must be submitted to the MMO in writing and the relevant statutory nature conservation body within three months following the end of the UXO clearance activity and must include the following for each detonation undertaken—

(a) co-ordinates, depth, current speed, charge utilised and the date and time of each detonation; and

(b) whether any mitigation was deployed, including feedback on practicalities of deployment of equipment and efficacy of the mitigation where reasonably practicable, or justification if this information is not available.

(7) Should there be more than one UXO clearance activity, the report required under sub-paragraph (6) will be provided at intervals agreed in writing with the MMO.

Post Construction

23. The relevant undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensed activities are removed within six weeks of completion of the licensed activity.

Disposal

24.—(1) The relevant undertaker must inform the MMO of the location and quantities of material disposed of each month under this licence.

(2) The information submitted pursuant to sub-paragraph (1) must be submitted to the MMO by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

25. The relevant undertaker must ensure dredge arisings are disposed of within the extent of the Order limits seaward of MHWS, within the disposal site TY150, TY160 (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal.

26. The material to be disposed of within the disposal site must be placed within the boundaries of the disposal site(s) specified within Table 10 in Part 1 of this licence.

27. The combined total volume of material for disposal at each of the disposal sites specified within Table 10 in Part 1 of this licence must not exceed 500m3.

Provision of Information

28.—(1) Should the relevant undertaker become aware that any of the information on which the granting of this licence was based was materially false or misleading, the relevant undertaker must notify the MMO in writing as soon as is reasonably practicable.

(2) A notification submitted pursuant to sub-paragraph (1) must explain what information was materially false or misleading and include the correct information.

Amendments to plans etc.

29. With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this licence, the plans, protocols or statements so approved are taken to include amendments that may be approved in writing by the MMO subsequent to the first approval of those plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.

Maximum parameters

30. Work No. 5B is not authorised to the extent that it gives rise to environmental effects that are materially new or different to those identified based on the maximum parameters set out in paragraph 9.3.28 of Chapter 9 of the environmental statement.

Safety Management

31.—(1) Subject to sub-paragraph (4), no part of the licensed activities may commence until a marine safety management system for that part has been submitted to and approved in writing by the MMO.

(2) The marine safety management system approved pursuant to sub-paragraph (1) must be in accordance with the Port Marine Safety Code and Guide to Good Practice on Port Marine Operations (or such documents as may replace them).

(3) The licensed activities must be carried out in accordance with the marine safety management system approved pursuant to sub-paragraph (1).

(4) Sub-paragraphs (1) to (3) do not apply to any part of the licensed activities where evidence has been submitted to and approved in writing by the MMO that there is an existing marine safety management system in place and which will apply to the relevant part of the licensed activities.

Provision of Information

32.—(1) Only when driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the relevant undertaker must provide the following information to the Marine Noise Registry—

(a) prior to the commencement of the licenced activities, information on the expected location, start and end date of impact pile driving / detonation of explosives to satisfy the Marine Noise Registry's Forward Look requirements;

(b) within 12 weeks of completion of impact pile driving / detonation of explosives, information on the locations and dates of impact pile driving / detonation of explosives to satisfy the Marine Noise Registry's Close Out requirements.

(2) The relevant statutory undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to sub-paragraph (1) above within 7 days of the submission.

(3) For the purpose of this condition—

(a) "Marine Noise Registry" means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;

(b) "Forward Look" and "Close Out" requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document;

(c) "JNCC" means the Joint Nature Conservation Committee.

SCHEDULE 11 Article 37

DEEMED MARINE LICENCE UNDER THE 2009 ACT: PROJECT B

PART 1

LICENSED ACTIVITIES

1.—(1) In this licence—

"the 2004 Act" means the Energy Act 2004;

"the 2008 Act" means the Planning Act 2008;

"the 2009 Act" means the Marine and Coastal Access Act 2009;

"authorised development" means the development and associated development described in Schedule 1 of the Order;

"CEMP" means a construction environmental management plan for the licensed activities or any part of those works;

"commence" means the first carrying out of any licensed activities authorised by this marine licence and "commenced" and "commencement" shall be construed accordingly;

"condition" means a condition under Part 2 of this licence;

"disposal" means the deposit of dredge arisings at a disposal site carrying reference TY160 – "Tees Bay A" or TY150 – "Tees Bay C";

"dredge arisings" means inert material of natural origin, produced during dredging;

"enforcement officer" means a person authorised to carry out enforcement duties under Chapter 3 of Part 4 (marine licensing) of the 2009 Act;

"environmental statement" means the document certified as the environmental statement by the Secretary of State for the purposes of this Order;

"framework construction environmental management plan" means the document certified as the framework construction environmental management plan by the Secretary of State for the purposes of this Order;

"licensed activities" means the activities specified in Part 1 of this licence;

"maintain" includes inspect, upkeep, repair, adjust, alter, improve, preserve and further includes remove, reconstruct and replace provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and "maintenance" must be construed accordingly;

"MCMS" means the MMO's online system for submission of marine licence applications and management of consented marine licences, including the submission of condition returns;

"Kingfisher Fortnightly Bulletin" means the bulletin published by the Humber Seafood Institute or such other alternative publication approved in writing by the MMO;

"Marine Management Organisation" means the body created under the 2009 Act which is responsible for the monitoring and enforcement of this licence or any successor of that function and "MMO" shall be construed accordingly;

"MCA" means the Maritime and Coastguard Agency;

"mean high water springs" or "MHWS" means the highest level which spring tides reach on average over a period of time;

"office hours" means the period from 09:00 until 17:00 on any working day;

"Order" means the Net Zero Teesside Order 2024;

"Order limits" has the same meaning as in article 2(1) (interpretation) of the Order;

"relevant undertaker" means Net Zero North Sea Storage Limited (company number 12473084) or the person who has the benefit of this deemed marine licence by virtue of article 7 (benefit of this Order) and article 8 (consent to transfer benefit of this Order) and any agent, contractor or sub-contractor acting on its behalf;

"sediment sampling plan" means a plan that provides an adequate characterisation of material proposed for dredging as part of the licenced activities;

"Trinity House" means the Corporation of Trinity House of Deptford Strond;

"UXO" means unexploded ordnance;

"vessel" means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft and any other craft capable of travelling on, in or under water, whether or not self-propelled;

"working day" means a day other than a Saturday or a Sunday, which is not Christmas Day, Good Friday or a bank holiday under section 1 (bank holidays) of the Banking and Financial Dealings Act 1971;

"Work No. 5B" means Work No. 5B as described in Schedule 1 to the Order; and

"Work No. 8" means Work No. 8 as described in Schedule 1 to the Order.

(2) A reference to any statute, order, regulation or similar instrument is to be construed as reference to a statute, order, regulation or similar instrument as amended by any subsequent statute, order, regulation or instrument or as contained in any subsequent re-enactment.

(3) Unless otherwise indicated—

(a) all times are taken to be Greenwich Mean Time (GMT); and

(b) all co-ordinates are taken to be latitude and longitude degrees minutes and seconds to three decimal places.

(4) Except where otherwise notified in writing by the relevant organisation, the primary point of contact with the organisations listed below and the address for returns and correspondence are—

(a) Centre for Environment, Fisheries and Aquaculture Science, Pakefield Road, Lowestoft, Suffolk, NR33 0HT; Tel. 01502 562 244;

(b) Historic England, Cannon Bridge House, 25 Dowgate Hill, London, EC4R 2YA; Tel.020 7973 370;

(c) Kingfisher Information Service of Seafish, Email – kingfisher@seafish.co.uk

(d) Marine Management Organisation, Local Enforcement Office, Neville House Bell Street, North Shields, NE30 1LJ; Tel. 0191 257 4520, Email – northshields@marinemanagement.org.uk;

(e) Marine Management Organisation, Marine Licensing Team, Lancaster House, Hampshire Court, Newcastle Business Park, Newcastle Upon Tyne, NE4 7YH; Tel. 0300 123 1032, Email – marine.consents@marinemanagement.org.uk;

(f) Maritime and Coastguard Agency, Navigation Safety Branch, Bay 2/20, Spring Place, 105 Commercial Road, Southampton, SO15 1EG; Tel. 020 3817 2433;

(g) Natural England, Foss House, Kings Pool, 1-2 Peasholme Green, York, YO1 7PX; Tel. 0300 060 3900;

(h) The United Kingdom Hydrographic Office, Admiralty Way, Taunton, Somerset, TA1 2DN; Tel. 01823 337 900;

(i) Trinity House, Tower Hill, London, EC3N 4DH; Tel. 020 7481 6900.

(5) Unless otherwise advised in writing by the MMO, MCMS must be used for all licence returns or applications to vary this licence.

Details of licensed activities

2.—(1) Subject to the licence conditions in Part 2, this licence authorises the relevant undertaker to carry out any licensable marine activities under section 66(1) (licensable marine activities) of the 2009 Act which—

(a) form part of, or are related to, the authorised development; and

(b) are not exempt from requiring a marine licence by virtue of any provision made under section 74 of the 2009 Act.

(2) The licensed activities are authorised in relation to the construction, maintenance and operation of—

(a) Work No. 5B—

(i) construction of a micro-bored tunnel;

(ii) dredging campaign(s) facilitating the removal of material from the seabed required for the construction of works and backfill / side cast as required;

(iii) the disposal of up to 500m3 of dredge arisings at each of the disposal sites carrying reference TY160 – "Tees Bay A" and TY150 – "Tees Bay C";

(iv) the installation of a pipeline;

(v) the establishment of a connection point for a discharge head including but not limited to the creation of a punchhole;

(vi) the emplacement of a discharge head;

(vii) the deposit of rock armour protection;

(viii) construction works; and

(ix) UXO inspection, removal or detonation; and

(b) Work No. 8—

(i) horizontal direction drilling and works to facilitate such drilling;

(ii) grouting, sealing and jointing activities required to install a safe and functional pipeline;

(iii) the construction of a pipeline end-piece in order to effectively provide temporary prevention from ingress;

(iv) installation of fibre-optic control cables and power cables; and

(v) UXO inspection, removal or detonation,

in connection with Work No. 5B or Work No. 8 and to the extent that they do not otherwise form part of any such work, further associated development within the meaning of section 115(2) (development for which development consent may be granted) of the 2008 Act comprising such other works as may be necessary or expedient for the purposes of or in connection with the relevant part of the authorised development and which fall within the scope of the work assessed by the environmental statement and the provisions of this licence.

3. The relevant undertaker may engage in the licensed activities related to Work No. 5B and Work No. 8 in the area bounded by the coordinates set out in Table 11 in this paragraph.

Table 11

Work No.	*Description*	*Longitude*	*Latitude*
Work No. 5B	Replacement discharge pipeline to the Tees Bay	-1.089946 -1.082979 -1.08312 -1.083903 -1.099769 -1.099968 -1.103141	54.63327 54.630381 54.630343 54.630131 54.625843 54.625789 54.624931

		-1.103864 -1.104309 -1.105244 -1.107138 -1.107962 -1.108859 -1.108101 -1.107614 -1.106721 -1.10572 -1.105639 -1.090325 -1.090027	54.624736 54.624862 54.625169 54.625736 54.625997 54.626305 54.626585 54.626764 54.627093 54.627462 54.627492 54.633131 54.633241
Work No. 8	Underground high pressure carbon dioxide export pipeline	-1.105639 -1.105445 -1.105243 -1.105031 -1.104828 -1.104626 -1.10423 -1.103942 -1.103788 -1.103773 -1.103684 -1.103594 -1.103413 -1.103263 -1.103171 -1.103121 -1.103036 -1.102839 -1.102667 -1.102396 -1.102034 -1.101672 -1.101342 -1.100985 -1.100717 -1.100333 -1.10005 -1.099769 -1.099968 -1.103141 -1.103864 -1.104309 -1.105244 -1.107138 -1.107962 -1.108859 -1.108101 -1.107614 -1.106721 -1.10572	54.627492 54.6274 54.627298 54.627203 54.627127 54.627055 54.626919 54.62684 54.626803 54.6268 54.626783 54.626769 54.626743 54.626724 54.626713 54.626707 54.626694 54.626665 54.62663 54.626569 54.626496 54.626409 54.626325 54.626223 54.626145 54.626036 54.625942 54.625843 54.625789 54.624931 54.624736 54.624862 54.625169 54.625736 54.625997 54.626305 54.626585 54.626764 54.627093 54.627462

4. The coordinates for the disposal sites notified to the MMO for use in this licence are specified in Table 12 in this paragraph.

Table 12

Disposal Site Ref	*Description*	*Easting*	*Northing*
TY150	Tees Bay A disposal site	-0.956699 -0.9783 -0.998299 -0.9767 -0.956699	54.698301 54.690001 54.705 54.710001 54.698301
TY160	Tees Bay B disposal site	-1.004999 -1.025 -1.0583 -1.036699 -1.004999	54.683302 54.67 54.680002 54.691702 54.683302

5. The coordinates in Table 11 and Table 12 are defined in accordance with reference system WGS84 - World Geodetic System 1984.

6. This licence remains in force until the authorised development has been decommissioned in accordance with a programme approved by the Secretary of State under section 106 (approval of decommissioning programmes) of the 2004 Act, including any modification to the programme under section 108 (reviews and revisions of decommissioning programmes) of the 2004 Act, and the completion of such programme has been confirmed by the Secretary of State in writing.

7. The provisions of section 72 (variation, suspension, revocation and transfer) of the 2009 Act apply to this licence except that the provisions of section 72(7) and (8) relating to the transfer of the licence only apply to a transfer not falling within article 8 (consent to transfer the benefit of this Order).

8. With respect to any condition which requires the licensed activities be carried out in accordance with the plans, protocols or statements approved under this Schedule, the approved details, plan or scheme are taken to include any amendments that may subsequently be approved in writing by the MMO.

PART 2

CONDITIONS

General

9. Any oil, fuel or chemical spill within the marine environment must be reported to the MMO Marine Pollution Response Team as soon as reasonably practicable, but in any event within 12 hours of such oil, fuel or chemical spill being identified in accordance with the following, unless otherwise advised in writing by the MMO—

(a) within office hours Tel. 0300 200 2024;

(b) outside office hours Tel. 07770 977 825; or

(c) at all times if other numbers are unavailable, Tel. 0845 051 8486 or Email – dispersants@marinemanagement.org.uk.

Notifications and Inspections

10.—(1) The relevant undertaker must ensure that—

(a) a copy of this licence (issued as part of the grant of the Order) and any subsequent amendments or revisions to it is provided to—

(i) all agents and contractors notified to the MMO in accordance with condition 14(2)(a); and

(ii) the vessel masters responsible for the vessels notified to the MMO in accordance with condition 14(2)(b); and

(b) within 28 days of receipt of a copy of this licence those persons referred to in paragraph (a) above must confirm receipt of this licence in writing to the MMO.

(2) Only those persons and vessels notified to the MMO in accordance with condition 14 are permitted to carry out the licensed activities.

(3) Copies of this licence must also be available for inspection at the following locations—

(a) The relevant undertaker's registered address;

(b) any site office located at or adjacent to the construction site and used by the relevant undertaker or its agents and contractors responsible for the loading, transportation or deposit of dredge arisings; and

(c) on board each vessel or at the office of any person with responsibility for such vessel from which the removal or deposit of dredge arisings are to be made.

(4) The documents referred to in sub-paragraph (1)(a) must be available for inspection by an authorised enforcement officer at the locations set out in sub-paragraph (3)(b) above.

(5) The relevant undertaker must provide access, and if necessary appropriate transportation, to the offshore construction site or any other associated works or vessels to facilitate any inspection that the MMO considers necessary to inspect the works during construction and operation of the authorised development.

(6) The relevant undertaker must inform the MMO Local Enforcement Office in writing at least five days prior to the commencement of the licensed activities or any part of them, and within five days of completion of the licensed activities. A copy of the notification must be provided to the MMO Marine Licensing Team within 24 hours of issue.

(7) The relevant undertaker must inform the Kingfisher Information Service of Seafish of details regarding the vessel routes, timings and locations relating to the construction of the authorised development or relevant part—

(a) at least 14 days prior to the commencement of each of Work Number 5B and Work Number 8 seaward of MHWS springs, for inclusion in the Kingfisher Fortnightly Bulletin and offshore hazard awareness data; and

(b) as soon as reasonably practicable and no later than 24 hours after completion of construction of each of Work Number 5B and Work Number 8 seaward of MHWS,

and confirmation of notification to Kingfisher Information Service of Seafish must be provided to the MMO Licensing Team as soon as reasonably practicable and no later than 24 hours after the date of such notice.

(8) A notice to mariners must be issued by the relevant undertaker at least 14 days prior to the commencement of the licensed activities or any part of them advising of—

(a) the start date of the licenced activities relating to Work No. 5B or Work No. 8; and

(b) the expected vessel routes from the construction ports to the relevant location,

and copies of all notices must be provided to MMO Licensing Team, TH, MCA and the United Kingdom Hydrographic Office within five days as soon as reasonably practicable and no later than 24 hours after the issue of such notice.

(9) The relevant undertaker must notify the United Kingdom Hydrographic Office of—

(a) the commencement (within ten days of the date of commencement) of the licensed activities; and

(b) progress and completion of construction (within ten days of the date of completion of construction) of the licensed activities,

in order that all necessary amendments to nautical charts are made. The relevant undertaker must send a copy of any notification issued to the MMO as soon as reasonably practicable and no later than 24 hours after the issue of such notice.

(10) In case of material damage to, or destruction or decay of, the authorised development seaward of MHWS or any part thereof, the relevant undertaker must as soon as possible and no later than 24 hours following the relevant undertaker becoming aware of any such damage, destruction or decay, notify the MMO, MCA, Trinity House, Kingfisher Information Service of Seafish and the United Kingdom Hydrographic Office.

(11) In case of exposure of pipelines on or above the seabed, the relevant undertaker must, within three working days following identification of a cable exposure, notify mariners by issuing a notice to mariners and by informing Kingfisher Information Service of Seafish of the location and extent of exposure, and no later than five days after the date of issue of such notice the relevant undertaker must send a copy of that notice to MMO, MCA, Trinity House, and the United Kingdom Hydrographic Office.

Pre-construction

11.—(1) The relevant undertaker must submit a sediment sampling plan to the MMO for approval following consultation with the Environment Agency) at least six months prior to the commencement of dredging activities.

(2) The sediment sampling and analysis must be undertaken—

(a) in accordance with the sediment sampling plan approved by the MMO pursuant to sub-paragraph (1); and

(b) by a laboratory which has been validated by the MMO for sediment analysis to inform marine licence applications.

(3) Details of the sediment sampling and analysis undertaken pursuant to sub-paragraph (2) must be submitted to the MMO at least 6 weeks prior to the commencement of dredging activities.

(4) No dredging and disposal activities may be undertaken until the details of sediment sampling and analysis submitted pursuant to sub-paragraph (3) have been approved by the MMO in writing (following consultation with the Environment Agency).

12.—(1) The relevant undertaker must submit a CEMP covering the period of construction to include details of—

(a) a marine pollution contingency plan to address the risks, methods and procedures to deal with any spills and collision incidents of the authorised development in relation to all activities to be carried out;

(b) a biosecurity plan detailing how risk of the introduction and spread of invasive non-native species will be minimised;

(c) waste management and disposal arrangements; and

(d) the appointment and responsibilities of a fisheries liaison officer.

(2) The CEMP must be submitted to the MMO for approval in writing at least three months prior to the commencement of the licensed activities or part of the licensed activities.

(3) The CEMP submitted pursuant to sub-paragraph (2) must be in accordance with the framework construction environmental management plan.

(4) The licensed activities must be carried out in accordance with the CEMP approved pursuant to sub-paragraph (2) unless otherwise agreed in writing with the MMO.

13.—(1) A marine method statement must be submitted to the MMO at least three months prior to the proposed commencement of the licensed activities or part of the licenced activities.

(2) A marine method statement submitted pursuant to sub-paragraph (1) for licensed activities related to Work No. 5B must include details of—

(a) methods of dredging to be employed and associated disposal arrangements;

(b) the micro-bored tunnel installation and methodology;

(c) the discharge head installation technique and methodology;

(d) rock armour specification, provenance and installation technique; and

(e) an indicative programme for the delivery of the licensed activities.

(3) A method statement submitted pursuant to sub-paragraph (1) for licensed activities related to Work No. 8 must include details of—

(a) the pipeline installation technique and methodology; and

(b) an indicative programme for the delivery of the licensable activities.

(4) A marine method statement submitted pursuant to sub-paragraph (1) must—

(a) only include details of the licensed activities in so far as they are required; and

(b) be scaled to correspond to the final requirements of the authorised development.

(5) No part of the licensed activities may commence until the marine method statement for that part has been approved in writing by the MMO.

(6) A marine method statement approved pursuant to sub-paragraph (6)(5) may be amended from time to time subject to approval in writing from the MMO.

(7) The licensed activities must be carried out in accordance with the marine method statement approved pursuant to sub-paragraphs (6) and (7).

Reporting of engaged agents, contractors and vessels

14.—(1) The relevant undertaker must notify the MMO in writing of any agents, contractors or subcontractors (including their name, address and company number if applicable) that will carry on any licensed activity listed in this licence on behalf of the relevant undertaker.

(2) A notification pursuant to sub-paragraph (1) must—

(a) include the name, address and company number if applicable of any agent, contractor or sub-contractor; and

(b) details of any vessel being used to carry on any licensed activity listed in this licence on behalf of the relevant undertaker including the master's name, vessel type, vessel IMO number and vessel owner or operating company (including company number if applicable); and

(c) must be provided no less than 24 hours before the commencement of the licensed activity.

(3) Any changes to the name or function of the specified agent, contractor or sub-contractor, or details or functions of the specified vessel, as provided in accordance with sub-paragraph (1) must be notified to the MMO in writing no less than 24 hours before the agent, contract or sub-contractor carries out a licensed activity.

Written scheme of archaeological investigation

15.—(1) The licensed activities, or any part of the licensed activities, must not commence unless a written scheme of archaeological investigation has been submitted to and approved in writing by the MMO following consultation with Historic England.

(2) A written scheme of archaeological investigation submitted pursuant to sub-paragraph (1) must include—

(a) details of responsibilities of the relevant undertaker, archaeological consultant and contractor where required and appropriate;

(b) archaeological analysis of survey data, and timetable for reporting, which is to be submitted to the MMO;

(c) details of the measures to be taken to protect, record or preserve any significant archaeological features that may be found and must set out a process for how unexpected

finds will be dealt with which must be in accordance with the measures in the framework construction environmental management plan;

(d) delivery of any mitigation including the use of archaeological construction exclusion zones in agreement with the MMO;

(e) a reporting and recording protocol, including reporting of any wreck or wreck material during construction, operation and decommissioning of the authorised development; and

(f) a geoarchaeological assessment that determines the extent to which any deposits of paleoenvironmental features exist.

(3) Unless otherwise agreed in writing the written scheme of archaeological investigation should be implemented as approved.

Construction, Operation and Maintenance

16. The relevant undertaker must ensure that any coatings and treatments used are approved by the Health and Safety Executive as suitable for use in the marine environment and are used in accordance with the Pollution Prevention for Businesses guidelines.

17. The storage, handling, transport and use of fuels, lubricants, chemicals and other substances must be undertaken so as to prevent releases into the marine environment including bunding of 110% of the total volume of all reservoirs and containers.

18. The relevant undertaker must—

(a) not discharge waste concrete slurry or wash water from concrete or cement into the marine environment; and

(b) site concrete and cement mixing and washing areas at least 10 metres from the River Tees or surface water drain to minimise the risk of run off entering the marine environment.

19. During licensed activities all wastes must be stored in designated areas that are isolated from surface water drains, open water and bunded to contain any spillage.

20.—(1) Vibratory or drilled “pin” piling must be used as standard, with percussive piling only used if required to drive a pile to its design depth and where the relevant undertaker has established, following the carrying out of a desk top study informed by appropriate survey information, that vibratory or drilled “pin” piling would be ineffective.

(2) Where percussive piling is established to be necessary in accordance with sub-paragraph (1)—

(a) soft-start procedures must be used to ensure incremental increase in pile power over a set time period until full operational power is achieved;

(b) the soft-start duration must be a period of not less than 20 minutes; and

(c) should piling cease for a period greater than 10 minutes, then the soft start procedure must be repeated.

21.—(1) In the event that any rock material is misplaced or lost below MHWS, the relevant undertaker must report the loss to the MMO Local Enforcement Office and MMO Marine Licensing Team using the dropped object procedure and via return of a completed Marine Licence Dropped Incident Report (MLDIR1), as soon as possible, and in any event within 48 hours of becoming aware of an incident and if the MMO reasonably considers such material to constitute a navigation or environmental hazard (dependent on the size and nature of the material) the relevant undertaker must use reasonable endeavours to locate the material and recover it.

(2) On receipt of the MLDIR1, the MMO may require, acting reasonably, the relevant undertaker to carry out relevant surveys. The relevant undertaker must carry out surveys in accordance with the MMO’s reasonable requirements and must report the results of such surveys to the MMO;

(3) On receipt of such survey results, the MMO may, acting reasonably, require the relevant undertaker to remove specific obstructions from the seabed. The relevant undertaker must carry

out removals of specific obstructions from the seabed in accordance with the MMO's reasonable requirements and at its own expense;

(4) Where the relevant undertaker has been unable to locate or recover material pursuant to discharging its duties under sub-paragraphs (1) to (3) it must demonstrate to the MMO that reasonable attempts have been made to locate, remove or move any such material.

UXO Clearance

22.—(1) No removal or detonation of UXO can take place until a UXO clearance methodology and marine mammal mitigation protocol has been submitted to and approved in writing by the MMO (following consultation with the Environment Agency and Natural England).

(2) The UXO clearance methodology and marine mammal mitigation protocol must be submitted to the MMO no later than six months prior to the date on which it is intended for UXO clearance activities to begin (unless otherwise agreed in writing by the MMO).

(3) The UXO clearance methodology submitted pursuant to sub-paragraph (1) must be based on the nature, location and size of UXO or magnetic anomalies that have been identified and include—

(a) a methodology for the clearance of magnetic anomalies or otherwise which are deemed a UXO risk;

(b) information to demonstrate how the best available evidence and technology has been taken into account in formulating the methodology;

(c) a debris removal plan;

(d) a plan highlighting the area(s) within which clearance activities are proposed;

(e) details of engagement with other local legitimate users of the sea; and

(f) a programme of works.

(4) The marine mammal mitigation protocol submitted pursuant to sub-paragraph (1) must include details of the measures to prevent auditory or other injury to marine mammals following current best practice as advised by the relevant statutory nature conservation bodies.

(5) The removal or detonation of UXO must be undertaken in accordance with UXO clearance methodology and marine mammal mitigation protocol approved pursuant to sub-paragraph (1).

(6) Subject to sub-paragraph (7) a UXO clearance close out report must be submitted in writing to the MMO and the relevant statutory nature conservation body within three months following the end of the UXO clearance activity and must include the following for each detonation undertaken—

(a) co-ordinates, depth, current speed, charge utilised and the date and time of each detonation; and

(b) whether any mitigation was deployed, including feedback on practicalities of deployment of equipment and efficacy of the mitigation where reasonably practicable, or justification if this information is not available.

(7) Should there be more than one UXO clearance activity, the report required under sub-paragraph (6) will be provided at intervals agreed in writing with the MMO.

Post Construction

23. The relevant undertaker must ensure that any equipment, temporary structures, waste and debris associated with the licensed activities are removed within six weeks of completion of the licensed activity.

Disposal

24.—(1) The relevant undertaker must inform the MMO of the location and quantities of material disposed of each month under this licence.

(2) The information submitted pursuant to sub-paragraph (1) must be submitted to the MMO by 15 February each year for the months August to January inclusive, and by 15 August each year for the months February to July inclusive.

25. The relevant undertaker must ensure that only inert material of natural origin, produced during dredging is disposed of within the extent of the Order limits seaward of MHWS, within the disposal site TY150, TY160 (or any other disposal site approved in writing by the MMO), and that any other materials are screened out before disposal.

26. The material to be disposed of within the disposal site must be placed within the boundaries of the disposal site(s) specified within Table 12 in Part 1 of this licence.

27. The volume of material for disposal at each of the disposal sites specified within Table 12 in Part 1 of this licence must not exceed 500m3.

Provision of Information

28.—(1) Should the relevant undertaker become aware that any of the information on which the granting of this licence was based was materially false or misleading, the relevant undertaker must notify the MMO in writing as soon as is reasonably practicable.

(2) A notification submitted pursuant to sub-paragraph (1) must explain what information was materially false or misleading and include the correct information.

Amendments to plans etc.

29. With respect to any condition which requires the licensed activities to be carried out in accordance with the plans, protocols or statements approved under this licence, the plans, protocols or statements so approved are taken to include amendments that may be approved in writing by the MMO subsequent to the first approval of those plans, protocols or statements provided it has been demonstrated to the satisfaction of the MMO that the subject matter of the relevant amendments do not give rise to any materially new or materially different environmental effects to those assessed in the environmental information.

Maximum parameters

30. Work No. 5B and Work No. 8 are not authorised to the extent that they give rise to environmental effects that are materially new or different to those identified based on the maximum parameters set out in paragraph 9.3.28 of Chapter 9 of the environmental statement.

Safety Management

31.—(1) Subject to sub-paragraph (4), no part of the licensed activities may commence until a marine safety management system for that part has been submitted to and approved in writing by the MMO.

(2) The marine safety management system approved pursuant to sub-paragraph (1) must be in accordance with the Port Marine Safety Code and Guide to Good Practice on Port Marine Operations (or such documents as may replace them).

(3) The licensed activities must be carried out in accordance with the marine safety management system approved pursuant to sub-paragraph (1).

(4) Sub-paragraphs (1) to (3) do not apply to any part of the licensed activities where evidence has been submitted to and approved in writing by the MMO that there is an existing marine safety management system in place and which will apply to the relevant part of the licensed activities.

Provision of Information

32.—(1) Only when driven or part-driven pile foundations or detonation of explosives are proposed to be used as part of the foundation installation the relevant undertaker must provide the following information to the Marine Noise Registry—

(a) prior to the commencement of the licenced activities, information on the expected location, start and end dates of impact pile driving / detonation of explosives to satisfy the Marine Noise Registry's Forward Look requirements;

(b) within 12 weeks of completion of impact pile driving / detonation of explosives, information on the locations and dates of impact pile driving / detonation of explosives to satisfy the Marine Noise Registry's Close Out requirements.

(2) The relevant undertaker must notify the MMO of the successful submission of Forward Look or Close Out data pursuant to sub-paragraph (1) above within 7 days of the submission.

(3) For the purpose of this condition—

(a) "Marine Noise Registry" means the database developed and maintained by JNCC on behalf of Defra to record the spatial and temporal distribution of impulsive noise generating activities in UK seas;

(b) "Forward Look" and "Close Out" requirements are as set out in the UK Marine Noise Registry Information Document Version 1 (July 2015) or any updated information document;

(c) "JNCC" means the Joint Nature Conservation Committee.

SCHEDULE 12

Article 41

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part—

"alternative apparatus" means alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means—

(a) in the case of a utility undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant (as defined in the 1989 Act), belonging to or maintained by that utility undertaker;

(b) in the case of a utility undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a utility undertaker within paragraph (c) of the definition of that term—

(i) mains, pipes or other apparatus belonging to or maintained by that utility undertaker for the purposes of water supply; and

(ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A (agreement to adopt water main or service pipe at future date) of the Water Industry Act 1991;

(d) in the case of a utility undertaker within paragraph (d) of the definition of that term—

(i) any drain or works vested in the utility undertaker under the Water Industry Act 1991;

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act, and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; and

(e) any other mains, pipelines or cables that are not the subject of the protective provisions in Parts 2 to 28 of this Schedule;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

"utility undertaker" means—

(a) any licence holder within the meaning of Part 1 (electricity supply) of the 1989 Act;

(b) a gas transporter within the meaning of Part 1 (gas supply) of the 1986 Act;

(c) water undertaker within the meaning of Part 2 of the Water Industry Act 1991;

(d) a sewerage undertaker within the meaning of Part 2 of the Water Industry Act 1991; and

(e) an owner or operator of apparatus within paragraph (e) of the definition of that term,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained, and only where such owner or operator is not the subject of any of the protective provisions in Parts 2 to 28 of this Schedule.

Precedence of the 1991 Act in respect of apparatus in the streets

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

4. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), a utility undertaker is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition etc. except by agreement

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of a utility undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to the utility undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the utility undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to the utility undertaker 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 Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (1) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a utility undertaker the reasonable expenses incurred by that utility undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

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

(3) If in accordance with the provisions of this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the utility undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 6(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a utility undertaker in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 6(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

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

(b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker, 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 a utility undertaker, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by a utility undertaker.

(3) A utility undertaker 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) A utility undertaker 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 10 applies. If requested to do so by the undertaker, a utility undertaker must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 10 for claims reasonably incurred by a utility undertaker.

Enactments and agreements

11. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaking in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part—

"the 2003 Act" means the Communications Act 2003;

"electronic communications apparatus" has the same meaning as set out in paragraph 5 of the electronic communications code;

"the electronic communications code" has the same meaning as set out in section 106 (application of the electronic communications code) of the 2003 Act;

"infrastructure system" has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7 of that code;

"network" means—

(a) so much of a network or infrastructure system provided by an operator as is not excluded from the application of the electronic communications code by a direction under section 106(3)(a) of the 2003 Act; and

(b) a network which the Secretary of State is providing or proposing to provide; and "operator" means a person in whose case the electronic communications code is applied by a direction under section 106(3)(a) of the 2003 Act and who is an operator of a network; and

"operator" means a person in whose case the electronic communications code is applied by a direction under section 106(3)(a) of the 2003 Act and who is an operator of a network.

13. The exercise of the powers of article 33 (statutory undertakers) is subject to Part 10 of Schedule 3A (the electronic communications code) of the 2003 Act.

14.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

(c) the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, 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 an operator, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by an operator.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand 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 operator 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 14 applies. If requested to do so by the undertaker, the operator must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 14 for claims reasonably incurred by the operator.

(5) Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).

15. This Part of this Schedule does not apply to—

(a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

16. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION AS ELECTRICITY UNDERTAKER

Application

17. For the protection of National Grid as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Grid.

Interpretation

18. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Grid to enable National Grid to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any electric lines or electrical plant as defined in the 1989 Act, belonging to or maintained by National Grid, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Grid for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2 of this Order and commencement is construed to have the same meaning save that for the purposes of this Part of this Schedule only the term commence and commencement includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Grid including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Grid" means National Grid Electricity Transmission Plc (Company Number 2366977) whose registered office is at 1-3 Strand, London, WC2N 5EH or any successor as a licence holder within the meaning of Part 1 of the 1989 Act;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed;

"specified works" means any of the authorised development or activities 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 22(2) or otherwise; and/or

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 22(2) or otherwise; and/or

(c) activity that is referred to in development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines";

"undertaker" means the undertaker as defined in article 2(1) of this Order.

On Street Apparatus

19. Except for paragraphs 20 (apparatus of National Grid in streets subject to temporary stopping up), 24 (retained apparatus), 25 (expenses) and 26 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Grid, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Grid in streets subject to temporary stopping up

20. Notwithstanding the temporary stopping up or diversion of any street under the powers of article 13 (temporary stopping up of streets, public rights of way and access land), National Grid will be at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

21. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Grid.

Removal of apparatus

22.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Grid to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Grid 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 National Grid advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Grid 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 National Grid to its satisfaction (taking into account paragraph 23(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, National Grid 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 in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Grid to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Grid 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 Part of this Schedule.

Facilities and rights for alternative apparatus

23.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Grid 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 National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Grid.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Grid under sub-paragraph (1) above 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 National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 30 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

24.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Grid a plan of the works to be executed and seek from National Grid details of the underground extent of their electricity tower foundations.

(2) In relation to works which will or may be situated on, over, under or within (i) 15 metres measured in any direction of any apparatus, or (ii) involve embankment works within 15 metres of any apparatus, the plan to be submitted to National Grid under sub-paragraph (1) must include a method statement and 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;

(f) any intended maintenance regimes; and

(g) an assessment of risks of rise of earth issues.

(3) In relation to any works which will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any two or more electricity towers, the plan to be submitted under sub-paragraph (1) must, in addition to the matters set out in sub-paragraph (2), include a method statement describing—

(a) details of any cable trench design including route, dimensions, clearance to pylon foundations;

(b) demonstration that pylon foundations will not be affected prior to, during and post construction;

(c) details of load bearing capacities of trenches;

(d) details of any cable installation methodology including access arrangements, jointing bays and backfill methodology;

(e) a written management plan for high voltage hazard during construction and ongoing maintenance of any cable route;

(f) written details of the operations and maintenance regime for any cable, including frequency and method of access;

(g) assessment of earth rise potential if reasonably required by National Grid's engineers; and

(h) evidence that trench bearing capacity is to be designed to support overhead line construction traffic of at least 26 tonnes in weight.

(4) The undertaker must not commence any works to which sub-paragraph (2) or (3) apply until National Grid has given written approval of the plan so submitted.

(5) Any approval of National Grid required under sub-paragraph (4)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and

(b) must not be unreasonably withheld.

(6) In relation to any work to which sub-paragraph (2) or (3) apply, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage, for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(7) Works executed under sub-paragraph (2) or (3) must be executed in accordance with the plan, submitted under sub-paragraph (1) or as relevant sub-paragraph (6), as approved or as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (6) or (8) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Grid will be entitled to watch and inspect the execution of those works.

(8) Where National Grid 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 as part of the plan approved pursuant to this paragraph, must be carried out to National Grid's satisfaction prior to the commencement of any specified works for which protective works are required and National Grid must give notice of its requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(9) If National Grid in accordance with sub-paragraph (6) or (8) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 17 to 19, 22 and 23 apply as if the removal of the apparatus had been required by the undertaker under paragraph 22(2).

(10) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the authorised development, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(11) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out "emergency works" as defined in Part 3 of the 1991 Act but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (12) at all times.

(12) At all times when carrying out any works authorised under the Order, the undertaker must comply with National Grid's policies for development near overhead lines EN43-8 and HSE's guidance note 6 "Avoidance of Danger from Overhead Lines".

Expenses

25.—(1) Save where otherwise agreed in writing between National Grid and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably and properly incurred by National Grid in, or in connection with, 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 consequence of the execution of any authorised development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Grid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Grid as a consequence of National Grid—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 22(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Grid;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) 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 any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 30 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Grid in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

26.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably and properly incurred by National Grid in making good such damage or restoring the supply; and

(b) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Grid, by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as aforesaid other than arising from any default of National Grid.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of sub-paragraph (2) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

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

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Grid, its officers, employees, servants, contractors or agents; and

(b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Grid as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 26.

(4) National Grid must give the undertaker reasonable notice of any third party claim or demand and no settlement, admission of liability, or compromise or demand 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.

(5) National Grid 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 26 applies where it is within National Grid's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Grid's control. If requested to do so by the undertaker, National Grid 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) National Grid must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

Enactments and agreements

27. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Grid and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

28.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Grid requires the removal of apparatus under paragraph 22(2) or National Grid makes requirements for the protection or alteration of apparatus under paragraph 24, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of

National Grid's undertaking and National Grid must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Grid's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

29. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

30. Save for differences or disputes arising under paragraphs 22(2), 22(4), 23(1) and 24 any difference or dispute arising between the undertaker and National Grid under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 47 (arbitration).

Notices

31. Notwithstanding article 46 (service of notices), any plans submitted to National Grid by the undertaker pursuant to paragraph 24 must be submitted using the LSBUD system or such other address as National Grid may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 4

FOR THE PROTECTION OF NATIONAL GAS TRANSMISSION PLC AS GAS UNDERTAKER

Application

32. For the protection of National Gas as referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and National Gas.

Interpretation

33. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the satisfaction of National Gas to enable National Gas to fulfil its statutory functions in a manner no less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by National Gas for the purposes of gas supply, together with any replacement apparatus and such other apparatus constructed pursuant to the Order that becomes operational apparatus of National Gas for the purposes of transmission, distribution and/or supply and includes any structure in which apparatus is or will be lodged or which gives or will give access to apparatus;

"authorised development" has the same meaning as in article 2 (interpretation) of this Order and includes any associated development authorised by the Order and (unless otherwise specified) for the purposes of this Part of this Schedule includes the use and maintenance of the authorised development and construction of any works authorised by this Schedule;

"commence" and "commencement" has the same meaning as in article 2 (interpretation) of this Order and commencement is construed to have the same meaning save that for the

purposes of this Part of this Schedule only the term commence and commencement includes any below ground surveys, monitoring, ground work operations or the receipt and erection of construction plant and equipment within 15 metres of any apparatus;

"functions" includes powers and duties;

"ground mitigation scheme" means a scheme approved by National Gas (such approval not to be unreasonably withheld or delayed) setting out the necessary mitigation measures (if any) for a ground subsidence event;

"ground monitoring scheme" means a scheme for monitoring ground subsidence which sets out the apparatus which is to be subject to such monitoring, the extent of land to be monitored, the manner in which ground levels are to be monitored, the timescales of any monitoring activities and the extent of ground subsidence which, if exceeded, will require the undertaker to submit for National Gas's approval a ground mitigation scheme;

"ground subsidence event" means any ground subsidence 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, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of National Gas including construct, use, repair, alter, inspect, renew or remove the apparatus;

"National Gas" means National Gas Transmission plc (Company Number 02006000) whose registered office is at National Grid House, Warwick Technology Park, Gallows Hill, Warwick, CV34 6DA or any successor as a gas transporter within the meaning of Part 1 of the 1986 Act;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe and assess the works to be executed; and

"specified works" means any of the authorised development or activities 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 37(2) or otherwise;

(b) may in any way adversely affect any apparatus the removal of which has not been required by the undertaker under paragraph 37(2) or otherwise; and/or

(c) includes any of the activities that are referred to in section 8 of T/SP/SSW/22 (National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties").

On Street Apparatus

34. Except for paragraphs 35 (apparatus of National Gas in streets subject to temporary stopping up), 39 (retained apparatus), 40 (expenses) and 41 (indemnity) of this Schedule which will apply in respect of the exercise of all or any powers under this Order affecting the rights and apparatus of National Gas, the other provisions of this Schedule do not apply to apparatus in respect of which the relations between the undertaker and National Gas are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus of National Gas in streets subject to temporary stopping up

35. Notwithstanding the temporary stopping up or diversion of any street under the powers of article 13 (temporary stopping up of streets, public rights of way and access land), National Gas will be at liberty at all times to take all necessary access across any such stopped up street and/or

to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

Protective works to buildings

36. The undertaker, in the case of the powers conferred by article 19 (protective works to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of National Gas.

Removal of apparatus

37.—(1) If, in the exercise of powers conferred by this Order, the undertaker acquires any interest in or possesses temporarily any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of National Gas to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of National Gas 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 National Gas advance written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order National Gas 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 National Gas to its satisfaction (taking into account paragraph 38(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, National Gas 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 assist the undertaker to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation must not extend to the requirement for National Gas to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of or land secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between National Gas and the undertaker.

(5) National Gas must, after the alternative apparatus to be provided or constructed has been agreed, and subject to a written diversion agreement having been entered into between the parties and the grant to National Gas 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 Part of this Schedule.

Facilities and rights for alternative apparatus

38.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for National Gas 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 National Gas and must be no less favourable on the whole to National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by National Gas.

(2) If the facilities and rights to be afforded by the undertaker and agreed with National Gas under subparagraph (1) above 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 National Gas than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject the matter will be referred to arbitration in accordance with paragraph 45 (arbitration) of this Part of this Schedule and the arbitrator may make such provision for the payment of compensation by the undertaker to National Gas as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

39.—(1) Not less than 56 days before the commencement of any specified works the undertaker must submit to National Gas a plan and, if reasonably required by National Gas, a ground monitoring scheme in respect of those works.

(2) The plan to be submitted to National Gas under sub-paragraph (1) must include a method statement and 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 etc;

(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.

(3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until National Gas has given written approval of the plan so submitted.

(4) Any approval of National Gas required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and

(b) must not be unreasonably withheld.

(5) In relation to any work to which sub-paragraphs (1) and/or (2) apply, National Gas may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against interference or risk of damage for the provision of protective works or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under sub-paragraphs (1) and (2) must be executed in accordance with the plan, submitted under sub-paragraph (2) or as relevant sub-paragraph (5), as approved or as amended from time to time by agreement between the undertaker and National Gas and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by National Gas for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and National Gas will be entitled to watch and inspect the execution of those works.

(7) Where National Gas 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 as part of the plan approved pursuant to this paragraph, must be carried out to National Gas's satisfaction prior to the commencement of any specified works for which protective works are required and National Gas must give notice of its

requirement for such works within 42 days of the date of submission of a plan pursuant to this paragraph (except in an emergency).

(8) If National Gas in accordance with sub-paragraph (4) or (6) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 32 to 34, 37 and 38 apply as if the removal of the apparatus had been required by the undertaker under paragraph 37(2).

(9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the specified works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph will apply to and in respect of the new plan.

(10) The undertaker will not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in Part 3 of the 1991 Act but in that case it must give to National Gas notice as soon as is reasonably practicable and a plan of those works and must comply with sub-paragraphs (5), (6) and (7) insofar as is reasonably practicable in the circumstances and comply with sub-paragraph (10) at all times;

(11) At all times when carrying out any works authorised under the Order National Gas must comply with National Gas's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Gas, High pressure Gas pipelines and associated installation requirements for third parties T/SP/SSW22" and HSE's "HS(~G)47 Avoiding Danger from underground services".

(12) As soon as reasonably practicable after any ground subsidence event attributable to the authorised development the undertaker shall implement an appropriate ground mitigation scheme save that National Gas retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and can recover any such costs in line with paragraph 40.

Expenses

40.—(1) Save where otherwise agreed in writing between National Gas and the undertaker and subject to the following provisions of this paragraph, the undertaker must pay to National Gas on demand all charges, costs and expenses reasonably and properly incurred by National Gas in, or in connection with, 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 consequence of the execution of any authorised development including without limitation—

(a) any costs reasonably incurred by or compensation properly paid by National Gas in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including without limitation all costs incurred by National Gas as a consequence of National Gas—

(i) using its own compulsory purchase powers to acquire any necessary rights under paragraph 37(3); or

(ii) exercising any compulsory purchase powers in the Order transferred to or benefitting National Gas;

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus, where no written diversion agreement is otherwise in place;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;

(f) 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 any such works referred to in this Part of this Schedule.

(2) There will be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 45 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to National Gas by virtue of sub-paragraph (1) will be reduced by the amount of that excess save to the extent that it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs will be borne by the undertaker.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus will not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole will be treated as if it also had been agreed or had been so determined.

(5) Any amount which apart from this sub-paragraph would be payable to National Gas in respect of works by virtue of sub-paragraph (1) will, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on National Gas any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

41.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development) or property of National Gas, or there is any interruption in any service provided, or in the supply of any goods, by National Gas, or National Gas becomes liable to pay any amount to any third party, the undertaker will—

(a) bear and pay on demand the cost reasonably and properly incurred by National Gas in making good such damage or restoring the supply; and

(b) indemnify National Gas for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from National Gas, by reason or in consequence of any such damage or interruption or National Gas becoming liable to any third party other than arising from any default of National Gas.

(2) The fact that any act or thing may have been done by National Gas on behalf of the undertaker or in accordance with a plan approved by National Gas or in accordance with any requirement of National Gas as a consequence of the authorised development or under its

supervision will not (unless sub-paragraph (3) applies), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless National Gas fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

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

(a) any damage or interruption to the extent that it is attributable to the neglect or default of National Gas, its officers, employees, servants, contractors or agents; and

(b) any part of the authorised development and/or any other works authorised by this Part of this Schedule carried out by National Gas as an assignee, transferee or lessee of the undertaker with the benefit of this Order pursuant to section 156 of the Planning Act 2008 or article 8 (consent to transfer benefit of the Order) subject to the proviso that once such works become apparatus ("new apparatus"), any authorised development yet to be executed and not falling within this sub-section 3(b) will be subject to the full terms of this Part of this Schedule including this paragraph 41.

(4) National Gas must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability, compromise or demand 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.

(5) National Gas 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 41 applies where it is within National Gas's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of National Gas's control. If requested to do so by the undertaker, National Gas 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) National Gas must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

Enactments and agreements

42. Save to the extent provided for to the contrary elsewhere in this Part of this Schedule or by agreement in writing between National Gas and the undertaker, nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Gas in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

43.—(1) Where in consequence of the proposed construction of any part of the authorised development, the undertaker or National Gas requires the removal of apparatus under paragraph 37(2) or National Gas makes requirements for the protection or alteration of apparatus under paragraph 39, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of National Gas's undertaking and National Gas must use its best endeavours to co-operate with the undertaker for that purpose.

(2) For the avoidance of doubt whenever National Gas's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

Access

44. If in consequence of the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such

apparatus as will enable National Gas to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

45. Save for differences or disputes arising under paragraphs 37(2), 37(4), 38(1) and 39 any difference or dispute arising between the undertaker and National Gas under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and National Gas, be determined by arbitration in accordance with article 47 (arbitration).

Notices

46. Notwithstanding article 46 (service of notices), any plans submitted to National Gas by the undertaker pursuant to paragraph 39 must be submitted using the LSBUD system or such other address as National Gas may from time to time appoint instead for that purpose and notify to the undertaker in writing.

PART 5

FOR THE PROTECTION OF AIR PRODUCTS PLC

47. For the protection of Air Products the following provisions have effect, unless otherwise agreed in writing between the undertaker and Air Products.

48. In this Part—

"Air Products" means Air Products Public Limited Company (company number 00103881) whose registered address is Hersham Place Technology Park, Molesey Road, Walton On Thames, Surrey KT12 4RZ;

"alternative apparatus" means alternative apparatus adequate to enable Air Products to fulfil its contractual obligations in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by Air Products for the purposes of gas supply; and

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land.

Precedence of the 1991 Act in respect of apparatus in streets

49. This Part does not apply to apparatus in respect of which the relations between the undertaker and Air Products are regulated by the provisions of Part 3 (Street works in England and Wales) of the 1991 Act.

50. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), Air Products is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

No acquisition etc. except by agreement

51. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Removal of apparatus

52.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Air Products' apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of Air Products to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Air Products in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Air Products written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Air Products reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Air Products the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Air Products must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Air Products and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) Air Products must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to Air Products 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 Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to Air Products that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by Air Products, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Air Products.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

53.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Air Products facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Air Products or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Air Products than the

facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Air Products as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

54.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 52(2), the undertaker must submit to Air Products a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Air Products for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Air Products is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Air Products under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Air Products in accordance with sub-paragraph (1) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 47 to 53 apply as if the removal of the apparatus had been required by the undertaker under paragraph 52(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Air Products notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Expenses and costs

55.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Air Products the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 52(2).

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

(3) If in accordance with the provisions of this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the

amount which apart from this sub-paragraph would be payable to Air Products by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 52(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Air Products in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Air Products any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

56.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 52(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Air Products, or there is any interruption in any service provided, or in the supply of any goods, by Air Products, the undertaker must—

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

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

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

(3) Air Products 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) Air Products 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 56 applies. If requested to do so by the undertaker, Air Products must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 56 for claims reasonably incurred by Air Products.

Enactments and agreements

57. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Air Products in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

PART 6

FOR THE PROTECTION OF CATS NORTH SEA LIMITED

58. For the protection of CATS, the following provisions have effect, unless otherwise agreed in writing between the undertaker and CATS.

59. In this Part of this Schedule—

"CATS" means CATS North Sea Limited (Company number 09250798) whose registered address is Suite 17th Floor, 50 Broadway, London, United Kingdom, SW1H 0BL and any successor in title or function to the CATS pipelines;

"CATS pipeline(s)" means the following pipelines, owned by CATS and operated by Wood UK Ltd—

(a) The 36″ CATS pipeline (PL-774) transporting high pressure natural gas 411.84km (404km subsea, 7.84km onshore) from the CATS Riser Platform, located in the Central Graben Development of the North Sea, to processing facilities at the CATS Terminal in Teesside;

(b) Onshore 6″ Condensate export pipeline (PL-937) transporting natural gas condensate 2.87km from the CATS Terminal to Sabic, North Tees plant;

(c) Onshore 6″ Condensate export pipeline (PL-938) transporting natural gas condensate 2.45km from the CATS Terminal to the Navigator Terminals storage site;

(d) Onshore 6″ Propane pipeline (CAT-Pipeline-04) transporting Propane 1.09km from the CATS Terminal to ConocoPhillips storage site;

(e) CAT-Pipeline-05 6″ Butane pipeline transporting butane 1.09km from the CATS Terminal to Conoco Phillips storage site;

"CATS requirements" means the requirements applicable for works undertaken within 50 metres of the CATS pipelines as set out in the—

(a) CATS Wayleaves Guidance for Landowners and Third Parties, Doc Number: CAT-PPI-PRC-019;

(b) CATS Conditions and Restrictions for Work Activities in Close Proximity to CATS Pipelines, Doc Number: CAT-PPI-PRC-020; and

(c) CATS Procedures for the Excavation and Backfill of CATS Pipelines, Doc Number: CAT-PPI-PRC-021,

or any updates or amendments thereto as notified to the undertaker in writing; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 60.

Consent under this Part

60. Before commencing any part of the authorised development within 50 metres of the CATS pipelines, the undertaker must submit to CATS the works details for the proposed works and such further particulars as CATS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require in line with the CATS requirements.

61. No works comprising any part of the authorised development within 50 metres of the CATS pipelines are to be commenced until the works details in respect of those works submitted under paragraph 60 have been approved by CATS.

62.—(1) Any approval of CATS required under paragraph 61 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CATS may require to be made having regard to the CATS requirements.

(2) Where CATS consider that the authorised development will adversely affect the safe operation of the CATS pipelines it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of CATS that the authorised development will not adversely affect the safe operation of the CATS pipeline.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 61 and any requirements imposed on the approval under sub-paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 70 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 70.

63. Where formal consent is required under the CATS requirements for works within the wayleave of the CATS pipelines (between 3.5 metres to 7.5 metres either side of the pipeline, depending on location), approval given by CATS under paragraph 61 constitutes formal consent for the purposes of the CATS requirements.

Compliance with the CATS requirements

64. In undertaking any works or exercising any rights within 50 metres of the CATS pipelines, the undertaker must comply with such conditions, requirements or regulations as are set out in the CATS requirements.

65. No explosives for blasting are to be used within 400 metres of any part of the CATS pipeline(s) or associated installations, until the details in respect of those works have been submitted to and approved by CATS, such approval not to be unreasonably withheld or delayed and shall be deemed to have been given if no response is received from CATS within 60 days of a request having been made by the undertaker.

Monitoring for damage to pipelines

66.—(1) When undertaking any works or exercising any rights within 50 metres of the CATS pipelines, the undertaker must monitor the CATS pipelines to establish whether damage has occurred.

(2) Where any damage occurs to the CATS pipelines as a result of the works, the undertaker must immediately cease all work in the vicinity of the damage and must notify CATS to enable repairs to be carried out to the reasonable satisfaction of CATS.

(3) If damage has occurred to the CATS pipelines as a result of the works the undertaker will, at the request and election of CATS—

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

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

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

(5) Following the completion of any works within 50 metres of the CATS pipelines if damage is found to have occurred to any of the CATS pipelines as a result of the relevant works, sub-paragraphs (2) to (4) of this paragraph apply to that damage.

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

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

(2) Where there is leakage or escape, the undertaker must immediately—

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

(b) inform CATS;

(c) prevent any approach by the public;

(d) shut down any machinery and other sources of ignition within at least 350 metres from the leakage; and

(e) assist emergency services as may be requested.

Indemnity

68.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 60, any damage is caused to the CATS Pipelines, or there is any interruption in any service provided, or in the supply of any goods, by CATS, the undertaker must—

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

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

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

(3) CATS 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) CATS 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 68 applies. If requested to do so by the undertaker, CATS must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 68 for claims reasonably incurred by CATS.

Costs

69.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CATS the reasonable expenses incurred by them in, or in connection with, the inspection, removal, alteration or protection of any CATS pipeline which may be required in consequence of the execution of any such works referred to or approved under this Part, including without limitation—

(a) authorisation of works details in accordance with paragraphs 60 to 63;

(b) the engagement of an engineer and their observation of the authorised works affecting the CATS pipelines and the provision of safety advice in accordance with the CATS requirements; and

(c) any reasonable costs incurred by CATS in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary.

(2) Prior to incurring any fees, costs, charges or expenses associated with the activities outlined in sub-paragraph (1), CATS must give prior written notice to the undertaker of the activity or activities to be undertaken and an estimate of the fees, costs, charges or expenses to be incurred.

(3) Any fees, costs, charges and expenses reasonably incurred by the operating partner of the CATS pipeline (who for the time being is Wood Group UK Limited) shall not be notifiable costs in terms of paragraph (2).

Arbitration

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

PART 7

FOR THE PROTECTION OF CF FERTILISERS UK LIMITED

71. For the protection of CF Fertilisers, the following provisions have effect, unless otherwise agreed in writing between the undertaker and CF Fertilisers.

72. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable CF Fertilisers to undertake its operations on the CF Fertilisers site in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to or maintained by CF Fertilisers;

"CF Fertilisers" means CF Fertilisers UK Limited (company number 03455690) whose registered address is Head Office Building, Ince, Chester, Cheshire CH2 4LB and any successor in title to the CF Fertilisers site;

"the CF Fertilisers site" means the land in between Haverton Hill Road and Belasis Avenue, adjacent to the Order limits and which is owned and operated by CF Fertilisers;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"the proposed CF pipeline" the proposed pipeline to service the CF Fertilisers site and which is to be owned or for the benefit of CF Fertilisers and to be used for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipeline as are specified by section 65(2) of the Pipe-lines Act 1962 (meaning of "pipe-line");

"the respective authorised developments" means the authorised development and the proposed CF pipeline respectively; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph79.

Precedence of the 1991 Act in respect of apparatus in streets

73. This Part does not apply to apparatus in respect of which the relations between the undertaker and CF Fertilisers are regulated by the provisions of Part 3 (Street works in England and Wales) of the 1991 Act.

74. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), CF Fertilisers is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

Removal of apparatus/access

75.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that apparatus is relocated or diverted, that apparatus must not be removed under this Part, and any right of CF Fertilisers to maintain that apparatus in that land and to gain access to it must not be extinguished (or otherwise made less advantageous), until alternative apparatus (or alternative rights as the case may be) has been constructed (or granted) and is in operation, and access to it has been provided, to the reasonable satisfaction of CF Fertilisers in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to CF Fertilisers written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order CF Fertilisers reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to CF Fertilisers the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, CF Fertilisers must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between CF Fertilisers and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) CF Fertilisers must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to CF Fertilisers 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 Part.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to CF Fertilisers that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by CF Fertilisers, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of CF Fertilisers.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

76.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to CF Fertilisers facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted—

(a) upon such terms and conditions as may be agreed between the undertaker and CF Fertilisers or in default of agreement settled by arbitration in accordance with article 47; and

(b) in compliance with all health and safety, environmental and regulatory requirements and relevant industry standards.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to CF Fertilisers than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to CF Fertilisers as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained Apparatus

77.—(1) Not less than 28 days before starting the execution of any works comprised in the authorised development that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 76(2), the undertaker must submit to CF Fertilisers the works details for the proposed works and such further particulars as CF Fertilisers may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No works referred to in sub-paragraph (1) are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by CF Fertilisers.

(3) Any approval of CF Fertilisers required under sub-paragraph (1) must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and CF Fertilisers is entitled to watch and inspect the execution of those works.

(4) The works referred to in sub-paragraph (1) must be carried out in accordance with the works details approved under sub-paragraph (2) and any requirements imposed on the approval under sub-paragraph (3).

(5) Where there has been a reference to an arbitrator in accordance with paragraph 87 and the arbitrator gives approval for the works details, the works referred to in sub-paragraph (1) must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 87.

(6) If CF Fertilisers in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by the undertaker under paragraph 76(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to CF Fertilisers notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

Consent under this Part

78. Paragraphs 79 to 82 of this Part only apply where prior to the undertaker commencing any part of Work Numbers 2A or 6 CF Fertilisers has begun (but not completed) construction of the proposed CF pipeline anywhere within the Order limits.

79. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the proposed CF pipeline or access to it, the undertaker must submit to CF Fertilisers the works details for the proposed works and such further particulars as

CF Fertilisers may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

80. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the proposed CF pipeline or access to it are to be commenced until the works details in respect of those works submitted under paragraph 79 have been approved by CF Fertilisers.

81. Any approval of CF Fertilisers required under paragraph 80 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as CF Fertilisers may require to be made for the routing, construction, safety, operational viability and maintenance of the proposed CF pipeline.

82.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 80 and any requirements imposed on the approval under paragraph 81.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 87 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 87.

(3) Nothing in paragraphs 79 to 82 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of paragraphs 79 to 84 apply to and in respect of the new plan, section and description.

Notices

83. Any notices to be served on CF Fertilisers in accordance with this Part shall be served in writing on the registered company address and on the General Counsel at CF Fertilisers, Ince, Chester, Cheshire CH2 4LB.

Co-operation

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

(a) the construction of the authorised development would have the potential to have an effect on the exercise by CF Fertilisers of its rights in connection with the proposed CF pipeline within the Order limits;

(b) the construction of the respective authorised developments may be undertaken within the Order limits concurrently; or

(c) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and CF Fertilisers must—

(a) co-operate with each other with a view to ensuring—

(i) the compatibility of the respective authorised developments;

(ii) the co-ordination of construction programming and the carrying out of the respective authorised developments;

(iii) that access for the purposes of constructing the respective authorised developments is maintained for the undertaker, CF Fertilisers and their respective employees, contractors and sub-contractors;

(iv) the undertaker and CF Fertilisers have the appropriate risk assessments, method statements (RAMS) and construction design management (CDM) in place and are able to comply with their obligations in this respect; and

(v) that operation, maintenance and access to the respective authorised developments is maintained for the undertaker and CF Fertilisers;

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Expenses and costs

85.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to CF Fertilisers the reasonable expenses incurred by it in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 76(2).

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part, that value being calculated and agreed after removal.

(3) If in accordance with the provisions of this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 47 (arbitration) to be necessary,

then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to CF Fertilisers by virtue of sub-paragraph (1) is to be reduced by the amount of that excess. The provisions of this sub-paragraph (3) shall only apply where the alteration is at the election of CF Fertilisers and not where such change to the existing type, capacity, dimensions or depth is as a result of industry requirements, legislation or environmental or health and safety considerations.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 76(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to CF Fertilisers in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on CF Fertilisers any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

86.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of this Schedule, any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of CF Fertilisers, or there is any interruption in any service provided, or in the supply of any goods, by CF Fertilisers, the undertaker must—

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

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

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

(3) CF Fertilisers 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 subject to its obligations in sub-paragraph (4).

(4) If the Undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

(a) keep CF Fertilisers fully informed of the developments and material elements of the proceedings;

(b) take account of the views of CF Fertilisers before taking any action in relation to the claim;

(c) not bring the name of CF Fertilisers or any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and

(d) not pay or settle such claims without the prior written consent of CF Fertilisers, such consent not to be unreasonably withheld or delayed.

(5) CF Fertilisers 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 86 applies. If requested to do so by the undertaker, CF Fertilisers must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 86 for claims reasonably incurred by CF Fertilisers.

Arbitration

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

PART 8

FOR THE PROTECTION OF EXOLUM SEAL SANDS LTD AND EXOLUM RIVERSIDE LTD

88. For the protection of Exolum, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Exolum.

89. In this Part of this Schedule—

"Exolum" means Exolum Seal Sands Ltd (Company number 00465548) and Exolum Riverside Ltd (Company number 03422427), both of whose registered address is 1st Floor 55 King William Street, London EC4R 9AD and any successor in function to Exolum's operations;

"the Exolum operations" means the operations and assets within the Order limits or operations and assets which have the benefit of rights (including access) over the Order limits vested in Exolum including the pipeline crossing the Order limits operated by Exolum used at all times and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962;

"restricted works" means any works forming any part of the authorised development that are near to, or will or may affect the Exolum operations or access to them including—

(a) all works within 15 metres of the Exolum operations;

(b) the crossing of the Exolum operations by other utilities;

(c) the use of explosives within 400 metres of the Exolum operations; and

(d) piling, undertaking of a 3D seismic survey or the sinking boreholes within 30 metres of the Exolum operations,

whether carried out by the undertaker or any third party in connection with the authorised development; and

"works details" means—

(a) plans and sections;

(b) a method statement describing—

(i) the exact position of the works;

(ii) the level at which the works are proposed to be constructed or renewed;

(iii) the manner of the works' construction or renewal including details of excavation, positioning of plant etc.;

(iv) the position of all apparatus;

(v) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus;

(vi) any intended maintenance regime;

(vii) details of the proposed method of working and timing of execution of works;

(viii) details of vehicle access routes for construction and operational traffic; and

(ix) any other information reasonably required by Exolum to assess the works;

(c) where the restricted works will or may be situated on, over, under or within 15 metres measured in any direction of the Exolum operations, or (wherever situated) impose any load directly upon the Exolum operations or involve embankment works within 15 metres of the Exolum operations, the method statement must also include—

(i) the position of the Exolum operations; and

(ii) by way of detailed drawings, every alteration proposed to be made to the Exolum operations; and

(d) any further particulars provided in response to a request under paragraph 90.

Consent of restricted works under this Part

90.—(1) Unless a shorter period is otherwise agreed in writing between the undertaker and Exolum, not less than thirty five (35) days before commencing the execution of any restricted works, the undertaker must submit to Exolum the works details for the restricted works and such further particulars as Exolum may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

(2) No restricted works are to be commenced until the works details in respect of those works submitted under sub-paragraph (1) have been approved by Exolum.

(3) Any approval of Exolum required under this paragraph 90 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Exolum may require to be made for—

(a) the continuing safety and operational viability of the Exolum operations; and

(b) the requirement for Exolum to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Exolum operations.

(4) Any approval of Exolum required under this paragraph 90 including any reasonable requirements required by Exolum under sub-paragraph (3), must be made in writing within a period of 21 days (unless a shorter period is otherwise agreed in writing between the undertaker and Exolum) beginning with the date on which the works details were submitted to Exolum under sub-paragraph (1) or the date on which any further particulars requested by Exolum under sub-paragraph (1) were submitted to Exolum (whichever is the later).

(5) The authorised development must be executed only in accordance with the works details approved by Exolum under this paragraph 90 including any reasonable requirements notified to the undertaker in accordance with sub-paragraph (3) and Exolum shall be entitled to watch and inspect the execution of those works.

(6) If Exolum in accordance with sub-paragraph (3) and in consequence of the restricted works proposed by the undertaker, reasonably requires the removal of any of the Exolum operations and gives written notice to the undertaker of that requirement, this Order applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph (1).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but (unless otherwise agreed in writing between the undertaker and Exolum) in no case less than 28 days before commencing the execution of any restricted works, new works details, instead of the works details previously submitted, and having done so the provisions of this paragraph 90 apply to and in respect of the new works details.

Prohibition of acquisition and interference

91.—(1) Regardless of any provision in this Order or anything shown on the land plans or if the Order applies to any interest in any land in which the Exolum operations are placed or over which access to the Exolum operations is enjoyed—

(a) the undertaker must not, otherwise than in accordance with terms of this Order including any approval given under this Part—

(i) obstruct or render less convenient the access to the Exolum operations;

(ii) interfere with or affect the Exolum operations or Exolum's ability to carry out its functions including operating its pipeline and its terminal by way of the creation of restrictive covenants or otherwise;

(iii) require that the Exolum operations are relocated or diverted; or

(iv) remove or require to be removed any Exolum operations; and

(b) any right of Exolum to access the Exolum operations shall not be extinguished until any necessary alternative access has been provided to the reasonable satisfaction of Exolum.

(2) Where the undertaker takes temporary possession of any land or carries out survey works on land in respect of which Exolum has an easement, right, operations, assets or other interests (together "Exolum's rights")—

(a) where Exolum's rights do not provide or require access over, in or under the Order limits, there is no restriction on the exercise of such rights;

(b) where Exolum's rights do provide or reasonably require access in, on or under the Order limits, Exolum may exercise those rights where reasonably necessary—

(i) in an emergency without notice; and

(ii) in non-emergency circumstances having first given the undertaker prior written notice in order to allow the parties to liaise over timing and co-ordination of their respective works during the period of temporary possession; and

(c) subject to paragraph (b) the undertaker shall not extinguish Exolum's rights, unless in accordance with the provisions of this Order.

Cathodic protection testing

92. Where in the reasonable opinion of Exolum or the undertaker—

(a) the authorised development might interfere with the cathodic protection forming part of the Exolum operations; or

(b) the Exolum operations might interfere with the proposed or existing cathodic protection forming part of the authorised development,

Exolum and the undertaker must co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and implement measures for providing or preserving cathodic protection.

Expenses

93.—(1) Subject to the following provisions of this paragraph 93, the undertaker must pay to Exolum the reasonable and properly incurred costs and expenses (including reasonable staffing costs if work is carried out in-house) incurred by Exolum in, or in connection with—

(a) undertaking its obligations under this Order including—

(i) the execution of any works under this Order including for the protection of the Exolum operations; and

(ii) the review and assessment of works details in accordance with paragraph 90;

(b) the watching of and inspecting the execution of the restricted works; and

(c) imposing reasonable requirements in accordance with paragraph 90(3).

(2) Prior to incurring any costs or expenses associated with the activities in sub-paragraph (1), Exolum must give prior written notice to the undertaker of the activities to be undertaken and an estimate of the costs or expenses to be incurred.

Indemnity

94.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 90, any damage is caused to the Exolum operations, or there is any interruption in any service provided, or in the supply of any goods, by Exolum, the undertaker must—

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

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

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

(3) Exolum 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) Exolum 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 94 applies. If requested to do so by the undertaker, Exolum must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 94 for claims reasonably incurred by Exolum.

Arbitration

95.—(1) The undertaker and Exolum shall use their reasonable endeavours to secure the amicable resolution of any dispute or difference arising between them out of or in connection with this Order in accordance with the following provisions of this paragraph.

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

(3) Where there has been a reference to an arbitrator in accordance with sub-paragraph (1) and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under sub-paragraph (1)

PART 9

FOR THE PROTECTION OF INEOS NITRILES (UK) LIMITED

96. For the protection of INEOS, the following provisions have effect, unless otherwise agreed in writing between the undertaker and INEOS.

97. In this Part of this Schedule—

"INEOS" means INEOS Nitriles (UK) Limited (Company number 06238238) whose registered address is PO Box 62 Seal Sands, Middlesbrough TS2 1TX and any successor in title or function to the INEOS operations;

"the INEOS operations" means the operations or property within Order limits vested in INEOS Nitriles (UK) Limited including the pipeline crossing the Order limits owned and operated by INEOS used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 98.

Consent under this Part

98. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them or which would otherwise be located on land within the INEOS operations, the undertaker must submit to INEOS the works details for the proposed works and such further particulars as INEOS may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

99. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the INEOS operations or access to them or which would otherwise be located on land within the INEOS operations are to be commenced until the works details in respect of those works submitted under paragraph 98 have been approved by INEOS.

100.—(1) Any approval of INEOS required under paragraph 99 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as INEOS may require to be made for—

(a) the continuing safety and operational viability of the INEOS operations;

(b) the continuing safe operation of infrastructure not belonging to INEOS but within or adjacent to the INEOS operations, including access at all times for inspection maintenance and repair etc whether that be by INEOS or by any party with rights in the land or infrastructure on or in the land; and

(c) the requirement for INEOS to have—

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

(ii) uninterrupted and unimpeded access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the INEOS operations.

(2) Where INEOS can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the INEOS operations it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of INEOS that the authorised development will not significantly adversely affect the safety of the INEOS operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 99 and any requirements imposed on the approval under sub-paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 103 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 103.

Compliance with requirements, etc. applying to the INEOS operations

101. In undertaking any works in relation to the INEOS operations or exercising any rights relating to or affecting the INEOS operations, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the INEOS operations.

Indemnity

102.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 98, any damage is caused to the INEOS operations or there is any interruption in any service provided, or in the supply of any goods, by INEOS, the undertaker must—

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

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

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

(3) INEOS 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) INEOS 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 102 applies. If requested to do so by the undertaker, INEOS must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 102 for claims reasonably incurred by INEOS.

Arbitration

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

PART 10

FOR THE PROTECTION OF MARLOW FOODS LIMITED

104. For the protection of Marlow Foods, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Marlow Foods.

105. In this Part of this Schedule—

"Marlow Foods" means Marlow Foods Limited (Company number 01752242) whose registered address is Quorn Foods, Station Road, Stokesley, North Yorkshire TS9 7AB and any successor in title to the Marlow Foods operations; and

"the Marlow Foods operations" means the operations of Marlow Foods located on Nelson Avenue, Billingham TS23 4HA.

Regulation of powers

106. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access to the Marlow Foods operations by Marlow Foods, its employees, contractors or sub-contractors, such access to be either along the existing highway route at Nelson Avenue, Billingham or such diversionary route as the undertaker may provide.

107. The undertaker must give to Marlow Foods not less than 28 days' written notice of its intention to commence the construction of any part of the authorised development that uses the existing highway route at Nelson Avenue, Billingham.

Co-operation

108. Insofar as the construction of any part of the authorised development and access to the Marlow Foods operations would have an effect on each other, the undertaker and Marlow Foods must—

(a) co-operate with each other with a view to ensuring—

(i) that access for the purposes of constructing the authorised development is maintained for the undertaker, its employees, contractors and sub-contractors; and

(ii) that access to the Marlow Foods operations is maintained for Marlow Foods, its employees, contractors and sub-contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the access to the Marlow Foods operations and the construction of the authorised development.

Indemnity

109.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the use of the highway at Nelson Avenue by the undertaker in connection with the construction of the authorised development, there is any interruption in any service provided, or in the supply of any goods, by Marlow Foods, the undertaker must make reasonable compensation to Marlow Foods for any expenses, loss, damages, penalty or costs incurred by Marlow Foods, by reason or in consequence of any such 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 Marlow Foods, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Marlow Foods.

(3) Marlow Foods 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) Marlow Foods 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 109 applies. If requested to do so by the undertaker, Marlow Foods must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 109 for claims reasonably incurred by Marlow Foods.

Arbitration

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

PART 11

FOR THE PROTECTION OF RAILWAY INTERESTS

111. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 124 of this Part of this Schedule, any other person on whom rights or obligations are conferred by that paragraph.

112.—(1) In this Part of this Schedule—

"construction" includes execution, placing, alteration and reconstruction and "construct" and "constructed" have corresponding meanings;

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 (licences) of the Railways Act 1993(**a**);

"Network Rail" means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at Waterloo General Office, London, United Kingdom, SE1 8SW) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and any successor to Network Rail Infrastructure Limited's railway undertaking;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

"protective works" means any works specified by the engineer under paragraph 114(4);

"railway operational procedures" means procedures specified under any access agreement (as defined in Part 1, section 83(1) of the Railways Act 1993) or station lease;

"railway property" means any railway belonging to Network Rail and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail or a tenant or licensee of Network Rail for the purposes of such railway or related works, apparatus or equipment;

(**a**) 1993 c. 43.

"regulatory consents" means any consent or approval required under—

(a) the Railways Act 1993;

(b) the network licence; and/or

(c) any other relevant statutory or regulatory provisions,

by either the Office of Rail and Road or the Secretary of State for Transport or any other competent body including change procedures and any other consents, approvals of any access or beneficiary that may be required in relation to the authorised development; and

"specified work" means so much of any of the authorised development as is or is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property and for the avoidance of doubt, includes the maintenance of such works under the powers conferred by article 5 (maintenance of authorised development).

"undertaker" has the same meaning as in article 2 (interpretation) of this Order.

113.—(1) Where under this Part of this Schedule Network Rail is required to give its consent, or approval in respect of any matter, that consent, or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

(a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and

(b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development pursuant to this Order.

114. The undertaker must not under the powers of this Order do anything which would result in railway property being incapable of being used or maintained or which would affect the safe running of trains on the railway.

115.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not communicated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to communicate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not communicated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or

stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation decommissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

116.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 114(4) must, when commenced, be constructed—

(a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 114;

(b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;

(c) in such manner as to cause as little damage as is possible to railway property; and

(d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

117. The undertaker must—

(a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and

(b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.

118. Network Rail must at all times afford reasonable facilities to the undertaker and its employees, contractors or agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

119.—(1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations or additions may be carried out by Network Rail and if Network Rail gives to the undertaker 56 days' notice (or in the event of an emergency or safety critical issue such notice as is reasonable in the circumstances) of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which are expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which

in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 114, pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 119(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving must be set off against any sum payable by the undertaker to Network Rail under this paragraph.

120. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 114(3) or in constructing any protective works under the provisions of paragraph 114(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

(b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

121.—(1) In this paragraph—

"EMI" means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

"Network Rail's apparatus" means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 114 for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker's compliance with sub-paragraph (3)—

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 114) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 114 has effect subject to the sub-paragraph.

(6) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (3) the testing of the authorised development causes EMI, then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI;

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI; and

(d) The undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 115.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 124(1) applies to the costs and expenses reasonably incurred or losses reasonably suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 119(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

122.—(1) If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

(2) Regardless of anything in sub-paragraph (1), on receipt of a notice given by Network Rail pursuant to sub-paragraph (1), the undertaker may respond in writing to Network Rail requesting Network Rail to take the steps as may be reasonably necessary to put the specified work the subject of the notice in such state of maintenance as not adversely to affect railway property. If Network Rail agrees to undertake the steps it must give to the undertaker reasonable notice of its intention to carry out such steps, and the undertaker must pay to Network Rail the reasonable cost of doing so.

123. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

124. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

125.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction, maintenance or operation of a specified work or the failure thereof it;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others within the control of the undertaker whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others within the control of the undertaker whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to railway property or any such interference or obstruction or delay to the operation of the railway as a result of access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others within the control of the undertaker; or

(e) in respect of costs incurred by Network Rail in complying with any railway operational procedure or obtaining any regulatory consents which procedures are required to be followed or consents obtained to facilitate the carrying out or operation of the authorised development

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must—

(a) give the undertaker reasonable written notice of any such claims or demands;

(b) not make any settlement or compromise of such a claim or demand without the prior consent of the undertaker; and

(c) take all steps as are within its control and are reasonable in the circumstances to mitigate any liabilities relating to such claims or demands and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 124 applies. If requested to do so by the undertaker, Network Rail is to provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker is to only be liable under this paragraph 124 for claims reasonably incurred by Network Rail.

(3) In no circumstances is the undertaker liable to Network Rail under sub-paragraph (1) for any indirect or consequential loss or loss of profits, save that the sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in sub-paragraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

126. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable pursuant to this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 124) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs).

127. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

128. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

(a) any railway property shown on the works and land plans and described in the book of reference;

(b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

129. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

130. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent under article 8 (consent to transfer

of benefit or Order) of this Order) and any such notice must be given no later than 7 days before any such application is made and must describe or give (as appropriate)—

(a) the nature of the application to be made;

(b) the extent of the geographical area to which the application relates; and

(c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

131. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) are certified by the Secretary of State provide a set of those plans and documents to Network Rail in a format specified by Network Rail.

PART 12

FOR THE PROTECTION OF NORTHERN POWERGRID (NORTHEAST) PLC

132. For the protection of Northern Powergrid (Northeast) Plc the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northern Powergrid.

133. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable Northern Powergrid to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means electric lines or electrical plant (as defined in Part 1 of the 1989 Act), belonging to or maintained by Northern Powergrid and includes any structure in which apparatus is or is to be lodged or which gives or will gives access to Northern Powergrid to such apparatus;

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

"plan" includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed and shall include any measures proposed by the undertaker to ensure the grant of sufficient land or rights in land necessary to mitigate the impact of the works on the apparatus; and

"Northern Powergrid" means Northern Powergrid (Northeast) Plc (Company number 02906593) whose registered office is at Lloyds Court, 78 Grey Street, Newcastle Upon Tyne, NE1 6AF.

134. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Powergrid are regulated by the provisions of Part 3 (Street works in England and Wales) of the 1991 Act.

135. Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), Northern Powergrid is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

136. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement of Northern Powergrid.

137.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that Northern Powergrid's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northern Powergrid to

maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided pursuant to a completed easement for a tenure no less than exists to the apparatus being relocated or diverted, all to the reasonable satisfaction of Northern Powergrid in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Northern Powergrid written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order Northern Powergrid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northern Powergrid the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Powergrid must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable and at the cost of the undertaker (subject to prior approval by the undertaker of its estimate of costs of doing so) use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between Northern Powergrid and the undertaker or in default of agreement settled by arbitration in accordance with paragraph 148.

(5) Northern Powergrid must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with paragraph 148, and after the grant to Northern Powergrid 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 Part of this Schedule.

138.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to Northern Powergrid facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Powergrid or in default of agreement settled by arbitration in accordance with paragraph 148.

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to Northern Powergrid than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to Northern Powergrid as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

139.—(1) Not less than ninety days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 136(2), the undertaker must submit to Northern Powergrid a plan, section and description of the works to be executed.

(2) Those works must be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Northern Powergrid for the alteration or

otherwise for the protection of the apparatus, or for securing access to it, and Northern Powergrid is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northern Powergrid under sub-paragraph (2) must be made within a period of twenty-eight days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If Northern Powergrid in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 131 to 137 apply as if the removal of the apparatus had been required by the undertaker under paragraph 136(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than thirty-five days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to Northern Powergrid notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

140.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Powergrid the reasonable expenses incurred by Northern Powergrid—

(a) in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 136(2); and

(b) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker whether or not the undertaker proceeds to implement those proposals or alternative or none at all,

provided that if it so prefers Northern Powergrid may abandon apparatus that the undertaker does not seek to remove in accordance with paragraph 136(1) having first decommissioned such apparatus.

(2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal and for the avoidance of doubt, if the apparatus removed under the provisions of this Part of this Schedule has nil value, no sum will be deducted from the amount payable under sub-paragraph (1).

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with paragraph 148 to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to Northern Powergrid by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing

apparatus where such extension is required in consequence of the execution of any such works as are referred to in paragraph 136(2); and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to Northern Powergrid in respect of works by virtue of sub-paragraph (1), is to be reduced by the amount which represents that benefit if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on Northern Powergrid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course.

141.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 136(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Powergrid, or there is any interruption in any service provided by Northern Powergrid, the undertaker must—

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

(b) make reasonable compensation to Northern Powergrid for any other expenses, loss, damages, penalty or costs incurred by Northern Powergrid,

by reason or in consequence of any such damage or interruption.

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

(3) Northern Powergrid 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) Northern Powergrid 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 140 applies. If requested to do so by the undertaker, Northern Powergrid must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 140 for claims reasonably incurred by Northern Powergrid.

142. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Powergrid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

143. Without prejudice to the generality of the protective provisions in this Part of the Schedule, Northern Powergrid must from time to time submit to the undertaker estimates of reasonable costs and expenses it expects to incur in relation to the implementation of any diversions or relocation of apparatus contemplated under this Part of the Schedule including without limitation—

(a) in assessing and preparing a design for its apparatus to address and accommodate the proposals of the undertaker under paragraph 139;

(b) costs incurred in fulfilling its obligations in paragraph 136(3);

(c) fees incurred in settling and completing and registering any documentation to secure rights for its diverted or relocated apparatus; and

(d) costs and expenses of contractors required to undertake any works for which Northern Powergrid is responsible and of purchasing the necessary cabling and associated apparatus,

provided that Northern Powergrid must use reasonable endeavours to minimise to a proper and reasonable level any charges, costs, fees and expenses to the extent that they are incurred.

144. Northern Powergrid and the undertaker must use their reasonable endeavours to agree the amount of any estimates submitted by Northern Powergrid under paragraph 142 within 15 working days following receipt of such estimates by the undertaker. The undertaker must confirm its agreement to the amount of such estimates in writing and must not unreasonably withhold or delay such agreement. If the parties are unable to agree the amount of an estimate, it will be dealt with in accordance with paragraph 148.

145. Work in relation to which an estimate is submitted must not be commenced by Northern Powergrid until that estimate is agreed with the undertaker in writing and a purchase order up to the value of the approved estimate has been issued by the undertaker to Northern Powergrid and an easement for the routes of the apparatus has been granted to Northern Powergrid pursuant to paragraph 136(1) for the benefit of its statutory undertaking.

146. If Northern Powergrid at any time becomes aware that an estimate agreed is likely to be exceeded, it must forthwith notify the undertaker and must submit a revised estimate of the relevant costs and expenses to the undertaker for agreement.

147. Northern Powergrid may from time to time and at least monthly from the date of this Order issue to the undertaker invoices for costs and expenses incurred up to the date of the relevant invoice, for the amount of the relevant estimate agreed. Invoices issued to the undertaker for payment must—

(a) specify the approved purchase order number; and

(b) be supported by timesheets and narratives that demonstrate that the work invoiced has been completed in accordance with the agreed estimate.

148. The undertaker is not responsible for meeting costs or expenses in excess of an agreed estimate, other than where agreed under paragraph 145 above or determined in accordance with paragraph 148.

149. Any difference under the provisions of this Part of the Schedule, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by an independent electrical engineer by or on behalf of the President for the time being of the Institute of Engineering and Technology.

150. Prior to carrying out any works within the Order limits Northern Powergrid must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

PART 13

FOR THE PROTECTION OF NPL WASTE MANAGEMENT LIMITED

151. For the protection of NPL, the following provisions have effect, unless otherwise agreed in writing between the undertaker and NPL.

152. In this Part of this Schedule—

"NPL" means NPL Waste Management Limited (Company number 06112535) whose registered address is One St Peter's Square, Manchester M2 3DE and any successor in title or function to the NPL access shafts;

"NPL access shafts" means the shafts within plots 4 and 5 in the Order limits owned and operated by NPL for the purposes of accessing the Billingham Anhydrite Mine; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 152.

Consent under this Part

153. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the NPL access shafts or access to them, the undertaker must submit to NPL the works details for the proposed works and such further particulars as NPL may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

154. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the NPL access shafts or access to them are to be commenced until the works details in respect of those works submitted under paragraph 152 have been approved by NPL.

155. Any approval of NPL required under paragraph 153 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as NPL may require to be made for NPL to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation of the NPL access shafts.

156.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 153 and any requirements imposed on the approval under paragraph 154.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 157 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 157.

Indemnity

157.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 152, any damage is caused to the NPL access shafts or property of NPL, or there is any interruption in any service provided, or in the supply of any goods, by NPL, the undertaker must—

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

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

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

(3) NPL 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) NPL 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 156 applies. If requested to do so by the undertaker, NPL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 156 for claims reasonably incurred by NPL.

Arbitration

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

PART 14

FOR THE PROTECTION OF PD TEESPORT LIMITED

159. For the protection of PD Teesport, the following provisions have effect, unless otherwise agreed in writing between the undertaker and PD Teesport.

160. In this Part of this Schedule—

"PD Teesport" means PD Teesport Limited (company number 02636007), whose registered address is 17-27 Queen's Square, Middlesborough, TS2 1AH and any successor in title or function to the PD Teesport operations;

"the PD Teesport operations" means the port operations or property (including all freehold, leasehold, easements, wayleaves, licences and other rights) vested in PD Teesport (or any related company whose assets or operations are impacted by the construction, maintenance and operation of the authorised development), including access to and from those operations or activities via Tees Dock Road and access, use and occupation of the Redcar Bulk Terminal as well as access over South Gare Road and Seal Sands Road;

"road user(s)" means any person who has a—

(a) right to use Seal Sands Road or South Gare Road (including parties authorised by PD Teesport);

(b) need to use Seal Sands Road or South Gare Road to access property or facilities owned, operated or occupied by them; and

(c) need to use Seal Sands Road or South Gare Road in connection with undertaking their business operations or statutory functions;

"Seal Sands Road" means any part of Seal Sands Road within the Order limits;

"South Gare Road" means any part of South Gare Road within the Order limits; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 164.

Regulation of powers

161. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the operation or maintenance of the PD Teesport operations or access to them without the prior written consent of PD Teesport.

162. Any approval of PD Teesport required under paragraph 160 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as PD Teesport may require to be made in relation to—

(a) the continuing safety, or operational activity of the PD Teesport operations;

(b) ensuring that there is no commercial loss to PD Teesport; or

(c) the requirement for PD Teesport (including its employees, agents, servants and contractors), any, tenants, licencees and occupiers on its land to have reasonable access to, occupation and use of the PD Teesport operations at all times.

Regulation of powers in relation to Seal Sands Road

163. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent use of Seal Sands Road by PD Teesport and road users, such access to be along the existing highway route at Seal Sands Road.

Regulation of powers in relation to South Gare Road

164. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent access via South Gare Road to South Gare by PD Teesport and road users, such access to be either along the existing highway route at South Gare Road, or such diversionary route as the undertaker may provide (provided that such alternative route is equally commodious).

Consent under this Part

165. Before commencing any part of the authorised development which may have an effect on the operation or maintenance of the PD Teesport operations or access to them, the undertaker must submit to PD Teesport the works details for the proposed works and such further particulars as PD Teesport may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

166. No works comprising any part of the authorised development which may have an effect on the operation or maintenance of the PD Teesport operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 164 have been approved by PD Teesport.

167. Any approval of PD Teesport required under paragraph 165 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as PD Teesport may require to be made for—

(a) the continuing safety, operational activity or business interests of the PD Teesport operations; and

(b) the requirement for PD Teesport to have uninterrupted and unimpeded access (including river access) to PD Teesport operations at all times.

168. The authorised development must be carried out in accordance with the works details approved under paragraph 165 and any requirements imposed on the approval under paragraph 166.

169. Where there has been a reference to an arbitrator in accordance with paragraph 170 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 170.

Indemnity

170.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 164, any damage is caused to the PD Teesport operations, or there is any interruption in any service provided, or in the supply of any goods, by PD Teesport, the undertaker must—

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

(b) indemnify PD Teesport for any other expenses, loss (including loss of profits), damages, penalty, claims, investigations, demands, charges, actions, notices, proceedings, orders, awards, judgments, damages, other liabilities and expenses (including legal fees, expenses and fines) or costs incurred of any kind or nature whatsoever by them, by reason or in consequence of any such damage or interruption.

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

(3) PD Teesport 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) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

(a) keep PD Teesport fully informed of the developments and material elements of the proceedings;

(b) take account of the views of PD Teesport before taking any action in relation to the claim;

(c) not bring the name of the PD Teesport on any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and

(d) not pay or settle such claims without the prior written consent of PD Teesport, such consent not to be unreasonably withheld or delayed.

(5) PD Teesport 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 169 applies. If requested to do so by the undertaker, PD Teesport must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 169 for claims reasonably incurred by PD Teesport.

Arbitration

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

PART 15

FOR THE PROTECTION OF REDCAR BULK TERMINAL LIMITED

172. For the protection of RBT, the following provisions have effect, unless otherwise agreed in writing between the undertaker and RBT.

173. In this Part of this Schedule—

"apparatus" means any mains, pipes, cables or other apparatus within the Order limits which provide water, electricity or electronic communications to the RBT operations together with any replacement of that apparatus pursuant to the Order;

"alternative access" means appropriate alternative road or rail access which enables RBT to access the RBT operations and RBT site in a manner no less efficiently than previously by means of RBT's existing road or rail accesses;

"alternative apparatus" means appropriate alternative apparatus which enables water, electricity and electronic communications supply to be provided to the RBT operations in a manner no less efficiently than previously by existing apparatus;

"offloading procedure" means the procedure whereby the undertaker, its employees, contractors or sub-contractors are offloading materials, plant or machinery required for the authorised development at the wharf within the RBT site, such procedure to commence when the undertaker, its employees, contractors or sub-contractors have commenced docking the relevant vessel at the wharf for the purposes of such offloading;

"RBT" means Redcar Bulk Terminal Limited (Company number 07402297), whose registered address is Time Central, 32 Gallowgate, Newcastle Upon Tyne, Tyne and Wear, United Kingdom, NE1 4BF and any successor in title or function to the RBT operations;

"the RBT operations" means the port business and other operations of RBT carried out upon the RBT site;

"the RBT site" means land and property within the Order limits, vested in RBT; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working, management measures and locations on the RBT site;

(c) details of the timing of execution of works and any interference this may cause to the RBT operations;

(d) details of any management measures (including details of access routes for vehicles to undertake) that will be put in place to ensure that road and rail traffic is still able to access the RBT operations and the RBT site (unless it would be unsafe to do so in which case such details must provide details of how alternative access is to be provided);

(e) details of lifting and scheduling activities on the RBT site, including the programming and access requirements for any offloading procedures; and

(f) any further particulars provided in response to a request under paragraph 177.

Regulation of powers

174. The undertaker must not exercise the powers granted under this Order so as to hinder or prevent the RBT operations, or access to the RBT site without the prior written consent of RBT.

175. Any approval of RBT required under paragraph 173 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

(a) the continuing safety and operational viability of the RBT operations;

(b) the avoidance of commercial losses to the RBT operations; and

(c) the requirement for RBT to have reasonable access to the RBT operations and the RBT site at all times.

176. Without limiting paragraph 174, it is not reasonable for RBT to give approval pursuant to paragraph 174 subject to requirements which restrict or interfere with the undertaker's access to the RBT site during an offloading procedure.

Interference with Apparatus and Access

177.—(1) If, in the exercise of the powers conferred by this Order, the undertaker requires that apparatus is removed, interrupted, severed or disconnected, that apparatus must not be removed, interrupted, severed or disconnected until details of the alternative apparatus have been approved by RBT and the alternative apparatus has been constructed at the undertaker's cost and is in operation to the satisfaction of RBT.

(2) The undertaker must ensure that RBT shall hold the same facilities and rights that it holds for the apparatus in respect of the alternative apparatus.

(3) Regardless of the temporary prohibition or restriction of use of streets under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), the undertaker shall ensure that the party responsible for any apparatus is at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that street.

(4) The provisions of this paragraph do not apply to apparatus in respect of which the relations between the undertaker and the party responsible for the apparatus in question are regulated by the provisions of Part 3 (Street works in England and Wales) of the 1991 Act.

(5) If the undertaker uses its powers under the Order to temporarily extinguish or permanently acquire any right of road or rail access which RBT benefits from the undertaker must provide at its own cost an alternative access prior to the extinguishment or acquisition of that right of access and ensure that RBT shall hold the equivalent rights for that access in respect of an alternative access.

Consent under this Part

178. Before commencing—

(a) any part of the authorised development which would have an effect on the RBT operations or access to them; or

(b) any activities on or to the RBT site,

the undertaker must submit to RBT the works details for the proposed works or activities and such further particulars as RBT may, not less than 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

179. No—

(a) works comprising any part of the authorised development which would have an effect on the RBT operations or access to them; or

(b) activities on the RBT site,

are to be commenced until the works details in respect of those works or activities submitted under paragraph 177 have been approved by RBT.

180. Any approval of RBT required under paragraph 178 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as RBT may require to be made for—

(a) the continuing safety and operational viability of the RBT operations;

(b) the avoidance of commercial losses to the RBT operations; and

(c) the requirement for RBT to have reasonable access to the RBT site at all times.

181. Without limiting paragraph 179, it is not reasonable for RBT to give approval pursuant to paragraph 179 subject to requirements which restrict or interfere with the undertaker's access to the wharf and roadways within the RBT site during an offloading procedure.

182.—(1) The authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the works details approved under paragraph 178 and any requirements imposed on the approval under paragraph 179.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 185 and the arbitrator gives approval for the works details, the authorised development and activities on the wharf and roadways within the RBT site must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 185.

Co-operation

183. Insofar as the construction of any part of the authorised development or activities on the wharf and roadways within the RBT site, and the operation or maintenance of the RBT operations or access to them would have an effect on each other, the undertaker and RBT must—

(a) co-operate with each other with a view to ensuring—

(i) the co-ordination of activities and programming to allow the authorised development, the undertaker's activities on the wharf and the roadways within the RBT site (including offloading procedures) and the RBT operations to continue;

(ii) that reasonable access for the purposes of constructing the authorised development and the undertaker's activities on the wharf and the roadways within the RBT site (including offloading procedures) is maintained for the undertaker, its employees, contractors and sub-contractors; and

(iii) that operation of the RBT operations and access to the RBT site is maintained for RBT at all times; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the RBT operations, the construction of the authorised development and the undertaker's activities on the wharf and roadways within the RBT site (including offloading procedures).

184. The undertaker must pay to RBT—

(a) a cost agreed with RBT for the daily use of the RBT site and RBT services in consequence of the construction of any works referred to in paragraph 177 and use of the RBT site by the undertaker; and

(b) the reasonable costs and expenses incurred by RBT in connection with the approval of plans, inspection and approval of any works details.

Indemnity

185.—(1) Subject to sub-paragraphs (2) and (3) below, if by reason or in consequence of the construction of any of the works referred to in paragraph 177 or by the use of the RBT site by the undertaker any damage is caused to the RBT site (including the wharf, roadways, any RBT buildings, plant or machinery on the RBT site) or to the RBT operations, or there is any interruption in any service provided, or in the provision by RBT or denial of any services, or in any loss of service from apparatus that is affected by the authorised development the undertaker must—

(a) bear and pay the cost reasonably incurred by RBT in making good such damage or restoring the provision by RBT of any services; and

(b) make compensation to RBT for any other expenses, loss, damages, penalty or costs reasonably incurred by RBT (including, without limitation, all costs for the repair or replacement necessitated by physical damage), by reason or in consequence of any such damage or interruption or denial of any service provided by RBT.

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

(3) RBT must give the undertaker reasonable notice of any claim or demand that has been made against it in respect of the matters in subparagraph (1)(a) and (b) and no settlement or compromise of such a claim is to be made without the consent of the undertaker such consent not to be unreasonably withheld.

(4) RBT must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 184 applies. If requested to do so by the undertaker, RBT must provide a reasonable explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 184 for claims reasonably incurred by RBT.

Arbitration

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

PART 16

FOR THE PROTECTION OF SABIC PETROCHEMICALS UK LIMITED

Benefit of protective provisions

187. The following provisions of this Schedule have effect for the benefit of SABIC, unless otherwise agreed between the undertaker and SABIC.

Interpretation

188. In this Schedule—

"access roads" means the access roads within the Order limits giving access to pipelines or the protected crossing;

"affected assets" means—

(a) apparatus which would be physically affected by the relevant works;

(b) the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and

(c) in relation to the exercise of an identified power, any apparatus in the protected land which would be affected by the exercise of that power.

"apparatus" means pipelines and cables owned or operated by SABIC within the Order limits and includes—

(a) any structure existing at the time when a particular action is to be taken under this Part in which apparatus is or is to be lodged or which will give access to apparatus;

(b) any coating or special wrapping of the apparatus; and

(c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(**a**) as if the pipelines were a "pipe-line" in section 65(1) of that Act;

"construction access plan" means a plan identifying how access will be maintained to apparatus the protected crossing and the North Tees Facilities during the proposed construction or maintenance work including—

(a) any restrictions on general access by SABIC, including the timing of restrictions;

(b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;

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

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

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

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

"damage" includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

"engineer" means an engineer appointed by SABIC for the purposes of this Order;

(**a**) 1968 c. 58. Section 65 was amended by section 89(1) of and paragraphs 1 and 2 of Schedule 2 to the Energy Act 2011 (c. 16.) S.I. 2000/1937 and S.I. 2011/2305.

"major works" means works by SABIC requiring the closure, diversion or regulation of any roads serving the North Tees Facilities;

"North Tees Facilities" means the site at North Tees Works at which SABIC operates various facilities;

"operator" means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

"owner" means—

(a) in relation to the pipeline corridor, any person—

(i) with an interest in a pipeline in the pipeline corridor;

(ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or

(iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;

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

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

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

(c) in relation to the protected crossing, any person—

(i) with an interest in the protected crossing;

(ii) with rights in relation to the protected crossing; or

(iii) with pipelines in or comprising the protected crossing; and

(d) in relation to protected land means any person falling within paragraphs (a) to (c) above.

"pipeline corridor" means the land identified as the pipeline corridor on the Sembcorp Pipeline Corridor protective provisions supporting plans;

"pipelines" means any apparatus owned or operated by SABIC located in the pipeline corridor or in or comprising the protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;

"pipeline survey" means a survey of the pipeline corridor and the protected crossing to establish (if not known)—

(a) the precise location of the pipelines and the protected crossing;

(b) the specification of the pipelines and protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey;

(c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;

"protected crossing" means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

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

(a) the access roads;

(b) the pipeline corridor; or

(c) the protected crossing;

"relevant work" means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

"SABIC" means SABIC Petrochemicals UK Limited whose registered office is at Wilton Centre, Wilton, Redcar, Cleveland, TS10 4RF;

"Sembcorp Pipeline Corridor protective provisions supporting plan" means the plan which is certified as the Sembcorp Pipeline Corridor protective provisions supporting plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

"specified persons" means the Company Secretary, SABIC UK Petrochemicals Limited, Wilton Centre, Redcar, Cleveland, TS10 4RF in relation to SABIC UK Petrochemicals Limited, or such other person as they may notify to the undertaker in writing;

"works details" means the following—

(a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;

(b) details of methods and locations of any piling proposed to be undertaken under paragraph 195;

(c) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 196;

(d) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 197;

(e) details of the location of any pipelines affected by the oversailing provisions in paragraph 198, including details of the proposed clearance;

(f) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;

(g) details of the undertaker and their principal contractors' management of change procedures;

(h) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;

(i) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;

(j) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;

(k) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and

(l) any further particulars provided in accordance with paragraph 189(2).

Pipeline survey

189.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must—

(a) carry out and complete the pipeline survey; and

(b) comply with sub-paragraph 188(3) below.

(2) The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys.

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on SABIC and invite SABIC to advise the undertaker within 28 days of receipt of the survey if SABIC considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossing

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

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

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

(a) the works details supplied in respect of that relevant work under paragraph 189 have been authorised by SABIC; or

(b) the works details supplied in respect of that relevant work under paragraph 189 have been authorised by an arbitrator under paragraph 192(3); or

(c) authorisation is deemed to have been given in accordance with paragraph 192(1).

192.—(1) Any authorisation by SABIC required under paragraph 190(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as SABIC may require to be made for—

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

(b) the requirement for SABIC to have—

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

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

(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 190 and any conditions imposed on the authorisation under paragraph 191(1).

(3) Where there has been a reference to arbitration in accordance with paragraph 211 and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the arbitrator under paragraph 192(3).

193.—(1) In the event that—

(a) no response has been received to the submission of the works details under paragraph 189 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 189(1)and no further particulars have been requested under paragraph 189(2); or

(b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 189(2).

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

(2) In the event that—

(a) the undertaker considers that SABIC has unreasonably withheld its authorisation under paragraph 191(1); or

(b) the undertaker considers that SABIC has given its authorisation under paragraph 191(1) subject to unreasonable conditions

the undertaker may refer the matter to an arbitrator for determination under paragraph 211.

(3) Where the matter is referred to arbitration under paragraph 192(2) the arbitrator is to determine whether or not authorisation should be given and, if so the conditions which should reasonably be attached to the authorisation under sub-paragraphs (a) and (b) of paragraph 191(1).

Notice of works

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

Further provisions about works

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

196.—(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to SABIC for approval in accordance with paragraph 189.

197.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by SABIC.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to SABIC under paragraph 189.

198.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to SABIC in accordance with paragraph 189.

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

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

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

(6) In the event of a dispute as to—

(a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or

(b) the amount of any payment under sub-paragraph (5),

the undertaker or SABIC may refer the matter for arbitration under paragraph 211.

199.—(1) A minimum clearance of 1500 millimetres must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with SABIC.

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

Monitoring for damage to pipelines

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

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

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

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

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

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

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

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

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

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

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

(b) inform SABIC;

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

(d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

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

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

(a) introduced after the date on which notice of the works was given under paragraph 193; or

(b) determined by arbitration following a determination under paragraph 211 to unreasonably—

(i) create significant engineering, technical or programming difficulties; or

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

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

Access for construction and maintenance

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

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

204.—(1) In preparing a construction access plan under paragraph 202 the undertaker must—

(a) establish the programme for SABIC's major works in the pipeline corridor and the North Tees Facilities and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and

(b) establish where SABIC's access to the protected land, or any pipeline or the North Tees Facilities has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to arbitration under paragraph 211 in relation to any disagreement about a construction access plan the arbitrator must have regard to—

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

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

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

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

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

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

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

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

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

(2) Where SABIC or the undertaker refers the construction access plan to arbitration for determination under paragraph 211, no works affecting access rights over the access roads may commence until that determination has been provided.

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

Insurance

206.—(1) Before carrying out any part of the authorised development affecting SABIC, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer with the terms, cover and level of cover as may be agreed in writing between the undertaker and SABIC, and evidence of that insurance must be provided on request to SABIC.

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

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

207.—(1) If SABIC has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 205—

(a) SABIC may refer the matter to arbitration under paragraph 211; and

(b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 211 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

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

(a) authorisation of survey details submitted by the undertaker under paragraph 188(3), authorisation of works details submitted by the undertaker under paragraph 189 and the imposition of conditions under paragraph 191;

(b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 193;

(c) responding to the consultation on piling under paragraph 195;

(d) considering the effectiveness of any compacting which has taken place under paragraph 197, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;

(e) the repair and testing of a pipeline or protected crossing under paragraph 199;

(f) considering and responding to consultation in relation to the construction access plan under paragraph 202 and providing details of their programme for major works to the undertaker under paragraph 203; and

(g) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 205,

including the reasonable costs incurred by SABIC in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow SABIC to carry out its functions under these protective provisions.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any of the works referred to in paragraph 189, any damage is caused to the affected assets or property of SABIC, or there is any interruption in any service provided, or in the supply of any goods, by SABIC, the undertaker must—

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

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

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

(4) SABIC must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior 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.

(5) SABIC must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

(6) In the assessment of any sums payable to SABIC under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, SABIC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

(7) SABIC 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 applies. If requested to do so by the undertaker, SABIC must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (2). The undertaker shall only be liable under this paragraph for claims reasonably incurred by SABIC.

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

209. The undertaker must give written notice to SABIC of the terms and level of cover of any guarantee or alternative form of security put in place under article 48 (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

210. The undertaker, must when requested to do so by SABIC, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) in electronic form.

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

Arbitration

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

PART 17

FOR THE PROTECTION OF THE SEMBCORP PROTECTION CORRIDOR

Extent of this Part

213.—(1) The provisions of this Part have effect for the benefit of owners and operators in the Sembcorp Protection Corridor, owners and operators in the Wilton Complex and Sembcorp unless otherwise agreed in writing between the undertaker and Sembcorp.

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

(a) any agreement of the type mentioned in sub-paragraph (1) has effect as if it had been made between Sembcorp and the transferee or grantee (as the case may be); and

(b) written notice of the transfer or grant must be given to Sembcorp on or before the date of that transfer or grant.

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

(a) which states that it is "entered into for the purposes of the Sembcorp Protective Provisions"; and

(b) whether entered into before or after the making of this Order.

(4) Article 44 (*procedure in relation to certain approvals*) paragraphs (4) and (5) do not apply to any consent, agreement or approval required or contemplated by any of the provisions of this Part.

Interpretation of this Part

214. In this Part of this Schedule—

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

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

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

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

"owner" means—

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

(i) with an interest in the Sembcorp Protection Corridor;

(ii) with rights in, on, under or over the Sembcorp Protection Corridor; or

(iii) with apparatus in, on or under the Sembcorp Protection Corridor; or

(b) in relation to the Wilton Complex, any owner (as defined in article 2(1) of this Order) or occupier in the Wilton Complex;

but who is not a third party owner or operator;

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

"the Sembcorp operations" means—

(a) the activities and functions carried on by Sembcorp in the Sembcorp Protection Corridor (including in relation to any access routes and laydown spaces associated with them or it);

(b) the number 2 river tunnel between Bran Sands and North Tees crossing the Order limits under the River Tees (together with associated headhouses) operated by Sembcorp; and

(c) other pipes and apparatus (including access routes and laydown spaces associated with such pipes and apparatus) operated—

(i) by Sembcorp; or

(ii) by any owner or operator within the Sembcorp Protection Corridor; or

(iii) for the benefit or on behalf of any owner or operator in the Wilton Complex;

"Sembcorp Protection Corridor" means the area edged black and shaded yellow on the Sembcorp Protection Corridor protective provisions supporting plans;

"Sembcorp Protection Corridor protective provisions supporting plans" means the plans which are certified as the Sembcorp Protection Corridor protective provisions supporting plans by the Secretary of State under article 45 (certification of plans etc) for the purposes of this Order;

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

"third party protective provisions" means the protective provisions in Parts 1 to 16 or 18 to 28 of this Schedule;

"Wilton Complex" means the industrial and manufacturing plant shown edged blue on the Sembcorp Protection Corridor protective provisions supporting plans; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 214.

Separate approvals by third party owners or operators

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

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

(a) the same information provided to the third party owner or operator at the same time; and

(b) a copy of any approval from the third party owner or operator given pursuant to the third party protective provisions

Removal of apparatus

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

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

(3) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between Sembcorp and the undertaker or in default of agreement settled by an arbitrator appointed under paragraph 226.

(4) The owner or operator in question must, after the alternative apparatus to be provided or constructed has been agreed or determined by an arbitrator under paragraph 226, and after the grant to the owner or operator of any such facilities and rights as are referred to in sub-paragraph (2) and after the expiration of any applicable notice period in respect of the works under the Pipelines Safety Regulations 1996, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under this Part subject to any reasonable directions given to or requirements imposed on that owner or operator by Sembcorp.

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

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

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

Alternative apparatus

217.—(1) Where, in accordance with this Part, the undertaker affords to an owner or operator and Sembcorp facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted on such terms and conditions as may be agreed between the undertaker and Sembcorp or in default of agreement determined by arbitration under paragraph 226, such terms to be no less favourable as a whole than the terms and conditions which applied to the apparatus to be removed.

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

(a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the authorised development for which the alternative apparatus is to be substituted.

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

Consent under this Part in connection with Sembcorp operations

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

219. The works referred to in paragraph 217 must not be commenced until the works details in respect of those works submitted under that paragraph have been approved by Sembcorp.

220. Any approval of Sembcorp required under paragraph 218 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Sembcorp may require to be made for—

(a) the continuing safety and operational viability of the Sembcorp operations; and

(b) the requirement for Sembcorp to have reasonable access to the Sembcorp operations at all times.

221.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 218 and any requirements imposed on the approval under paragraph 219.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 226 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 226.

Insurance

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

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

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

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

Expenses

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

(a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus or alternative apparatus under any provision of this Part;

(b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;

(c) the survey of any land, apparatus or works, the watching, inspection, superintendence and monitoring of works or the installation or removal of any temporary works in consequence of the exercise by the undertaker of any power under this Order;

(d) the design, project management, supervision and implementation of works;

(e) the negotiation and grant of necessary rights for the construction, adjustment, alteration, use, repair, maintenance, renewal, inspection, removal and replacement of alternative apparatus;

(f) monitoring the effectiveness of any requirements referred to in paragraph 219and the installation of any additional protective measures reasonably required in order to deal with any deficiency in the expected level of protection afforded by those requirements; and

(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,

within a reasonable time of being notified by the person in question that it has incurred such expenses, such notification to be provided by the owner or operator or Sembcorp (as the case may be).

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

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

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

(5) If in accordance with this Part—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by an arbitrator under paragraph 226 to be necessary, then, if such placing involves cost in the construction of works under this Part exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the owner or operator in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

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

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

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

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

Indemnity

224.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development, including without limitation any of the works referred to in paragraph 215 (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or any subsidence resulting from any of these works, any damage is caused to the Sembcorp operations or property of an owner or operator or Sembcorp, or there is any interruption in any service provided, or in the supply of any goods, to or by an owner or operator or Sembcorp, or Sembcorp becomes liable to pay any amount to any third party, the undertaker must—

(a) bear and pay the cost reasonably incurred by the owner or operator in question or Sembcorp (as the case may be) in making good such damage or restoring the service, supply and/or operations; and

(b) make reasonable compensation to the owner or operator in question or Sembcorp or to any other person whose supply or operations are affected by the damage or interruption (as the case may be, and in all cases excluding third party owners or operators) for any other expenses, loss, damages, penalty or costs incurred by that person, by reason or in consequence of any such damage or interruption.

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

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

(4) The person to whom the liability is owed under sub-paragraph (1) must use its reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 223 applies where it is within its reasonable ability and control so to do. If requested to do so by the undertaker, the person must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 223 for claims reasonably incurred by the owner or operator in question or by Sembcorp (as the case may be).

Participation in community groups

225.—(1) Before undertaking any works or exercising any powers in this Order relating to or affecting the Sembcorp operations or the Sembcorp Protection Corridor, the undertaker must participate in any relevant consultation groups established or co-ordinated by Sembcorp.

(2) Before undertaking any construction works affecting the Sembcorp operations or the Sembcorp Protection Corridor, where any of these might reasonably be expected to give rise to significantly perceptible effects beyond the Order limits in terms of—

(a) construction noise and vibration management;

(b) air quality, including dust emissions;

(c) waste management;

(d) traffic management and materials storage on site;

(e) surface water and groundwater management; or

(f) artificial light emissions,

the undertaker must participate in any relevant community environmental liaison group that may be established or co-ordinated by Sembcorp with local residents.

(3) The undertaker must co-operate with Sembcorp to respond promptly to any complaints raised in relation to the construction or operation of the authorised development or the traffic associated with the authorised development.

(4) The undertaker's obligations in sub-paragraphs (1) and (2) are subject to Sembcorp providing reasonable notice to them of the existence of a relevant consultation group or a relevant community environmental liaison group and reasonable notice of the arrangements for meetings of those groups.

Notice of start and completion of commissioning

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

(2) Notice of the intended date of final commissioning of each of Work Nos. 1 and 6 must be given to Sembcorp no later than fourteen days prior to the date of final commissioning.

Arbitration

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

Additional Agreement

228. For the protection of Sembcorp, the Sembcorp Operations, the Sembcorp Protection Corridor and the Wilton Complex, the undertaker and Sembcorp have entered into an agreement dated 9 December 2022 containing provisions for the protection and benefit of Sembcorp, the Sembcorp Operations, the Sembcorp Protection Corridor and the Wilton Complex in relation to the exercise operation and use of the authorised development by the undertaker in addition to and which differ from the provisions for the protection of the Sembcorp Protection Corridor set out in this Part.

PART 18

FOR THE PROTECTION OF ANGLO AMERICAN

Interpretation

229. For the protection of Anglo American the following provisions have effect, unless otherwise agreed in writing between the Parties.

230. The following definitions apply in this Part of this Schedule—

"AA Easements" means the Deed of Grant entered into by Redcar Bulk Terminal Limited and York Potash Processing & Ports Limited dated 6 July 2018 and the Deed of Grant entered into by Redcar Bulk Terminal Limited, York Potash Limited and York Potash Processing & Ports Limited dated 26 June 2019;

"Anglo American Specified Works" means so much of the Woodsmith Project as is within the Shared Area;

"Anglo American" means the parties with the benefit of the York Potash Order (being Anglo American Woodsmith Limited and Anglo American Crop Nutrients Limited) and Anglo American Woodsmith (Teesside) Limited;

"Anglo American Apparatus" means the pipeline, cables, structures which are or are to be owned, occupied or maintained by Anglo American within the Shared Area;

"EA Permit" means the environmental permit for the landfill site at Bran Sands given permit number EPR/FB3601GS (formerly Waste Management Licence EAWML60092);

"expert" means a person appointed pursuant to paragraph 241(b);

"NWL Facility" means the Northumbrian Water Limited Bran Sands Wastewater Treatment Plant;

"NZT Apparatus" means the pipeline, cables, structures to be owned, occupied or maintained by the undertaker within the Shared Area;

"Parties" means the undertaker and Anglo American;

"Plans" includes sections, drawings, specifications design data, software, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of the shared area;

"Property Documents" means any leases, licences or other documents by virtue of which Anglo American has an interest in, on or over land;

"Respective Projects" means the authorised development and the Woodsmith Project;

"Secretary of State" means the Secretary of State for Energy Security and Net Zero or any successor in function;

"Shared Area" means the land coloured blue on the Shared Area Plan;

"Shared Area 1" means the land comprising plots 222 and 223 on the land plans;

"Shared Area 2" means the land comprising plots 252, 252a, 253, 253a, 255, 263, 278, 280, 281, 284, 285, 286, 294, 301, 302, 303, 314, 315, 316, 317, 318, 319, 320, 321, 322, 324, 325, 328, 329, 330, 331, 332, 333, 343 and 541 on the land plans;

"Shared Area 3" means the land comprising plots 332, 343, 345 and 347 on the land plans;

"Shared Area 4" means the land comprising plots 384, 397, 395, 401 and 405 on the land plans;

"Shared Area 5" means the land comprising plots 417, 418, 427, 432, 436 and 439 on the land plans;

"Shared Area 6" means the land comprising plots 540a and 540d on the land plans;

"Shared Area Plan" means the plan which is certified as the Net Zero Teesside Anglo American Shared Area Plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

"Specified Works" means so much of the authorised development as is within the Shared Area;

"STDC Agreement" means a Deed of Licence and Option entered into between South Tees Development Corporation, York Potash Processing and Ports Limited and Sirius Minerals PLC dated 9 January 2019;

"Woodsmith Project" means the construction, operation, or maintenance of development authorised by the York Potash Order or by any planning permission or development consent order issued whether before or after the date of this Agreement as part of the Woodsmith Project such development comprising—

(a) an underground mine at Sneatonthorpe for the mining of polyhalite;

(b) a Mineral Transport System being a tunnel from the mine to Teesside;

(c) a Material Handling Facility at Wilton International, Teesside; and

(d) Harbour Facilities at Teesside including an overland conveyor between the Material Handling Facility and the Redcar Bulk Terminal and the harbour authorised by the York Potash Order and planning permissions; and

"York Potash Order" means the York Potash Harbour Facilities Order 2016.

Consent to works in the shared area

231.—(1) Where the consent or agreement of Anglo American is required under the provisions of this Part of this Schedule the undertaker must give at least 21 days written notice to Anglo American of the request for such consent or agreement and in such notice must specify the works or matter for which consent or agreement is to be requested and the Plans that will be provided with the request which must identify—

(a) the land that will or may be affected;

(b) which Works Nos. from the Order any powers sought to be used or works to be carried out relate to;

(c) which of the entities which make up the undertaker is to carry out the works and the identity of the contractors carrying out the work on behalf of that entity;

(d) the proposed programme for the power to be used or works to be carried out; and

(e) the named point of contact for the undertaker for discussions in relation to the information supplied and the consenting process.

(2) Anglo American must notify the undertaker within 14 days of the receipt of the written notice under sub-paragraph (1) of—

(a) any information it reasonably requires to be provided in addition to that proposed to be supplied by the undertaker under sub-paragraph (1);

(b) any particular circumstances with regard to the construction or operation of the Woodsmith Project it requires to be taken into account;

(c) the named point of contact for Anglo American for discussions in relation to the information supplied and the consenting process; and

(d) the specific person who will be responsible for confirming or refusing the consent or agreement.

(3) Any request for consent under paragraphs 232(1), 233(1) and 233(2) must be accompanied by the information referred to in sub-paragraph (1) as amended or expanded in response to sub-paragraph (2).

(4) Subject to sub-paragraph (5), where conditions are included in any consent granted by Anglo American pursuant to this Part of this Schedule, the undertaker must comply with the conditions if it chooses to implement or rely on the consent, unless the conditions are waived or varied in writing by Anglo American.

(5) Wherever in this Part of this Schedule provision is made with respect to the agreement approval or consent of Anglo American, that approval or consent must be in writing and subject to such reasonable terms and conditions as Anglo American may require including conditions requiring protective works to be carried out, but must not be unreasonably refused or delayed and for the purposes of these provisions it will be deemed to be reasonable for any consent to be refused if it would—

(a) compromise the safety and operational viability of the Woodsmith Project;

(b) prevent the ability of Anglo American to have uninterrupted access to the Woodsmith Project;

(c) cause a breach of the obligations under, or conditions attached to, the EA Permit or render compliance with the obligations under, or conditions attached to, the EA Permit—

(i) more difficult; and/or

(ii) more expensive;

(d) make regulatory compliance more difficult or expensive; and/or

(e) cause a breach of, or prevent compliance with, any obligations to other parties contained in any Property Documents,

provided that before Anglo American can validly refuse consent for any of the reasons set out in sub-paragraphs (a) to (e) it must first give the undertaker seven days' notice of such intention and

consider any representations made in respect of such refusal by the undertaker to Anglo American within that seven day period.

(6) The seven day period referred to in the proviso to sub-paragraph (5) must be added to the period of time within which any request for agreement, approval or consent is required to be responded to pursuant to the provisions of this Part of this Schedule.

(7) In the event that—

(a) the undertaker considers that Anglo American has unreasonably withheld its authorisation or agreement under paragraph 232(1), 233(1), and/or 233(2); or

(b) the undertaker considers that Anglo American has given its authorisation under paragraph 232(1), 233(1), and/or 233(2) subject to unreasonable conditions,

the undertaker may refer the matter to dispute resolution under paragraph 241.

(8) Any notice under sub-paragraph (1) and any request for approval or consent under the provisions of this Part of this Schedule must be sent to Anglo American by recorded delivery and addressed to—

(a) the Head of Legal and the Head of Environment Permitting and Sustainable Development at Anglo American Crop Nutrients Limited at Resolution House, Lake View, Scarborough YO11 3ZB; and

(b) the Company Secretary, Anglo American Crop Nutrients Limited at the registered office for the time being of that company.

(9) In the event that Anglo American does not respond in writing to a request for approval or consent or agreement within 28 days of its receipt of the postal request then the undertaker may serve upon Anglo American written notice requiring Anglo American to give their decision within a further 28 days beginning with the date upon which Anglo American received written notice from the undertaker and, subject to compliance with sub-paragraph (10), if by the expiry of the further 28 day period Anglo American has failed to notify the undertaker of its decision Anglo American is deemed to have given its consent, approval or agreement without any terms or conditions.

(10) Any further notice given by the undertaker under sub-paragraph (9) must include a written statement that the provisions of sub-paragraph (9) apply to the relevant approval or consent or agreement.

Co-operation

232. Insofar as the Anglo American Specified Works are or may be undertaken concurrently with the Specified Works within the Shared Area, the undertaker must—

(a) co-operate with Anglo American with a view to ensuring—

(i) the co-ordination of programming of all activities and the carrying out of works within the Shared Area; and

(ii) that access for the purposes of the construction and operation of the Woodsmith Project is maintained for Anglo American and its contractors, employees, contractors and sub-contractors; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the Respective Projects.

Regulation of works within the shared area

233.—(1) The undertaker must not carry out the Specified Works without the prior written consent of Anglo American obtained pursuant to, and in accordance with, the provisions of paragraph 230.

(2) Where under paragraph 230(5) Anglo American requires any protective works to be carried out either by themselves or by the undertaker (whether of a temporary or permanent nature) such protective works must be carried out to the reasonable satisfaction of Anglo American.

(3) Nothing in paragraph 230 or this paragraph 232 precludes the undertaker from submitting at any time or from time to time, but in no case less than 48 days before commencing the execution of any Specified Work, new Plans in respect of that Specified Work in substitution of the Plans previously submitted, and the provisions of this paragraph and paragraph 230 shall apply to the new Plans.

(4) Where there has been a reference to an expert in accordance with paragraph 240(b) and the expert in determining the dispute gives approval for the works concerned, the Specified Works must be carried out in accordance with that approval and any conditions applied by the decision of the expert under paragraph 242.

(5) The undertaker must give to Anglo American not less than 28 days' written notice of its intention to commence the construction of any of the Specified Works and, not more than 14 days after completion of their construction, must give Anglo American written notice of the completion.

(6) The undertaker is not required to comply with sub-paragraphs (1) to (5) above in a case of emergency, (being actions required directly to prevent possible death or injury) but in that case it must give to Anglo American notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and thereafter must comply with paragraphs 230 and this paragraph 232 in so far as is reasonably practicable in the circumstances.

(7) The undertaker must at all reasonable times during construction of the Specified Works allow Anglo American and its officers, employees, servants, contractors, and agents access to the Specified Works and all reasonable facilities for inspection of the Specified Works.

(8) After the purpose of any temporary works has been accomplished, the undertaker must with all reasonable dispatch, or after a reasonable period of notice in writing from Anglo American requiring the undertaker to do so, remove the temporary works in, on, under, over, or within the Shared Area.

(9) If the undertaker fails to remove the temporary works within a reasonable period of receipt of a notice pursuant to sub-paragraph (8) above, Anglo American may remove the temporary works and may recover the reasonable costs of doing so from the undertaker.

(10) The undertaker must not exercise the powers conferred by the Order or undertake the Specified Works to prevent or interfere with the access by Anglo American to the Anglo American Specified Works unless first agreed in writing by Anglo American.

(11) If in consequence of the exercise of the powers conferred by the Order or the carrying out of the Specified Works the access to any of the Anglo American Specified Works is materially obstructed, the undertaker must provide such alternative means of access to the Anglo American Specified Works as will enable Anglo American to construct, maintain or use the Woodsmith Project no less effectively than was possible before the obstruction.

(12) To ensure its compliance with this paragraph 232, the undertaker must before carrying out any of the Specified Works request up-to-date written confirmation from Anglo American of the location of any part of its then existing or proposed Anglo American Specified Works.

Regulation of powers over the shared area

234.—(1) The undertaker must not exercise the powers granted under the Order so as to hinder or prevent the construction, operation or maintenance of the Anglo American Specified Works without the prior written consent of Anglo American.

(2) The undertaker must not exercise the powers under any of the articles of the Order specified in sub-paragraph (3) below over or in respect of the Shared Area otherwise than with the prior written consent of Anglo American.

(3) The articles referred to in sub-paragraph (2) above are—

(a) article 10 (power to alter layout etc. of streets);

(b) article 11 (street works);

(c) article 12 (construction and maintenance of new or altered means of access);

(d) article 13 (temporary stopping up of streets, public rights of way and access land);

(e) article 14 (access to works);

(f) article 16 (traffic regulation);

(g) article 17 (discharge of water);

(h) article 18 (felling or lopping of trees and removal of hedgerows);

(i) article 19 (protective work to buildings);

(j) article 20 (authority to survey and investigate the land);

(k) article 22 (compulsory acquisition of land);

(l) article 23 (power to override easements and other rights);

(m) article 25 (compulsory acquisition of rights etc.);

(n) article 26 (private rights);

(o) article 28 (acquisition of subsoil and airspace only);

(p) article 30 (rights under or over streets);

(q) article 31 (temporary use of land for carrying out the authorised development);

(r) article 32 (temporary use of land for maintaining the authorised development); and

(s) article 33 (statutory undertakers).

(4) In the event that Anglo American withholds its consent pursuant to sub-paragraph (2) above it must notify the undertaker in writing of the reasons for withholding such consent and (if applicable) the time period during which such consent will be withheld.

(5) Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not appropriate or acquire or take permanent or temporary possession of any land interest held by Anglo American in any plots shown on the land plans, or appropriate, acquire, extinguish, interfere with or override any easement, other interest or right in such land.

Constructability Principles

235.—(1) The undertaker (unless otherwise agreed, or in an emergency relating to potential death or serious injury, or where it would render the Specified Works, NZT Apparatus, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties) must—

(a) in respect of all Shared Areas—

(i) carry out the works in such a way that will not prevent or interfere with the continued construction of the Anglo American Specified Works, or the maintenance or operation of the Anglo American Apparatus unless the action leading to such prevention or interference has the prior written consent of Anglo American;

(ii) ensure that works carried out to, or placing of NZT Apparatus beneath, roads along which construction or maintenance access is required by Anglo American in respect of any Anglo American Apparatus (including the overland conveyor) will be of adequate specification to bear the loads;

(iii) prior to the undertaker carrying out any of the Specified Works in any part of any Shared Area, the undertaker must in respect of the Specified Work concerned—

(aa) submit a construction programme and a construction traffic and access management plan in respect of that area to Anglo American and obtain agreement thereof from Anglo American (noting that a single construction traffic and access management plan may be completed for one or more parts of each Shared Area or more than one Shared Area and may be subject to review if agreed between the Parties) and without prejudice to the generality of sub-paragraph (i) the plans must include such measures and construction practices or processes as are necessary to satisfactorily address the relevant

issues in relation to construction traffic and access management during construction that are set out in this paragraph 234;

(bb) where applicable, confirm to Anglo American in writing the identity of the client for the purposes of the relevant Construction Design and Management Regulations applicable from time to time; and

(cc) obtain the agreement of Anglo American to the location of any temporary laydown areas where such areas are not those referred to in Table 5-2 of the environmental statement;

(iv) update the monthly construction programme approved under sub-paragraph (iii)(aa) monthly and supply a copy of the updated programme to Anglo American every month;

(v) at all times construct the Specified Works in compliance with the relevant approved construction programme and construction traffic and access management plan;

(vi) notify Anglo American of any incidences which occur as a result of, or in connection with, the Specified Works which are required to be reported under the relevant Reporting of Injuries Diseases and Dangerous Occurrences Regulations applicable from time to time within 24 hours of the duty to report arising;

(vii) provide comprehensive, as built, drawings of the Specified Works (including, for the avoidance of doubt, buried pipelines) within three months of the completion of each of the Specified Works;

(viii) following the completion of each of the Specified Works unless otherwise agreed in writing by Anglo American fully reinstate the affected area (with the exception only of the retention of the permanent elements of the Specified Works) and remove all waste/surplus materials; and

(ix) obtain the prior written consent of Anglo American for the use of any re-cycled aggregate material within the Shared Area;

(b) in respect of Shared Area 1, construct the Specified Works in such a way that—

(i) construction activities do not interfere with the ability of Anglo American to construct and operate the shiploader within Shared Area 1;

(ii) construction access is maintained for Anglo American to undertake the construction of its ship loader, associated equipment and quay and is safeguarded;

(iii) the use by Anglo American of a laydown facility within Shared Area 1 in connection with its construction activities is appropriately protected; and

(iv) no works are carried out in that part of Shared Area 1 which is the subject of the AA Easements;

(c) in respect of Shared Area 2, construct the Specified Works in such a way that—

(i) the construction access required by Anglo American along Shared Area 2 for the construction of the quay authorised by the York Potash Order is safeguarded at all times;

(ii) access for Anglo American and third parties to, and along, the pipeline corridor within Shared Area 2 is safeguarded at all times;

(iii) Anglo American has unhindered access to manage the discharge facility within the NWL Facility and to empty their leachate chambers at all times so as to be able to comply with its obligations under the EA Permit;

(iv) access via the area colloquially known as the Eston Triangle is safeguarded; and

(v) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 2 is not impaired;

(d) in respect of Shared Area 3, construct the Specified Works in such a way that—

(i) Anglo American is able to access the gas monitoring facility within the NWL Facility at all times so as to be able to comply with its obligations under the EA Permit;

(ii) the operation and maintenance of boreholes BH0627 and BH0628 is not interfered with; and

(iii) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 3 is not impaired;

(e) in respect of Shared Area 4, construct the Specified Works in such a way that—

(i) use by Anglo American of laydown areas within Shared Area 4 in connection with construction activities for the Woodsmith Project is appropriately protected;

(ii) access to the rail crossing point within or adjacent to Shared Area 4 for Anglo American is safeguarded;

(iii) the operation and maintenance of borehole BH622 is not interfered with; and

(iv) the construction, operation and maintenance of any overland conveyor to be located within Shared Area 4 is not impaired; and

(f) in respect of Shared Area 5, construct the Specified Works in such a way that the construction, operation and maintenance of any overland conveyor to be located within Shared Area 5 is not impaired.

(2) The undertaker must not do anything within Shared Areas 2,3, 4 and 5 which will constrain the ability of Anglo American to construct and operate an overland conveyor along the route which is the subject of the STDC Agreement or do anything which will compromise the construction, operational efficiency or maintenance of that conveyor or make the construction, operation or maintenance of it materially more expensive (unless such difference in cost (including any difference attributable to delay) is agreed to be provided by the undertaker).

(3) Any spoil from the Anglo American Specified Works or the Specified Works (including contaminated material) must be dealt with in accordance with a spoil management plan to be agreed between the Parties in advance of the work by either Party generating such spoil beginning.

(4) In considering a request for any consent under the provisions of this Part of this Schedule, Anglo American must not—

(a) request an additional construction traffic and access management plan or a spoil management plan if such a plan has already been approved pursuant to sub-paragraph (1)(a)(iii)(aa) (as relevant in respect of a traffic and access management plan) or agreed pursuant to sub-paragraph (3) (in respect of a spoil management plan); and

(b) refuse consent for reasons which conflict with the contents of documents approved by Anglo American pursuant to the provisions of this paragraph and paragraph 235.

Interface Design Process

236.—(1) Prior to the seeking of any consent under this Part of this Schedule, the undertaker must, unless Anglo American has brought forward works in that part of the Shared Area before the undertaker, participate in a design and constructability review for that part of the Shared Area which shall, at a minimum (unless otherwise agreed), include the following matters—

(a) a Front End Engineering Design (FEED) level indicative construction work-pack;

(b) a hazard and operability study;

(c) a construction hazard study; and

(d) in respect of any part of the Shared Area which is to accommodate the overland conveyor, information to demonstrate that the relevant Specified Works account for the interface with any overland conveyor located in that part of the Shared Area.

(2) Unless otherwise agreed, the undertaker must submit the outcome of the design and constructability review referred to in sub-paragraph (1) to Anglo American for approval prior to the seeking of any consent under this Part of this Schedule.

(3) The undertaker must at all times design and construct the Specified Works in compliance with the relevant approved design and constructability review pursuant to sub-paragraph (2).

(4) The undertaker may undertake a single design and constructability review process for one or more parts of the Shared Area and any approved design and constructability review may be amended if agreed by Anglo American.

(5) In considering any request for consent or approval under this Part of this Schedule, Anglo American must not refuse consent for details that are consistent with those approved under sub-paragraph (2) unless Anglo American reasonably believes that the relevant agreed design and constructability review is materially out of date or is inapplicable due to a change in either the authorised development or the Woodsmith Project.

Design Principles

237. The Specified Works must be designed in such a way (unless otherwise agreed by Anglo American)—

(a) that the location and design of the Specified Works do not interfere with the operation and maintenance of boreholes BH0622, BH0627, BH0628; and

(b) so as not to conflict with the ability of Anglo American to construct the southern tower for the overland conveyor in the location authorised by the York Potash Order or the conveyor towers in the alternative locations within Shared Area 4.

Maintenance and Operational Principles

238. The Specified Works must be maintained and operated in such a way that (unless otherwise agreed, in an emergency, or where it would render the Specified Works, Anglo American Specified Works or Anglo American Apparatus unsafe, or put the undertaker in breach of its statutory duties)—

(a) in Shared Area 2: Anglo American has unhindered access to manage the discharge facility within the NWL Facility and to empty their leachate chambers so as to be able to comply with its obligations under the EA Permit;

(b) in Shared Area 3: Anglo American (along with NWL) has unhindered access to monitor the gas monitoring facility located within the NWL Facility so as to be able to comply with its obligations under the EA Permit; and

(c) in Shared Areas 2, 3, 4 and 5: the operation of any overland conveyor located within those Shared Areas is not impaired.

Miscellaneous provisions

239.—(1) The undertaker and Anglo American must each act in good faith and use reasonable endeavours to co-operate with, and provide assistance to, each other as may be required to give effect to the provisions of this Part of this Schedule.

(2) The undertaker must pay to Anglo American the reasonable expenses incurred by Anglo American in connection with the consenting processes under this Part of this Schedule, including the approval of plans, inspection of any Specified Works or the alteration or protection of the Anglo American Specified Works.

Indemnity

240.—(1) Subject to sub-paragraphs (2) and (3), if by reason, or in consequence, of the construction, maintenance or operation of any Specified Works, or failure thereof, any damage is caused to any Anglo American Apparatus used in connection with the Anglo American Specified Works or damage is caused to any part of the Anglo American Specified Works or there is any interruption in any service provided, or the operations of Anglo American, or in the supply of any goods, by Anglo American, or Anglo American becomes liable to pay any amount to any third party as a consequence of the Specified Works, the undertaker must—

(a) bear and pay the costs reasonably incurred by Anglo American in making good such damage or restoring the service, operations or supply; and

(b) compensate Anglo American for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from Anglo American, by reason or in consequence of any such damage or interruption or Anglo American becoming liable to any third party as aforesaid.

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

(3) Anglo American 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) If the undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

(a) keep Anglo American fully informed of the developments and material elements of the proceedings;

(b) take account of the views of Anglo American before taking any action in relation to the claim;

(c) not bring the name of the Anglo American on any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and

(d) not pay or settle such claims without the prior written consent of Anglo American such consent not to be unreasonably withheld or delayed.

(5) Anglo American must use its reasonable endeavours to mitigate any claim or losses in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies. If requested to do so by the undertaker, Anglo American 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 not be liable under this paragraph in respect of any claim capable of being mitigated or minimised to the extent that Anglo American has not used its reasonable endeavours to mitigate and/or minimise that claim in accordance with sub-paragraph (5).

(7) The fact that any work or thing has been executed or done with the consent of Anglo American and in accordance with any conditions or restrictions prescribed by Anglo American or in accordance with any plans approved by Anglo American or to its satisfaction or in accordance with any directions or award of any expert appointed pursuant to paragraph 241 does not relieve the undertaker from any liability under this paragraph.

Dispute Resolution

241. Article 47 (arbitration) does not apply to the provisions of this Part of this Schedule.

242. Any difference in relation to the provisions in this Part of this Schedule must be referred to—

(a) a meeting of the Managing Director of Net Zero Teesside Power Limited and/or the Managing Director of Net Zero North Sea Storage Limited, whichever is the relevant party and the Chief Executive Officer of Anglo American Crop Nutrients Limited 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 Anglo American or, in the absence of

agreement identified by the President of the Institute of Civil Engineers, who must be sought to be appointed within 28 days of the notification of the dispute.

243. The fees of the expert appointed pursuant to paragraph 241(b) are to be payable by the Parties in such proportions as the expert may determine or, in the absence of such determination, equally as between the Parties.

244. Where appointed pursuant to paragraph 241(b), the expert must—

(a) invite the Parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;

(b) allow each Party an opportunity to comment on the submissions made by the other provided they are received within 21 days of the receipt of the submissions referred to in sub-paragraph (a);

(c) issue a decision within 42 days of receipt of the submissions submitted pursuant to sub-paragraph (a); and

(d) give reasons for the decision.

245. The expert must consider where relevant—

(a) the development outcomes sought by the undertaker and Anglo American;

(b) the ability of the undertaker and Anglo American to achieve the outcomes referred to sub-paragraph (a) in a timely and cost-effective manner;

(c) any increased costs on any Party as a result of the matter in dispute;

(d) whether under this Order or the York Potash Order, the undertaker's or Anglo American's outcomes could be achieved in any alternative manner without the Specified Works being materially compromised in terms of increased cost or increased length of programme; and

(e) any other important and relevant considerations.

246. 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 settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

PART 19

FOR THE PROTECTION OF SUEZ RECYCLING AND RECOVERY UK LIMITED

247. For the protection of Suez, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Suez.

248. In this Part of this Schedule—

"the respective authorised developments" means the authorised development and the Suez energy from waste facility respectively;

"Suez" means Suez Recycling and Recovery UK Limited (company number 02291198) whose registered address is Suez House, Grenfell Road, Maidenhead, Berkshire SL6 1ES and any successor in title;

"the Suez energy from waste facility" the proposed energy from waste facility authorised by planning permission ref 14/1454/EIA granted by Stockton-on-Tee Borough Council to be situated on the Suez site;

"Suez site" means the land within the Order limits owned by Suez; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 249.

Consent under this Part

249. Paragraphs 249 to 252 of this Part only apply where prior to the undertaker commencing any part of Work Number 6 Suez has either begun or completed construction of the Suez energy from waste facility anywhere within the Order limits.

250. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Suez energy from waste facility or access to it, the undertaker must submit to Suez the works details for the proposed works and such further particulars as Suez may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

251. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Suez energy from waste facility or access to it are to be commenced until the works details in respect of those works submitted under paragraph 249 have been approved by Suez.

252. Any approval of Suez required under paragraph 250 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Suez may require to be made to ensure that the respective authorised developments can co-exist within the Suez site.

253.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 250 and any requirements imposed on the approval under paragraph 251.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 255 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 255.

Co-operation

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

(a) the construction of the Suez energy from waste facility and the authorised development may be undertaken within the Order limits concurrently; or

(b) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and Suez 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, Suez 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 Suez; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Indemnity

255.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 249, any damage is caused to the Suez site, or there is any interruption in any service provided, or in the supply of any goods, by Suez, the undertaker must—

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

(b) make reasonable compensation to Suez for any other expenses, loss, damages, penalty or costs incurred by Suez, 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 Suez, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Suez.

(3) Suez 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) Suez 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 254 applies. If requested to do so by the undertaker, Suez must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 254 for claims reasonably incurred by Suez.

Arbitration

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

PART 20

FOR THE PROTECTION OF SOUTH TEES DEVELOPMENT CORPORATION

257. For the protection of South Tees Development Corporation, Teesworks Limited and South Tees Developments Limited, the following provisions have effect, unless otherwise agreed in writing between the undertaker and South Tees Development Corporation, South Tees Developments Limited and Teesworks Limited.

258.—(1) In this Part of this Schedule—

"AIL access route land" means plots 290, 291 and 299, so far as required in relation to Work No. 10;

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

"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 it in the reasonable opinion of the undertaker 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 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 Teesworks 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 Teesworks entity or the undertaker, it can be carried out and completed in accordance with the undertakers' programme for the construction of the authorised development;

(h) in relation only to the AIL access route work that the diversion work complies with the red main criteria;

(i) in relation only to the parking diversion works that—

(i) from 1 July 2023 to 30 September 2023, 60 parking spaces within the STDC area (but no more than 1.5km from Work No. 1) would be available to the undertaker for the parking of private cars;

(ii) from 1 October to 31 December 2023, 150 parking spaces within the STDC area (but no more than 1.5km from Work No. 1) would be available to the undertaker for the parking of private cars;

(iii) by 1 January 2024, at least 300 car parking spaces within the STDC area would be available for use by the undertaker for the parking of private cars;

(iv) and that the number of car parking spaces specified would be available for use by the undertaker at all times during the periods specified, and that the surface of any land designated for use as a car parking space is suitable for such use, and that the undertaker will be able to operate a bus service that provides for the transport of personnel from the car parking spaces to construction areas during the construction of the authorised development;

and that in the reasonable opinion of the undertaker the car parking spaces would be available for use by the undertaker at all times during the periods specified, and that the land demonstrated for use as car parking spaces is suitable for such use, and that the undertaker will be able to operate a bus service that provides for the transport of personnel from the car parking spaces to construction areas during the construction of the authorised development;

"diversion notice" means a notice from the Teesworks entity to the undertaker under paragraph 270;

"diversion work" means works, development or use of land;

"diversion works agreement" means an agreement between the Teesworks 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 Teesworks entity must carry out the diversion work, in either case in accordance with the undertakers' 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 31 (temporary use of land for carrying out the authorised development);

(g) article 32 (temporary use of land for maintaining the authorised development); and

(h) article 33 (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 272(c) that additional information is reasonably required before it can decide whether to agree to a diversion work;

"parking land" means part of each of plots 289, 292, 293, 298 and 300 being the area shown hatched green on the parking plan, so far as required in relation to Work No. 9A;

"parking plan" means the plan which is certified as the parking plan by the Secretary of State under article 45 (certification of plans etc.) for the purposes of this Order;

"parking works" means use of the parking land within part of Work No. 9A for parking;

"the PCC site access plan" means the plan which is certified as the PCC site access plan by the Secretary of State under article 45 for the purposes of this Order;

"the PCC site access route land" means parts of plots 425, 459, 485 and 488, and plots 425a, 458, 458a, 467, 470, 473, 493, 496, 500, 502, 504, 505 and 508, being the area shown hatched green on the PCC site access plan so far as required in relation to Work No. 10;

"the PCC site access route works" means Work No. 10 within the PCC site access route land;

"proposed land" means one of the AIL access route land, the parking land, the PCC site access route land or the water connection land;

"proposed work" means one of the AIL access route works, the parking works, the PCC site access route works or the water connection works;

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

"the respective authorised developments" means the authorised development and the Teesworks development respectively;

"red main criteria" means that—

(a) the diversion work must be along a route must connect to plot 223 at the same location as the existing road;

(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 20 metre width by 20 metre height by 80 metre length, with an axle width of 10 metres, and with 5 metres of overhang each side;

(d) the diversion work must allow a minimum internal turning radius of 24 metres and a maximum outer turning radius of 53 metres;

(e) the longitudinal slope of the diversion work must not exceed 5%;

(f) the transverse slope of the diversion work must not exceed 1.5%; and

(g) the diversion work must have a minimum ground bearing capacity of 100 kN/m2 and sufficient protection provided if it crosses underground facilities;

"South Tees Developments Limited" 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;

"STDC" means South Tees Development Corporation;

"STDC area" means the administrative area of STDC;

"the Teesworks development" means development authorised by any planning permission or development consent order granted in relation to the Teesworks site (or generally by permitted development rights), or prospective development planned in relation to the Teesworks site;

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

"Teesworks entity" means subject to paragraph 286 Teesworks Limited, STDC and South Tees Developments Limited and any successor in title to the freehold interest in the Teesworks site;

"the Teesworks site" means any land within the Order limits owned by STDC, Teesworks Limited and South Tees Developments Limited;

"water connection land" means part of plots 473, and plots 409a, 425a, 458, 461, 463, 467, 470, 472, 498, 509, 512, 515, 516, 518, 519, 521, 522, 524, 525, 531, 532, 533, 534, 535, 536, 537, 538, being the area shown hatched green on the water connection plan, and so far as required in relation to Work No. 4;

"water connection plan" means the plan which is certified as the water connection plan by the Secretary of State under article 45 for the purposes of this Order;

"water connection works" means Work No. 4 within the water connection land;

"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;

(f) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8 and 10 within which the corresponding works are proposed to be carried out;

(g) details of the location within the Teesworks site of a corridor situated within the limits shown on the works plans for numbered works 2A, 3, 4A, 5, 6, 8 and 10 within which the permanent corresponding works will be placed; and

(h) any further particulars provided in response to a request under paragraph 258; and

"works 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 Part 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 Teesworks Development; or

(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 works

259. Before commencing the construction of any part of the authorised development including any permitted preliminary works within the Teesworks site, the undertaker must first submit to the

Teesworks entity for its approval the works details for the work and such further particulars as the Teesworks entity may, within 30 days from the day on which the works details are submitted under this paragraph, reasonably require.

260. No works comprising any part of the authorised development including any permitted preliminary works within the Teesworks site are to be commenced until the works details in respect of those works submitted under paragraph 258 have been approved by the Teesworks entity.

261. Any approval of the Teesworks entity required under paragraph 58 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Teesworks entity may require to be made to ensure that the respective authorised developments can co-exist within the Teesworks site.

262. The authorised development must be carried out in accordance with the works details approved under paragraph 258 and any requirements imposed on the approval under paragraph 260 or where there has been a reference to an arbitrator in accordance with paragraph 285 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.

263. The undertaker must not exercise the powers under Article 14 or any other provision of this Order to create a means of access between the Tees Dock Road and plots 274 and 279 as shown on the land plans.

Co-operation

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

265. The undertaker must provide the Teesworks entity with information the Teesworks entity reasonably requests in relation to the authorised development and which the Teesworks 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 Teesworks development.

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

(a) the construction of the authorised development may be undertaken on the Teesworks site concurrently with demolition or site preparation works undertaken by the Teesworks entity;

(b) the construction of the respective authorised developments may be undertaken on the Teesworks site concurrently; or

(c) the construction of one of the respective authorised developments would have an effect on the operation or maintenance of the other respective authorised development or access to it.

(2) Where this paragraph applies the undertaker and the Teesworks 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 Teesworks 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 Teesworks entity; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the respective authorised developments.

Expenses

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

(a) the authorisation of works details in accordance with paragraphs 258 to 261;

(b) the process in relation to proposed works and diversion works set out in paragraphs 268 to 280(2);

(c) where the relevant diversion work is provided by the Teesworks 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; and

(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 Teesworks site, a proportion of the cost of construction of a diversion work provided instead of the PCC site access route works or the water connection works, such proportion to be agreed between the undertaker and the Teesworks entity acting reasonably or to be determined by arbitration pursuant to paragraph 285.

(2) Prior to incurring any expenses associated with the activities outlined in paragraph 266, the Teesworks 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 266 so far as they relate to the procurement of diversion work instead of the AIL access route works or the parking works will be incurred by the entity that serves the relevant diversion notice.

Indemnity

268.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 258 and approved under paragraph 259, or any diversion works, any damage is caused to the Teesworks site, or there is any interruption in any service provided, or in the supply of any goods, by the Teesworks entity, the undertaker must—

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

(b) make reasonable compensation to the Teesworks entity for any other expenses, loss, damages, penalty or costs incurred by the Teesworks 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 any damage or interruption to the extent that it is attributable to the act, neglect or default of the Teesworks entity, its officers, employees, servants, contractors or agents.

(3) The Teesworks 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 Teesworks 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 267 applies. If requested to do so by the undertaker, the Teesworks 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). The undertaker shall only be liable under this paragraph 267 for claims reasonably incurred by the Teesworks entity.

Provision for diversion works

269. 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 Teesworks entity details of its proposed works programme; and

(ii) provide such further particulars relating to the proposed works as the Teesworks entity may on occasion reasonably request, and must provide the details reasonably available to the undertaker that have been requested by the Teesworks entity within a period of 30 days of a request by the Teesworks entity or such longer period as the Teesworks 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 works notice to the Teesworks entity for that part.

270. If the undertaker intends to change the timing of the proposed work as set out in a proposed works programme issued to the Teesworks entity or the timing of the proposed works set out in a work notice the undertaker must notify the Teesworks 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 Teesworks entity.

271. The Teesworks entity may issue a notice (a "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 268(b); or

(b) the date of issue of the most recent work notice under paragraph 269,

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

272. 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.

273. If a diversion notice is issued to the undertaker before the expiry of the period under paragraph 270, the undertaker must notify the Teesworks entity no later than 30 days after the date of receipt of the diversion notice confirming whether the undertaker—

(a) agrees to 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").

274. In making the decision under paragraph 272 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.

275. Where the undertaker gives an information notice to the Teesworks 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.

276. Where the undertaker notifies the Teesworks entity under paragraph 272(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.

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

278. If the Teesworks 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 272 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 272(c); or

(b) in any case 150 days from the date of the undertaker's works notice under paragraph 268(b) or if relevant 150 days from the date of any revised works notice issued by the undertaker under paragraph 269.

279. If the undertaker issues notice to the Teesworks entity under paragraph 272(b) confirming that it does not agree to the diversion notice, the Teesworks entity may submit a further diversion notice to the undertaker to address the undertaker's reasons for refusal under paragraph 275, 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 272(b); or

(b) in any case 150 days from the date of the undertaker's works notice under paragraph 268(b) or if relevant 150 days from the date of any further works notice issued by the undertaker under paragraph 269.

280. If the undertaker issues a notice under paragraph 272(a) the Teesworks 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 Teesworks entity must use reasonable endeavours to obtain the planning permission in order that the diversion work can be carried out without delay to the undertakers' programme for the construction of the authorised development.

281.—(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 279 (or such longer period as may be agreed between the parties prior to the expiry of that 30 day period) the Teesworks entity or the undertaker may within 5 days of the end of that period refer the matter to arbitration under paragraph 285.

(2) If a diversion works agreement is not entered into within the 30 day period set out in paragraph 279 (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 Teesworks 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 278.

282. If a reference is made to arbitration under paragraph 285 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.

283. Where the arbitrator determines that the terms of the diversion works agreement can be in accordance with the diversion condition the Teesworks entity and the undertaker must use best endeavours to enter into the diversion works agreement on the terms determined by the arbitrator within 10 days of the arbitrator's decision.

284. If—

(a) a diversion works agreement is entered into within the 30 day period set out in paragraph 279; or

(b) a reference to arbitration is made in accordance with paragraph 285 and a diversion works agreement is entered into within the 10 day period in paragraph 282,

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

285.—(1) If—

(a) no diversion notice is issued by the Teesworks entity to the undertaker before the expiry of the period under paragraph 270;

(b) a diversion notice is issued by the Teesworks entity to the undertaker, the undertaker issues a notice not agreeing to the diversion work under paragraph 272(b), and no further diversion notice is issued by the Teesworks entity to the undertaker prior to the dates set out in paragraph 278;

(c) a diversion notice is issued by the Teesworks entity to the undertaker, the undertaker issues an information notice, and no further information is provided by the Teesworks entity to the undertaker prior to the dates set out in paragraph 277;

(d) paragraph 279 applies and the Teesworks 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 280;

(e) the arbitrator determines under paragraph 285 that the terms of the diversion works agreement cannot reasonably be in accordance with the diversion condition; or

(f) paragraph 282 applies and the Teesworks 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 paragraph 284 applies, this does not obviate the need for the undertaker to comply with paragraphs 258 to 261A in respect of the relevant proposed work.

Arbitration

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

Interpretation

287. Any reference to the Teesworks entity in this Part means the freehold owner of the relevant part of the Teesworks site.

288. Where a notice or information is provided by the undertaker to any of STDC, South Tees Developments Limited or Teesworks Limited under this Part, a copy of that notice or information must also be sent to the other parties.

PART 21

FOR THE PROTECTION OF THE BREAGH PIPELINE OWNERS

289. For the protection of the Breagh Pipeline Owners, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the Breagh Pipeline Owners.

290. In this Part of this Schedule—

"Breagh Pipeline" means the twenty inch (20") diameter pipeline and associated three inch (3") monoethylene glycol pipeline and fibre-optic cable extending from the field known as the

Breagh field located in UKCS blocks 42/12a and 42/13a to the onshore gas reception and processing terminal known as the Teesside Gas Processing Plant (located in Seal Sands, Teesside) owned by the Breagh Pipeline Owners and operated by the Breagh Pipeline Operator used at various times for the passage of natural gas and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962;

"Breagh Pipeline Operations" means the operations or property, including the leasehold interests, rights of access and easements relating to the construction and operation of the Breagh Pipeline, within the Order limits vested in the Breagh Pipeline Owners and/or the Breagh Pipeline Operator;

"Breagh Pipeline Operator" means the person, firm or company designated by the Breagh Pipeline Owners to operate the Breagh Pipeline on their behalf, being, at the date of this Order, INEOS UK SNS Limited (Company number 01021338) and including any successor or assign in such capacity;

"Breagh Pipeline Owners" means any company that owns the Breagh Pipeline being, at the date of this Order, INEOS UK SNS Limited (Company number 01021338) and ONE-DYAS UK LIMITED (Company number 03531783) whose registered address is Anchor House, 15-19 Britten Street, London SW3 3TY in respect of INEOS UK SNS Limited and 8th Floor 100 Bishopsgate, London EC2N 4AG in respect of ONE-DYAS UK LIMITED, and including any successors and assignees in such capacity; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 290.

Consent under this Part

291. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of or access to the Breagh Pipeline or the Breagh Pipeline Operations, the undertaker must submit to the Breagh Pipeline Owners the works details for the proposed works and such further particulars as the Breagh Pipeline Owners may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

292. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of or access to the Breagh Pipeline or the Breagh Pipeline Operations are to be commenced until the works details in respect of those works submitted under paragraph 290 have been approved by the Breagh Pipeline Owners.

293.—(1) Any approval of the Breagh Pipeline Owners required under paragraph 291 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as the Breagh Pipeline Owners may require to be made for—

(a) the continuing safety and operational viability of the Breagh Pipeline; and

(b) the requirement for the Breagh Pipeline Owners to have—

(i) uninterrupted and unimpeded emergency access with or without vehicles to the Breagh Pipeline and the Breagh Pipeline Operations at all times; and

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

(2) Where the Breagh Pipeline Owners can reasonably demonstrate that the authorised development will significantly adversely affect the safety of the Breagh Pipeline and the Breagh Pipeline Operations they are entitled to withhold their authorisation until the undertaker can demonstrate to the reasonable satisfaction of the Breagh Pipeline Owners that the authorised

development will not significantly adversely affect the safety of the Breagh Pipeline and the Breagh Pipeline Operations.

(3) The authorised development must be carried out in accordance with the works details approved under paragraph 291 and any requirements imposed on the approval under sub-paragraph (1).

(4) Where there has been a reference to an arbitrator in accordance with paragraph 295 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 295.

Compliance with requirements, etc. applying to the Breagh Pipeline and the Breagh Pipeline Operations

294. In undertaking any works in relation to the Breagh Pipeline and the Breagh Pipeline Operations or exercising any rights relating to or affecting the Breagh Pipeline and the Breagh Pipeline Operations, the undertaker must comply with such conditions, requirements or regulations relating to health, safety, security and welfare as are operated in relation to access to or activities in the Breagh Pipeline and the Breagh Pipeline Operations.

Indemnity

295.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 290, any damage is caused to the Breagh Pipeline and the Breagh Pipeline Operations or there is any interruption in any service provided, or in the supply of any goods, by the Breagh Pipeline Owners, the undertaker must—

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

(b) make reasonable compensation to the Breagh Pipeline Owners for any other expenses, loss, damages, penalty or costs incurred by the Breagh Pipeline Owners, 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 Breagh Pipeline Owners, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by the Breagh Pipeline Owners.

(3) The Breagh Pipeline Owners 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 Breagh Pipeline Owners must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 294 applies. If requested to do so by the undertaker, the Breagh Pipeline Owners must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 294 for claims reasonably incurred by the Breagh Pipeline Owners.

Arbitration

296. Any difference or dispute arising between the undertaker and the Breagh Pipeline Owners under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the Breagh Pipeline Owners, be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 22

FOR THE PROTECTION OF TEESSIDE WINDFARM LIMITED

297. For the protection of Teesside Windfarm, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Teesside Windfarm.

298. In this Part of this Schedule—

"restricted works" means works below mean high water springs forming part of the authorised development comprising Work No. 5B (a new water discharge pipeline to the Tees Bay in connection with Work No. 1) and Work No. 8 (high pressure carbon dioxide export pipeline corridor);

"restricted works considerations" means the following potential risks to the Teesside Windfarm operations associated with the restricted works—

(a) risks associated with vessels in close proximity to the Teesside Windfarm turbines;

(b) the risk of any explorations, geoscience activities or construction works including the drilling of bore holes damaging the Teesside Windfarm cable connection;

(c) impacts associated with changes to the seabed that may impact upon the foundation of the Teesside Windfarm turbines; and

(d) seismic effects that may impact upon the stability of the Teesside Windfarm turbines;

"Teesside Windfarm" means Teesside Windfarm Limited (Company number 06708759) of Alexander House, 1 Mandarin Road, Rainton Bridge Business Park, Houghton Le Spring, DH4 5RA and any successor in title or function to the Teesside Windfarm operations;

"the Teesside Windfarm operations" means the operations or property within the Order limits vested in Teesside Windfarm including the electric line (as defined in Part 1 of the 1989 Act) crossing the Order limits owned and operated by Teesside Windfarm used at various times for carrying electricity and all ancillary apparatus including such works and apparatus properly appurtenant to the electricity line; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 298.

Consent under this Part

299. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Teesside Windfarm operations or access to them, or cross any infrastructure owned or operated by Teesside Windfarm, and before commencing the restricted works, the undertaker must submit to Teesside Windfarm the works details for the proposed works and such further particulars as Teesside Windfarm may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require.

300. Particularly in respect of the restricted works, the undertaker must have regard to the restricted works considerations entered into between the parties when preparing the works details in accordance with paragraph 298.

301. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Teesside Windfarm operations or access to them, or cross any infrastructure owned or operated by Teesside Windfarm, or comprising the restricted works, are to be commenced until the works details in respect of those works submitted under paragraph 298 have been approved by Teesside Windfarm.

302. Any approval of Teesside Windfarm required under paragraph 300 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Teesside Windfarm may require to be made for—

(a) the continuing safety, uninterrupted use and operational viability of the Teesside Windfarm operations; and

(b) the requirement for Teesside Windfarm to have reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety uninterrupted use and operation or viability of the Teesside Windfarm operations.

303.—(1) The authorised development must be carried out in accordance with the works details approved under paragraph 298 and any requirements imposed on the approval under paragraph 301.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 304 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 304.

Indemnity

304.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 298, any damage is caused to the Teesside Windfarm operations, or there is any interruption in any service provided, or in the supply of any goods, by Teesside Windfarm, the undertaker must—

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

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

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

(3) Teesside Windfarm 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) If the Undertaker becomes responsible for a claim or demand pursuant to sub-paragraph (3) it must—

(a) keep Teesside Windfarm fully informed of the developments and material elements of the proceedings;

(b) take account of the views of Teesside Windfarm before taking any action in relation to the claim;

(c) not bring the name of the Teesside Windfarm on any related company into disrepute and act in an appropriate and professional manner when disputing any claim; and

(d) not pay or settle such claims without the prior written consent of Teesside Windfarm, such consent not to be unreasonably withheld or delayed.

(5) Teesside Windfarm must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 303 applies. If requested to do so by the undertaker, Teesside Windfarm must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 303 for claims reasonably incurred by Teesside Windfarm.

Arbitration

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

PART 23

FOR THE PROTECTION OF HUNTSMAN POLYURETHANES (UK) LIMITED

Benefit of protective provisions

306. The following provisions of this Schedule have effect for the benefit of HPU, unless otherwise agreed between the undertaker and HPU.

Interpretation

307. In this Schedule—

"access roads" means the access roads within the Order limits giving access to pipelines or the protected crossing;

"affected assets" means—

(a) apparatus which would be physically affected by the relevant works;

(b) the protected crossing where relevant works are to be carried out within 25 metres of the protected crossing; and

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

"apparatus" means pipelines and cables owned or operated by HPU within the Order limits and includes—

(a) any structure existing at the time when a particular action is to be taken under this Part in which apparatus is or is to be lodged or which will give access to apparatus;

(b) any coating or special wrapping of the apparatus; and

(c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962(**a**) as if the pipelines were a "pipe-line" in section 65(1) of that Act;

"construction access plan" means a plan identifying how access will be maintained to apparatus the protected crossing and the North Tees Facilities during the proposed construction or maintenance work including—

(a) any restrictions on general access by HPU, including the timing of restrictions;

(b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;

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

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

(**a**) 1962 c. 58. Section 65 was amended by section 89(1) of, and paragraphs 1 and 2 of Schedule 2 to, the Energy Act 2011 (c. 16), S.I. 2000/1937 and S.I. 2011/2305.

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

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

"damage" includes all damage including in relation to a pipeline leakage and the weakening of the mechanical strength of a pipeline;

"engineer" means an engineer appointed by HPU for the purposes of this Order;

"HPU" means Huntsman Polyurethanes (UK) Limited (company number 03767067) whose registered office is Concordia House Glenarm Road, Wynyard Business Park, Billingham, United Kingdom, TS22 5FB;

"major works" means works by HPU requiring the closure, diversion or regulation of any roads serving the North Tees Facilities;

"North Tees Facilities" means the site of facilities at North Tees connected to or supplying HPU's apparatus;

"operator" means any person who is responsible for the construction, operation, use, maintenance or renewal of any pipeline;

"owner" means—

(a) in relation to the pipeline corridor, any person—

(i) with an interest in a pipeline in the pipeline corridor;

(ii) with rights in, on, under or over the pipeline corridor in respect of a pipeline; or

(iii) with a pipeline or proposed pipeline in, on, under or over the pipeline corridor;

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

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

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

(c) in relation to the protected crossing, any person—

(i) with an interest in the protected crossing;

(ii) with rights in relation to the protected crossing; or

(iii) with pipelines in or comprising the protected crossing; and

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

"pipeline corridor" means the land identified as the pipeline corridor on the Sembcorp Pipeline Corridor protective provisions supporting plans;

"pipelines" means any apparatus owned or operated by HPU located in the pipeline corridor or in or comprising the protected crossing at the time the pipeline survey is carried out or as may be added between the date of the pipeline survey and the commencement of the authorised development, providing that any such additions are notified to the undertaker as soon as reasonably practicable;

"pipeline survey" means a survey of the pipeline corridor and the protected crossing to establish (if not known)—

(a) the precise location of the pipelines and the protected crossing;

(b) the specification of the pipelines and protected crossing including, where relevant, their composition, diameter, pressure and the products they are used to convey; and

(c) any special requirements or conditions relating to the pipelines which differ from the requirements or conditions applying to standard pipelines of that type;

"protected crossing" means the tunnel which carries pipelines under the River Tees known as Tunnel 2;

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

(a) the access roads;

(b) the pipeline corridor; or

(c) the protected crossing;

"relevant work" means a work which may have an effect on the operation, maintenance, abandonment of or access to any pipeline or the protected crossing;

"Sembcorp Pipeline Corridor protective provisions supporting plan" means the plan certified as the Sembcorp Pipeline Corridor protective provisions supporting plan by the Secretary of State under article 45 (certification of plans etc) for the purposes of this Order;

"specified persons" means the Operations Manager, Huntsman Polyurethanes, PO Box 99, Wilton, Redcar, TS10 4YA in relation to Huntsman Polyurethanes (UK) Limited, or such other person as they may notify to the undertaker in writing; and

"works details" means the following—

(a) a description of the proposed works together with plans and sections of the proposed works where such plans and sections are reasonably required to describe the works concerned or their location;

(b) details of methods and locations of any piling proposed to be undertaken under paragraph 314;

(c) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 315;

(d) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 316;

(e) details of the location of any pipelines affected by the oversailing provisions in paragraph 317, including details of the proposed clearance;

(f) details of the method location and extent of any dredging, a technical assessment of the likely effect of the dredging on the protected crossing and any mitigation measures which are proposed to be put in place to prevent damage to the protected crossing;

(g) details of the undertaker and their principal contractors' management of change procedures;

(h) details of the traffic management plan, which plan must include details of vehicle access routes for construction and operational traffic and which must assess the risk from vehicle movements and include safeguards to address identified risks;

(i) details of the lifting study during the construction phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;

(j) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground assets and which study must provide for individual lift plans;

(k) details of the emergency response plan as prepared in consultation with local emergency services and the pipeline operators; and

(l) any further particulars provided in accordance with paragraph 308(2).

Pipeline survey

308.—(1) Before commencing any part of the authorised development in the pipeline corridor or which may affect a protected crossing the undertaker must—

(a) carry out and complete the pipeline survey; and

(b) comply with sub-paragraph (3) below.

(2) The pipeline survey must be undertaken by an appropriately qualified person with at least 10 years' experience of such surveys.

(3) When the pipeline survey has been completed the undertaker must serve a copy of the pipeline survey on HPU and invite HPU to advise the undertaker within 28 days of receipt of the

survey if HPU considers that the pipeline survey is incomplete or inaccurate and if so in what respect following which the undertaker must finalise its pipeline survey.

Authorisation of works details affecting pipelines or protected crossing

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

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

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

(a) the works details supplied in respect of that relevant work under paragraph 308 have been authorised by HPU; or

(b) the works details supplied in respect of that relevant work under paragraph 308 have been authorised by an arbitrator under paragraph 311(2); or

(c) authorisation is deemed to have been given in accordance with paragraph 311(1).

311.—(1) Any authorisation by HPU required under paragraph 309(a) must not be unreasonably withheld but may be given subject to such reasonable conditions as HPU may require to be made for—

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

(b) the requirement for HPU to have—

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

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

(2) The authorised development must be carried out in accordance with the works details authorised under paragraph 309 and any conditions imposed on the authorisation under paragraph (1).

(3) Where there has been a reference to arbitration in accordance with paragraph 311(2) and the arbitrator gives authorisation, the authorised development must be carried out in accordance with the authorisation and conditions contained in the award of the arbitrator under paragraph 311(3).

312.—(1) In the event that—

(a) no response has been received to the submission of the works details under paragraph 308 within 45 days of the undertaker obtaining a written acknowledgment of receipt from a specified person under paragraph 308(1) and no further particulars have been requested under paragraph 308(2); or

(b) authorisation has not been given within 30 days of the undertaker obtaining a written acknowledgment of receipt from a specified person of the further particulars supplied under paragraph 308(2),

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

(2) In the event that—

(a) the undertaker considers that HPU has unreasonably withheld its authorisation under paragraph 310(1); or

(b) the undertaker considers that HPU has given its authorisation under paragraph 310(1) subject to unreasonable conditions,

the undertaker may refer the matter to an arbitrator for determination under paragraph 330.

(3) Where the matter is referred to arbitration under paragraph (2) the arbitrator is to determine whether or not authorisation should be given and, if so the conditions which should reasonably be attached to the authorisation under sub-paragraph (a) and (b) of paragraph 310(1).

Notice of works

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

Further provisions about works

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

315.—(1) All piling within 1.5 metres of the centreline of a pipeline must be non-percussive.

(2) Where piling is required within 50 metres of the centreline of a pipeline or which could have an effect on the operation or maintenance of a pipeline or access to a pipeline, details of the proposed method for and location of the piling must be provided to HPU for approval in accordance with paragraph 308.

316.—(1) Where excavation of trenches (including excavation by dredging) adjacent to a pipeline affects its support, the pipeline must be supported in a manner approved by HPU.

(2) Where the undertaker proposes to carry out excavations which might affect above ground structures such as pipeline supports in the pipeline corridor, the undertaker must calculate the zone of influence of those excavations and provide those calculations to HPU under paragraph 308.

317.—(1) Where a trench is excavated across or parallel to the line of a pipeline, the backfill must be adequately compacted to prevent any settlement which could subsequently cause damage to the pipeline.

(2) Proposed methods and locations of compacting must be notified to HPU in accordance with paragraph 308.

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

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

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

(6) In the event of a dispute as to—

(a) whether or not backfill has been adequately compacted under sub-paragraphs (1) to (4); or

(b) the amount of any payment under sub-paragraph (5),

the undertaker or HPU may refer the matter for arbitration under paragraph 330.

318.—(1) A minimum clearance of 1500 millimetres must be maintained between any part of the authorised development and any affected asset (whether that part of the authorised development is parallel to or crosses the pipeline) unless otherwise agreed with HPU.

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

Monitoring for damage to pipelines

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

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

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

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

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

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

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

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

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

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

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

(b) inform HPU;

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

(d) assist emergency services as may be requested.

Compliance with requirements, etc. applying to the protected land

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

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

(a) introduced after the date on which notice of the works was given under paragraph 312; or

(b) determined by arbitration following a determination under paragraph 330 to unreasonably—

(i) create significant engineering, technical or programming difficulties; or

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

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

Access for construction and maintenance

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

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

323.—(1) In preparing a construction access plan under paragraph 321 the undertaker must—

(a) establish the programme for HPU's major works in the pipeline corridor and the North Tees Facilities and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and

(b) establish where HPU's access to the protected land, or any pipeline or the North Tees Facilities has a reasonable expectation to exercise access rights over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

(2) Where a reference is made to arbitration under paragraph 330 in relation to any disagreement about a construction access plan the arbitrator must have regard to—

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

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

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

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

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

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

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

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

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

(2) Where HPU or the undertaker refers the construction access plan to arbitration for determination under paragraph 330, no works affecting access rights over the access roads may commence until that determination has been provided.

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

Insurance

325.—(1) Before carrying out any part of the authorised development affecting HPU, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer with the terms, cover and level of cover as may be agreed in writing between the undertaker and HPU, and evidence of that insurance must be provided on request to HPU.

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

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

326. If HPU has a dispute about the proposed insurance (including the terms or level of cover) to be provided under paragraph 324—

(a) HPU may refer the matter to arbitration under paragraph 330; and

(b) the undertaker may put in place an insurance policy it considers to be appropriate and continue with the authorised development at its own risk whilst the determination under paragraph 330 is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

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

(a) authorisation of survey details submitted by the undertaker under paragraph 307(3), authorisation of works details submitted by the undertaker under paragraph 308 and the imposition of conditions under paragraph 310;

(b) the engagement of an engineer and their observation of the authorised works affecting the pipelines and the provision of safety advice under paragraph 312;

(c) responding to the consultation on piling under paragraph 314;

(d) considering the effectiveness of any compacting which has taken place under paragraph 316, including considering and evaluating compacting testing results and the details of further compaction works under that paragraph;

(e) the repair and testing of a pipeline or protected crossing under paragraph 318;

(f) considering and responding to consultation in relation to the construction access plan under paragraph 321 and providing details of their programme for major works to the undertaker under paragraph 322; and

(g) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 324,

including the reasonable costs incurred by HPU in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow HPU to carry out its functions under these protective provisions.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any of the works referred to in paragraph 306, any damage is caused to the affected assets of HPU, or there is any interruption in any service provided, or in the supply of any goods, by HPU, the undertaker must—

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

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

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

(4) HPU must give the undertaker reasonable notice of any claim or demand under sub-paragraph (2) and no settlement or compromise of such a claim or demand is to be made without the prior 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.

(5) HPU must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part.

(6) In the assessment of any sums payable to HPU under this Part there must not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, HPU if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part or increasing the sums so payable.

(7) HPU 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 applies. If requested to do so by the undertaker, HPU must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (2). The undertaker shall only be liable under this paragraph for claims reasonably incurred by HPU.

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

328. The undertaker must give written notice to HPU of the terms and level of cover of any guarantee or alternative form of security put in place under article 48 (funding for compulsory acquisition compensation) and any such notice must be given no later than 28 days before any such guarantee or alternative form of security is put in place specifying the date when the guarantee or alternative form of security comes into force.

329. The undertaker, must when requested to do so by HPU, provide it with a complete set of the documents submitted to and certified by the Secretary of State in accordance with article 45 (certification of plans etc.) in electronic form.

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

Arbitration

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

PART 24

FOR THE PROTECTION OF NAVIGATOR TERMINALS SEAL SANDS LIMITED

332. For the protection of Navigator Terminals, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Navigator Terminals.

333. In this Part of this Schedule—

"Navigator Terminals" means Navigator Terminals Seal Sands Limited (company number 00829104) whose registered address is Oliver Road, Grays, RM20 3ED and any successor in title or function to the Navigator Terminals operations;

"the Navigator Terminals operations" means the operations within the Order limits vested in Navigator Terminals including the pipeline crossing the Order limits operated by Navigator Terminals used at various times for the passage of multi-purpose hydrocarbon fuels and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962; and

"works details" means—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 333.

Consent under this Part

334. Before commencing any part of the authorised development which would have an effect on the operation or maintenance of the Navigator Terminals operations or all necessary and existing access to them, the undertaker must submit to Navigator Terminals the works details for the proposed works and such further particulars as Navigator Terminals may, within 28 days from the day on which the works details are submitted under this paragraph, reasonably require for approval by Navigator Terminals.

335. No works comprising any part of the authorised development which would have an effect on the operation or maintenance of the Navigator Terminals operations or access to them are to be commenced until the works details in respect of those works submitted under paragraph 333 have been approved by Navigator Terminals.

336. Any approval of Navigator Terminals required under paragraph 334 must not be unreasonably withheld or delayed unless the works details are not consistent with and in accordance with terms of this Part but may be given subject to such reasonable requirements as Navigator Terminals may require to be made for—

(a) the continuing safety and operational viability of the Navigator Terminals operations; and

(b) the requirement for Navigator Terminals to have reasonable access with or without vehicles at all times to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the Navigator Terminals operations.

337.—(1) The authorised development must be carried out with good and suitable materials in a good and workmanlike manner in accordance with the works details approved under paragraph 334 and any requirements imposed on the approval under paragraph 335 and all other statutory and other requirements or regulations.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 336 and the arbitrator gives approval for the works details, the authorised development must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 336.

Indemnity

338.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 333, any damage or loss is caused to the Navigator Terminals operations or property of Navigator Terminals, or there is any interruption in any service provided, or in the supply of any goods, by Navigator Terminals, the undertaker must—

(a) bear and pay the cost incurred by Navigator Terminals in making good such damage or restoring the supply; and

(b) make compensation to Navigator Terminals for any other expenses, loss, damages, penalty or costs incurred by Navigator Terminals, 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 solely to the act, neglect or default of Navigator Terminals, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by Navigator Terminals.

(3) Navigator Terminals 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) Navigator Terminals must use its reasonable endeavours to mitigate in whole or in part and to minimise so far as it is able and using the steps of a reasonably prudent operator of such a facility any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 337 applies. If requested to do so by the undertaker, Navigator Terminals must provide reasonable details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 337 for claims reasonably incurred by Navigator Terminals.

Arbitration

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

PART 25

FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

340. For the protection of NW, the following provisions, unless otherwise agreed in writing between the undertaker and NW, have effect.

341. In this Part of this Schedule—

"alternative apparatus" means alternative apparatus adequate to enable NW to fulfil its statutory functions in no less efficient a manner than previously;

"apparatus" means the following items belonging to or maintained by NW within the Order limits—

(a) in the case of NW's water undertaking—

(i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or "accessories" (as defined in section 219(1) of the Water Industry Act 1991) belonging to or maintained or used by NW for the purposes of water supply; and

(ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and

(b) in the case of NW's sewerage undertaking—

(i) any sewer, drain or disposal works vested in NW under the Water Industry Act 1991; and

(ii) any sewer, drain or disposal works which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, "disposal main" (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

"functions" includes powers and duties;

"in" in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land;

"NW" means Northumbrian Water Limited, company number 02366703, whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham, DH1 5FJ;

"plan" includes sections, drawings, specifications and method statements; and

"the standard protection strips" means strips of land falling within the following distances to either side of the medial line of any relevant pipe or apparatus—

(a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;

(b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;

(c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres;

(d) 6 metres where the diameter of the pipe exceeds 750 millimetres; and

(e) 6.5 metres where it is a sewer.

342. The undertaker must not within the standard protection strips interfere with or build over any apparatus within the Order limits or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips unless otherwise agreed in writing with NW, such agreement not to be unreasonably withheld or delayed, and this provision must be brought to the attention of any contractor responsible for carrying out any part of the authorised development on behalf of the undertaker.

343. The alteration, extension, removal or re-location of any apparatus shall not be implemented until—

(a) any requirement for any permits under the Environmental Permitting Regulations 2016 or other replacement legislation and any other associated consents are obtained; and

(b) if applicable, the undertaker has made the appropriate application under sections 106 (right to communicate with public sewers), 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) or 185 (duty to move pipes, etc. in certain cases) of the Water Industry Act 1991 as may be required by those provisions and has provided a plan of the works proposed to NW and NW has given the necessary consent or approval under the relevant provision, such agreement not to be unreasonably withheld or delayed,

and in the event that such works are to be executed by the undertaker, they are to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by NW for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

344. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which any apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension shall take place until NW has established to its reasonable satisfaction, without unnecessary delay, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus.

345. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for NW to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of NW, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for NW, such agreement not to be unreasonably withheld or delayed.

346. If in consequence of the exercise of the powers conferred by the Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to

such apparatus as will enable NW to maintain or use the apparatus no less effectively than was possible before such obstruction.

347. If in consequence of the exercise of the powers conferred by the Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets will immediately be given to NW and afforded the same protection as other NW assets.

348.—(1) Subject to sub-paragraphs (2) and (3), if for any reason or in consequence of the construction of any of the works referred to in paragraphs 341 to 343 any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of NW, or there is any interruption in any service provided, or in the supply of any goods, by NW, the undertaker must—

(a) bear and pay the cost reasonably incurred by NW in making good any damage or restoring the supply; and

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

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

(3) NW 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) NW 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 347 applies. If requested to do so by the undertaker, NW must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 347 for claims reasonably incurred by NW.

349. Any dispute arising between the undertaker and NW under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).

350.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or NW requires the removal of apparatus or NW makes requirements for the protection or alteration of apparatus, the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of NW's undertaking and NW must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus which may belong to or be maintainable by NW but which does not appear on any statutory map kept for the purpose by NW, it shall inform NW of the existence and location of the apparatus as soon as reasonably practicable.

(3) Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and NW in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

351. Prior to carrying out any works within the Order Limits (as defined in the Order) NW must give written notice of the proposed works to the undertaker, such notice to include full details of the location of the proposed works, their anticipated duration, access arrangements, depths of the works, and any other information that may impact upon the works consented by the Order.

PART 26

FOR THE PROTECTION OF NORTHERN GAS NETWORKS LIMITED

Application

352. For the protection of the Northern Gas Networks Limited the following provisions shall, unless otherwise agreed in writing between the undertaker and Northern Gas Networks Limited, have effect.

Interpretation

353. In this Part of this Schedule—

"alternative apparatus" means appropriate alternative apparatus to the reasonable satisfaction of Northern Gas Networks to enable Northern Gas Networks to fulfil its statutory functions in a manner not less efficient than previously;

"apparatus" means any mains, pipes or other apparatus belonging to Northern Gas Networks which it uses for the purposes of its undertaking;

"functions" includes powers and duties;

"in" in a context referring to works, apparatus or alternative apparatus in land includes a reference to such works, apparatus or alternative apparatus under, over, across, along or upon such land;

"maintain" and "maintenance" shall include the ability and right to do any of the following: construct, use, repair, alter, inspect, renew or remove;

"Northern Gas Networks" means Northern Gas Networks Limited (Company Number 05167070) whose registered office is at 1100 Century Way, Colton, Leeds, LS15 8TU;

"plan" or "plans" include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed; and

"works" means all works carried out by the undertaker to construct, lay, render operational, maintain, repair, renew, inspect and replace the authorised development or any part thereof including without limitation ancillary works of excavation, resurfacing, protecting, testing and drainage works, as affect the apparatus.

354. Except for paragraphs 354 (apparatus of statutory undertaker in stopped up streets), 358 (retained apparatus: protection), 359 (expenses) and 360 (indemnity), this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northern Gas Networks are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus of statutory undertaker in stopped up streets

355. Notwithstanding the temporary stopping up or diversion of any street under the powers conferred by article 13 (temporary stopping up of streets, public rights of way and access land), Northern Gas Networks is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street, subject always to the undertaker's unimpeded ability to carry out the works.

Acquisition of land

356. Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any apparatus or override any easement or other interest of Northern Gas Networks otherwise than by agreement.

Removal or diversion of apparatus

357.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in land in which the apparatus is placed, that apparatus must not be removed under this Part or otherwise, and any right of Northern Gas Networks to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of Northern Gas Networks in accordance with sub-paragraphs (2) to (5).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal or diversion of any apparatus placed in that land, it must give to Northern Gas Networks written notice of that requirement, together with a plan of the works and the removal or diversion works proposed, the proposed position of the alternative apparatus, and the proposed timeline for the works. Northern Gas Networks must reasonably approve these details. The undertaker must afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

(a) the construction of alternative apparatus in other land of the undertaker; and

(b) the maintenance of that apparatus,

and after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration) and after the grant to Northern Gas Networks of any such facilities and rights, Northern Gas Networks must complete the works and bring the alternative apparatus into operation and subsequently remove any apparatus required to be removed by the undertaker and must use its reasonable endeavours to meet the undertaker's proposed timeline, and in any event must do so without undue delay, in accordance with the details provided by the undertaker under this sub-paragraph or as otherwise reasonably agreed by the undertaker.

(3) If, in consequence of the works carried out by the undertaker, Northern Gas Networks reasonably needs to remove or divert any of its apparatus, it must without undue delay give the undertaker written notice of that requirement, together with a plan of the work proposed, the proposed position of the alternative apparatus and the proposed timeline for the works. The undertaker must reasonably approve these details and must afford to Northern Gas Networks, to their reasonable satisfaction, the necessary facilities and rights for—

(a) the construction of alternative apparatus in other land of the undertaker; and

(b) the maintenance of that apparatus,

and after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration) and after the grant to Northern Gas Networks of any such facilities and rights, Northern Gas Networks must complete the works and bring the alternative apparatus into operation and subsequently remove any apparatus required to be removed by the undertaker without undue delay and in accordance with the approved details and timeline.

(4) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraphs (2) and (3) in the land in which the alternative apparatus or part of such apparatus is to be constructed, Northern Gas Networks must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible take such steps as are reasonable in the circumstances (at the Undertaker's expense) to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(5) Paragraphs 359 (expenses) and 360 (indemnity) of this Part of this Schedule apply to removal or diversions works under this paragraph 356, subject to Northern Gas Networks providing to the undertaker in advance and in writing (to the extent practicable) a reasonable cost estimate for works that it proposes to carry out.

Facilities and rights for alternative apparatus

358.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Northern Gas Networks facilities and rights for the construction and maintenance in land of the

undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Northern Gas Networks or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus in the land of the undertaker, and the terms and conditions to which those facilities and rights are to be granted, are less favourable on the whole to Northern Gas Networks than the facilities and rights enjoyed by it in respect of the apparatus to be removed (as agreed between the undertaker and Northern Gas Networks, or failing agreement, in the opinion of the arbitrator), then the undertaker and Northern Gas Networks must agree appropriate compensation for the extent to which the new facilities and rights render Northern Gas Networks less able to effectively carry out its undertaking or require it to do so at greater cost. If the amount of compensation cannot be agreed, the matter must be settled by arbitration in accordance with article 47 (arbitration) and the arbitrator must make provision for the payment of appropriate compensation by the undertaker to Northern Gas Networks as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

359.—(1) Not less than 28 days before commencing the execution of any works that will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus, the removal or diversion of which apparatus has not been required by the undertaker under paragraph 356(2) or otherwise or by Northern Gas Networks under paragraph 356(3), the undertaker must submit to Northern Gas Networks a plan showing the works and the apparatus.

(2) The plan to be submitted to Northern Gas Networks under sub-paragraph (1) shall be detailed including a method statement and describing—

(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 etc;

(d) the position of all apparatus; and

(e) by way of detailed drawings, every alteration proposed to be made to or close to any apparatus.

(3) Subject to sub-paragraph (4) the undertaker must not commence the construction or renewal of any works to which sub-paragraphs (1) or (2) apply until Northern Gas Networks has given written approval of the plan so submitted.

(4) Any approval of Northern Gas Networks undertaker required under sub-paragraph (3)—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7); and

(b) must not be unreasonably withheld or delayed.

(5) In relation to works to which sub-paragraph (1) applies, Northern Gas Networks may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order to which this paragraph 358 applies must be executed only in accordance with the relevant plan, notified under sub-paragraph (1) and approved (with conditions, if applicable) under sub-paragraph (4), as amended from time to time by agreement between the undertaker and Northern Gas Networks. Northern Gas Networks is entitled to watch and inspect the execution of those works.

(7) Where Northern Gas Networks requires any protective works or subsidence monitoring to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature),

Northern Gas Networks must give the undertaker notice of such requirement in its approval under sub-paragraph (3), and—

(a) such protective works must be carried out to Northern Gas Networks' reasonable satisfaction prior to the carrying out of the relevant part of the works;

(b) ground subsidence monitoring must be carried out in accordance with a scheme approved by Northern Gas Networks (such approval not to be unreasonably withheld or delayed), which shall set out—

(i) the apparatus which is to be subject to such monitoring;

(ii) the extent of land to be monitored;

(iii) the manner in which ground levels are to be monitored;

(iv) the timescales of any monitoring activities; and

(v) the extent of ground subsidence which, if exceeded, must require the undertaker to submit for Northern Gas Networks' approval a ground subsidence mitigation scheme in respect of such subsidence; and

(c) if a subsidence mitigation scheme is required, it must be carried out as approved (such approval not to be unreasonably withheld or delayed).

(8) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of the relevant works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(9) The Undertaker must not be required to comply with sub-paragraphs (1) or (2) in the case of emergency but in that case it must give to Northern Gas Networks notice as soon as is reasonably practicable and a plan of those works shall comply with the other requirements in this paragraph insofar as is reasonably practicable in the circumstances, provided that it always complies with sub-paragraph (10).

(10) At all times when carrying out any works authorised under the Order that may or will affect the apparatus, the Undertaker must comply with the Statutory undertaker's policies for safe working in proximity to gas apparatus including the "Specification for safe working in the vicinity of Northern Gas Networks, Gas pipelines and associated installation requirements for third parties "NGN/SPSSW22" and the Health and Safety Executive guidance document "HS(G)47 Avoiding Danger from underground services".

Expenses

360.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northern Gas Networks the charges, costs and expenses reasonably incurred by Northern Gas Networks in, or in connection with, the inspection, removal or diversion, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be reasonably required and necessary in consequence of the execution of any such works as are required and approved under this Part, including without limitation—

(a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation in the event that the Statutory Undertaker elects to use compulsory purchase powers to acquire any necessary rights under 356(4);

(b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;

(c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;

(d) the approval of plans;

(e) the carrying out of protective works;

(f) 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 any works carried out pursuant to this Schedule; and

(g) any statutory loss of supply payments under the 'Guaranteed Standards of Service' regime that the Statutory Undertaker may incur in consequence of the works, but in the event that such payments are likely to become payable, the Statutory Undertaker must give the Undertaker notice as soon as reasonably practicable of the payments and the likely amount.

(2) Northern Gas Networks must use its reasonable endeavours to mitigate in whole or in part, and in any event to minimise, any costs, expenses, loss, demands and penalties capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, Northern Gas Networks must provide an explanation of how the claimed expenses have been minimised or details to substantiate the cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable to pay expenses that have been reasonably incurred by Northern Gas Networks.

(3) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part and which is not re-used as part of the alternative apparatus, that value being calculated after removal and not including the costs (if any) of disposing that apparatus.

(4) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

then, if this incurs greater expense than would have been incurred by a like-for-like (or as close as practicable to like-for like) replacement at the same depth, the undertaker shall not be liable for this additional expense.

(5) For the purposes of sub-paragraph (4) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus where such extension is required in consequence of the execution of any such works as are referred to and approved under this Part.

(6) An amount which apart from this sub-paragraph would be payable to Northern Gas Networks in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Northern Gas Networks any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

Indemnity

361.—(1) Subject to sub-paragraphs (2), (3) and (4), and without detracting from paragraph 359 above, if by reason or in consequence of the construction of any works referred to and approved under this Part, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of Northern Gas Networks, or there is any interruption in any service provided, or in the supply of any goods, by Northern Gas Networks, the undertaker must—

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

(b) make reasonable compensation to Northern Gas Networks for any other expenses, loss, damages, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by Northern Gas Networks on behalf of the undertaker or in accordance with a plan approved by Northern Gas Networks or in accordance with any requirement of Northern Gas Networks as a consequence of the authorised development

or under its supervision shall not (subject to sub-paragraph (4)), excuse the undertaker from liability under the provisions of this sub-paragraph (2) unless Northern Gas Networks fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that does not accord with the approved plan.

(3) Northern Gas Networks must use its reasonable endeavours to mitigate in whole or in part, and to minimise any costs, expenses, loss, demands, penalties etc. capable of being claimed under sub-paragraph (1). If requested to do so by the undertaker, Northern Gas Networks must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 360 for claims reasonably incurred by Northern Gas Networks.

(4) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to—

(a) any damage or interruption to the extent that it is attributable to the neglect or default of Northern Gas Networks, its officers, employees, servants, contractors or agents; or

(b) any indirect or consequential loss or loss of profits by the Statutory Undertaker

(5) Northern Gas Networks must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker (not to be unreasonably withheld or delayed) 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.

Enactments and agreements

362. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Northern Gas Networks in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

363. Where in consequence of the proposed construction of any of the works under this Part, the undertaker or Northern Gas Networks requires the removal of apparatus in accordance with the provisions of this Part, each party must use reasonable endeavours to co-ordinate the execution of such works in the interests of safety and the efficient and economic execution of such works, taking into account the absolute need to ensure the safe and efficient operation of Northern Gas Networks' undertaking and its apparatus.

Access

364. If in consequence of the powers granted under this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable Northern Gas Networks to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

365. Any difference or dispute arising between the undertaker and Northern Gas Networks under this Part must, unless otherwise agreed in writing between the undertaker and Northern Gas Networks, be determined by arbitration in accordance with the article 47 (arbitration).

Works falling outside of development authorised by the Order

366. Nothing in this Schedule shall require the undertaker to carry out works, or requires the undertaker to enable Northern Gas Networks to carry out works, that are not authorised by the Order. Northern Gas Networks must not request any alteration, diversion, protective work or any other work which is not authorised to be carried out under this Order (but for the avoidance of doubt, it may elect to carry out such works itself under any other planning permission, permitted development rights or statutory powers (including those of compulsory acquisition) available to it).

Cathodic protection testing

367. Where in the reasonable opinion of either party—

(a) the authorised development might interfere with the existing cathodic protection forming part of the apparatus; or

(b) the apparatus might interfere with the proposed or existing cathodic protection forming part of the authorised development,

the parties shall co-operate in undertaking the tests which they consider reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

PART 27

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

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

369. In this Part of this Schedule—

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

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

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

"NT Group" means NTL, NTR and NTLL;

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

"works details" means including for land of which the undertaker intends to take only temporary possession under the Order—

(a) plans and sections;

(b) details of the proposed method of working and timing of execution of works;

(c) details of vehicle access routes for construction and operational traffic; and

(d) any further particulars provided in response to a request under paragraph 369.

Consent under this Part

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

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

(3) Any approval of the NT Group under sub-paragraph (2) must be given in respect of NTL, NTR and NTLL together, must not be unreasonably withheld or delayed but may be given subject

to such reasonable requirements as the NT Group may require to be made for them to have reasonable access with or without vehicles to the operations and any land owned by NTL, NTR or NTLL which is adjacent to the Order limits.

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

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

Indemnity

371.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 369, any damage is caused to the operations or access to any land owned by NTL, NTR or NTLL which is adjacent to the Order limits is obstructed, the undertaker must—

(a) bear and pay the cost reasonably incurred by NTL, NTR or NTLL in making good any such damage; and

(b) make reasonable compensation to NTL, NTR or NTLL for any other expenses, loss, damages, penalty or costs incurred by each of them, by reason or in consequence of any such damage or interruption.

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

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

(4) Each of NTL, NTR and NTLL must use their reasonable endeavours to mitigate in whole or in part and to minimise any costs, expenses, loss, demands and penalties to which the indemnity under this paragraph 370 applies. If requested to do so by the undertaker, NTL, NTR and NTLL must provide an explanation of how the claim has been minimised or details to substantiate any cost or compensation claimed pursuant to sub-paragraph (1). The undertaker shall only be liable under this paragraph 370 for claims reasonably incurred by NTL, NTR and NTLL.

Arbitration

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

Apparatus

373. Where, in exercise of powers conferred by the Order, the undertaker acquires any interest in land in which any apparatus owned by NTL, NTR or NTLL is placed and such apparatus is to be relocated, extended, removed or altered in any way, no relocation, extension, removal or alteration shall take place until NTL, NTR or NTLL (as the case may be) has approved contingency arrangements in order to conduct its operations, such approval not to be unreasonably withheld or delayed.

PART 28

FOR THE PROTECTION OF TEESSIDE GAS & LIQUIDS PROCESSING, TEESSIDE GAS PROCESSING PLANT LIMITED & NORTHERN GAS PROCESSING LIMITED

374. For the protection of TGLP, TGPP and NGPL, the following provisions have effect, unless otherwise agreed in writing between the undertaker and TGLP, TGPP and NGPL.

375. In this Part of this Schedule—

"alternate access agreement" means a contractually binding agreement providing the undertaker with an alternative access to plots 110, 112, 113 and 114, utilising land outside of plots 103 and 108;

"affiliates" means, as to a specified party, any other party that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such specified party. For the purposes of this definition, the concept of "control", when used with respect to any specified party, shall signify the possession of the power to direct the management and policies of such party, whether through the ownership of voting securities or partnership or other ownership interests;

"design package" means the package of documents to be provided to the NSMP entity for consultation and agreement in accordance with the design approval process in paragraphs 378 to 383 comprising of—

(a) the design documents, being all plans, levels and setting out information, drawings, specifications, details, reports, calculations, records and other construction and design and related documents and information (including any software necessary to view them) prepared or to be prepared by or on behalf of the undertaker in relation to the relevant works and/or the site of the relevant works;

(b) a detailed methodology of the proposed method of working including timing of execution of the relevant works; and

(c) for relevant works package A the traffic management plan or detail demonstrating how the relevant works would be delivered in accordance with an already approved traffic management plan,

which package shall be updated from time to time with the approval of the NSMP Entity in accordance with the provisions of this Part;

"includes" or "including" means includes without limitation or including without limitation, as applicable;

"NGPL" means Northern Gas Processing Limited (Company number 2866642) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL;

"NGPL freehold" means the freehold property registered under Land Registry title number CE160127;

"NSMP entity" means together TGLP, TGPP and NGPL and any successor in title or function to the NSMP operations in whole or in part from time to time. Reference to an NSMP entity shall be to one or more of these entities and reference to NSMP entities will be to all of the foregoing, as the context admits;

"NSMP group" means the NSMP entity and its affiliates and its and their directors, officers, employees, contractors, sub-contractors, representatives and agents;

"NSMP operations" means all or any part of operations of the NSMP entities within Teesside from time to time including the ownership and enjoyment of all NSMP rights and NSMP property and the operation of all energy and other infrastructure at or relating to NSMP property, which currently comprises a plant to process gas from the UK North Sea and includes the NSMP pipelines;

"NSMP pipelines" means the low and high pressure pipelines owned and/or operated and/or used by the NSMP entities and/or over which the NSMP entities have rights from time to time

within Teesside which are used (or have been used or are intended to be used) at various times for the passage of natural gas and/or liquid natural gas and/or other products (including butane, propane and condensate output) and all ancillary apparatus including such works and apparatus properly appurtenant to the pipelines as are specified by section 65(2) (meaning of "pipe-line") of the Pipe-lines Act 1962;

"NSMP property" means all property owned and/or enjoyed by an NSMP entity within Teesside from time to time, including the TGLP freehold and NGPL freehold itself together with the NSMP rights;

"NSMP requirements" means, with respect to relevant works package A—

(a) the continuing safety and uninterrupted and unimpeded operation and perpetuation of the NSMP operations;

(b) uninterrupted and unimpeded emergency access with or without vehicles to the NSMP operations; and

(c) the requirement for the NSMP entity and its employees, contractors, sub-contractors, agents and assigns to have at all times during the construction of the authorised development 24 hour unhindered access, utilities and servicing to all parts of the NSMP operations including in relation to access on foot, and with cars, light commercial vehicles and heavy goods vehicles with abnormal loads;

"NSMP rights" means without limitation all rights, benefits and privileges owned or enjoyed by an NSMP entity or in relation to which an NSMP entity has a benefit, whether legal, equitable, contractual or otherwise in existence from time to time relating to the NSMP entities, their business, operations and property including access, utilities, services (including surface water drainage) and all rights relating to the NSMP pipelines;

"parties" means the relevant NSMP entity and the undertaker;

"relevant works" mean any part of relevant works package A and relevant works package B;

"relevant works package A" means works included in Work Number 2 or 10 of the authorised development or access in connection with those works numbers, on plots 103, 105, 106 or 108, and access in connection with works on plots 110, 112, 113, 114;

"relevant works package B" means those parts of the authorised development, whether within the TGLP freehold, within the Order limits or otherwise, which would have a potential effect on the operation, safety, or maintenance of or access to the NSMP operations, excluding relevant works package A;

"TGLP" means Teesside Gas & Liquids Processing (Company number 02767808) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL and any successor in title or function and any successor in title to the TGLP freehold;

"TGLP freehold" means the freehold properties registered under Land Registry title numbers CE160125 and CE168304, within which plots 105, 106 and 103 are situated;

"TGPP" means Teesside Gas Processing Plant Limited (Company number 05740797) of Suite 1, 7th Floor 50 Broadway, London, United Kingdom, SW1H 0BL; and

"traffic management plan" means the undertaker's detailed traffic management plans for the relevant works package A and which will set out access arrangements for the relevant works package A in relation to plot 103, plot 105, plot 106, plot 108, and access in connection with works on plot 110, plot 112, plot 113, and plot 114, and Seal Sands Road (including but not limited to plans for ensuring 24 hour unhindered access for the period of construction of the relevant works package A for the NSMP entity, its employees, contractors, sub-contractors, agents and assigns whether by cars, light commercial vehicles, heavy vehicles carrying abnormal loads and emergency services vehicles) for each stage or phase of the relevant works package A.

376. No relevant works are to be commenced until the design package has been developed and submitted by the undertaker and approved or deemed approved by the NSMP entity in accordance with the design approval process at paragraphs 377 to 382 below.

377. Following approval or deemed approval of the design package, the undertaker will submit any proposed changes (other than those which will have no adverse impact on the NSMP operations) to any of the documentation or drawings comprising the approved design package in accordance with the change approval process at paragraphs 382 to 386387 below and prior to the changes being implemented. The undertaker shall only implement such changes to the documentation or drawings (as applicable) as are agreed in writing in advance with the NSMP entity under the change approval process. Following any such changes to the design package having been approved or deemed approved the undertaker shall provide the NSMP entity with an updated electronic copy of the design package as changed.

378. The undertaker will design and carry out or will procure that the relevant works are designed and carried out in all respects in accordance with the approved design package (subject to any changes agreed as part of the change approval process).

Approval Process

Part A – Design Approval Process

379. This Part A sets out the approval process to be followed in respect of the consultation and agreement of the design package.

380. The undertaker shall submit the design package to the NSMP entity for consultation, review and approval.

381. Following submission of the design package to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity within twenty business days of receipt by the NSMP entity of the design package. As part of that consultation the parties agree to adhere to the following—

(a) the NSMP entity must, within twenty business days of the date of receipt of the design package, notify in writing the undertaker;

(i) of its approval of all or any part of the design package; or

(ii) of its disapproval of all or any part of the design package and the reasons for disapproval of any part of the design package; or

(iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings,

(b) Within twenty business days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the design package.

(c) If agreement on the design package and approval by the NSMP entity cannot be reached before the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties), the matter will be treated as a dispute to be resolved in accordance with paragraph 401 of this Part unless otherwise agreed by the parties.

382. In the event the NSMP entity does not provide any response to the undertaker in accordance with the timescale set out in paragraph 380(a) or (b) the NSMP entity shall be deemed to have given their approval to the design package.

383. Once approved, the undertaker shall issue one paper copy and one electronic copy of the documents comprised within the approved design package and shall compile and maintain a register of the date and contents of the submission of the design package.

384. With respect to the relevant works package A, the undertaker may either submit the traffic management plan for agreement as part of the design package, or it may submit the traffic

management plan in advance of a design package in which case the design approval process set out in Part A and the change approval process set out in Part B of this Part of this Schedule shall apply as though references to "design package" were to "traffic management plan".

Part B – Change Approval Process

385. This Part B sets out the approval process to be followed in respect of the consultation and agreement of any changes (other than those which will have no adverse impact on the NSMP operations) required to the design package after its approval under the design approval process above.

386. The undertaker shall submit any such change required to the design package (other than those which will have no adverse impact on the NSMP operations) (a "change request") to the NSMP entity for consultation, review and approval.

387. Following submission of the change request to the NSMP entity, the parties agree to actively consult with each other so as to achieve approval by the NSMP entity of the change request within ten working days of receipt by the NSMP entity of the change request. As part of that consultation the parties agree to adhere to the following—

(a) the NSMP entity must, within ten business days of the date of receipt of the change request, notify in writing the undertaker—

(i) of its approval of all or any part of the change request;

(ii) of its disapproval of all or any part of the change request including the reasons for disapproval of any part of the change request; or

(iii) any further or other information, data and documents that the NSMP entity reasonably requires, including, without limitation any modified documents or drawings;

(b) within five business days of the undertaker providing any further information pursuant to sub-paragraph (a)(iii) above, or providing material reasons why any changes requested by the NSMP entity (as part of its response pursuant to sub-paragraph (a)(ii) or (iii)) cannot be implemented or further information cannot be provided, the NSMP entity and the undertaker will actively consult with each other for the purposes of agreeing the change request; and

(c) if agreement between the parties cannot be reached before the end of the relevant period pursuant to sub-paragraph (a) or (b) above (or such alternate timescales as are agreed between the parties) the matter will be treated as a dispute to be resolved in accordance with paragraph 401 of this Part.

388. In the event the NSMP entity does not provide a response to the undertaker in accordance with the timescales set out in paragraph 386(a) or (b) above, the NSMP entity shall be deemed to have given their approval to the change request.

389. Once approved, the undertaker shall issue one (1) paper copy and one (1) electronic copy of the documents comprising any approved change request and compile and maintain a register of the date and contents of any such change request.

Part C – Approval Principles

390. Any approval of the NSMP entity required under Part A or Part B of this Part of this Schedule must not (subject to paragraphs 390 and 391 below) be unreasonably withheld or delayed but may be given subject to the NSMP requirements (with respect to relevant works package A) and in considering any request to agree or approve details under Part A or B the NSMP Entity must make its decision in accordance with—

(a) with respect to relevant works package A, the approval principles set out at paragraphs 390 to 394 of this Part; and

(b) with respect to relevant works package B, with the approval principles set out at paragraphs 395 and 396 of this Part.

Approval Principles: Relevant Works Package A

391. Where the NSMP entity can reasonably demonstrate that any part of the relevant works package A will materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations it is entitled to withhold its authorisation until the undertaker can demonstrate to the reasonable satisfaction of the NSMP entity that such part of relevant works package A will not materially adversely affect the uninterrupted and unimpeded operation, safety and maintenance of, or access to, the NSMP operations, having regard to the measures of any approved or proposed traffic management plan. A material adverse effect includes any impediment, diminution, restriction or interruption on the NSMP entity's access to the access road which runs across plots 108, 103 and 106.

392. Subject to paragraph 393, below, it shall be reasonable for the NSMP entity to withhold approval to any works comprised in relevant works package A—

(a) which shall include physical works on, depositing of materials on or stopping up of plots 108, 103 and 106 but not the passage of reasonable construction traffic over these plots (which shall be subject to any approved traffic management plan or any traffic management plan submitted as part of the design package);

(b) which involve any resurfacing or redevelopment of the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold unless a working method has been submitted and approved by the NSMP entity which amongst any other requirements of the NSMP entity demonstrates access will be continuously maintained and will be no less convenient for the NSMP entity;

(c) which require access for construction traffic over the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold, other than—

(i) over plots 98, 108, 103, 105 and 106 as strictly required for construction of Work Number 2A within plot 105; or

(ii) over plots 98, 108 and 103 as strictly required for the implementation of Work Numbers 2 and 10 on plots 110, 112, 113 and 114,

in each case subject to the approved traffic management plan or any proposed traffic management plan submitted as part of the relevant design package;

(d) which include any construction or laydown area on the TGLP freehold, other than a temporary laydown area within plot 105 for materials required for the construction of Work Number 2A within plot 105; or

(e) which requires the stopping up of Seal Sands Road or the private road (parts of which runs through plots 103, 106 and 108) either temporarily or permanently.

393. It will be unreasonable for the NSMP entity to withhold approval under sub-paragraphs 391(a) and (c), on grounds relating to access to the NSMP operations (as required under the NSMP requirements) if the design package submitted demonstrates that relevant works package A will be undertaken in accordance with any approved traffic management plan.

394. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the traffic management plan and approval of the design package for relevant works package A—

(a) co-operate with each other with a view to ensuring—

(i) the compatibility of the authorised development and the NSMP operations;

(ii) the co-ordination of the construction programming of the authorised development and the NSMP operations; and

(iii) the achievement of the NSMP requirements; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised development and the NSMP operations, having regard always to the NSMP requirements.

Approval Principles: Relevant Works Package B

395. It shall be reasonable for the NSMP entity to withhold approval to any works comprised in relevant works package B, or to impose conditions on any approval having regard to the requirement for—

(a) uninterrupted and unimpeded emergency access with or without vehicles to the NSMP operations at all times; and

(b) reasonable access with or without vehicles to inspect, repair, replace and maintain and ensure the continuing safety and operation or viability of the NSMP operations.

396. The undertaker and the NSMP entity must, in carrying out their obligations in relation to the approval of the design package for relevant works package B—

(a) co-operate with each other with a view to ensuring—

(i) the compatibility of the authorised development and the NSMP operations; and

(ii) the co-ordination of the construction programming of the authorised development and the NSMP operations; and

(b) use reasonable endeavours to avoid any conflict arising from the carrying out of the authorised development and the NSMP operations, having regard always to the approval principles in paragraph 395.

Compliance with requirements, etc. applying to the NSMP operations

397. If any circumstance arises resulting from relevant works package A which causes any interruption to the operation or maintenance of or access to the NSMP operations or damage to the NSMP property the undertaker shall procure its immediate remediation.

398. In undertaking any works in relation to the NSMP operations or exercising any rights relating to or affecting the NSMP operations, the undertaker must comply with such conditions, requirements or regulations relating to uninterrupted operation and access, health, safety, security and welfare as are operated in relation to access to or activities in the NSMP operations, provided the same are provided to the undertaker prior to approval of the design package.

399. For the benefit of NSMP, the undertaker must not exercise the powers granted under this Order so as to hinder or prevent access via the access road between the TGLP freehold and Seal Sands Road and the continuation of that access road within the TGLP freehold other than as expressly provided for in an approved traffic management plan or approved design package.

Indemnity

400.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 375 any damage is caused to NSMP operations or there is any interruption in any service provided, or in the supply of any goods, by the NSMP entity, the undertaker must—

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

(b) make reasonable compensation to the NSMP entity for any other expenses, loss, damage, penalty or costs incurred by the NSMP 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 any damage or interruption to the extent that it is attributable to the act, neglect or default of the NSMP entity or its agents.

(3) The NSMP 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 NSMP entity must use its reasonable endeavours to mitigate in whole or in part any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph 400 applies.

Arbitration

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

Access to plots 110, 112, 113 or 114

402. The undertaker must not use plots 105 or 106 to access plots 110, 112, 113 or 114.

403. The undertaker must not use plots 103 or 108 to access plots 110, 112, 113 or 114 if an alternate access agreement has been concluded.

404. Where an alternate access agreement has been concluded, reference to plots 110, 112, 113 and 114 in the definitions of “relevant works package A” and “traffic management plan” is taken to be deleted.

SCHEDULE 13

Article 44

PROCEDURE FOR DISCHARGE OF REQUIREMENTS

405. In this Schedule—

"requirement consultee" means any body named in a requirement as a body to be consulted by the relevant planning authority in discharging that requirement; and

"start date" means the date of the notification given by the Secretary of State under paragraph 409(2)(b).

Applications made under a Requirement

406.—(1) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement the relevant planning authority must give notice to the undertaker of its decision on the application within a period of eight weeks beginning with the later of—

(a) the day immediately following that on which the application is received by the authority;

(b) the day immediately following that on which further information has been supplied by the undertaker under paragraph 407; or

(c) such longer period as may be agreed in writing by the undertaker and the relevant planning authority.

(2) Subject to paragraph 409, in the event that the relevant planning authority does not determine an application within the period set out in sub-paragraph (1), the relevant planning authority is to be taken to have granted all parts of the application (without any condition or qualification) at the end of that period.

(3) Any application made to the relevant planning authority pursuant to sub-paragraph (1) must include a statement to confirm whether it is likely that the subject matter of the application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement and if it will then it must be accompanied by information setting out what those effects are.

(4) Where an application has been made to the relevant planning authority for any consent, agreement or approval required by a Requirement included in this Order and the relevant planning authority does not determine the application within the period set out in sub-paragraph (1)—

(a) and the application is accompanied by a report pursuant to sub-paragraph (3) which states that the subject matter of such application is likely to give rise to any materially new or materially different environmental effects compared to those in the environmental statement; or

(b) it considers that the subject matter of such application will give rise to any materially new or materially different environmental effects compared to those in the environmental statement,

then the application is deemed to have been refused by the relevant planning authority at the end of that period.

Further information and consultation

407.—(1) In relation to any application to which this Schedule applies, the relevant planning authority may request such reasonable further information from the undertaker as is necessary to enable it to consider the application.

(2) In the event that the relevant planning authority considers such further information to be necessary and the provision governing or requiring the application does not specify that consultation with a requirement consultee is required, the relevant planning authority must, within

10 working days of receipt of the application, notify the undertaker in writing specifying the further information required.

(3) If the provision governing or requiring the application specifies that consultation with a requirement consultee is required, the relevant planning authority must issue the consultation to the requirement consultee within five working days of receipt of the application, and must notify the undertaker in writing specifying any further information requested by the requirement consultee within five working days of receipt of such a request and in any event within 15 working days of receipt of the application (or such other period as is agreed in writing between the undertaker and the relevant planning authority).

(4) In the event that the relevant planning authority does not give notification as specified in sub-paragraph (2) or (3) it is deemed to have sufficient information to consider the application and is not thereafter entitled to request further information without the prior agreement of the undertaker.

Fees

408.—(1) Where an application is made to the relevant planning authority for written consent, agreement or approval in respect of a requirement, the fee prescribed under regulation 16(1)(b) of the Town and Country Planning (Fees for Applications, Deemed Applications, Requests and Site Visits) (England) Regulations 2012(**a**) (as may be amended or replaced from time to time) is to apply and must be paid to the relevant planning authority for each application.

(2) Any fee paid under this Schedule must be refunded to the undertaker within four weeks of—

(a) the application being rejected as invalidly made; or

(b) the relevant planning authority failing to determine the application within eight weeks from the relevant date in paragraph 405 unless—

(i) within that period the undertaker agrees, in writing, that the fee is to be retained by the relevant planning authority and credited in respect of a future application; or

(ii) a longer period of time for determining the application has been agreed pursuant to paragraph 406 of this Schedule.

Appeals

409.—(1) The undertaker may appeal in the event that—

(a) the relevant planning authority refuses an application for any consent, agreement or approval required by a requirement included in this Order or grants it subject to conditions;

(b) the relevant planning authority is deemed to have refused an application pursuant to paragraph 406(3);

(c) on receipt of a request for further information pursuant to paragraph 407 the undertaker considers that either the whole or part of the specified information requested by the relevant planning authority is not necessary for consideration of the application; or

(d) on receipt of any further information requested, the relevant planning authority notifies the undertaker that the information provided is inadequate and requests additional information which the undertaker considers is not necessary for consideration of the application.

(2) The steps to be followed in the appeal process are as follows—

(a) the undertaker must submit the appeal documentation to the Secretary of State and must on the same day provide copies of the appeal documentation to the relevant planning authority and any requirement consultee;

(**a**) S.I. 2012/2920.

(b) the Secretary of State must appoint a person to determine the appeal as soon as reasonably practicable after receiving the appeal documentation and must forthwith notify the appeal parties of the identity of the appointed person and the address to which all correspondence for the appointed person's attention should be sent;

(c) the relevant planning authority and any requirement consultee must submit written representations to the appointed person in respect of the appeal within 10 working days of the start date and must ensure that copies of their written representations are sent to each other and to the undertaker on the day on which they are submitted to the appointed person;

(d) the appeal parties must make any counter-submissions to the appointed person within 10 working days of receipt of written representations pursuant to sub-paragraph (c);

(e) the appointed person must make his decision and notify it to the appeal parties, with reasons, as soon as reasonably practicable and in any event within 30 working days of the deadline for the receipt of counter-submissions pursuant to sub-paragraph (d); and

(f) the appointment of the person pursuant to paragraph (b) may be undertaken by a person appointed by the Secretary of State for this purpose instead of by the Secretary of State.

(3) In the event that the appointed person considers that further information is necessary to enable the appointed person to consider the appeal the appointed person must, within five working days of the appointed person's appointment, notify the appeal parties in writing specifying the further information required.

(4) Any further information required pursuant to sub-paragraph (3) must be provided by the relevant party to the appeal to the appointed person and the other appeal parties on the date specified by the appointed person (the "specified date"), and the appointed person must notify the appeal parties of the revised timetable for the appeal on or before that day. The revised timetable for the appeal must require submission of written representations to the appointed person within 10 working days of the specified date, but otherwise the process and time limits set out in paragraphs (c) to (e) of sub-paragraph (2) apply.

(5) The appointed person may—

(a) allow or dismiss the appeal; or

(b) reverse or vary any part of the decision of the relevant planning authority (whether the appeal relates to that part of it or not) and may deal with the application as if it had been made to them in the first instance.

(6) The appointed person may proceed to a decision on an appeal taking into account only such written representations as have been sent within the relevant time limits.

(7) The appointed person may proceed to a decision even though no written representations have been made within the relevant time limits, if it appears that there is sufficient material to enable a decision to be made on the merits of the case.

(8) The decision of the appointed person on an appeal is to be final and binding on the parties, unless proceedings are brought by a claim for judicial review.

(9) If an approval is given by the appointed person pursuant to this Schedule, it is deemed to be an approval for the purpose of Schedule 2 (requirements) as if it had been given by the relevant planning authority. The relevant planning authority may confirm any determination given by the appointed person in identical form in writing but a failure to give such confirmation (or a failure to give it in identical form) does not affect or invalidate the effect of the appointed person's determination.

(10) Save where a direction is given pursuant to sub-paragraph (11) requiring the costs of the appointed person to be paid by the relevant planning authority, the reasonable costs of the appointed person must be met by the undertaker.

(11) On application by the relevant planning authority or the undertaker, the appointed person may give directions as to the costs of the appeal parties and as to the parties by whom the costs of the appeal are to be paid. In considering whether to make any such direction and the terms on which it is to be made, the appointed person must have regard to the advice on planning appeals

and the award costs published on 3 March 2014 by what was then the Department for Communities and Local Government or any circular or guidance which may from time to time replace it.

SCHEDULE 14

Article 45

DOCUMENTS AND PLANS TO BE CERTIFIED

Table 13

(1) *Document name*	*(2)* *Document reference*	*(3)* *Revision number*	*(4)* *Date*
access and rights of way plans	4.5	6	March 2023
application guide	1.2	17	April 2023
book of reference	3.1	8	April 2023
design and access statement	5.4	5	April 2023
environmental statement	Non-technical summary, 6.1 Volume 1, 6.2 Volume 2, 6.3 Volume 3, 6.4 Non-Technical Summary of Environmental Statement Addendum, 7.7 Environmental Statement Addendum – Volume I, 7.8.1 Environmental Statement Addendum – Volume II, 7.8.2 Non-Technical Summary of Second Environmental Statement Addendum, 7.10 Second Environmental Statement Addendum – Volume 1, 7.11.1 Second Environmental Statement Addendum – Volume II, 7.11.2 Non-Technical Summary of Third Environmental Statement Addendum, 7.14 Third Environmental Statement Addendum – Volume 1, 7.15.1 Third Environmental Statement Addendum – Volume II, 7.15.2	- - - - - - - - - -	As listed in the application guide
framework construction environmental management plan	6.45	3	October 2022
indicative lighting strategy	5.11	1	May 2021
indicative landscape and biodiversity strategy	5.12	2	August 2022
land plans	4.2	6	March 2023
Net Zero Teesside Anglo American Shared Areas Plan	4.17	1	September 2022
parking plan	4.16.2	3	October 2022
PCC site access plan	4.16.3	2	August 2022

Sembcorp Pipeline Corridor protective provisions supporting plan	4.19	1	October 2022
Sembcorp Protection Corridor protective provisions supporting plans	4.20	1	March 2023
updated landscape and biodiversity plan	4.15	4	October 2022
water connection plan	4.16.4	2	August 2022
works plans	4.4	6	March 2023

SCHEDULE 15

Requirement 3

DESIGN PARAMETERS

Table 14

Component	*Maximum Length (m)*	*Maximum Width (m)*	*Maximum Height (m AOD)*
Gas turbine hall	76	76	43
Heat recovery steam generator building	63	28	63
Heat recovery steam generator stack		6.5 m (inner diameter)	98
Steam turbine hall	64	54	43
Absorber tower	35	25	93
Absorber stack		6.6 m (inner diameter)	128
Low carbon electricity generating station electrical substation	130	120	42
New electrical substation at Tod Point			22
National Grid Tod Point substation extension (northern bay)			22
National Grid Tod Point substation extension (southern bay)			22

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Net Zero Teesside Power Limited and Net Zero North Sea Storage Limited (together referred to in this Order as the undertaker) to construct, operate and maintain a gas-fired electricity generating station with an electrical output of up to 860 megawatts together with equipment required for the capture and compression of carbon dioxide emissions from both the generating station and a wider industrial carbon capture network in Teesside. The Order also authorises the undertaker to construct, operate and maintain infrastructure for the high-pressure compression of carbon dioxide and the landward part of an offshore carbon dioxide export pipeline. The Order would permit the undertaker to acquire, compulsorily or by agreement, land and rights in land and to use land for this purpose.

A copy of the Order plans and the book of reference mentioned in this Order and certified in accordance with article 45 (certification of plans etc.) of this Order may be inspected free of charge during working hours at bp ICBT Chertsey Road Sunbury on Thames Middlesex TW16 7BP.