

SCHEDULE 41

Article 41

PROTECTIVE PROVISIONS FOR THE PROTECTION OF NORTH TEES LIMITED, NORTH TEES LAND LIMITED, NORTH TEES LANDFILL SITES LIMITED AND NORTH TEES RAIL LIMITED

1. 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.

2. In this Schedule—

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

“affected assets” means—

(a) apparatus which would be physically affected by the relevant works;

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

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

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

(a) any structure existing at the time when a particular action is to be taken under this Schedule in which apparatus is or is to be lodged or which will give access to apparatus;

(b) any coating or special wrapping of the apparatus; and

(c) all ancillary apparatus properly appurtenant to the pipelines, that would be treated as being associated with a pipe or systems of pipes under section 65(2) of the Pipe-Lines Act 1962 as if the pipelines were a “pipe-line” in section 65(1) of that Act;(a);

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

(a) any restrictions on general access by NT Group, including the timing of restrictions;

(b) any alternative accesses or routes of access that may be available to the undertaker using the access roads;

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

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

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

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

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

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

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

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

"North Tees Estate Plan" means the plan entitled the North Tees Estate Plan

"NT Group" means NTL, NTLL, NTLSL and NTR;

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

"NTLSL" means North Tees Landfill Sites Limited (company number 10197479) whose registered office 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 office is The Cube, Barrack Road, Newcastle upon Tyne, Tyne and Wear, NE4 6DB and any successor in title to it;

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

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

"owner" means

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

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

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

and

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

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

(a) North Tees Estate including;

a. Any access roads and tracks

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

c. The rail lines

d. Any apparatus and infrastructure within the North Tees Estate

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

(e) details of piling design (including proposed methodology, size and dept of piles, and their location for any piling proposed to be undertaken under paragraph 10;

(f) Piling risk assessment (in accordance with the EA technical guidance document on Piling in Contaminated Land);

(g) Contractor's construction environmental management plan including any proposed environmental monitoring and mitigation measures to prevent impacts on the environment;

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- (h) Contractor's construction environmental management plan including any proposed environmental monitoring and mitigation measures to prevent impacts on the environment;
- (i) Contractor's construction phase plan
- (j) Materials management plan (where re-use of excavated materials is proposed) including laboratory test results for the proposed materials and screening to demonstrate that the material is suitable for its proposed use. Also confirmation whether the CL:AIRE Definition of Waste Code of Practice is being followed and provide the associated declaration;
- (k) Written risk assessments and method statements (RAMS) for all activities to include and identify those which could affect the ground or contamination within the ground;
- (l) Details of the proposed methodology to manage, treat and dispose of water and non aqueous phase liquids encountered during the construction works;
- (m) Details of the proposed methodology for preventing contamination of the underlying ground from stockpiling of materials
- (n) Details of materials to be brought onto site for the purpose of infilling excavations or changing ground levels including the sources, chemical and geotechnical composition and proposed use;
- (o) Details of proposed additional site investigations (if required) including the location, size and angle of any trial pits or boreholes and associated RAMS
- (p) Preliminary risk assessment, site investigation, detailed assessment, remedial strategy and verification reports (including long term monitoring)
- (q) details of methods of excavation and any zones of influence the undertaker has calculated under paragraph 11;
- (r) details of methods and locations of any compaction of backfill proposed to be undertaken under paragraph 12;
- (s) details of the location of any pipelines affected by the oversailing provisions in paragraph 13, including details of the proposed clearance;
- (t) 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;
- (u) details of the undertaker and their principal contractors' management of change procedures;
- (v) 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;
- (w) 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;
- (x) details of the lifting study during the operational phase, which must include a technical assessment of the protection of underground [and above ground] assets and which study must provide for individual lift plans;
- (y) details of the emergency response plan as prepared in consultation with local emergency services and any operators; and
- (d)–

Consent under this Schedule

3.—(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, NTLL, NTLSL and NTR 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 28-30 days (or such longer period as is agreed between the parties) 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, NTLL, NTLSL and NTR 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, NTLL, NTLSL and NTR, 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, NTLL, NTLSL and NTR 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 46 (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 46.

Notice of works

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

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Further provisions about works

5 (1) No explosives are to be used within the protected land.

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

(2) Where piling is required within 50 metres of the centreline of an apparatus or which could have an effect on the operation or maintenance of the Protective Land, details of the proposed method for and location of the piling must be provided to NT Group for approval in accordance with paragraph 3.

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

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

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

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(2) Proposed methods and locations of compacting must be notified to NT Group in accordance with paragraph 3.

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

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

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

(6) In the event of a dispute as to—

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

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

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

Monitoring for damage to affected assets

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

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

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

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

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

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

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

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

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

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

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

(b) inform NT Group;

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

(d) assist emergency services as may be requested.

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

Compliance with requirements, etc. applying to the protected land

12.—(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.

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

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

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

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

14.—(1) In preparing a construction access plan under paragraph [] the undertaker must—

- (a) establish the programme for NT Group's major works in on or adjacent to the Protected Land, and plan the construction or maintenance works to prevent or (if such conflict cannot be reasonably prevented) to minimise any conflict between the construction or maintenance works and the programmed major works; and
- (b) establish where NT Group is reasonably expected to exercise access rights to access to the protected land or any apparatus over particular access roads in respect of which rights are proposed to be restricted or extinguished, establish the purpose of that expectation and provide an alternative or replacement means of access whereby that expectation can be met.

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

- (a) whether major works were, at the date of the consultation already programmed to take place;
- (b) the extent to which the authorised development can be accommodated simultaneously with the programmed major works;
- (c) the usual practice in respect of conditions or requirements subject to which authorisation to close or divert the access roads is given by the owner of the access roads;
- (d) the undertaker's programme in respect of the authorised development and the extent to which it is reasonable for it to carry out the authorised development at a different time;
- (e) the availability (or non-availability) of other times during which the authorised development could be carried out;
- (f) the programme in respect of the major works and the extent to which it is reasonable for NT Group to carry out the major works at a different time; and
- (g) the financial consequences of the decision on the undertaker and on NT Group.

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

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

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(2) Where NT Group or the undertaker refers the construction access plan to arbitration for determination under paragraph [], 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.

Boreholes

416. The authorised development must be carried out so as to enable NT Group to access boreholes MW1, MW3, DM306, DM502 and DM602 at all times unless otherwise agreed by NT Group acting reasonably or in the event of emergency.

Huntsman Drive

517. The construction and maintenance of the authorised development must be carried out so as not to prevent usage of Huntsman Drive by NT Group unless otherwise agreed by NT Group acting reasonably or in the event of emergency

Indemnity

618.—(1) Subject to sub-paragraphs (2) and (3), if by ~~direct~~-reason or in ~~direct~~-consequence of the construction of any of the works referred to ~~in paragraph 3~~, any damage is caused to the operations or access to any land owned by NTL, NTLL, NTLSL and NTR which is adjacent to the Order limits is obstructed, the undertaker must—

- (a) bear and pay the cost reasonably incurred by NTL, NTLL, NTLSL and NTR in making good any such damage; and
- (b) make reasonable compensation to NTL, NTLL, NTLSL and NTR for any other expenses, loss, damages, penalty or costs incurred by each of them, by ~~direct~~-reason or in ~~direct~~-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, NTLL, NTLSL and NTR 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, NTLL, NTLSL and NTR 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 4 applies.

(5) If requested to do so by the undertaker, NTL, NTLL, NTLSL and NTR 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 4 for claims reasonably incurred by NTL, NTLL, NTLSL and NTR.

Arbitration

719. Any difference or dispute arising between the undertaker and the NT Group under 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 46 (arbitration).

Apparatus

820. (1) Where, in the exercise of powers conferred by the Order, the undertaker acquires any interest in land in which any apparatus owned by NTL, NTLL, NTLSL and NTR 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, NTLL, NTLSL and NTR (as the case may be) has approved contingency arrangements in order to conduct its operations, such approval not to be unreasonably withheld or delayed.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to NT Group written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order, NT Group reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to NT Group the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

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(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, NT Group must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Schedule must be constructed in such manner and in such line or situation as may be agreed between NT Group and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

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

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to NT Group that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being executed by NT Group, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of NT Group

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

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Insurance

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21.—(1) Before carrying out any part of the authorised development affecting NT Group, the undertaker (or any contractor carrying out such works on behalf of the undertaker) must put in place a policy of insurance with a reputable insurer with the terms, cover and level of cover as may be agreed in writing between the undertaker and NT Group, and evidence of that insurance must be provide on request to NT Group.

(2) Not less than 30 days before carrying out any part of the authorised development on the protected land or before proposing to change the terms of the insurance policy, the undertaker must notify NT Group of

details of the terms or cover of the insurance policy that it proposes to put in place, including the proposed level of the cover to be provided.

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

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

(a) NT Group may refer the matter to arbitration under paragraph []; 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 [] is complete, following which the undertaker must adjust the insurance policy if necessary to accord with the determination.

Costs

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

(a) authorisation of survey details submitted by the undertaker, authorisation of works details submitted by the undertaker and the imposition of conditions under paragraph [];

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

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

(d) responding to the consultation on piling;

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

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

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

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

(i) considering the adequacy of the terms and level of cover of any insurance policy proposed or put in place by the undertaker under paragraph 21, including the reasonable costs incurred by NT Group in engaging and retaining such external experts, consultants and contractors as may be reasonably necessary to allow NT Group to carry out its functions under these protective provisions.

(2) Subject to sub-paragraphs (3) and (4), if by reason or in consequence of the construction of any of the works referred to in paragraph 4, any damage is caused to the affected assets or property of NT Group, or there is any interruption in any service provided, or in the supply of any goods, by NT Group, the undertaker must—

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

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

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

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

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

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