

PROTECTIVE PROVISIONS FOR THE PROTECTION OF SUEZ RECYCLING AND RECOVERY UK LIMITED

1. For the protection of Suez, the following provisions have effect, unless otherwise agreed in writing between the undertaker and Suez.

2. In this Schedule—

“restricted works” means any works forming any part of the authorised development that will or may temporarily or permanently disrupt access to the Suez operations;

“Suez” means Suez Recycling and Recovery UK Limited (company number 02291198), whose registered office is at Suez House, Grenfell Road, Maidenhead, Berkshire, SL6 1ES and any successor in title;

“Suez operations” means the assets and operations within the Order limits vested in Suez;

“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 3.

Consent of restricted works under this Schedule

3. Before commencing the restricted works, the undertaker must submit to Suez the works details for the restricted 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.

4. The restricted works are not to be commenced until the works details in respect of the restricted works submitted under paragraph 3 have been approved by Suez.

5. Any approval of Suez required under paragraph 4 must not be unreasonably withheld or delayed but may be given subject to such reasonable requirements as Suez may require to have reasonable access to the Suez site.

6.—(1) The restricted works must be carried out in accordance with the works details approved under paragraph 4 and any requirements imposed on the approval under paragraph 5.

(2) Where there has been a reference to an arbitrator in accordance with paragraph 8 and the arbitrator gives approval for the works details, the restricted works must be carried out in accordance with the approval and conditions contained in the decision of the arbitrator under paragraph 8.

Indemnity

7.—(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 3, any damage is caused to Suez operations, or there is any interruption in any service provided, or in the supply of any goods, by or to 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 7 applies.
- (5) 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).
- (6) The undertaker shall only be liable under this paragraph 7 for claims reasonably incurred by Suez.

Arbitration

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

Applicant's submissions

1. General

- 1.1. In preparing Schedule 23 to the draft DCO [REP7-018] (**DCO PPs**), the Applicant has largely followed the protective provisions for the benefit of Suez Recycling and Recovery UK Limited (**Suez**) that are contained in Part 19 of Schedule 12 to the Net Zero Teesside Order 2024. The Applicant considers the interactions between the NZT DCO and Suez' assets and operations are largely similar to the interactions between the authorised development and Suez' assets and operations. As such, the Applicant considers the DCO PPs are appropriate to protect Suez's assets and operations.

2. Issue 1 - Impact on Suez site and operations

- 2.1. The Applicant understands that Suez is concerned about the impact of the authorised development on the Suez site and operations, including access.
- 2.2. The Applicant considers that the protective provisions contained in the DCO PPs provide adequate protection to safeguard Suez's operations and site access.
- 2.3. Paragraph 3 of the DCO PPs requires the Applicant to obtain Suez's consent before commencing the 'restricted works'. The restricted works are 'any works forming any part of the authorised development that will or may temporarily or permanently disrupt access to the Suez operations.' As such, the approval power that paragraph 3 provides Suez directly addresses its concerns regarding impacts to the Suez's site and operations.
- 2.4. Suez can impose any reasonable requirements on the restricted works in order to enable Suez's reasonable access to the Suez site. This control further enables Suez to ensure that their site access is safeguarded, and therefore Suez can protect its ongoing operations.
- 2.5. The restricted works can only be carried out in accordance with Suez's approval and the requirements it imposes. In the event that the restricted works are determined by an arbitrator, they must be carried out in accordance with the approval and conditions determined by the arbitrator.
- 2.6. Paragraph 7 of the DCO PPs states that if any damage is caused to Suez's operations, or there is any interruption in any service provided, or in the supply of any goods, by or to Suez, as a result of the restricted works, the Applicant must:
 - 2.6.1. bear and pay the cost reasonably incurred by Suez in making good such damage or restoring the supply; and
 - 2.6.2. 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.
- 2.7. With these protections, the Applicant considers that Suez's concerns regarding its ongoing operations and site access are safeguarded.

3. Issue 2 - Consequential loss

- 3.1. The Applicant understand that Suez considers that paragraph 7(2)(b) should be removed from the DCO PPs.
- 3.2. The Applicant does not agree. The Applicant should not be liable for consequential loss, indirect loss or loss of profits as these losses are too remote from, and lack a causal link to, the damage or interruption to service of supply of goods contemplated by paragraph 7(1). As such, the exclusion in paragraph 7(2)(b) is appropriate. Paragraph 7(2)(b) is consistent with the protective provisions that benefited Suez in the Net Zero Teesside Order 2024 (see paragraph 255(2)(b) of Part 19 of Schedule 12). This paragraph is also precededented in bespoke protective provisions in the Net Zero Teesside Order 2024 (see for example, paragraphs 109(2)(b), 125(3), 295(2)(b) and 361(4)(b) of Parts 10-11, 21 and 26 respectively of Schedule 12 to the Net Zero Teesside Order 2024).